

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

GORDON LAWRIE, MARGARET)
LAWRIE, CHARLES MCKINLAY, ALAN)
SIEGEL, KIMBERLY SIEGEL, STEPHEN)
FRIEZE, ELIZABETH FRIEZE, BARRY)
SOBEL, NAOMI BERGER, ANDREW)
BILLINGTON CHARLOTTE)
BILLINGTON, JOHNNY MILLER, JAMES)
C. RAMEY, HEATHER PETTS, PHILIP)
BUTTON, JOHN MIGYANKA, FLORA)
MIGYANKA, CHRISTOPHER DELANEY,)
and PAUL TIPTON, individually and on)
behalf of all others similarly situated,)

Case No: 3:09-CV-00446-TJC-HTS

Plaintiffs,)

v.)

THE GINN COMPANIES, LLC, GINN)
DEVELOPMENT COMPANY, LLC, GINN)
REAL ESTATE COMPANY, LLC, GINN)
FINANCIAL SERVICES, LLC, GINN)
TITLE SERVICES, LLC, ESI LIVING,)
LLC, LUBERT-ADLER PARTNERS, L.P.,)
FIFTH THIRD BANCORP, FIFTH THIRD)
BANK (MICHIGAN), SUNTRUST)
MORTGGE, INC., and WACHOVIA)
BANK, N.A.)

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is a proposed Class action to redress one of the largest real estate and mortgage frauds in recent history. This action is brought by Plaintiffs on behalf of themselves and those similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, against Defendants The Ginn Companies, LLC, Ginn Development Company, LLC; Ginn Real Estate Company, LLC; Ginn Financial Services, LLC; Ginn Title Services, LLC; ESI Living, LLC; Lubert-Adler Partners, L.P.; Fifth Third Bancorp; Fifth Third Bank (Michigan); SunTrust Mortgage, Inc.; and Wachovia Bank, N.A., for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 et seq. (“RICO”), and the Florida Unfair and Deceptive Practices Act, Florida Statutes §§ 501.201 et seq., and Florida common law in connection with a complex and wide ranging scheme used by Defendants to market, sell and finance real estate in certain residential real estate developments through misrepresentations, fraud and violations of federal and state law.

2. At issue in this case is Defendants’ scheme to market, sell and finance real estate in residential communities developed by the Ginn and Lubert-Adler Defendants at prices that were fraudulently inflated through misrepresentations, manipulation, fraud, deceptions, omissions and unconscionable conduct, as described in detail below, in order to astronomically increase their profits at the expense of purchasers such as Plaintiffs and the other members of the Class.

3. Plaintiffs and other members of the Class bought real estate in communities developed by the Ginn Defendants and Lubert-Adler that were marketed pursuant to a common scheme. These communities included, without limitation:

- (a) Hammock Beach in Palm Coast, Florida;
- (b) Tesoro Preserve in Port St. Lucie, Florida;

- (c) Reunion Resort in Orlando, Florida;
- (d) Bella Collina in Montverde, Florida;
- (e) Yacht Harbor Village at Hammock Beach, in Palm Coast, Florida;
- (f) Conservatory at Hammock Beach in Palm Coast, Florida;
- (g) Quail West in Naples, Florida;
- (h) Cobblestone Park in Blythewood, South Carolina;
- (i) The BriarRose in Hancock County, Georgia;
- (j) Laurelmor in Boone, North Carolina;
- (k) Burke Mountain in East Burke, Vermont;
- (l) Ginn Sur Mer, Bahamas;
- (m) Mahogany Run in the Virgin Islands;
- (n) Tesoro Club;
- (o) Tesoro Beach Club;
- (p) Admirals Cove Condominiums;
- (q) Hammock Beach Club Villas;
- (r) Hammock Beach Club; and
- (s) The Towers at Hammock Beach Club.

4. Defendants victimized and misled Plaintiffs and the Class as to the value of such property through a scheme implemented by Defendants that involved every step of the real estate purchase process—from the introduction of the property at lavish “launches” and presales deceptively promoted with standardized marketing materials through the mails and wires, to the intentional manipulation of property values through misrepresentations, fraud, deception, omissions and unconscionable conduct, to the funding of mortgage loans for the properties, based upon materially false, artificially-inflated and purposefully manipulated appraisals.

Defendants developed this reprehensible scheme and moved their enterprise from one development to the next.

5. The scheme caused substantial harm to thousands.
6. As one builder stated during an interview with Plaintiffs' counsel:

They built the prices artificially high.

They used fraudulent leasebacks. The price would include a provision for the builder to give a percentage of the money back to the buyer, right there at closing. But it was fake because the builder would not actually occupy the property. Ginn just enticed people to purchase at high prices by offering them a cash kickback at closing to completely cover their carrying costs. This made the selling price artificially high.

It was fraud. This is how they raised the prices. I decided not to do it because I knew this house of cards was going to collapse. I had never seen anything this crazy. It was fraud.

I've been building homes for a long time and I've never heard of anything like what these people were doing. They had insider trading going on to raise prices. They used shell companies to buy and flip properties. That's how they jacked up the prices. They would sell to mystery men.

That's how this thing collapsed. If you look at every community they did, it was always the same thing. In my opinion, the lot prices were all based on fraudulent appraisals.

I believe that the banks knew exactly what was going on.

7. As early as 2005, even other Florida developers began to note that Ginn's "success" was beyond ordinary and quite questionable. For example, one developer questioned Ginn's sales projections with respect to a launch at Reunion, stating:

It's optimistic. They've done a brisk business, but it has been awhile since we've done business with them because their prices kept climbing.

Noelle C. Haner, *Ginn's Goal: Condo Sales of \$1 Billion*, Orlando Business Journal (May 20, 2005), available at: <http://orlando.bizjournals.com/orlando/stories/2005/05/23/story1.html#> (quoting Virginia Cowie, founder and owner of British Homes Group) (emphasis added).

8. Each and every member of the proposed Class was harmed by the conduct alleged herein. The scheme was designed to and succeeded at building on the inflated values derived from the improper appraisals, inappropriate comparables, false recording tactics, kickbacks and other improprieties used by Defendants. It was not necessary that every individual sale involved such elements in order for Ginn to obtain prices inflated well beyond where they would have been in the absence of the scheme, as appraisals downstream of the original tainted appraisals were tainted by the fraud.

9. The inflated sales prices for properties in the Ginn communities resulting from the conduct alleged herein tainted subsequent valuations, appraisals and sales prices, permitting Ginn to continuously obfuscate the true value of the properties, set prices at an artificially high level and otherwise create false appreciation in value and permitting SunTrust, Fifth Third, Wachovia and Ginn Financial to reap substantial short-term benefits from providing the appurtenant mortgage loans.

10. Each member of the Class fell victim to the Defendants' scheme and purchased one or more Ginn properties with a value far below that represented by Defendants, thereby suffering substantial losses to their money or business, including monetary losses. In fact, the subject properties are actually worth as little as ten percent of their "appraised value"—a phenomenon that absolutely cannot be explained by mere "market downturn."

11. As set forth below, each of the Defendants actively participated in and exercised control over the conduct furthering the overall scheme for the common objective of fraudulently

and substantially increasing profits from the sales and financing of Ginn properties to the Class members at substantially and artificially inflated prices.

12. Plaintiffs seek redress for the losses to property that the Class (defined below) suffered as a result of Defendants' illegal acts, and further seek declaratory and injunctive relief to prevent further losses.

II. JURISDICTION AND VENUE

13. This Court has federal question jurisdiction over the subject matter of this action pursuant to 18 U.S.C. §§ 1961, 1962 and 1964; 28 U.S.C. §§ 1331, 1332 and 1367.

14. Diversity jurisdiction is also conferred over this Class action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), providing for jurisdiction where, as here, the aggregated amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs and: (a) any member of a class of Plaintiffs is a citizen of a State different from any defendant; and/or (b) any member of a class of Plaintiffs is a citizen or subject of a foreign state. See 28 U.S.C. §§ 1332(d)(2) and (6).

15. This Court has supplemental jurisdiction over the state law claims asserted herein, pursuant to 28 U.S.C. § 1367(a).

16. This Court has personal jurisdiction over the Defendants pursuant to 18 U.S.C. §§ 1965 (b) and (d).

17. The activities of the Defendants and their co-conspirators as described herein have been within the flow of interstate commerce on a continuous and uninterrupted basis and have had a substantial effect on interstate commerce.

18. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this

district and/or or a substantial part of property that is the subject of this action is situated in this district.

III. PARTIES

A. Plaintiffs

19. Plaintiffs Gordon Lawrie and Margaret Lawrie are British citizens residing in Winter Garden, Florida. The Lawries were victims of the illegal acts alleged herein and were injured as a result, suffering substantial losses to their money and property.

20. Plaintiff Charles McKinlay is a British citizen residing in Edinburgh, Scotland. McKinlay was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

21. Plaintiff Alan Siegel is a United States citizen residing in Orlando, Florida. Alan Siegel was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

22. Plaintiff Kimberly Siegel is a United States citizen residing in Orlando, Florida. Kimberly Siegel was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to her money and property.

23. Plaintiffs Stephen Frieze and Elizabeth Frieze are British citizens residing in Montverde, Florida. The Friezes were victims of the illegal acts alleged herein and were injured as a result, suffering substantial losses to their money and property.

24. Plaintiff Barry Sobel is a United States citizen residing in Boca Raton, Florida. Sobel was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

25. Plaintiff Naomi Berger is a United States citizen residing in Coconut Creek, Florida. Berger was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to her money and property.

26. Plaintiffs Andrew and Charlotte Billington are British citizens residing in Gloucestershire, England. The Billingtons were victims of the illegal acts alleged herein and were injured as a result, suffering substantial losses to their money and property.

27. Plaintiff Johnny Miller is a United States citizen residing in Orlando, Florida. Miller was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

28. Plaintiffs Heather Petts and Philip Button are British citizens residing in Essex, England. Petts and Button were victims of the illegal acts alleged herein and were injured as a result, suffering substantial losses to their money and property.

29. Plaintiffs John and Flora Migyanka are United States citizens residing in Plymouth, Michigan. The Migyankas were victims of the illegal acts alleged herein and were injured as a result, suffering substantial losses to their money and property.

30. Christopher Delaney is a United States citizen residing in Avon, Ohio. Delaney was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

31. Plaintiff James Ramey is a United States citizen residing in Tampa, Florida. Ramey was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

32. Plaintiff Paul Tipton is a British citizen residing in Bowdon, Cheshire. Tipton was a victim of the illegal acts alleged herein and was injured as a result, suffering substantial losses to his money and property.

B. Defendants

i) Ginn/Lubert-Adler Defendants

33. Defendant The Ginn Companies, LLC, a/k/a “The Ginn Companies” is a Delaware limited liability company with its principal place of business located in Celebration, Florida.

34. Ginn Development Company, LLC, a/k/a “The Ginn Company,” a/k/a “Ginn Clubs and Resorts,” is a Georgia limited liability company with its principal place of business located in Palm Coast, Florida.

35. The Ginn Companies and Ginn Development Company also operate through a myriad of affiliates and subsidiaries many of which were partnerships formed with co-Defendant Lubert-Adler, including, without limitation: Ginn-LA, LLC; Ginn-LA Pine Island, Ltd., LLLP; Ginn-LA Orlando Ltd., LLLP; Ginn-LA Hammock Beach, Ltd., LLLP; Ginn-LA Wilderness, LLC; Ginn-LA Naples, LLC; Ginn-LA Hutchinson Island, LLC; Ginn BriarRose Holding, GP, LLC; Ginn LA-BriarRose Holdings, Ltd., LLLP; and Ginn-LA Hamlet, LLC. The Ginn Companies and Ginn Development Company (“Ginn”), along with co-Defendant Lubert-Adler, directed and/or controlled the activities of such subsidiaries and/or affiliates. The “LA” in “Ginn-LA” stands for Lubert-Adler.

36. The Ginn Companies, Ginn Development and their affiliates and subsidiaries are hereinafter collectively referred to as “Ginn.” Each reference to “Ginn” constitutes a reference to each such Defendant.

37. Defendant Ginn Real Estate Company, LLC (“Ginn Real Estate”), is a Georgia limited liability company that maintains a principal place of business in Celebration, Florida. Ginn Real Estate knowingly and actively sold “resale” properties that were the subject of the scheme alleged herein at inflated prices to further the joint objectives of the Defendants.

38. Defendant Ginn Title Services, LLC (“Ginn Title”) is a Georgia limited liability company that maintains a principal place of business in Celebration, Florida. Ginn Title knowingly and actively participated in the scheme and conduct alleged herein by, as described at length below and without limitation, improperly and fraudulently recording sales and sales prices of properties in developments that are the subject of the scheme in order to further the joint objectives of the Defendants.

39. Defendant ESI Living, LLC (“ESI Living”), is a property sales marketing firm that had its principal place of business in Orlando, Florida. ESI Living actively participated in and controlled various aspects of the scheme and conduct alleged herein. Each reference to “ESI Living” refers to ESI Living and its predecessors-in-interest as hereinafter described.

40. Defendant Lubert-Adler Partners, L.P., sometimes referred to as “LA,” is a real estate private equity firm, domiciled in Delaware and headquartered in Philadelphia, Pennsylvania. Lubert-Adler has jointly developed real estate projects and marketed real estate properties, including those at issue in this lawsuit, with the Ginn defendants. The partnership between Ginn and Lubert-Adler “was structured such that the private equity firm [LA] put up all the money and took 80 percent of the profits.” Geraldine Fabrikant, *It’s Tee Time, Where is Everybody?*, The New York Times (October 15, 2009) (*available at: <http://travel.nytimes.com/2009/05/24/business/24golf.html>*). It operated through various entities and multiple funds, including, without limitation, the Lubert-Adler Real Estate Parallel Fund II,

L.P., the Lubert-Adler Real Estate Fund II, L.P., the Lubert-Adler Real Estate Parallel Fund III, L.P., the Lubert-Adler Real Estate Fund III, L.P. and the Lubert-Adler Capital Real Estate Fund III, L.P. Lubert-Adler had a 50% ownership interest in Ginn Development Company, LLC, and owned 80% of all Ginn developments. Additionally, Dean Adler of Lubert-Adler actively participated in the scheme described through a separate partnership with Ginn known as “A&G Enterprises.” Lubert-Adler actively participated in and exercised control over various aspects of the scheme and conduct alleged herein.

C. Lender Defendants

i) Fifth Third

41. Defendant Fifth Third Bancorp is a publicly-traded Ohio corporation headquartered in Cincinnati, Ohio. Defendant Fifth Third Bank (Michigan) is a subsidiary of Fifth Third Bancorp and is a Michigan-chartered bank headquartered in Grand Rapids, Michigan.

42. On or about January 1, 2005, Fifth Third Bancorp completed an acquisition of First National Bankshares of Florida, Inc. and merged First National Bank of Florida into Fifth Third Bank (Michigan). In or about November 2007, Fifth Third Bancorp completed its acquisition of R-G Crown Enterprises and merged R-G Crown Bank’s 30 Florida branches into Fifth Third Bank (Michigan). See [www.prnewswire.com/cgi-bin/stories\(11-05-2007\)](http://www.prnewswire.com/cgi-bin/stories(11-05-2007)). In its related press release, Fifth Third touted its rapid expansion within Florida and the merger with R-G Crown Bank as a continuation of its growth into “faster growing markets” and its increasing Florida presence. *Id.* In addition, Fifth Third welcomed the R-G Crown Bank customers and employees with whom it would have a continuing relationship going forward. *Id.* Fifth Third and its predecessors hereinafter referred to as “Fifth Third.” Each reference to “Fifth Third” or “Fifth Third and its predecessors-in-interest” constitutes a reference to each such Defendant.

ii) SunTrust

43. Defendant SunTrust Mortgage, Inc. (“SunTrust”) is a subsidiary of SunTrust Bank, a subsidiary of SunTrust Banks, Inc. SunTrust originates loans through over 200 locations in multiple locations, maintains correspondent and broker relationships in 49 states and services loans in 50 states and the District of Columbia.

iii) Wachovia

44. Defendant Wachovia Bank, N.A. is a national banking association organized and existing under the laws of the United States subsidiaries of Wells Fargo & Co. Wachovia Bank, N.A. and Wachovia Mortgage Corp hereinafter collectively referred to as “Wachovia.”

iv) Ginn Financial

45. Ginn Financial Services, LLC (“Ginn Financial”) is a Georgia limited liability company that maintains a principal place of business in Celebration, Florida. Ginn Financial knowingly and actively participated in and controlled various aspects of the scheme and conduct alleged herein.

46. Fifth Third, SunTrust, Wachovia and Ginn Financial are referred to collectively as the “Lender Defendants.” Each reference to the “Lender Defendants” constitutes a reference to each such Defendant.

47. The Defendants named herein also conducted their fraudulent activities and schemes through additional unnamed co-conspirators including additional appraisal companies, brokers, builders, lenders, attorneys, as well as numerous partnerships and companies formed by the co-conspirators and their officers and employees in order to make straw purchases of properties in the subject developments to further the Defendants’ joint objectives.

IV. FACTUAL ALLEGATIONS

A. The Scheme

48. The scheme began in 1998 with the Hammock Beach development in Palm Coast, Florida. The development was financed by Lubert-Adler. This development was followed by a string of other developments, including, without limitation:

- (a) Tesoro Preserve in Port St. Lucie, Florida;
- (b) Reunion Resort in Orlando, Florida;
- (c) Bella Collina in Montverde, Florida;
- (d) Yacht Harbor Village at Hammock Beach, in Palm Coast, Florida;
- (e) Conservatory at Hammock Beach in Palm Coast, Florida;
- (f) Quail West in Naples, Florida;
- (g) Cobblestone Park in Blythewood, South Carolina;
- (h) The BriarRose in Hancock County, Georgia;
- (i) Laurelmor in Boone, North Carolina;
- (j) Burke Mountain in East Burke, Vermont;
- (k) Ginn Sur Mer the Bahamas;
- (l) Mahogany Run in the Virgin Islands;
- (m) Tesoro Club;
- (n) Tesoro Beach Club;
- (o) Admirals Cove Condominiums;
- (p) Hammock Beach Club Villas;
- (q) Hammock Beach Club; and
- (r) The Towers at Hammock Beach Club.

49. In order to cultivate presales and sales at these developments pursuant to the plan alleged herein, Ginn developed and maintained a database of thousands of names and sent

luxurious, leather-bound marketing materials to those on the list through the mails, and also sent marketing materials by fax and by electronic mail. Ginn also marketed through “whisper campaigns” and through outside real estate brokers.

50. ESI Living and its principals managed marketing and sales of at least 13 Ginn communities and claimed to have sold more than 10,000 properties for \$5.5 billion over a seven-year period.

51. The first phase of the scheme involved creating frenzied demand through a standardized marketing approach that falsely touted the high value and high demand for the properties in the subject Ginn developments. The marketing approach included the dissemination of misleading, deceptive and/or false marketing material to potential purchasers and their agents in the United States and abroad through the use of the mail and wires. The intense demand created for the initial developments was an integral component of the scheme, as it laid the groundwork for successfully implementing the succeeding steps in the scheme.

52. The standardized approach used to develop the appearance of high value not only involved touting the amenities and features of the development (which were often never actually completed), but also the creation and manipulation of property values through the use of fraudulent bank-ordered appraisals. For example, the Tesoro and Quail West Developments were marketed as being sites for lavish beach clubs that were never built. Bella Collina was marketed as having a world-class equestrian center, which was never built.

53. The use of emails to promote these communities and their promised amenities was common. For example, in an email sent to James C. Ramey at 11:39 PM on July 7, 2007, Ginn salesperson Chris Matoska, brother of ESI Living principal and Executive Vice President of Ginn Real Estate James Matoska, stated:

Jc

Just wanted to give you a heads up that we now are offering 90% financing and 10% down on all lots in the Bahamas for the next 45 days. We also now have 160 million set aside for a guarantee that all the amenities in the core (casino pools etc) and the golf course will be built. Didn't know if you and mark were still interested but this would be a great time to take advantage and possible pick up one of those deep water lots (just a slip in the Bahamas sells for the same price as the lot and slip here)

Let me know if you have any interest

Chris

The amenities of which Chris Matoska spoke were, of course, never actually completed.

54. Defendants' scheme involved the creation of high comparable sales figures for the appraisals through various techniques including: (a) using inappropriate comparables for appraisals; (b) including the value of leasebacks, furniture packages and club memberships in the purchase price and in the appraisal for properties sold; (c) creating documents to reflect transfers that did not exist; (d) transferring properties to bank officers and employees (sometimes as known or silent partners) at artificially high prices to subsequently be flipped to an innocent purchaser; (e) purposefully soliciting and utilizing cash purchases to serve as artificially inflated comparables for appraisals, often with promises of guaranteed funding and/or other special treatment by banks and/or developers; (f) falsely recording the sales prices when multiple lots were sold, so as to falsely indicate that one lot alone sold for the entire purchase price; and (g) soliciting sales from and providing multiple mortgage loans to unsuspecting foreign nationals.

55. The scheme was hugely successful and created windfall profits for Defendants. Through their scheme, Defendants would sell and finance the purchases of up to \$200 million in residential real estate in a single day.

56. For example, in March 2004, during a "Priority Selection Event" at Reunion, Ginn made \$170 million in sales in one day—then the highest one-day sales total in Florida history.

57. As another example:

In December 2001, Ginn held its first record priority sales event, selling 264 home sites worth \$40 million in just 16 hours. After Reunion's first three sales events, some \$320 million worth of real estate had exchanged hands....At Bella Collina, Ginn sold 400 custom home sites for more than \$174 million in less than four hours -- a state record. [Later] the company broke that record with the release of the final 403 custom home sites at Bella Collina, selling them for a total of \$320.7 million in three hours.

Noelle C. Haner, *Ginn's Goal: Condo Sales of \$1 Billion*, Orlando Business Journal (May 20, 2005), available at: <http://orlando.bizjournals.com/orlando/stories/2005/05/23/story1.html#>. At the time, Ginn executive and ESI Living principal James Matoska boasted, "Every launch we do now is hitting the \$100 million or more mark." *Id.*

58. In March 2002, Yacht Harbor Village, Hammock Beach, held a sales event, selling 75 homesites for \$25 million.

59. Also in March 2002, Tesoro held a sales event, selling 350 homesites for \$57 million.

60. In March 2003, a Property Owner Appreciation Weekend in Tesoro resulted in \$8 million in sales.

61. In September 2003, a sales event in Yacht Harbor Village produced \$54 million in sales in less than 90 minutes from the sale of 88 condominium units.

62. In October 2003, Reunion held a sales event during which 67 condominiums were sold in 3 hours for \$23 million.

63. Also in October 2003, Watersong on Hutchinson Island sold out in less than four hours for a total of \$50.3 million.

64. In Bella Collina, prices rose from approximately \$277,000 to approximately \$1.2 million in only 3 months.

65. As set forth in detail below, each of the Defendants participated in and controlled a portion of the activities and conduct described herein in order to advance the overall scheme and the joint objectives of the Defendants.

V. FOSTERING FRENZIED DEMAND

66. Defendants used these and other tactics, many of which were developed and directed for this scheme by Defendant ESI Living, LLC, to create a false sense of high demand for properties in the Ginn developments. Defendants used presale “launches” for the Ginn developments which were promoted to potential purchasers and their agents, both in the United States and abroad, through the mails and wires and invited “select” individuals to pay refundable deposits of \$1,000 down for the opportunity to “win,” through a lottery, the right to purchase one of the purportedly limited number of available lots.

67. Prior to the launch, Ginn salespersons asked prospective purchasers to complete a “Priority Selection Form,” indicating lots that they would like to purchase. *See, e.g.*, Exhibit A, attached hereto. Prospective purchasers were always directed to list as many lots as possible, in light of heavy anticipated demand.

68. However, in reality, the launch parties were a sham and simply another component of the unlawful scheme. Ginn and Lender Defendants preselected the individuals who (ironically) “won” at the lavish launches. This is because the loan officers for the Lender Defendants “tipped off” Ginn as to which prospective purchasers were approved and would actually receive funding to close.

69. Each launch was preceded by an extravagant party in a luxurious location, such as the Ritz-Carlton Hotel. These lavish parties often featured helicopter rides, cocktails, prize drawings and expensive hors d’oeuvres. The pre-launch party would be attended not only by Ginn sales representatives, but also by representatives and employees of Ginn’s “preferred

lenders,” who had already committed to their co-conspirators to finance purchases by the “winners” in order to further the joint objective of generating future property sales at inflated prices and funding corresponding mortgages for substantial amounts.

70. Additionally, to create demand for the properties, Defendants invited far more interested buyers than could possibly receive properties during the launch parties (for example, having up to 1000 people present, whereas only 300 lots were available under the “lottery”).

71. Ginn also instructed its salespersons to make false statements during the launch events in order to mislead purchasers and create demand. For example, according to numerous purchasers, while giving tours of the properties, Ginn salespersons often made statements concerning lots that “just sold” or falsely indicating that inventory was almost sold out.

72. If a Ginn salesperson was having trouble making a sale, the representative enlisted the support of the onsite sales office. To provide a sense of urgency and limited availability, the sales office sent employees to the sales site where they posed as potential purchasers.

73. Another stratagem involved sending mass emails, indicating that a developer-owned property had just come back onto the market, but would be available for only a very limited amount of time.

74. For example, at 5:21 PM on September 28, 2005, Erin Visconti, Sales Assistant to Steve McHenry in Bella Collina, sent the following mass email:

A new company lot has become available on the golf course. Lot #224 has come back at \$665,900. All original launch incentives are included (full sports membership, \$10,000 applied to closing, and \$10,000 off if closed in 45 days). Please let Steve or I know immediately if you are interested. **We anticipate it being sold in a matter of minutes.**

(emphasis added)

75. At 9:05 AM on October 11, 2005, Erin Visconti, Sales Assistant to Steve McHenry in Bella Collina, sent the following mass email:

As of this morning, lot # 71 has become available for \$739,900. This company lot is on the golf course and has come back with all launch incentives included. This lot will be sold by this afternoon, so if you are interested let Steve or I know immediately.

Here is a map of the property so that you can view this amazing buy!

76. At 3:10 PM on August 23, 2005, Erin Visconti, Sales Assistant to Steve McHenry in Bella Collina, sent the following mass email:

We just had a new company lot become available! Lot # 254 for \$719,900. It is 50' wide at the street and sits on the golf course overlooking the 15th and 12th fairways with a southern exposure. It's a great lot.

Please call me right away if you, or someone you know, is interested...

77. Ginn employees would also make false promises of amenities. For example, Ginn salesperson Bradley Douglas Smedberg promised private boat docks to Bella Collina purchasers, including Joe Rud, although local authorities had actually refused to grant permission for the installation of such docks. The docks were also shown on site maps shown to prospective purchasers, including Joe Rud. Ginn also promised luxurious fitness facilities and amenities, such as equestrian courses, that it did not construct.

78. Another artifice used to create frenzied demand entailed falsely representing to interested buyers that a number of the available lots in a development had already been placed under contract. For example, prior to the second launch for Bella Collina, in June 2005, Ginn represented to potential buyers and outside sales agents that **ten lots** on Lake Apopka were already under contract for an average sales price of **\$2.2 million**. For example, realtor Phillipa

Liddel, who worked closely with Ginn salesperson Bradley Douglas Smedberg, stating the following in a fax sent to Richard and Mandy Beacock at 12:50 PM on April 4, 2005:

HOT OFF THE PRESS FROM BELLA COLLINA—they have just sold on Friday 10 lots overlooking lake Apopka for an average price of 2.2 million. A group from New Jersey bought all of them. So this has just increased the value of all lots up there.

(emphasis in original). Shortly after the launch, however, these contracts were suddenly rescinded. This is because the contracts were never real; rather, this tactic fueled demand for other lots in the development and convinced purchasers to buy such other lots for artificially-inflated prices.

79. Based on this information, for instance, on the day of the launch, a lakefront lot sold for \$1.6 million. Then, shockingly, on the same day, Bobby Ginn and Dean Adler of Lubert-Adler, through their partnership known as A&G Enterprises, sold a lakefront lot that they had purchased **on the same day** for \$609,000 to another buyer for \$1.95 million cash, based on the false representation that the lakefront lots had just sold for an average price of \$2.2 million—**producing a fraudulently-obtained windfall profit of over \$1.34 million in a single day.** Further, bank-hired appraisers later used this fraudulent \$1.95 million sale as a comparable for appraisals for other lots.

80. Another tactic involved making false statements regarding the property sales, in order to convince potential purchasers of the value of the Ginn properties. For example, in an email sent to purchaser Roy Bridges at 6:46 PM on April 27, 2005, Ginn salesperson Bradley Douglas Smedberg stated, “fyi...homesite 109 sold that same afternoon for \$1.3 million.” This was false. In reality, the site had sold for only \$467,900.

81. Defendants constantly assured prospective purchasers that values would increase. For example, in an email sent to purchaser James C. Ramey at 5:29 PM on November 30, 2006, Ginn salesperson Chris Matoska stated:

p.s. we just got word from greg that if we are to bring on any more oceanfront sites this year (all sold out) then they will be much higher than the 1.4-1.5 price range that we just sold the others at...gotta love that

82. For example, in August 2006, purchaser James C. Ramey was having second thoughts concerning a purchase in Ginn sur Mer. In an email sent to Ramey at 6:46 PM on August 28, 2006, Ginn salesperson Chris Matoska promised a \$500,000 profit in two months, stating:

When you get a chance (I left a message on your cell as well) give me a buzz....scott wanted me to go over with you some of the things that i shared with him pertaining to the project, the hud, what i found in other islands etc...i also think before you decide whether or not to purchaase you should know that we are planning on having another price increase on oceanfronts this year. we are about to run out of the ones we have that we released at 1.2 million (about 9 left) and from what we have heard, they will increase to atleast 1.5 million, which would mean that your lot has gone up 500,000 dollars in about 2 months...dude you would be crazy to cancel if thats the case (which im hoping it is!!!) call me or email me when you can

83. Subsequently, in an email sent to Ramey at 12:58 PM on August 29, 2006, Ginn salesperson Chris Matoska stated:

p.s. we are announcing on friday that we are buying old bahama bay....thats insider trading so dont make that public yet....so is the whole lots going to 1.5 million soon....you still think you want to cancel ? we sure are making it tougher arent we ? jk call me when you can

84. Chris Matoska was relentless. In a subsequent email sent to Ramey at 4:51 PM on December 22, 2006, he stated:

I'm sorry to hear about the oceanfront lot. I don't know if your interested but I have an owner next to my golf/ocean lot (635,900) who is interested in a partner for 1/3. He and his brother are in an wanted a third, but would consider also going 1/2 each if the 1/3 wasn't that appealing (they would get the mortgage and form partnership). They are great lots (as you know I bought two of them) with tremendous tremendous upside. Let me know if your interested in talking with him, very good guy around your age and owns with ginn elsewhere.

85. Defendants sent numerous solicitations through the mails and wires to prospective purchasers and outside agents.

86. At 9:02 AM on November 8, 2004, Ginn salesperson Brett Campbell sent an email to Christopher Godkin and other recipients, stating:

Saluti da Bella Collina!

Dear Chris,

Because of your interest in ***Bella Collina***, the private lakefront, golf and equestrian community, located on the shores of Lake Apopka and just minutes from downtown Orlando, you are receiving an advance notice of the release of our golf course property, "Hillcrest". Beginning today, November 8th, we are accepting reservations. You have an opportunity to be ***among the first*** to get in on this ground floor opportunity.

Discover the Bella Collina Club Lifestyle:

- Faldo Championship Golf Course
- Finely Crafted, Tuscan-Inspired Clubhouse
- State of the Art Spa and Fitness Center
- First Class Sports and Equestrian Center
- Tennis Facility featuring Har-Tru Courts
- Two Main Swimming Centers
- Rolling Hills, Live Oaks with Draping Spanish Moss, Orange Groves, Grape Vineyards and over 8 miles of Lakefront!

Our initial launch on April 24, 2004 set a Florida real estate record with an unprecedented ***sellout of 373 homesites for \$174 Million dollars!*** Since June, we have re-sold approximately \$25 million of home sites on the secondary market. The Ginn Company success story has become so widespread that people are now lining up for this ***final offering***, which will include Priority Reservation Selection Event incentives and pre-development pricing.

(emphasis in original).

87. On April 8, 2005, Steve McHenry, a Ginn Sales Executive in Bella Collina, sent the following mass email:

Launch info FYI...you will also be receiving this in the mail. Please call with any questions.

Saluti da Bella Collina...Here is the revised Golf Clubhouse rendering. Bobby Ginn thinks it will be the finest in the world! And Nick Faldo said in a recent meeting that the closest similarity Bella Collina will have to any existing golf courses will be with Bandon Dunes in Oregon and Shinnecock in New York!

As you are probably aware of, **we are about to set a land sales record that will reverberate around the world. We are anticipating approx. \$300,000,000 of golf course and waterfront property to be sold in a single day!** Thank you for being part of it. **Much material will soon be mailed to you, including pricing, Priority Selection material and Power of Attorney documents.** Please be diligent, complete all the necessary paperwork and return it to us, as soon as possible. Please feel free to call me as you have questions.

I have included the names of our approved lenders. Due to time considerations, **we are not requiring pre-approval/pre-qualification letters** to accompany the documents that you will be returning to us. We will, however, be strictly adhering to the closing date and, regardless of who is to blame, if a homesite is not closed within the predetermined time period (45 days), the contract will be cancelled. So please make every effort to expeditiously close on your lot **if you are fortunate enough to get one.** If you do not have the Luck of the Irish and you do not get a homesite, please be prepared to act quickly as lots reappear on the resale market or become available as a result of cancellation.

(emphasis added)

88. On May 6, 2005, Ginn salesperson Brett Campbell sent an email to Paul Davey, stating:

Paul,

Here is an updated inventory sheet. Homesite 185 is a tremendous value.

The homesite has an open view of the water since no homes will be built across the street. A comparable lot is 187 for \$1.5. Let me know if you have any questions.

Regards,
Brett

89. At 12:15 PM on July 18, 2005, Ginn salesperson Brett Campbell sent an email to purchaser Christopher Godkin, stating:

Chris,

Lot #472 has become available today with launch pricing and \$60,000 incentives for \$835,900.

Sites from the launch are being priced on the resale market for \$125,000 more than original selling price.

Thanks,
Brett

90. On November 15, 2005 at 3:00 PM, Patsy Moden, Ginn Sales Executive for Cobblestone Park, sent the following mass email to purchaser Christopher Godkin and other recipients:

Greetings,

In our continued promise to keep you informed about the newest availabilities at Ginn. We are pleased to announce the company has released 33 Homesites in Bella Collina one of the most prestigious communities in Orlando. These Homesites are available for the first time and are not resales. All are on beautiful Lake Sienna and will have first time buyer preconstruction incentives. Prices range from 1.5 -1.75 Million and one Interior in the 800's. If you are interested we can send you the site plan, price list and mail out a brochure. We don't anticipate these Waterfront Homesites to available for long so please contact Myself or Curt for more information.

91. At 11:57 AM on September 29, 2005, Ginn salesperson Brett Campbell sent an email to purchaser Christopher Godkin, stating:

Chris,

Lot 303 on Pine Island was purchased yesterday. Lot 161 has been listed at \$795,000! This site is across from Nick Faldo and looks back over the orange groves, will have waterviews, and is located in the most prestigious areas in the community.

These are the best values for Pine Island:

2,50,171,161,288,265,383

Thanks,
Brett

92. As set forth in detail below, each of the Defendants participated in and controlled a portion of the activities and conduct designed to create and foster frenzied demand in Ginn Community Properties.

VI. MANIPULATING PRICES IN GINN DEVELOPMENTS

93. Another tactic used by Defendants in order to fraudulently and artificially inflate selling prices for the Ginn properties was to purposefully cause to be recorded false information with respect to property sales.

94. For instance, Ginn would sell and one of the Lender Defendants would finance a mortgage loan for two properties for a particular buyer under one contract. Ginn Title—knowing that the county would record the sale exactly as presented to it—then caused the sale to be publicly recorded as one property having been sold for \$1 and with the other property having been sold for the entire purchase price. The “high-priced” sales were then used as comparables for appraisals in connection with later sales to unsuspecting buyers.

95. This was neither a coincidence nor a mere mistake by the respective County Clerk of Courts. The clerk’s office simply records sales prices as presented to them—period. Further, Ginn Title did this in multiple Ginn communities and in multiple counties.

96. For example, in Lake County, Lots 260 and 391, Bella Collina, R.L. Vogel Homes paid \$707,800 for both lots on or about June 7, 2004. Ginn Title caused Lot 260 to be recorded as \$707,800 and Lot 391 to be recorded as being sold for one dollar. Lot 260 was later used as a comparable for future appraisals as having being sold for \$707,800.

97. As another example, also in Lake County, on August 30, 2004, Monty Schwartz paid \$1,007,800 for Lots 183 and 323, Bella Collina. Ginn Title caused Lot 183 to be recorded as having been sold for \$1,007,800 and caused Lot 323 to be recorded as having been sold for one dollar. Lot 183 was later used as a comparable for future appraisals as having being sold for \$1,007,800.

98. As another example, also in Lake County, on June 30, 2005, Alstott Rorebeck Marini Development & Holdings, LLC paid \$1,817,700 for Bella Collina West Lots 6, 13 and 45, (golf lots). Ginn Title caused Lot 6 to be recorded as having been sold for \$1,817,700 and caused Lots 13 and 45 to be recorded as having been sold for one dollar. Lot 6 was later used as a comparable for future appraisals as having being sold for \$1,817,700.

99. For example, on or about April 26, 2005, Wachovia had Lot 143, Reunion West Villages, appraised for a loan for purchasers Ron and Marge Lanier. The appraiser, Diana David—one of the preferred appraisers for Ginn, SunTrust, Wachovia and R-G Crown Bank—prepared an appraisal using Lot 155 as a comparable, listing it as having been sold for \$546,700.

100. On or about May 6, 2005, appraiser Diana David prepared an appraisal for SunTrust for a loan for purchaser Audrey Williams Myers for Lot 101, Reunion West Villages and used Lots 34 and 155 as comparables, listing each as having been sold for \$546,700.

101. Later, on or about June 23, 2005, appraiser Diana David prepared an appraiser for Andrew Louka for Lot 255, Reunion West Village for R-G Crown Bank and used Lots 34 and 155 as comparables, listing each as having been sold for \$546,700.

102. Under another tactic, Ginn sold multiple lots to a single buyer under one contract. Ginn Title would then cause each property to be recorded for the complete amount of the

purchase price. Then, an appraiser would use the “high-priced” sales as comparables for later sales to unsuspecting buyers.

103. For example, in Flagler County, on or about April 25, 2005, Bobby Jones, an acquaintance of Bobby Ginn, purchased Lots 146 and 194, Conservatory, paying a total of \$964,800. Ginn Title caused each lot to be recorded for the full price of \$964,800.

104. For example, in Flagler County, on or about April 25, 2005, Michael Adams purchased Lots 140 and Lot 147, Conservatory, paying a total of \$989,800. Ginn Title caused each lot to be recorded for the full price of \$989,800.

105. Nathan Stith purchased Lot 316 Bella Collina, June 13, 2004 for \$277,900. However, curiously, a week earlier, on June 7, 2004, Nathan Stith somehow sold the same lot to Thomas Charles Pearson for \$425,000. Ginn Title closed and dictated the recording of both of these sales. Ginn Title clearly had reason to search the title and know that Nathan Stith did not have clear title to sell the property because he had yet to actually close on his purchase of it.

106. R-G Crown Bank provided a mortgage to Charles Pearson for the aforementioned June 7, 2004 transaction for \$385,000. Through this scheme, the “value” of the property was artificially raised by approximately \$150,000 in less than a week.

107. On November 15, 2004, Nick Inman paid \$199,900 for Lot 110, Reunion West Village A from Ginn-LA Orlando. Ginn Title performed the closing. Somehow, on October 22, 2004, Nick Inman sold the very same lot to Valerie Custom Homes for \$249,900. Ginn Title clearly had reason to search the title and know that Nick Inman did not have clear title to sell the property because he had yet to actually close on his purchase. Through this scheme, the “value” of the property was raised by approximately \$50,000 in less than a month.

108. As another example, in mid 2005, R-G Crown Bank's Brady Koegel told Christopher Godkin, who was seeking financing for the purchase of two Ginn lots, that R-G Crown Bank would guarantee financing for Lot 1, Conservatory, if Christopher Godkin would agree to pay cash for Lot 194, Bella Collina.

109. Another tactic was to use false comparable sales dates. For instance, Ginn Title caused Lot 194, Bella Collina West, to be recorded as having been sold to Godkin Developments by Ginn-LA Pine Island on May 27, 2005 for \$650,900. However, the sale did not actually take place until almost a month later. This was done only so that the lot could be used for comparables for the golf course lots.

110. For example, on or about May 19, 2005, appraiser Bradley S. Long prepared an appraisal for Fifth Third Bank for Lot 147, Bella Collina West and used Lot 194 as a comparable. On or about May 31, 2005, appraiser Bradley S. Long prepared an appraisal for Fifth Third Mortgage for Lot 10, Bella Collina West, and used Lot 194 as a comparable.

111. On or about June 5, 2005, appraiser Bradley S. Long prepared an appraisal for Fifth Third Bank for Lot 110, Bella Collina West and used Lot 194 as a comparable.

112. On or about August 24, 2005, appraiser Bradley S. Long prepared an appraisal for Fifth Third Bank for Lot 206, Bella Collina West and used Lot 194 as a comparable.

113. Another device utilized by Defendants was the use of cash purchases of properties at inflated prices, so that these properties could later serve as comparables for bank-ordered appraisals. In other words, Defendants would attempt to cover their tracks and add a false level of legitimacy to the appraisals by surreptitiously planting a comparable based upon a cash purchase—which did not include a bank-ordered appraisal—rather than based solely upon other

financed purchases that involved appraisals ordered by the very banks that participated in the scheme.

114. In a video taken on April 23, 2005 during a Bella Collina launch, the following conversation took place between Phillipa Liddel (realtor with IPG Realty) and Ginn salesperson Brad Smedberg:

Liddel: How many cash buyers have you got in here today, Brad?

Smedberg: We've probably got about 8 or 9. They usually give everybody that's paying cash homesites because we need the appraisals. We tell—if you're paying cash, you're closing in fourteen days, we'll guarantee you a home site.

115. As an example of this manipulation of appraisals, United States Lieutenant General Jay Montgomery Garner purchased a condominium unit in Reunion Grande. However, General Garner decided to back out of the deal after the appraisal for the property came in too low. However, General Garner's Ginn salesperson told him that if he did not go through with the purchase, he would be blacklisted by Ginn. The salesperson told General Garner to wait two weeks because they had some upcoming cash sales. Following the completion of the cash sales, a second appraisal was performed that utilized the cash sales as comparables.

116. Ginn also fed comparables to appraisers, cherry-picking properties with high values to be used as comparables for the appraisals even though the properties were not truly comparable in terms of location, features and/or other standard measures. Appraisers violated their standards of conduct, as articulated by the Appraisal Standards Board of the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice, by: (a) basing appraisals on predetermined opinions and conclusions; (b) performing as advocates for the Defendants; and (c)

failing to perform their duties with impartiality, objectively, independence and without accommodation of personal interests.

117. The appraisers utilized by Ginn and the Lender Defendants frequently used inappropriate comparables. This appraisers and Lender Defendants used comparables that were: (a) located in far more expensive developments; (b) located in developments targeted to end-users, rather than to investors; (c) provided to the appraiser by Ginn, rather than independently selected; (d) plainly more valuable than the subject property, such as using large, lakefront lots such as Lot 143, Bella Collina, as comparables for small interior lots; and/or (e) based on fraudulent straw purchases.

118. Another tactic was to improperly utilize distant, dissimilar properties as comparables, such as properties located Isleworth, one of the most expensive, lavish and exclusive communities in the United States, and certainly the highest-priced community in the area. Isleworth, pictured below, is home to such residents as Tiger Woods, Ken Griffey Jr., Mark O'Meara, and Planet Hollywood CEO Robert Earl and includes homes valued as high as \$16 million, including a 26,000 square foot home purchased by Shaquille O'Neal.



Source: <http://www.celebritydetective.com/aerial/isleworthphoto.html>. Comparables from Isleworth were absolutely inappropriate, due to the unusually high property values in Isleworth. As builder Tom Harvey of Image Home Builders stated during an October 9, 2009 interview with Plaintiffs' counsel:

When I heard they were getting comps for Reunion from Isleworth, I was shocked. That's like asking someone to buy a Nissan for the price of a Mercedes.

119. As another tactic, the bank-ordered appraisals fraudulently included inappropriate items as part of the subject property's appraised value, such as the value of an expensive furniture package. The value of the furniture package would often be improperly included in the appraisal in that the contract price included the value of the furniture and the predetermined

amount for the appraisal was based upon the contract price. It is improper to include the value of furniture packages and similar items in a property appraisal.

120. Builder leasebacks represent another, frequently used, tactic to fraudulently include inappropriate items as part of the subject property's appraised value to substantially increase the value of the appraisal.

121. Under this scheme, Ginn advertised and sold the property to the buyer, with an agreement by the builder to lease the property back from the buyer until construction was complete and a promise by Ginn that the buyer would be able to flip the property for a substantial profit before the expiration of the leaseback period. Unlike the typical model or "spec" home leaseback, the value of the leaseback would often then be improperly included in the sales price, in that the money for the "leaseback" and furniture package would simply be added on top of the purchase price.

122. For example, the builder inflated the cost of construction in an amount to cover the leaseback; then paid the leaseback amount at closing to the buyer. The Lender Defendants were complicit with this practice.

123. Then, Defendants would ensure that the predetermined amount for the appraisal was based upon the artificially-inflated contract price.

124. An example of how this operated was described in an email sent at 11:36 PM on January 19, 2008 from realtor Scott Reid to Christopher Godkin, referencing SunTrust:

We can also get creative with the financing and are able to beat Reunion's company leaseback offer for the Villas @ Reunion Square.

An example is below of how we can structure this deal for your clients.

\$589,900 Purchase Price

Seller furnishes per Ginn rental specs prior to closing (\$60,000)
\$144,000 leaseback for 24 months (entire amount paid UPFRONT
at closing)

Net Price: \$385,900

125. In an email sent to purchaser James C. Ramey at 4:39 PM on February 13, 2008,

Ginn salesperson Anthony Moore stated:

Also, keep in mind that these builders have leasebacks they can offer on a build if someone owns a lot. Just like Reunion each builder will have 2 leaseback [sp] to use up one they'll build on their own the other will be from an owner looking to take advantage of being able to leverage their funds.

126. Ginn Europe sent advertisements through the mails and wires, stating:

LIMITED OFFER

\$6,000 monthly leaseback for 2 years—guaranteed!

127. Another advertisement from Ginn Europe stated:

No Cost Ownership for Two Years

\$6,000 guaranteed return per month for the first two years

**Any investor purchasing before July 2007, will receive
a \$6,000 income per month for the first two years.**

128. When Ginn released the original Hammock Beach Club main building, the one bedroom condominium units were sold fully furnished and with a two-year leaseback valued at \$48,000, included within the selling price.

129. Many of the properties in Reunion were sold with leasebacks fraudulently included within the selling price.

130. Bank-ordered fraudulent appraisals played a substantial role in the scheme.

131. Complicit appraisers who participated in the scheme included:

- (a) David Appraisals (Diana David);
- (b) Appraisal Associates of the Treasure Coast (David Tremblay and Adam Jones);
- (c) Brad Long Appraisals, Inc.;
- (d) Duane Associates;
- (e) Certified Appraisal Services, Inc.;
- (f) Anthony Puvill;
- (g) Jeremy Stinemetz;
- (h) Appraisals Inc. of Central Florida;
- (i) AFL Appraisals (Julie E. Chartier, Diana David);
- (j) Scott Rhodes and Cecil Wright;
- (k) Premier Appraisals, Inc.

132. Ginn's preferred builders included:

- (a) Continental Builders;
- (b) RL Vogel Homes;
- (c) Homes by Carmen Dominguez;
- (d) Coudriet;
- (e) River Oaks;
- (f) P.G.M. Builders;
- (g) Brewer Homes; and
- (h) Bradford Builders.

133. Ginn also manipulated prices by controlling and/or limiting resales. For example, according to Armond Ferri, a former independent sales agent in Tesoro, in July or August 2004, during a sales meeting, John Pinter, ESI Living principal and Vice President of Sales in Tesoro,

directed the Tesoro salespersons not to sell any resale properties. Pinter threatened that anyone who sold resales would be fired.

134. Subsequently, Bobby Ginn joined a Tesoro sales meeting in May or June of 2005 and further discouraged the sale of resales, stating, "I pay you to sell my property. You get paid to sell developer property."

135. These were obvious attempts to manipulate the market and sell Ginn properties directly from the developer at artificially high prices.

136. Ginn would allow its employees and other insiders to purchase properties at discounted prices, and then flip them at artificially-inflated prices. These properties were given priority in the resale program. Ginn's policy was to allow its salesperson to show no more than 3 resales, so as to indicate high demand.

137. As an example, Ginn salesperson Brad Huffstetler earned over \$1 million from buying and flipping properties in the Ginn Communities.

138. As another means of keeping prices artificially high, Ginn would often show only resales that belonged to its employees or other insiders.

139. Indicative of Ginn's improper lock on price-competition, in an email sent to purchaser James C. Ramey at 8:33 PM on January 16, 2008, realtor Scott Reid stated:

Matt Freeman called me tonight saying that he finally got the okay from the President of the Ginn Company to list a couple of single family homes pre-construction. Listing commission would be 7%. They still will not list lots for probably another year but have no problem listing the single family homes as it does not compete with anything they are selling.

140. The Lender Defendants actively influenced and participated in the fraudulent scheme by engaging in activity that deceitfully inflated the value of property in the Ginn Communities and by receiving and giving kickbacks.

141. The Lender Defendants directly participated in the launches and other conduct intended to create artificially high valuations of properties in Ginn developments. For example, the Lender Defendants permitted Ginn to select the “winners” and agreed fund sales without regard for safeguards against over-valuation of properties such as using independent appraisers and applying regular underwriting standards.

142. The Lender Defendants often utilized appraisers selected by Ginn and who knowingly deviated from standard and sound appraisal practices by: (a) never inspecting the properties at issue; (b) using grossly inappropriate comparables—often provided by Ginn; (c) providing appraisals at values pre-determined by Ginn and/or the Lender Defendants.

143. The Lender Defendants also often advertised on Ginn’s website and in materials sent to potential purchasers through the mail and wires. *See, e.g.,* Exhibit B.

144. The Lender Defendants were also directly involved in soliciting new loans for Ginn properties. One tactic the Lender Defendants employed involved approaching current buyers, utilizing fraudulent appraisals in order to convince the buyers that their property had risen in value, then inducing them take out additional loans to purchase additional properties or to construct homes using the phantom “equity”.

145. Each of the Lender Defendants further participated and advanced the objectives of the scheme by financing property sales in the Ginn developments at the substantially and artificially inflated prices that they had helped to create, knowingly approving loans for amounts that were not justified by the true value of the properties and knowingly failing to apply appropriate underwriting and property valuation standards.

146. Each of the Lender Defendants provided financing for numerous properties within the Ginn developments, based on fraudulent appraisals and artificially-high property values.

They actively worked hand-in-hand with Ginn to create, effectuate and further the scheme. For instance, the Lender Defendants would often only hire appraisers that they knew would “play ball” by using inappropriate techniques to over-value the Ginn properties.

147. Each of the Lender Defendants plainly misrepresented to the Class members the true loan-to-value (“LTV”) ratios for their loans. As each of the Lender Defendants knew, independent and accurate appraisals are essential in order to correctly represent the LTV ratio for a given mortgage loan. The LTV ratio is calculated by dividing the value of the home by the amount of the loan. For example, if a borrower desires to borrow \$900,000 to purchase a property valued at \$1,000,000, the LTV ratio is 90%. However, if the appraisal has been artificially inflated, such that the actual value of the property is only \$250,000, then the LTV ratio is actually 360%. While each of the Lender Defendants represented to the members of the Class that their LTV ratios were, generally, between 80 and 100%, because of Defendants’ scheme, the actual LTV ratios for the Class members’ loans were much, much greater. Had the Class members known the true LTV ratios for their loans, they would not have accepted such loans. For instance, no member of the Class would have accepted a loan with an LTV ratio of 360%.

148. Ginn and the Lender Defendants also used mortgage brokers, such as John C. Grady of Acquisitions Mortgage Group and mortgage brokers Gary Harmon and Samuel Trafelet, of HMI, Inc., to further their scheme. For example, in an email to John Migyanka sent at 11:10 AM on March 8, 2005, Ginn salesperson Josh Estes stated, in part:

Here is the information about HMI the company we talked about earlier that offers creative financing. These guys know the Ginn Company very well so it should be an easy process.

149. For example, in a mass email sent at 10:33 PM on December 7, 2005, Gary Harmon of HMI, Inc. stated, in part:

There is a new Ginn pre-construction condo project that will be launching in April. This will be another outstanding launch for Ginn Clubs and Resorts complete with all the trimmings of a luxury launch...The build out on these units will be approximately 2 years meaning that you will have no payments, other than the 10% deposit due in June of '06. The pricing will start at about 550K and go up to 750K. They will take only 2,000 reservations for 616 units. Historically the Ginn launches have produced these exact numbers and sold out in 6 hours. HMI has been allowed to begin taking reservations on December 15th. This allows our clients a three times greater amount to receive property due to early reservation priority. It also allows us to take prospective clients to visit the resort for a private tour...

150. In a mass email sent at 11:43 PM on April 25, 2005, Gary Harmon of HMI, Inc. stated, in part:

...congrats to those of you lucky enough to get in at Bella Collina...I am looking very forward to the final lot release for Ginn Properties later this year at Tesoro...Please let me know if you are interested in getting a resale lot in Tesoro or Tesoro Preserve prior to the upcoming launch...We are also taking reservations on condos at Reunion...

151. However, Ginn only permitted mortgage brokers who referred to Ginn's preferred lenders. For example, in April 2005, Gary Harmon referred Migyanka to Wachovia Bank loan officer Scott Ferguson.

152. The Lender Defendants' misrepresentations played a critical part in the scheme. Quite plainly, the Ginn developments would not have sold for such enormously, artificially, inflated prices had the Lender Defendants represented to the Class members the true LTV ratios for their mortgage loans.

153. As set forth in detail below, each of the Defendants participated in and controlled a portion of the activities and conduct designed to manipulate prices in Ginn Community Properties.

VII. TARGETING FOREIGN NATIONALS

154. Defendants often targeted foreign nationals in promoting property sales due to the minimal credit checks required and the ability to avoid compliance with certain disclosure and document requirements. Sales to foreign nationals necessarily involved the use of the mails and wires at various steps of the property sales and financing transaction.

155. The Lender Defendants often required absolutely no documentation and/or income verification whatsoever from foreign nationals.

156. Defendants often marketed to foreign nationals via the internet.

157. For example, one advertisement used proclaimed that the foreign national buyer could obtain instant equity; the buyer could purchase a Ginn lot for \$350,000 and build a home for \$750,000. The advertisement stated that a bank would then appraise and finance the property for \$1.5M—producing instant substantial profits for the buyer. *See, e.g.,* http://www.investin.co.uk/overseas_property.html (no longer accessible).

158. Once the foreign national contacted Ginn, he/she was referred to one of the Lender Defendants. Ginn employees practically bent over backwards to introduce trusting foreign nationals to banks that had already agreed to “play ball.”

159. For example, in June 2004, Ginn salesperson Brook Quickel personally drove foreign national Christopher Godkin at least four hours to join him for a meeting in Casselberry, Florida with R-G Crown Bank’s Brady Koegel, the son of the bank’s founder, Jack Koegel. Godkin, impressed with the introduction, proceeded to purchase Ginn properties and refer Ginn to his business associates and clients.

160. The marketing campaign was successful. As the Orlando Business Journal reported:

Ginn's marketing has brought in a number of overseas buyers for all of its Florida communities, and coupled with the positive word-of-mouth reputation circulated about the company, it even has generated disciples of the company and its communities -- Ginnites.

Noelle C. Haner, *Ginn's Goal: Condo Sales of \$1 Billion*, Orlando Business Journal (May 20, 2005), available at: <http://orlando.bizjournals.com/orlando/stories/2005/05/23/story1.html#>.

161. Ginn also marketed to foreign nationals through "Ginn Europe," an affiliated company headquartered in Bristol, England, the employees of which included Bernie Giblin¹ and Martyn Ball, who served as Ginn Europe's Business Development Director. Ginn Europe, which became fully operational in March 2007, maintained a website located at www.GinnEurope.com (no longer accessible). The website boasted:

About Ginn Europe

Ginn Resorts brings to life a vision of legendary master-planned communities. For over three decades, under the direction of founder Bobby Ginn, the principals of the company has won a reputation for developing and managing the finest luxury vacation resorts offering leisure lifestyles by building resort communities in the Southeast.

162. Ginn Europe was aggressive with respect to its targeting of foreign nationals. For example, Ginn Europe offered free airfare to the United States and free accommodations to European prospective purchasers who bought within the Ginn communities. *See, e.g.*, <http://www.thevillageginn.com/purchasing.php> (accessed October 5, 2009). This website stated:

Throughout the year we will have special viewing trip packages to make your visit to the resort that much easier. These include:

- Flights
- Accommodation
- Full tour of the development with time to enjoy the local facilities.

¹ Bernie Giblin also served as the Director of Recreation and Social Events for The Club at Hammock Beach.

This will be after your refundable deposit is paid and if purchase does not go through the cost of the trip will be deducted from the deposit to a maximum of £1,500.

163. The Ginn Europe website also stated:

COME JOIN OUR VIP EXPERIENCE

Place a £3,000 refundable deposit on a property at Ginn Reunion before the end of February 2008 and you will be invited along with a partner, to be a guest of The Village at Ginn Resorts.

Stay up to 5 nights at the time of the Ginn Championship (www.ginnchampionship.com) where Ian Woosnam is expected to make his debut on the senior tour here.

Date: 24th – 30th March 2008

Location: Hammock Beach, Palm Coast, USA

Included:

- A round of golf on the highly acclaimed Tom Watson designed golf course
- 2 x spa experiences
- An exclusive invitation to the Ginn VIP party where you will be able to rub shoulders with golfing legends

If you are interested please contact us promptly as places are limited by calling 08000 111 875 or by email on info@TheVillageGinn.com

We hope to see you there!

164. Ginn promoted its properties at numerous events in the United Kingdom, including events held beginning in December 2007 at Ewood Park, a football stadium in Blackburn, Lancashire and home of the Blackburn Rovers Football Club. Ginn Europe was appointed as the football club's Official Overseas Property Partner, for the purpose of marketing the Ginn communities to the club's players and supporters. See *Rovers Sign up with Property Partner* (November 17, 2007), available at:

<http://www.rovers.co.uk/page/NewsDetail/0,10303~1169890,00.html>

165. Ginn Europe also sent advertising material to potential European purchasers that promised a “guaranteed 9.5% return in the first 2 years” in Reunion. See Exhibit C.

166. Another technique included befriending foreign nationals, and then inducing them to refer business associates and friends to Ginn. For example, Brookes & Co. is a British accounting firm, the principals of which include Heather Petts and Philip Button. While he was with First National Bank of Florida, Fifth Third Bank and Wachovia, throughout 2004 to 2006, loan officer Roy Snoeblen often contacted Petts and Button, by telephone and email, in the United Kingdom, seeking to encourage them to purchase Ginn properties and/or to refinance their existing mortgages for Ginn properties.

167. Ginn Sales Executive Patrick Lenihan and loan officers Roy Snoeblen and Brady Koegel corresponded quite often, sometimes daily, with British citizens Philip Button and Heather Petts, urging them to encourage their clients in the United Kingdom to purchase lots in Ginn properties and participate in launches, throughout 2004 to 2006. They encouraged them to buy in Laurelmor, Reunion, Cobblestone, Quail West and Ginn Sur Mer.

168. Ginn salesperson Patrick Lenihan told Petts and Button that the prices were constantly increasing and went so far as to actually guarantee a risk-free investment. For example, in an email sent to Philip Button at 2:52 PM on March 17, 2004, Patrick Lenihan stated, in part:

Since our Grand Opening in Dec. 2001 we have appreciated between %30-%50 per year...Our homesites have appreciated at a faster rate than any thin [sic] and has been the easiest to resale...Once we sell out of our homesites this year the demand will also increase dramatically.

What do you think will happen when the back nine of Palmer and Watson are open (this summer), the \$15million [sic] water park is open (early 2005) the clubhouse is open (2 weeks) the equestrian

center is open(early 2005) [sic], the main street village is complete (2006)the Spa [sic] and fitness center is complete (2006) the Ten court tennis pavilion with stadium seating (2006)...Now is the best time to get involved...the risk factor has also been taken out... (emphasis added)

169. Petts and Button, as well as their foreign national clients, relied upon the integrity and professionalism of the banks, officers and employees, including Snoeblen and Koegel, and their chosen appraisers.

170. As set forth in detail below, each of the Defendants participated in and controlled a portion of the activities and conduct designed to market Ginn Community Properties to foreign nationals as an element of their fraudulent scheme.

VIII. FURNISHING AND ACCEPTING KICKBACKS

171. As set forth in detail below, each of the Defendants participated in and controlled a portion of the activities and conduct designed to provide kickbacks to the Defendants and their co-conspirators by manipulating prices in Ginn Community Properties.

172. The Lender Defendants' officers and employees also often, accepted kickbacks from Ginn. Through specially-formed partnerships and/or limited liability companies, bank officers and employees purchased Ginn properties at "pre-launch" prices for the purpose of being able to later flip them for a profit, as property values were artificially inflated through false representations, deceptively-created demand and fraudulent appraisals. This was in furtherance of Defendants' scheme to artificially inflated selling prices for Ginn properties.

173. The Lender Defendants also provided kickbacks to Ginn employees by providing them with financing—which they would not have been able to obtain elsewhere—in order to purchase Ginn properties and flip them at artificially-inflated prices.

174. Ginn employees and other insiders often purchased lots prior to the launches in order to flip them and raise the prices.

175. Ginn employees often set up partnerships or limited liability companies and purchased Ginn properties, with mortgages provided by the Lender Defendants, so that they could flip the properties at artificially-inflated prices.

176. This was all done for the purpose of furthering Defendants' scheme to drive up the selling prices of Ginn properties.

177. Loan officer Bradley Robert King worked for both SunTrust and Wachovia during the Class Period. King and Ginn salesperson Bradley A. Huffstetler formed a partnership called "Northshore Ocean Hammock Investment LP," for the purpose of purchasing Ginn properties.

178. For example, King and Huffstetler purchased Lot 183, Harbor Village Marina, and then subsequently, on July 8, 2004, sold the lot to Frank J. and Debra Lynn Conti for \$493,000.

179. On or about July 19, 2006, King and Huffstetler purchased Lot 80, North Shore, Hammock Beach.

180. Huffstetler also purchased Lot 319, Bella Collina and listed it for sale for \$1.25 million.

181. Diana David, one of Ginn's top preferred appraisers, was involved in numerous property-flipping deals with Sean Barrett, Ginn's Vice President of Sales and Marketing, in a company called R&S Real Estate Investments, Inc.

182. On March 2, 2004, loan officer Bradley Robert King and Greg Ulmer, a Ginn sales executive in Tesoro, jointly purchased Lot 20-B11, First Replat, Riverplat, Tesoro for \$640,900. Just over a year later, on June 9, 2005, King and Ulmer earned a 100% profit by selling the lot to Steven Astuto for \$1.3 million.

183. Richard T. Davis, an attorney who worked very closely with Ginn and Ginn Title, together with builder PGM, which built Ginn homes in Tesoro, formed a limited liability company called R&P, LLC. Davis and the builder then purchased Lots 46, 47, 50 and 61 in a Ginn community known as Watersong, Port St. Lucie, with mortgage loans arranged by R-G Crown Bank.

184. These incestuous practices were stunningly rampant. For example, R-G Crown Bank officers/employees purchased at least 28 Ginn properties. KDHC, LLC was a company in the name of Rebecca Martel, wife of R-G Crown Bank's Brady Koegel. Through this company she had four loans from R-G Brown Bank to purchase four lots in Reunion. Through flipping properties, Martel earned \$541,400 in three months. Two of the resales were also financed by R-G Crown Bank.

185. R-G Crown Bank President Jack Koegel and Vice President Brady Koegel formed a company known as "Golf Park Properties," through which they purchased multiple Ginn properties at discounted prices in order to flip them at artificially-inflated values.

IX. REAPING PROFITS AND CAUSING LOSSES

186. Each of the Defendants profited from their participation in the scheme alleged herein, as set forth in further detail below. With regard to the Ginn Defendants and Lubert-Adler, the sale of properties at inflated prices and necessarily resulted in increased profits. Ginn Title benefited because of the volume of sales generated and the related fees.

187. Each of the Lender Defendants benefitted from the scheme alleged herein. As the New York Attorney General's Office explained during its 2007 investigation of Washington Mutual Bank, during the housing boom, lenders profited from higher appraisals because they allowed the lenders to close more loans at greater values. Similarly, in this case, each of the

Lender Defendants profited from the scheme alleged herein because it allowed them to close more loans at greater values.

188. Simply put, the Lender Defendants chased short term profits to their own detriment and to the detriment of each member of the Class.

189. First, each of the Lender Defendants actively participated in the scheme because making more loans meant that the lender made higher short-term profits in interest rates, in origination fees and other upfront fees.

190. Second, the Lender Defendants were incentivized by the fact that, rather than keep all of their loans on their balance sheets, they often sold many of their home loans as mortgage-backed securities. As Frederic Cannon, an analyst for Keefe, Bruyette & Woods, Inc. has explained:

For loans that a bank plans to sell, high appraisals support a greater amount of loans that can be sold, and loan officers are generally paid on volume. Further, if a mortgage loan is sold it is generally accepted by the lender that they have passed on the default risk to the security holder. Therefore, it would seem that there indeed could be an incentive for loan officers and the bank to push for inflated home values in the case of sold loans.

Allistair Barr, *WaMu Vulnerable on Securitized Mortgages?*, MarketWatch.com (November 2, 2007).

191. Third, *regardless* of whether each Lender Defendant kept the loans on its own balance sheet or sold them on the secondary market each, Lender Defendants benefitted from the scheme by being able to report: (a) an increased loan portfolio; and (b) an acceptable risk of default, based upon the LTV ratio for the loans in Ginn developments.

192. The LTV is calculated by dividing the total amount of the mortgage by the appraised value of the property: **Mortgage ÷ Appraised Value = LTV** (typically expressed as a percentage). Thus, the inflated appraisals permitted the Lender Defendants to artificially inflate

and misrepresent the value of the loans' by providing artificially acceptable LTV ratios for the loans. Inflated appraisals allowed the Lender Defendants to represent that the loan amounts for the Ginn properties were lower relative to the appraised value of the underlying collateral for the loans than they actually were. Indeed, the inflated appraisals allowed the Lender Defendants to report a high loan volume, while concealing the fact that the loans were vastly under-collateralized in that-in every case-the loan amounts far exceeded the value of the underlying collateral.

193. It is common knowledge that a higher LTV ratio is generally associated with a greater risk of default. Conversely, a lower LTV ratio is generally associated with a lower risk of default. Accordingly, as each of the Lender Defendants well knew, the value of the appraisal in the loan file is critical to determining the LTV ratio and the associated risk of default on the loan. Further, each of the Lender Defendants utilized LTV ratios to determine the default risk of loans held in its portfolio. Further, each of the Lender Defendants benefitted in the short term by being able to set aside fewer reserves for loan losses.

194. Each of the Lender Defendants knew that representing the true LTV ratios of the loans made on the Ginn properties would have wreaked havoc upon its balance sheets and caused uproar from its investors. For example, SunTrust Banks, Inc., the parent of SunTrust, represented to the investing public that it continuously monitors the quality of its loan portfolio and maintains an allowance for loan and lease losses sufficient to absorb probable losses inherent in its loan portfolio. *See, e.g.*, SunTrust Banks, Inc., Annual Report (Form 10-K), at 28 (March 1, 2007). Wachovia Corp., parent of Wachovia, reassured its shareholders of the strength of its loan portfolio by pointing to low LTV ratios. *See, e.g.*, Wachovia Corp., Q3 2008 Earnings Call Transcript, available at: <http://seekingalpha.com/article/101159-wachovia-corp-q3-2008->

earnings-call-transcript?page=-1. Fifth Third Bancorp provided a specific breakdown to the investing public of its loans with LTV ratios of greater than 80%. *See, e.g.*, Fifth Third Bancorp., Annual Report (Form 10-K), at 42-43 (February 2, 2007).

195. Moreover, the Lender Defendant's loan officers and brokers benefitted because they worked on commission, such that the higher a property's valuation, the higher the commission. Of course, this created incentive to pressure appraisers to arrive at higher valuations.

196. Each of the Lender Defendants named herein gamed the system using several different means to ensure that Ginn deals went through. These included "cherry-picking" which appraisers they used to appraise certain properties, based on which appraisers will play along and provide values high enough to permit the respective loans to close. Or, lenders may order multiple appraisals until they receive one that matches or exceeds the desired value. Each of the Lender Defendants named herein engaged in such activity for the purpose of increasing their short-term profits, without regard to the long-term effect upon their business and certainly without regard to the impact of their actions upon borrowers. Developers who directly market new homes have the same incentive to exert pressures for dishonest appraisals.

197. Significantly, in order to inflate short-term profits, each of the Lender Defendants knowingly took part in the scheme to artificially boost property prices. Each of the Lender Defendants knew that the gargantuan loans for the Ginn properties could not have been made without an appraiser who would "play ball." Notably, a similar motive and comparable conduct led to a November 1, 2007 lawsuit by New York Attorney General Andrew M. Cuomo against a major real estate appraisal company, alleging that the company colluded with Washington Mutual Bank, then the largest savings and loan in the country, to artificially inflate the appraised

values of homes and apply pressure to appraisers to get housing value estimates raised in order to help close loans. The suit alleged that, as a result of this scheme, as many as 262,000 consumers may have purchased houses at artificially high prices. As Terry Dunkin, then president of the Appraisal Institute correctly stated, “This is certainly not isolated to New York, and it’s certainly not limited to this particular case.” Each of the Lender Defendants named herein engaged in substantially similar conduct.

198. Defendants scheme to sell and facilitate the sale of properties at grossly artificially-inflated prices is emblematic of the type of conduct that contributed significantly to the devastating collapse of the housing and mortgage markets in the State of Florida and nationwide. Indeed, “experts say that exaggerated home prices have contributed to the crisis.” Carrie Johnson, *New York Sues Appraiser in Mortgage Loan Probe*, The Washington Post (November 2, 2007).

199. As the New York Attorney General’s Office noted in a letter to the United States Congress dated November 8, 2007:

Importantly, the conduct identified by the Attorney General’s Office is not an isolated instance of fraud. Simply put, over the course of its nine-month investigation into fraudulent practices in the mortgage industry, the Attorney General’s Office has determined that the appraisal process is broken...

200. Each of the Lender Defendants knew that Plaintiffs and the other Class members relied upon the accuracy of the appraisals supplied by the Lender Defendants. It is commonly known and understood that borrowers rely upon an appraisal as confirmation of the value of the subject property. As the Washington Post has observed, “Appraisals are the bedrock of the housing industry, with lenders, brokers, real estate agents *and home buyers* all relying on their accuracy.” Carrie Johnson, *New York Sues Appraiser in Mortgage Loan Probe*, The Washington Post (November 2, 2007).

201. Each of the Defendants in fact knew that borrowers typically rely upon the accuracy of the lender-ordered appraisal as confirmation of the value of the subject property. As one study noted:

When purchasing a home, buyers are likely to assume that the price they are paying reflects “where the market is at” and insomuch as they pay attention to the appraisal process it is with an eye toward having it done quickly and without problems.

Unwittingly, consumers put their financial well-being in the hands of two parties - the lender or broker, and a handpicked appraiser - who bring conflicts of interest to the job of assessing the value of their home. Most consumers never consider hiring an independent appraiser.

See David Callahan, Home Insecurity: How Widespread Appraisal Fraud Puts Homeowners at Risk, (Demos, Borrowing to Make Ends Meet, Briefing Paper # 4 March 2005) (“Widespread Appraisal Fraud”).

202. Not only did each of the Lender Defendants know that the members of the Class relied on their appraisals, but they induced such reliance. For example, in March 2005, in connection with his purchase of Lot 5, Conservatory, Hammock Beach, purchaser James Akouri never saw an appraisal and was told by SunTrust that he should not hire his appraiser. Specifically, when Akouri mentioned to SunTrust loan officer Jim Shaffer his desire to obtain an independent appraisal of the property, Shaffer told Akouri, “We appraise with our own company. It will be approved, don’t worry.” Shaffer further told Akouri that obtaining an independent appraisal would be a waste of time and money because it would not be used; rather, SunTrust had its own appraiser that it used that would get the value to where it needed to be. As a result, SunTrust knowingly financed the loan for a greater dollar amount than it should have, leading to the overall increase of the value of properties in the Ginn Developments.

203. As each of the Lender Defendants knew, a real estate appraiser plays a key role in the mortgage lending process. The appraiser's duty is to opine as to the value of the property. The purpose of the appraisal is to provide both borrowers and lenders with an accurate and independent assessment of a home's value.

204. The independence of a real estate appraiser is central to transactions to purchase or sell a home or to refinance a mortgage. Appraisals are used to establish a property's market value; therefore, inaccurate or fraudulent appraisals damage the entire market and have negative economic effects that are far reaching. Borrowers, who place a large investment in their property, can be particularly victimized by appraisal fraud.

205. The Widespread Appraisal Fraud study noted:

Perhaps the most persuasive evidence of the problem is that over 8,000 appraisers have signed a petition to the federal government complaining that the lending industry has "individuals within their ranks, who, as a normal course of business, apply pressure on appraisers to hit or exceed a predetermined value. This pressure comes in many forms and includes the following: the withholding of business if we refuse to inflate values; the withholding of business if we refuse to guarantee a predetermined value; the withholding of business if we refuse to ignore deficiencies in the property; refusing to pay for an appraisal that does not give them what they want; and blacklisting honest appraisers in order to use 'rubber stamp' appraisers, etc."

X. DEFENDANTS CONDUCT

A. Fifth Third and its Predecessors-in-Interest Actively and Knowingly Participated in Various Aspects of the Scheme

206. Fifth Third and its predecessors-in-interest were heavily involved in the scheme.

207. Fifth Third Bancorp and Fifth Third Bank (Michigan) (collectively referred to as "Fifth Third"), as successor in interest to both R-G Crown Bank and First National Bank of Florida, merged with and continued the operations of those entities, reaping the benefits of the unlawful activities and conduct alleged herein. Both mergers increased Fifth Third's Florida

presence by merger and continuation of existing operations with fast growing banks that, through their executives, officers and/or employees, had originated a substantial number of loans from and actively participated in the unlawful conduct alleged herein. Moreover, after the mergers were effectuated, employees and/or loan officers who continued at Fifth Third, including Roy Snoeblen and Jay Fulbright, continued to participate in the unlawful activities alleged herein directing conduct in connection with loan origination and manipulation of prices to further the objectives of the Enterprises described herein.

208. Fifth Third, First National Bank of Florida and R-G Crown Bank were all “Preferred Lenders” for the Ginn Developments and Fifth Third continues to hold many of the mortgages in Ginn Developments that were made through the activities of the Defendants and Enterprises alleged herein. Following its acquisitions of First National Bank of Florida and R-G Crown Bank, Fifth Third derived income from the mortgages originated by those banks as well as from the continued active origination of loans and control/participation in the scheme at issue for Fifth Third directly.

209. First National Bank of Florida, R-G Crown Bank and Fifth Third Bank made hundreds of loans Ginn communities, including, without limitation, Bella Collina, Reunion, Tesoro and The Conservatory. R-G Crown Bank made approximately 86% of the loans in Watersong Port St. Lucie and at least 30% of the loans in Bella Collina.

210. Fifth Third is liable, as a successor-in-interest, for the conduct of R-G Crown Bank and First National Bank of Florida.

211. Fifth-Third and its predecessors-in-interest participated in the fraudulent scheme to artificially create inflated prices for properties in the Ginn Developments and as a “Preferred Lender” of the Ginn Developments, participated in and exercised control over various aspects of

the scheme and conduct alleged herein by, *inter alia*, knowingly and actively participating in activities which fostered demand in the properties, facilitating the manipulation of sales prices for properties sold to members of the Class through misrepresentations, deceptions, omissions, fraudulent conduct, targeting and soliciting foreign nationals to purchase properties in the developments that are the subject of the scheme, and knowingly funding property sales at inflated amounts in order to further the joint objectives of the Defendants. Fifth Third not only used the mails the mails and wires to further the fraudulent scheme but also knew the Defendants would use the mails and wires in furtherance of the fraudulent scheme.

212. Jack A. Koegel was President of R-G Crown Bank, while his son, Brady Koegel, was Vice President, New Housing Division, within the bank. From the beginning of the scheme alleged herein, R-G Crown Bank controlled and/or actively participated in various aspects of the scheme with the purpose of furthering the joint objectives of the Defendants and the Enterprises.

213. R-G Crown Bank provided significant funding to Ginn for the purchase of the parcels to be used in the scheme including specifically funding for Ginn-LA's purchase of the parcel for Tesoro Preserve in Port St. Lucie, Florida.

214. Ginn's Chief Engineer, Doug Miller, also served on the board of directors of R-G Crown Bank.

215. Fifth Third sent emails and faxes to prospective borrowers, inviting them to the lavish launches and advertising its loan products for the Ginn Communities. These emails and faxes furthered the objectives of the fraudulent scheme by inducing the Plaintiffs to enter into improvident loans to finance Ginn Community properties at artificially inflated prices.

216. In an outlandish email dated June 22, 2006, on which appraiser David Tremblay was copied, R-G Crown Bank's Brady Koegel stated to purchaser Stephen Frieze that Frieze

could simply let him know, in no uncertain terms, what numbers needed to appear on the appraisal and he would make it happen. Specifically, Brady Koegel stated:

Stephen, email me (as well as the appraiser above) the physical addresses of both properties to appraise, your cell number or best contact number, **the value of each property you would like to see on the appraisal...** we should be in great shape (emphasis added)

217. R-G Crown Bank created and actively promoted a website specifically designed to target and exploit prospective purchasers of Ginn properties. For example, in an email dated 12:35 PM, September 14, 2006, R-G Crown Bank loan officer Jason Lough stated:

I finally hit the big time • ...I have been added to a website...My dreams have come true...Check it out...it has some pretty cool tools for home and investment buying...go to www.ginnloan.com. We are trying to help capture some of the business Ginn can't handle...Also any thing else you can throw at me. Please check it out...its very user friendly.

Fun items to play with on the site

1. Mortgage calculators
2. MLS search calculators
3. Links to Ginn communities
4. Pre-Qualify buyers or yourself
5. Much much more

Lough added, "...this site is fully programmable and designed strictly for Ginn Company." This email was sent to a numerous persons, including present and former Ginn purchasers, employees, agents and builders.

218. R-G Crown Bank was directly involved in soliciting new loans for Ginn properties through the mails and wires. For example, on the website www.GinnResorts.com, the following quote and endorsement from R-G Crown Bank President John Koegel appeared:

From a lender's perspective, it's been a total joy working with the Ginn company. In 2½ years, we've handled almost \$300 million in lot and construction loans for the company and we've never had one go delinquent. When they say they're going to do something, it gets done. Their people are exceptional from top to bottom.

(last accessed in July 2007; website no longer accessible).

219. In October 2005, Ginn salesperson Brett Campbell sent a handwritten card to purchaser Christopher Godkin, stating, in part:

Construction of private residences are about to begin in Bella Collina! ...I have included a letter from [R-G] Crown Bank stating how you may be able to start the process yourself...

Sinceramente,

Brett Campbell

220. Fifth Third officers and employees carefully ensured that the appraisals they obtained from their preferred appraisers came in at the “right price.” Fifth Third knowingly obtained and accepted the fraudulent appraisals and induced borrowers to rely on the fraudulent appraisals.

221. R-G Crown Bank’s Brady Koegel promised some purchasers that he had a way for them to build model homes on Ginn lots with no money out of pocket. Koegel offered to obtain an appraisal on the empty lot based on the future value of the lot plus the completed home and use the phantom “equity” in the lot as the down payment portion of the new construction loan that would be made available to the purchaser through R-G Crown Bank. According to Koegel’s plan, once the house was built, R-G Crown Bank would convert the loan to a permanent loan, list the property with Ginn and sell it for a profit.

222. At 11:15 AM on April 28, 2005, R-G Crown Bank’s Brady Koegel sent an email to Ginn purchaser John Migyanka discussing the Villas at Reunion Square. Therein, Koegel stated, “...I think the condos will make a great investment.”

223. Later in the day, Koegel continued to push the Ginn properties. In an email sent at 11:35am on April 28, 2005, Koegel stated:

There will be a NC project early part of next year and a Naples project toward the latter parts of this year. Both of those will be great projects, not to mention everything cooking in St. Lucie. Another Tesoro launch, the beach club launch and the marina and equestrian center they are working on collecting right now...

224. On June 7, 2004, builder RL Vogel Homes purchased Lots 260 and 391 in Bella Collina for a total purchase price of \$707,800, financed by R-G Crown Bank. However, Ginn Title caused the sale to be recorded as Lot 260 having been sold for \$707,800 and Lot 391 having been sold for \$1. Lot 260 was later used as a comparable for appraisals. Later, on January 28, 2005, Lot 391 was flipped to Stephen Frieze for over \$500,000—also financed by R-G Crown Bank and based on a fraudulent appraisal that was solicited by R-G Crown Bank.

225. Fifth Third employees manipulated the value of Ginn Community properties by obtaining inflated appraisals that justified the amount of the loans that Fifth Third financed, often obtaining loans which permitted Fifth Third to finance as much as 100% of the purchase price of the property.

226. On June 7, 2004, Lot 361, Bella Collina, was sold to Mark A. Keenan for \$444,000. R-G Crown Bank gave Keenan a \$400,000 mortgage for this purchase. The appraisal for this lot was fraudulent, in that it relied upon inappropriate comparables. In reality the property was worth far less than \$400,000.

227. R-G Crown Bank actively solicited loans in Bella Collina, based upon fraudulent appraisals and upon phantom lot “equity.”

228. One flyer from R-G Crown Bank, dated “Effective October 15, 2005,” attached hereto as Exhibit D and sent to Ginn purchasers through the mails and wires stated, in part:

R-G Crown Bank would like to congratulate you on your homesite purchase at Bella Collina. By doing so, you have positioned yourself to build the “Home of Your Dreams” or a custom “home for purchase” *without* having to bring any more money to closing. You may be eligible to build a \$1.5MM-\$3MM home based on your initial 10% lot down payment.

Begin and complete construction without spending another penny! Take full advantage of the equity in your homesite: (1) prevent bringing down payment money; (2) cover all interest payments start to finish; (3) include a furniture package; (4) possibly cover your first year’s mortgage payment; (4) cash out some money during construction, etc. **Limitless creative financing possibilities!**

Sell your construction loan during construction, possibly before the slab is poured or wait for the Street of Dreams!

229. The R-G Crown Bank flyer provided the following absurd hypothetical:

Ginn owner buys an interior homesite at the Bella Colina launch and still owes \$250,000. The homesite is now worth close to \$1,000,000. The borrower has \$750,000 equity to utilize and *take advantage of*. Owner can therefore build a \$2,000,000+ home on top of their homesite without bringing any money to closing and without making an interest payment until the home is completed.

See Id., (emphasis in original).

230. Fifth Third officers and employees knowingly used appraisals that were based on cash purchases as comparables to inflate the value of the property and allowed them to provide increased financing based on equity in the properties that did not exist. This use of cash comparables lead to ever increasing values for properties in the Ginn Communities which did not reflect the true state of the market, furthering the objectives of the scheme.

231. On or about June 28, 2005, R-G Crown Bank’s Brady Koegel told Christopher Godkin, who was seeking financing for the purchase of two Ginn lots, that R-G Crown Bank

would guarantee financing for Lot 1, Conservatory, if Godkin would agree to pay cash for Lot 194, Bella Collina.

232. Fifth Third ordered appraisals also fraudulently included items that were part of the sale, but not part of the property. These practices allowed Fifth Third officers and employees to augment the financing and resulted in inflating the price of all properties in the Ginn Communities. For example, Fifth Third provided financing based on appraisals that included builder leasebacks, expensive furniture packages and club memberships. When these items were included, they increased the appraisal by hundreds of thousands of dollars.

233. In an email to purchaser Christopher Godkin, dated February 11, 2005, R-G Crown's Brady Koegel plainly stated that R-G Crown Bank would fraudulently arrange for the appraisal of the subject property to include the price of a \$65,000 furniture package in the appraisal. Koegel wrote: "as long as the property appraises out with the furniture included, we are good to go."

234. Fifth Third's officers and employees accepted kickbacks from Ginn. Fifth Third bank officers and employees purchased properties at pre-launch prices, participated in the scheme which inflated the prices and then "flipped" the properties to unsuspecting buyers. Fifth Third officers and employees also formed special partnerships and/or limited liability partnerships which allowed them to hold properties until they could flip them at the inflated prices which they helped to create. These kickbacks were an integral aspect of the scheme.

235. In an email dated July 4, 2005 to an interested purchaser, R-G Crown Bank's Brady Koegel boasted, "I own 50% of 28 Ginn properties...I do not want to bite the hand that feeds me, regardless of how involved I am...I will not buy a lot at a Ginn launch moving forward when I can buy in their projects before the public can."

236. Koegel also stated, “I consistently partner with Ginn execs and sales staff behind the scenes...and without each of them knowing. I know A LOT of good information” (emphasis in original).

237. In an email dated June 28, 2005, Koegel excitedly bragged that he was “buying before most of Ginn’s biggest hitters can and below launch prices!”

238. As another example, Nicole Costello served as Ginn’s closing coordinator/notary. On or about December 23, 2004, Costello purchased Lot 147, Bella Collina, for \$242,910. On the same day, Costello flipped the property to a buyer named JHM Investments, LLC, for \$456,500—a one-day profit of approximately \$213,590. Financing and the appraisal for JHM Investments, LLC, were arranged by R-G Crown Bank.

239. Fifth Third Bank senior loan officer J.T. Holbrook, on June 18, 2004, purchased two lots in Reunion West Village North. He purchased one lot for \$224,900, with a mortgage for \$202,410 from R-G Crown Bank’s Brady Koegel.

240. Ten days later, on June 28, 2004, Holbrook bought another lot with his wife, Janet, for \$224,900 with a mortgage for \$200,000 from R-G Crown Bank. On July 8, 2005, Holbrook sold the second lot for \$540,000 to Jonathan Walker, a foreign national. Jonathan Walker was provided with a mortgage from Fifth Third Bank.

241. On July 25, 2005, the first lot was also sold to Walker for \$540,000, with a mortgage provided by Fifth Third Bank.

242. In furtherance of the scheme, Fifth Third officers and employees also provided kickbacks to Ginn Salespeople and employees in the form of financing that the Ginn salespeople and employees would not have been able to obtain elsewhere, which enabled the Ginn employees to flip the properties to the public for grossly inflated profits.

243. R-G Crown Bank's President Jack Koegel and Vice President Brady Koegel partnered with Mark A. Keenan to form a company called Golf Frontage, LLC, in Longwood Florida. On or about June 7, 2004, Keenan purchased Lot 361, Bella Collina, for \$444,900, with a \$400,410 mortgage from R-G Crown Bank. Subsequently, on May 3, 2005, Lot 361, Bella Collina, was flipped to an unsuspecting buyer named Michael J. Adams for \$1.49 million, with 100% financing provided by R-G Crown Bank. Thus, R-G Crown Bank had the lot appraised as having increased in value by over \$1 million in less than one year.

244. In an email dated June 28, 2005, R-G Crown Bank's Brady Koegel boasted to an interested purchaser regarding such kickbacks: "I have made their families millions inside Ginn when other banks would not finance them, as well as partnered on no-brainers inside Ginn with them personally and they are now 'returning the favor.'"

245. Eddie Schatz was Bobby Ginn's partner in Austin Outdoors, which did the majority of the landscaping for Ginn properties. On or about April 25, 2005, Schatz purchased Lots 141 and Lot 142, Bella Collina for \$529,900. On the same day, Schatz then flipped the properties to a purchaser named Michael J. Adams for \$640,000 per lot—a combined profit of approximately \$220,000 in a single day. Financing and the appraisal for Michael J. Adams were arranged by R-G Crown Bank.

246. On or about July 7, 2005, Ginn salesperson Bradley Douglas Smedberg purchased Lot 51, Unit 1, Quail West Replat for \$1,688,200 with a mortgage loan from R-G Crown Bank, recorded on July 14, 2005. This helped to further the scheme by providing an artificially-high comparable for future sales.

247. In email to Christopher Godkin, Koegel described kickbacks he received from Ginn, “just lining up a buyer to take them off my hands or a joint venture with a backside kicker.”

248. R-G Crown Bank gave Ginn salesperson Ken Holden multiple loans to purchase properties in Ginn developments.

249. Fifth Third was also involved in targeting foreign nationals to solicit loans in Ginn communities. For example, Fifth Third Bank did the majority of the foreign national loans in Bella Collina.

250. R-G Crown Bank’s Brady Koegel also encouraged foreign nationals to take out loans with R-G Crown Bank to purchase Ginn properties. For example, on November 17, 2004, British citizen Philip Button purchased Lot 235, Reunion West Village 3-A, for \$217,900. The mortgage was \$161,900. Subsequently, Petts and Button were contacted by R-G Crown Bank’s Brady Koegel, who asked whether they would be interested in purchasing a lot in Bella Collina. Koegel stated that this would be a great opportunity.

251. R-G Crown Bank boasted that, in connection with its “superior relationship as a participating financial institution in this and many other fine communities developed by the Ginn Company,” it offered “low bank fees, no application fee, no pre-payment penalty, Future Advance Provision, minimal documentation, welcoming all foreign national and stated income borrowers.” *See* Exhibit D, attached hereto.

252. In or about April 2005, R-G Crown Bank’s Brady Koegel informed his clients that R-G Crown Bank was being audited and had “technically” stopped providing lot loans for Ginn properties, but would continue to provide construction loans. Brady Koegel then referred borrowers to Roy Snoeblen of Fifth Third Bank for lot loans.

253. Fifth Third and its predecessors-in-interest benefitted from the fraudulent scheme as it profited from the higher loan volume, the higher short term profits in interest, origination fees and other upfront costs, and its ability to package and sell the loans on the secondary mortgage market both as loans with higher value and loans that met the standards for securitization. The increased loan volume resulted in higher commissions to its loan officers, executives, employees and agents.

254. Plaintiffs' and Class members' purchases of properties in the Ginn Communities at artificially elevated prices benefitted Fifth Third and its predecessors-in-interest; Fifth Third and its predecessors-in-interest knowingly accepted these benefits at the expense of the Plaintiffs and Class members.

255. Fifth Third and its predecessors-in-interest agreed to and participated in a civil conspiracy to defraud the Plaintiffs and Class members of their money, business and/or property by engaging in the activity herein alleged and causing damage to the Plaintiffs and Class members.

256. The conduct of the executives, loan officers and employees of First National Bank of Florida, R-G Crown Bank and Fifth Third in furtherance of the scheme alleged herein is egregious and inconsistent with the standard applicable to bank employees in their dealings with customers which require, at the very least, that a bank not take steps to mislead, deceive and/or defraud those who seek funding from it. Such conduct which was known, or should have been known to Fifth Third and the banks with which it merged had they exercised an appropriate level of supervision, caused injury to Plaintiffs and members of the Class who were customers of the banks in connection with their purchases and financing of property in Ginn Developments. Fifth Third participated in and exercised control over various aspects of the scheme and conduct

alleged herein by, *inter alia*, knowingly and actively facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, omissions, fraudulent conduct and funding property sales at inflated amounts in order to further the joint objectives of Defendants.

B. Sun Trust Mortgage Actively and Knowingly Participated in Aspects of the Scheme

257. SunTrust actively participated in the fraudulent scheme to artificially create inflated prices for properties in the Ginn Developments and as a “Preferred Lender” of the Ginn Developments, participated in and exercised control over various aspects of the scheme and conduct alleged herein by, *inter alia*, knowingly and actively participating in activities which fostered demand for the properties, facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, deceptions, omissions, fraudulent conduct, targeting and soliciting foreign nationals to purchase properties in the developments that are the subject of the scheme, and knowingly funding property sales at inflated amounts in order to further the joint objectives of Defendants. SunTrust not only used the mails and wires to further the fraudulent scheme but also knew that the Defendants would use the mails and wires in furtherance of the objectives of the fraudulent scheme.

258. SunTrust was involved with Ginn from the very beginning.

259. Bobby Ginn served as a member of an advisory board to SunTrust.

260. SunTrust participated in financing hundreds of loans in Ginn communities. SunTrust provided loans for over thirty percent of the properties in Bella Collina and provided hundreds of loans in Reunion and other Ginn communities.

261. SunTrust also provided construction/perm loans for Ginn properties through an affiliated company known as Custom Builder Mortgage, L.L.C. (“Custom Builder Mortgage”),

which was based in Maitland, Florida. This affiliate of SunTrust earned huge commissions on the loans.

262. SunTrust participated in numerous “launches” in the effort to create the impression of frenzied demand for properties in the Ginn Developments.

263. SunTrust sent emails and faxes to prospective borrowers, inviting them to the lavish launches and advertising its loan products for the Ginn Communities. These emails and faxes furthered the objectives of the fraudulent scheme by inducing the Plaintiffs to enter into improvident loans to finance Ginn Community properties at artificially inflated prices.

264. At 12:38 PM on April 4, 2005, SunTrust loan officer Jim Shaffer faxed the following advertisement to James Akouri, soliciting loans in The Conservatory, Hammock Beach, and making false representations as to the true LTV ratios of the loans:

04/04/2005 12:38 FAX 002

THE CONSERVATORY

LOT LOANS

95% FULL DOC-700 CREDIT SCORE


90% NO INCOME- 720 CR.SCORE
SELF EMPLOYED ONLY

******INTEREST ONLY******

1 LOT LOAN PER CUSTOMER
3 OR 5 YR FIXED RATE
NO PREPAYMENT PENALTY
NO POINTS/ORIGINATION

RATE TODAY-~~6.25%~~-6.5%
6.375 - 6.625

CONTACT:JIM SHAFFER
SUNTRUST MORTGAGE
(386) 258-2040 FAX (386)258-2058



YourWay
Home.

314224 mkt 231-01 **SUNTRUST**

265. SunTrust aggressively pursued prospective Ginn purchasers. As an example, on May 14, 2007, SunTrust loan officer Cheri R. Campbell sent an email to Ginn employees Kelly Headley and John Trueman stating, in part:

I sent the attached information to Kelly quite some time ago but I thought I would send again as a refresher. I also do quite a bit the condominium deals in Palm Coast and understand the property real well. I would be more than happy to help with both the condominiums and the lots...

Headley later forwarded this email to prospective purchaser John Migyanka on September 4, 2007. See Exhibit B, attached hereto.

266. As another example, at 5:11PM on April 2, 2007, SunTrust loan officer Michael Knight sent an email to James C. Ramey and Mark Shipley stating, in part, "Do you guys have any fresh recruits that can take down a couple?"

267. SunTrust was also involved in targeting foreign nationals to solicit loans in Ginn communities. For example, SunTrust sent loan officers to London, England to attend marketing events for Ginn properties, solicit loans and prepare mortgage applications on-site. *See, e.g.*, Exhibit E.

268. SunTrust colluded with the other Defendants to manipulate property values by obtaining fraudulently overvalued comparables. SunTrust knowingly used the property appraisals which used overvalued comparables to approve loans for amounts that were not justified by the true value of the property.

269. Tracy E. Miller bought the property located at 7823 Loxahatchee Ct. on or about December 8, 2006 for \$192,500. SunTrust gave him a mortgage loan for \$952,410, despite the fact that the property was worth far less than the sales price.

270. Brandon Kingsley bought the property located at 1013 Castle Pines Ct. on or about December 29, 2006 for \$265,000. SunTrust gave him a 100% LTV mortgage loan and

subsequently modified the loan to a construction/perm loan for \$966,681 on February 28, 2007 despite the fact that the property was worth far less than the “appraised” value.

271. SunTrust employees manipulated the value of Ginn Community properties by obtaining inflated appraisals that justified the amount of the loans that SunTrust financed, often obtaining loans which permitted SunTrust to finance as much as 100% of the purchase price of the property.

272. SunTrust officers and employees carefully ensured that the appraisals they obtained from their preferred appraisers came in at the “right price.” SunTrust knowingly obtained and accepted the fraudulent appraisals and induced borrowers to rely on the fraudulent appraisals.

273. SunTrust ordered appraisals also fraudulently included items that were part of the sale, but not part of the property. These practices allowed SunTrust officers and employees to augment the financing and resulted in inflating the price of all properties in the Ginn Communities. For example, SunTrust provided financing based on appraisals that included builder leasebacks, expensive furniture packages and club memberships. When these items were included, they increased the appraisal by hundreds of thousands of dollars.

274. At 2:15 PM on, December 1, 2006, SunTrust loan officer Michael Knight sent an email to John Busutil of Billstone Properties, stating, with respect to a loan application for Tracy Miller, exactly how to commit mortgage fraud:

We can't use this revised contract... The furniture pkg, leaseback, and membership being mentioned in this deal will cause any underwriter to back that amount out. **We need the whole 752,000 to be listed as cost to construct.** From there the cost breakdown can break down the costs. You just cant [sic] show items like furniture and memberships, because no bank will finance those terms. Let me know if you have any questions.

(emphasis added). The message was clear. The builder had provided Knight with a contract indicating that a leaseback, furniture package and membership would be included. Knight responded that the listed, actual cost of construction needed to be artificially inflated, so as to hide the inclusion of these items in the selling price.

275. SunTrust often encouraged Ginn salespersons and purchasers to disguise leaseback payments as other items, such as architect fees or costs of construction, on the settlement statements and/or sales contracts.

276. One technique was to fraudulently indicate that the borrower had paid funds out of pocket that had never actually been paid, such as showing artificial fees being paid to the builder outside of closing. For example, in an email dated March 12, 2007, SunTrust loan officer Michael Knight sent an email to SunTrust Construction File Manager Maureen Prescott stating, in part:

I spoke with John Busittil with William Stone Properties this morning, and he mentioned that he was shorted 60k on a draw request that you deducted out of architecture fees that the borrower paid outside of this transaction. We only had John place it on the cost breakdown to show the underwriter that the borrower had put a 40K deposit along with fees paid outside in relation to this transaction....

This indicates that Knight was able to close the loan only by falsely indicating that the borrower had paid \$60,000 to the builder as of closing for “architecture fees.”

277. SunTrust provided at least fifteen mortgages in Reunion on the same street with the same builder, William Stone. SunTrust also provided numerous loans in Laurelmor and Bella Collina.

278. At 1:48 PM on November 11, 2006, SunTrust loan officer Michael Knight sent the following email to James C. Ramey with respect to a construction loan for the property located at 7823 Loxahatchee Ct., Reunion West Villages North, for acquaintance Tracy E.

Miller, copying fellow SunTrust loan officer Chris Cotter, Ginn salesperson Anthony Moore and realtor Scott Reid:

JC----- Here is what the underwriter came back.

We will need a new cost breakdown to show 65K paid for architecture fees---already paid..

The remaining amount can be the following to take it from 993236 to 952410---- 40826 as deposit check..

I have the current breakdown like this before adding the 65K for architecture fees, and the check showing the deposit....

752500 cost to construct
192,500 cost of lot
38453--- interest reserve
14783---estimate for closing cost.

Total cost 995,236

Let me know your thoughts.

From the underwriter----

I increased the sales price to \$1,058,236 and reduced the loan amount to \$952,410 (10% down). I faxed the commitment and exception to Linda.

279. SunTrust was falsely and fraudulently increasing the spread between the sales price and the loan amount and indicating that the borrower had paid cash down that was actually never paid. Knight referenced the \$65,000 in architecture fees as “already paid,” despite knowing that, in fact, such funds had not been paid and would never be paid. This was simply a way for Knight to maneuver the numbers so as to get the deal done.

280. SunTrust later requested a falsified receipt to further the fraud. At 10:58 AM on December 5, 2006, Knight sent an email to James C. Ramey stating:

What is the chance of getting any type of receipt or invoice showing 60k from an architect showing paid.. I am trying to pull this one together, and we can give credit for the 60K but the

worksheet they are requiring up there is taking that from the builder in the initial draw. Let me know, or call me.

281. Purchaser Tracy E. Miller purchased the lot on December 15, 2006; as promised SunTrust loan officer provided the \$952,410 loan on the same day.

282. SunTrust provided a loan to purchaser Ian Murray for the purchase of Lot 314, Bella Collina. SunTrust loan officer Celeta Ryan-Quinn, of Custom Builder Mortgage, knew that Murray needed a loan in the amount of \$1,950,000. She also knew that she needed a 65% LTV ratio in order to get the deal done. SunTrust ensured that an appraisal that would provide the exact LTV ratio and loan amount needed to make the loan.

283. Ryan-Quinn knew that Murray needed to borrow approximately \$1,950,000 in order to cover his construction cost and lot payoff. Accordingly, in order to provide the requisite 65% LTV ratio, the appraisal needed to come in at \$3,000,000. Not surprisingly, at 6:22 PM on June 19, 2007, Ryan-Quinn sent an email to Murray, stating:

Appraisal and appraisal review came in for \$3,000,000 yeh!!!! I have to attend a meeting and will be free at after 12:00 today. This is great news. Will you be coming to the states to close?

Notably, SunTrust paid its affiliate Custom Builder Mortgage a “mortgage broker fee” of \$29,250 in connection with this loan.

284. On or about September 15, 2005, SunTrust provided a construction/perm loan to Andrew J.D. Murray for Lot 387, Bella Collina, in the amount of \$3,543,750. The appraisal was fraudulent, in that two of the comparables were nonexistent sales. The appraisal stated Lot 390 closed at \$5,389,000 and that Lot 394 closed for \$4,750,000. In reality, Lot 390 sold for \$429,900; Lot 394 sold for only \$449,900. The appraisal was performed by Joyce S. Powell on behalf of SunTrust. The appraisal estimated the property value at \$4.8 million; the property is currently worth an estimated \$1.8 million, at best.

285. On or about September 15, 2005, Andrew Murray purchased Lot 393, Bella Collina. The salesperson was Rusty Rogers. Rusty Rogers told Andrew Murray that once construction of a house was complete, the property would be worth \$8 million. The contract sales price for the lot was \$1,450,000; the cost of construction was listed as \$3,275,000 for a total of \$4,725,000, with financing provided by SunTrust.

286. Notably, the seller, Stonebridge Homes, had purchased the lot from Ginn-LA for \$429,000 less than a year earlier, on September 30, 2004, financed by a \$359,900 mortgage from SunTrust.

287. Thus, SunTrust arranged to have appraisals indicating that the lot had somehow “appreciated” by over \$1 million in less than a year. In connection with this loan, Ginn Real Estate collected a commission of \$235,350. Further, Ginn Lifestyle Group collected a royalty fee of \$78,450 from this fraudulent transaction.

288. Elbert Cecil Wright, III (“Cecil Wright”) was one of the appraisers commonly used in Bella Collina. He used a number of inappropriate comparables, such as using lakefront lots and internal lots up to 1½ acres as comps for much 40x140 foot golf lots. Federal Deposit Insurance Corporation (“FDIC”) employee Kathleen Tesi, who had a SunTrust loan for Lot 212, a Bella Collina golf course lot, filed a complaint with the Florida Department of Business & Professional Regulation against Cecil Wright. The Florida Department of Business & Professional Regulation subsequently filed an Administrative Complaint against Cecil Wright before the Florida Real Estate Appraisal Board, Case No. 2007059434. The complaint alleged that the appraiser:

- (a) incorrectly listed the dimensions of the subject property site;
- (b) incorrectly bracketed size and view, in determining that the adjustments for the considerably larger site sizes for comparable sales 1, 2 and 3 were “offset” by their inferior view (non-golf versus the subject property’s golf

view), and failed to provide an analysis or explanation in his report concerning the offset;

(c) erred in further adjusting comparable sales 2 and 3 for “inferior” locations

289. In his defense, Cecil Wright admitted that he had obtained all of his comparables from Ginn’s onsite sales manager Brett Campbell and that the appraisal “was reviewed and approved by the underwriting team of SunTrust Mortgage.” His license was later suspended and he was placed on probation.

290. SunTrust officers and employees knowingly used appraisals that were based on cash purchases as comparables to inflate the value of the property and allowed them to provide increased financing based on equity in the properties that did not exist. This use of cash comparables lead to ever increasing values for properties in the Ginn Communities which did not reflect the true state of the market, furthering the objectives of the scheme.

291. SunTrust’s officers and employees accepted kickbacks from Ginn. SunTrust bank officers and employees purchased properties at pre-launch prices, participated in the scheme which inflated the prices and then “flipped” the properties to unsuspecting buyers. SunTrust officers and employees also formed special partnerships and/or limited liability partnerships which allowed them to hold properties until they could flip them at the inflated prices which they helped to create. These kickbacks were an integral aspect of the scheme.

292. In furtherance of the scheme, SunTrust officers and employees also provided kickbacks to Ginn Salespeople and employees in the form of financing that the Ginn salespeople and employees would not have been able to obtain elsewhere, which enabled the Ginn employees to flip the properties to the public for grossly inflated profits.

SunTrust often provided mortgage loans to Ginn employees in return for referrals of Ginn purchasers. For example, one of the most luxurious condominium developments in downtown Orlando is The Sanctuary. SunTrust gave mortgage loans to Ginn

salespersons to purchase the only two penthouses in The Sanctuary. SunTrust gave Ginn salesperson Rusty Rogers a \$2.7 million mortgage to purchase one of the penthouses and gave Ginn salesperson Brett Campbell \$1,759,000 to purchase the other.

293. On or about on or about November 14, 2005, Ginn salesperson Bradley Douglas Smedberg received a loan from SunTrust on Lot 51, Unit 1, Quail West Replat.

294. SunTrust gave Ginn salesperson Jennifer Leachman three mortgages to purchase properties located in Lake County, Florida.

295. At launch in June 2004, Lot 256 in Bella Collina, sold for \$297,900. One year later, on or about May 20, 2005, while comparable Bella Collina lots were being sold to unsuspecting buyers for substantially, artificially inflated prices as high as \$1.2 million, Ginn sales manager Rusty Rogers purchased Lot 256, Bella Collina for \$299,000, with a \$284,050 mortgage loan from SunTrust, arranged by loan officer Celeta Ryan-Quinn. Pursuant to a Lot Loan Modification Agreement dated September 20, 2005, Rogers received a construction-to-perm loan from SunTrust and increased his note to \$2,767,000 for the construction of the luxurious home pictured below:



296. Rogers was given over \$4.7 million in SunTrust loans. In return, Rogers referred the majority of construction-to-perm loans in Bella Collina to SunTrust.

297. In addition to their purchase of Lot 256, Bella Collina, on or about May 31, 2006, Ginn salesperson Rusty Rogers and his wife, Margaret Rogers purchased Lot 182, Bella Collina.

298. Jennifer Leachman, another Ginn salesperson, personally had over \$1.4 million in SunTrust residential mortgage loans.

299. For example, on or about June 13, 2005, Lot 453, Bella Collina was sold to an unsuspecting buyer for \$1,550,900. On the same day, however, SunTrust employee James J. Shaffer, who arranged a large number of SunTrust mortgage loans in Bella Collina, purchased Lot 452 in Bella Collina—a plainly comparable lot— for \$850,900, financed by SunTrust.

300. As another example, on or about March 2, 2004, SunTrust employee Bradley Robert King—who arranged financing for a number Ginn properties—purchased Lot 20, Tesoro Preserve for \$640,900 through a partnership with Greg Ulmer, who was a Ginn salesman at Tesoro. Approximately one year later, on or about June 9, 2005, King flipped the lot for \$1.3 million.

301. King also formed a partnership with Ginn salesman Brad Hufstettler whereby he would purchase Ginn properties at “discounted” prices and flipped them, with financing provided by SunTrust.

302. SunTrust, its officers and employees participated in and knowingly financed properties based on artificially inflated prices. SunTrust benefitted from the fraudulent scheme as it profited from the higher loan volume, higher short term profits in interest, origination fees and other upfront costs, and its ability to package and sell the loans on the secondary mortgage market both as loans with higher value and loans that met the standards for securitization. The increased loan volume resulted in higher commissions to its loan officers, executives, employees and agents.

303. Plaintiffs’ and Class members’ purchases of properties in the Ginn Communities at artificially elevated prices benefitted SunTrust; SunTrust knowingly accepted these benefits at the expense of the Plaintiffs and Class members.

304. SunTrust agreed to and participated in a civil conspiracy to defraud the Plaintiffs and Class members of their money, business and/or property by engaging in the activity, herein alleged and causing damage to the Plaintiffs and Class members.

305. The activities of SunTrust’s officers and employees were related to and committed within the course of their employment. SunTrust officers and employees participated

in the fraudulent scheme as a Ginn preferred lender, and furthered SunTrust's business of making mortgage loans to property purchasers. SunTrust knew of and acquiesced in the activities of its officers and employees. SunTrust officers and employees attended the launches, solicited business from Ginn property purchasers, using SunTrust's electronic and ground mail systems. SunTrust was aware of the volume and size of the loans. SunTrust had the ability, wherewithal and duty to evaluate the loans its employees and officers were making to Ginn property purchasers. SunTrust continued to approve the loans for properties in the Ginn Communities, both those made to individual buyers and those made to its own employees beginning as early as 1998. SunTrust accepted the benefits that arose from those loans and reported them in its publicly filed financial documents.

306. Plaintiffs' and Class members' purchases of properties in the Ginn Communities at artificially elevated prices benefitted SunTrust; SunTrust knowingly accepted these benefits at the expense of Plaintiffs and Class Members.

307. The conduct of the executives, loan officers and employees of SunTrust in furtherance of the scheme alleged herein is inconsistent with the standard applicable to bank employees in their dealings with customers which require, at the very least, that a bank not take steps to mislead, deceive and/or defraud those who seek funding from it. Such conduct which was known, or should have been known to SunTrust had it exercised an appropriate level of supervision, caused injury to Plaintiffs and members of the Class who were customers of the bank in connection with their purchases and financing of property in Ginn Developments. SunTrust participated in and exercised control over various aspects of the scheme and conduct alleged herein by, inter alia, knowingly and actively facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, omissions,

fraudulent conduct and funding property sales at inflated amounts in order to further the joint objectives of Defendants.

308. As a direct and proximate result of SunTrust's executives, loan officers and employees' participation in the scheme to fraudulently inflate the value of property in the Ginn Communities, the Plaintiffs and Class members suffered damages and loss to their business and/or property.

309. Some of the SunTrust employees involved in the scheme included Jay Fulbright, Michael Knight, Karen Miller Losicky, Brad King, Celeta Ryan-Quinn, James J. ("Jim") Shaffer and Chris Cotter.

C. Wachovia Actively and knowingly Participated in Various Aspects of the Scheme

310. Wachovia was also heavily involved in the scheme. Wachovia actively participated in the fraudulent scheme to artificially create inflated prices for properties in the Ginn Developments and as a "Preferred Lender" of the Ginn Developments, participated in and exercised control over various aspects of the scheme and conduct alleged herein by, *inter alia*, knowingly and actively participating in activities which fostered demand for the properties, facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, deceptions, omissions, fraudulent conduct, targeting and soliciting foreign nationals to purchase properties in the developments that are the subject of the scheme, and knowingly funding property sales at inflated amounts in order to further the joint objectives of Defendants. Wachovia not only used the mails and wires to further the fraudulent scheme but also knew that the Defendants would use the mails and wires in furtherance of the objectives of the fraudulent scheme.

311. For example, Wachovia arranged for financing based on fraudulent appraisals and artificially-inflated property values in Reunion, Bella Collina and Laurelmor. The Wachovia

employees involved included, for instance, Roy Snoeblen, Jason Lough, Scott Ferguson, Brad King, Craig Fairey, Matthew Hertz and Mary Ann Ferguson. Wachovia made at least 300 loans in Ginn communities—likely many more.

312. Wachovia colluded with the other Defendants to manipulate property values in the Ginn Communities, by obtaining inflated appraisals which included the use of fraudulently overvalued comparables, the use of cash comparables, inappropriate comparables and fraudulently obtained appraisals that included builder leasebacks, expensive furniture packages and club memberships as part of the property value.

313. On or about June 15, 2005, Dawn Janowitz, together, with her husband, purchased Lot 31 in Tesoro-Vetrata. Their Ginn salesperson was Lonnie Mister, who referred them to Wachovia loan officer Scott Ferguson. The purchase price was \$787,000, financed through a 2-year balloon note by Wachovia. Wachovia appraised the property for \$800,000—more than the purchase price. Subsequently, in June 2007, Wachovia refinanced the loan and, on May 3, 2007, appraised the property for \$850,000. Wachovia knew or should have known that the property was grossly overvalued and that Mr. and Mrs. Janowitz were relying upon an accurate appraisal.

314. As Dawn Janowitz stated during an interview with Plaintiffs' counsel on October 8, 2009:

We were relying on Wachovia's appraisal. We trusted that the bank's appraisal would reflect the value of the property. We trusted that if the property appraised for a certain value, then it must be worth that.

315. On September 29, 2004, David Purcell paid a total amount of \$546,700 for Lots 33, 34 and 155, Reunion, Phase II, Parcel III. Each lot was recorded as having been sold for \$546,700. These false selling prices were later used as comparables for future appraisals by

Wachovia. For example, on or about April 26, 2005, Wachovia had Lot 143, Reunion West Villages, appraised for a loan for purchasers Ron and Marge Lanier. The appraiser, Diana David—one of Ginn’s preferred appraisers—prepared an appraisal using Lot 155 as a comparable, listing it as having been sold for \$546,700.

316. Wachovia was involved in targeting foreign nationals to solicit loans in Ginn Communities. Wachovia employees and loan officers, including Roy Snoeblen, corresponded with and spoke frequently with foreign nationals both to urge them to finance properties in the Ginn Communities and to reassure them as to the value and profitability of their transactions.

317. While he was with Wachovia, loan officer Roy Snoeblen would often, by telephone and email, contact Petts and Button in the United Kingdom, seeking to encourage them to purchase Ginn properties and/or to refinance their existing mortgages for Ginn properties. Marketing and selling to foreign nationals advanced the objectives of the scheme as Wachovia was not required to exercise the same underwriting standards for foreign nationals, not requiring the same level of documentation and because foreign nationals were more likely to rely on the advice and integrity of banks and their officers.

318. In April 2007, Wachovia loan officer Roy Snoeblen contacted foreign national Paul Corrigan and encouraged him to refinance his loan on the property located at 1220 Castle Pines Ct., Lot 133, Reunion West Village. Snoeblen arranged for Diana Lynne David of David Appraisals, Inc. to provide an appraisal for \$1,506,000. although the property was worth substantially less.

319. Also in April 2007, Wachovia loan officer Roy Snoeblen contacted foreign national Phillip Button and encouraged him to refinance his loan on the property located at 760 Desert Mountain Ct., Lot 235, Reunion West Village. Roy Snoeblen arranged for David

Reynold of David Appraisals, Inc. to provide an appraisal for \$1,501,000, although the property was worth substantially less.

320. In furtherance of the scheme, Wachovia officers and employees also provided kickbacks to Ginn Salespeople and employees in the form of financing that the Ginn salespeople and employees would not have been able to obtain elsewhere, which enabled the Ginn employees to flip the properties to the public for grossly inflated profits and furthered the objectives of the scheme.

321. Indicative of the close relationship, at 10:27 AM on July 26, 2007, Jason Lough, mortgage consultant with Wachovia Mortgage Corp., sent an email to Ginn employee Kelly Headley, Contract Coordinator in Tesoro, with the heading, "How is my favorite Tesoro Person???"

322. On January 10, 2006, Wachovia provided Ginn salesperson Brad Huffstetler a mortgage loan to purchase a Hammock Beach Club Condo, Unit 1007-D.

323. For example, James Matoska, a principal of co-Defendant ESI Living and Vice President of Sales and Marketing for co-Defendant Ginn Real Estate Company, formed a company called Terrazul, LLC and purchased several Ginn properties with financing provided by Wachovia, for the purpose of flipping the properties for higher prices. James Matoska also purchased property in Bella Collina under his own name, for the same purpose. These transactions were designed to further the scheme of artificially boosting selling prices and producing fraudulent profits, as well as providing high-priced comparables for future sales.

324. Wachovia benefitted from the fraudulent scheme, profiting from the higher loan volume, the higher short term profits in interest, origination fees and other upfront costs, and its ability to package and sell the loans on the secondary mortgage market both as loans with higher

value and loans that met the standards for securitization. The increased loan volume resulted in higher commissions to its loan officers, executives, employees and agents.

325. Plaintiffs' and Class members' purchases of properties in the Ginn Communities at artificially elevated prices benefitted Wachovia; Wachovia knowingly accepted these benefits at the expense of the Plaintiffs and Class members.

326. Wachovia agreed to and participated in a civil conspiracy to defraud the Plaintiffs and Class members of their money or property by engaging in the activity, herein alleged and causing damage to the Plaintiffs and Class members.

327. The conduct of the executives, loan officers and employees of Wachovia in furtherance of the scheme alleged herein is egregious and inconsistent with the standard applicable to bank employees in their dealings with customers which require, at the very least, that a bank not take steps to mislead, deceive and/or defraud those who seek funding from it. Such conduct which was known, or should have been known to Wachovia had it exercised an appropriate level of supervision, caused injury to Plaintiffs and members of the Class who were customers of the bank in connection with their purchases and financing of property in Ginn Developments. Wachovia participated in and exercised control over various aspects of the scheme and conduct alleged herein by, inter alia, knowingly and actively facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, omissions, fraudulent conduct and funding property sales at inflated amounts in order to further the joint objectives of Defendants.

D. The Ginn Defendants Actively and Knowingly Participated in Various Aspects of the Scheme

328. As set forth below, Ginn, Ginn Financial, Ginn Title and Ginn Real Estate Company actively participated in the scheme.

329. Ginn its employees and agents, were deeply involved in the scheme and played an active role in orchestrating aspects of the scheme including participating in activities which created artificial demand in the Ginn Communities, manipulating the prices of property in the Ginn Communities through fraudulent appraisals, control over the availability of properties for sale and resale, by targeting foreign nationals.

330. Ginn provided the foundation upon which the plan rested, enabling the Defendants to coalesce and bring the fraudulent scheme to fruition.

331. Ginn actively participated in the program of kickbacks benefitting the Defendants which were an intergral part of the scheme.

332. On or about December 14, 2004, Wilson Greene purchased Lots 80 and 81, Bella Collina for \$510,000 for both lots. Ginn Title caused Lot 80 to be recorded as having been sold for \$510,000 and caused Lot 81 to be recorded as having been sold for one dollar. Lot 80 was later used as a comparable for future appraisals as having being sold for \$510,000. The person next door had purchased a comparable lot only two months earlier for \$790,000. This was a kickback from Ginn to ESI Living/Echelon/Resort Management Associates.

333. Ginn Title, LLC was formed on May 14, 2003, by Cameron, Davis & Gonzalez, P.A., as a Florida limited liability company, with attorney Richard T. Davis as Ginn Title's registered agent.

334. Cameron, Davis & Gonzalez, P.A. and Ginn Title performed many of the loan closings for the properties and actively participated in the unlawful activities alleged herein. However, Cameron, Davis & Gonzalez, P.A. often did not require financial disclosures and often did not properly fill out forms and documents.

335. Ginn brought ESI Living into the Ginn Communities and integrated its principals into the Ginn organization, allowing the Defendants to engage in the fraudulent activity which is the basis of this law suit.

336. Without the Ginn sales force and the Ginn Company structure, the plan could not go forward. The sales people and Ginn employees participated in all aspects of the scheme.

337. For example, in an email sent at 5:29 PM on November 30, 2006, Ginn salesperson Chris Matoska (brother of Ginn and ESI Living executive James Matoska) sent the following email to purchaser James C. Ramey, with respect to a prospective purchase in Ginn Sur Mer:

JC

They are sending out the closing docs for the lot, and there will be two pages that will ask for a witness. Just leave those two pages blank and I will say that I witnessed it. Whoever the witness is has to go over to the bahamas and say that they witnessed it, so thats why Ill just sign it when you send the docs directly back to me.

338. Ginn established the policies and frameworks that allowed and encouraged its employees and executives to engage in the activities which furthered the fraudulent scheme.

339. Ginn profited and benefitted from its participation in the fraudulent scheme, profiting from the higher sales volume and the fraudulently inflated prices it received when the lots were sold. The scheme also allowed Ginn to expand and sell properties in each of its communities, as they were ready to launch, with prices set artificially high as the sales figures in pre-existing Ginn Communities set the benchmark for the price of property in communities it was rolling out and offering to the unsuspecting public for sale.

340. Ginn Financial was also heavily involved in the scheme. Ginn Financial actively participated in the fraudulent scheme to artificially create inflated prices for properties in the Ginn Developments and as a “Preferred Lender” of the Ginn Developments, participated in and exercised control over various aspects of the scheme and conduct alleged herein by, *inter alia*,

knowingly and actively participating in activities which fostered demand for the properties, facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, deceptions, omissions, fraudulent conduct, targeting and soliciting foreign nationals to purchase properties in the developments that are the subject of the scheme, and knowingly funding property sales at inflated amounts in order to further the joint objectives of Defendants. Ginn Financial not only used the mails and wires to further the fraudulent scheme but also knew that the Defendants would use the mails and wires in furtherance of the objectives of the fraudulent scheme.

341. For example, Ginn Financial arranged for financing based on fraudulent appraisals and artificially-inflated property values in the Ginn Communities, including brokering mortgages for Ginn properties.

342. Ginn Financial knowingly and actively financed properties that were the subject of the scheme alleged herein at inflated prices to further the joint objectives of the Defendants.

343. Ginn Financial arranged mortgage loans based on fraudulent appraisals for many Ginn properties, including properties in Bella Collina, Yacht Harbor Village and Quail West.

344. For example, on or about January 20, 2006, foreign national Paul Diggins purchased Lot 313 for \$930,000, through a partnership known as Marlborough, LLC, financed with a \$507,500 mortgage from Ginn Financial. On or about February 9, 2006, Diggins purchased Lot 1, Quail West for \$620,900, through a partnership known as Greenwich Isles, LLC, financed with a \$496,720 mortgage from Ginn Financial.

345. Contact persons for Ginn Financial included Megan Wood, Matt Steinhour and Bill McCracken.

346. Plaintiffs' and Class members' purchases of properties in the Ginn Communities at artificially elevated prices benefitted Ginn Financial; Ginn Financial knowingly accepted these benefits at the expense of Plaintiffs and Class members.

347. Ginn Financial benefitted from its participation in the fraudulent scheme, profiting from the higher loan volume and higher short term profits in terms of fees at closing, as well as commissions to its loan officers, executives, employees and agents.

348. Plaintiffs' and Class members' purchases of properties in the Ginn Communities at artificially elevated prices benefitted Ginn Financial; Ginn Financial knowingly accepted these benefits at the expense of the Plaintiffs and Class members.

Ginn Financial agreed to and participated in a civil conspiracy to defraud the Plaintiffs and Class members of their money or property by engaging in the activity, herein alleged and causing damage to the Plaintiffs and Class members.

349. The conduct of the executives, loan officers and employees of Ginn Financial in furtherance of the scheme alleged herein is egregious and inconsistent with the standard applicable to bank employees in their dealings with customers which require, at the very least, that a bank not take steps to mislead, deceive and/or defraud those who seek funding from it. Such conduct which was known, or should have been known to Ginn Financial had it exercised an appropriate level of supervision, caused injury to Plaintiffs and members of the Class who were customers of the bank in connection with their purchases and financing of property in Ginn Developments. Ginn Financial participated in and exercised control over various aspects of the scheme and conduct alleged herein by, inter alia, knowingly and actively facilitating the manipulation of the sales prices for the properties sold to members of the Class through misrepresentations, omissions, fraudulent conduct and funding property sales at inflated amounts in order to further the joint objectives of Defendants.

350. Ginn Real Estate was heavily involved in the scheme. As the resale arm of the Ginn system, it was responsible for orchestrating the resales in Ginn Communities and determining the supply and availability of resale lots for purchase. Ginn Real Estate agents and employees were able to pump the prices on lots and homes in the Ginn Communities.

351. Ginn Real Estate benefitted from its participation in the fraudulent scheme as it profited from the increased commissions on the properties that were sold at artificially inflated values and by the volume of business that the scheme generated. The increased volume resulted in higher commissions to its employees and sales representatives. Ginn Real Estate knowingly accepted these benefits at the expense of Plaintiffs and Class members.

352. Ginn Title was actively involved in the scheme, making it possible for the scheme to proceed by acting as the conduit for recording the fraudulent appraisals which were an integral part of the scheme.

353. Ginn Title knowingly caused numerous transactions to be recorded with the wrong information in order to create the paper documentation required for the plan to proceed.

354. Ginn Title benefitted its participation in the fraudulent scheme as it profited from the increased volume of sales in the Ginn Communities and the fees derived from its title business and its role in the Ginn family of companies. Ginn Title knowingly accepted these benefits at the expense of Plaintiffs and Class members.

E. Lubert-Adler Actively and Knowingly Participated in Various Aspects of the Scheme

355. As set forth below, Lubert-Adler actively participated in the scheme.

356. Lubert-Adler was involved in the initial development of the Ginn Communities, not only providing Ginn with the funding but also partnering with Ginn to actively develop the

Ginn properties through Ginn affiliates. <http://www.lubertadler.com/portfolio/residential-resort.php>

357. As part of its residential resort strategy, Lubert-Adler was involved in the “pre-selling and phasing” of the Ginn Communities. <http://www.lubertadler.com/portfolio/residential-resort.php>. On its website, Lubert-Adler boasts of its hands on approach to property investments, explaining that “returns are generated through lot and condominium sales”. In the communities that they develop with their local partners. (*available at*: <http://www.lubertadler.com/portfolio/residential-resort.php>) “The key to this strategy is forging strategic alliances with financially motivated, local operating partners who possess superior local knowledge and execution capabilities.” <http://www.lubertadler.com/investmentstrategy.php>

358. Lubert-Adler borrowed from and employed high level staff from other defendants. For instance, Vinod Paidipalli currently works as a Vice President at Lubert-Adler “focusing on acquisitions and asset management.” Prior to his employment at Lubert-Adler, Mr. Paidipalle was the Director of Corporate Finance with Ginn Resorts and before that he was a senior analyst at SunTrust Robinson Humphrey.

359. Lubert-Adler was not merely a passive investor. Rather, Lubert-Adler took an active role in managing, controlling and steering the Ginn operations and had substantial control over Ginn’s operations.

360. Lubert-Adler and Ginn purposefully induced purchasers to rely upon the strength of Lubert-Adler in support of the legitimacy of the Ginn developments. Plaintiffs were reassured by Lubert-Adler’s participation in the development, marketing and management of the

Ginn Communities and invested in the Communities based on Lubert-Adler's strength and its portfolio.

361. In flyers sent to purchasers, agents and brokers via email and in printed materials, Lubert-Adler and Ginn displayed their logos side-by-side, in the manner depicted below:



Lubert-Adler

362. As a purchaser and realtor Christopher Godkin stated during an interview with Plaintiffs' counsel:

Bella Collina sales executives, Reunion, Tesoro and Hammock Beach sales executives and sales managers used to speak openly about the financial strength of their funding partners to offer a feel good factor, ensuring that the visions would be realized.

Verbally they would explain who invested in the Lubert-Adler Funds, the universities, colleges, etc., such as Harvard & Yale. This flyer and other materials were openly distributed and used to prop up Ginn's financial credibility.

363. The flyer trumpeted:

- Bobby Ginn has worked extensively with Lubert-Adler for more than 10 years
- In the last 36 months Lubert-Adler has invested more than \$250 million in projects being developed by The Ginn Company and has approximately \$250 million in new projects currently under contract by the company

364. Indicative of the close working relationship between Lubert-Adler and Ginn, in July 2007, Robert H. Gidel, who had worked closely with Dean Adler and Lubert-Adler for over

20 years was brought in by Lubert-Adler to serve as President of The Ginn Company. At the time of the announcement, the complimentary roles of Gidel and Boby Ginn were cited as advancing their mutual interests.

365. In addition to the fact that the Lubert-Adler fund owned a 50% interest in Ginn and an 80% interest in the Ginn developments, Dean Adler, CEO and Co-Founder of Lubert-Adler formed a partnership with Bobby Ginn called A&G Enterprises. Through this partnership, Bobby Ginn and Adler purchased Ginn properties at discounted rates, then flipped them for substantial profits to unsuspecting buyers—**sometimes on the same day**. A&G Enterprises realized a 2.5 million profit in six months from the following transactions in Bella Collina:

Lot number	Purchase price	Date of Purchase	Date of sale	Sale Price	Profit/Lender
329	\$510,320	12/10/2004	12/10/2004	\$840,900	\$330,580 (sale financed by First National Bank of Florida)
330	\$520,320	10/29/2004	10/29/2004	\$810,900	\$290,580 (sale financed by SunTrust)
331	\$550,320	10/29/2004	10/29/2004	\$854,900	\$304,580 (sale financed by First National Bank of Florida)
332	\$550,320	10/31/2004	11/20/2004	\$854,900	\$304,580 (sale financed by R-G Crown Bank)
446	\$600,900	6/24/2005	6/24/2005	\$1,950,000.00	\$1,349,100 (cash sale)
Total Profit	\$2,579,420				

366. “Those transactions [cited above in ¶365] raised possible conflict-of-interest questions, experts in private equity say, because the partnership brought property in developments that were also asset held by private equity funds that Mr. Adler was helping to oversee. Steven N. Kaplan, a professor of finance at the University of Chicago, said that transactions such as this can be problematic because investors in a fun are deprived of profits that potentially accrue to insiders who buy assets for themselves.” (*Available at:* <http://travel.nytimes.com/2009/05/24/business/24golf.html?pagewanted=print>

367. Lubert-Adler benefitted from its participation in the scheme as an active developer and through the tainted profits it produced, as well as from the resulting increased fund management fees. Given Lubert-Adler’s ownership interest in the Ginn Communities, its participation in the phasing and pre-selling as well as its active role in the management of the properties, it derived substantial profits from the fraudulent scheme. Not only was Lubert-Adler able to profit as a company but it was able to pass these profits on to its investors in return for increased management fees. As a secondary benefit, it was able to report its profits favorably on its balance sheets, making it appear to be a more profitable company than it would have been absent its participation in the scheme, and thereby, luring in new investors, based on a phony, manufactured level of profit. Lubert-Adler derived a direct financial benefit from the scheme and ensured itself an ongoing income stream through its new investors.

F. ESI Living Actively and Knowingly Participated in Various Aspects of the Scheme

368. Defendant ESI Living, Inc., (“ESI Living”), formerly known as Echelon Sales, Inc., is a Delaware corporation, the principals of which are James Matoska, Craig Wheeler, Wilson Greene and John Pinter.

369. ESI Living is a property sales marketing firm that actively participated in and controlled various aspects of the scheme and conduct alleged herein. ESI Living managed

marketing and sales of at least 13 Ginn communities and claims to have sold more than 10,000 properties for \$5.5 billion over a seven-year period. ESI employees involved in the scheme included: Wilson Greene, James Matoska, Craig Wheeler, John Pinter, Barry McDermott and Jennifer Kelly.

370. ESI Living and its principals—Matoska, Wheeler, Pinter and Greene—actively controlled the marketing of the Ginn properties, including the launches and the resale program.

371. ESI Living is a successor-in-interest to Resort Management Associates, LLC (“RMA”).

372. Matoska, Wheeler, Greene and Pinter formed RMA, a South Carolina limited liability company, on May 26, 1998.

373. On or about August 5, 2002, James Matoska, Wheeler, Greene and Pinter filed an application for authority for RMA to transact business in the State of Florida, listing as its business address the *exact* address of the Ginn Company—215 Celebration Place, Ste 200, Celebration, Florida².

374. On or about September 15, 2006, the State of Florida revoked Resort Management Associates’ certificate of authority to conduct business in the state.

375. Matoska, Wheeler, Greene and Pinter then formed Echelon on May 29, 2007.

376. On November 13, 2008, Matoska, Wheeler, Greene and Pinter, the sole directors and sole stockholders of Echelon, renamed the company “ESI Living, Inc.” Notably (and unsurprisingly), they have also removed all references to Ginn from their company’s website.

377. As a successor to RMA, ESI Living is liable for the conduct alleged herein because it is a “mere continuation” or reincarnation of RMA. It was formed shortly after James Matoska, Wheeler, Green and Pinter ended RMA’s business operations, is owned by the same

² As described herein, RMA in fact transacted business within the State of Florida long before this date.

principals—James Matoska, Wheeler, Green and Pinter—and performs the same type of work and provides the same type of services as RMA. Additionally, ESI Living clearly and unequivocally held itself out to the world as the effective continuation of RMA. In other words, ESI Living was and is merely a “new hat” for RMA. *See, e.g.,* Exhibit F, attached hereto.

378. For the same reasons, ESI Living is also liable as successor to RMA under the “de facto merger theory,” which is well-recognized under Florida law.

379. ESI Living clearly held itself out to the public as being a continuation of RMA. In its marketing materials, ESI Living f/k/a Echelon, expressly takes credit for activities performed by RMA as early as 1998 and repeatedly states that Echelon was “known then as RMA.”

380. For example, despite the fact that ESI Living f/k/a Echelon was not incorporated until May 2007, the company’s own marketing materials state:

- (a) “When Bobby Ginn set out to launch Ginn Clubs and Resorts in 1999...he scoured the industry to find a team that could not only launch Hammock Beach, but build a sales and marketing division capable of overseeing all of the communities that would comprise Ginn Clubs and Resorts. Ginn found Echelon (known then as Resort Management Associates)...”
- (b) “In October 1999, Echelon agreed to work exclusively for the Ginn Company, handling all aspects of sales and marketing for every Ginn community.”
- (c) “Echelon brought in sales, marketing and administrative personnel to the Ginn Company, building and managing a team that would eventually sell more than 10,000 properties for \$5.5 billion over a seven-year period.”
- (d) In November 2006, at a time when most developers were seeing sharp declines in real estate sales, Echelon led the launch of Ginn Sur Mer, a luxury resort on Grand Bahama Island, selling \$150 million during the inaugural release.”
- (e) “The proof is evident, as Echelon led the Ginn Company to more than \$1 billion in sales revenue in 2006.”

- (f) “Echelon was able to help the Ginn Company go beyond just selling enough property to launch a resort.”

381. Despite the fact that ESI Living f/k/a Echelon was not incorporated until May 2007, with respect to the marketing of Ginn’s Hammock Beach community, which began in 1999, the company’s own marketing materials state:

- (a) “Bobby Ginn sought out the expertise of Echelon to take over the sales and marketing of Hammock Beach in October 1999.”
- (b) “Bobby Ginn hired Echelon (then known as RMA) to lead the branding, marketing and sales of his pre-development resort...”
- (c) “In the spring of 2004, Echelon would go on to sell the Towers at Hammock Beach.”
- (d) “In 2005, The Ginn Company added another community to the Hammock Beach brand: The Conservatory...Echelon orchestrated the predevelopment offering...”

382. Despite the fact that ESI Living f/k/a Echelon was not incorporated until May 2007, with respect to the marketing of Ginn’s Reunion Resort community, which began in 2001, the company’s own marketing materials state:

- (a) “The marketing campaign began in July 2001, starting with a whisper campaign...it would take an all-out effort for Echelon to hit the target of 125 opening day sales.”
- (b) “In December 2001, the Echelon team helped the Ginn Company get Reunion Resort off the ground in grand fashion.”
- (c) “In October 2003, Echelon launched Heritage Crossing, selling 67 units in three hours...”
- (d) “In November 2004, two condominium and condominium/hotel products—Reunion Grande and Centre Court Ridge—were released and sold out in a day...[t]he following year, Echelon topped those numbers when it sold 504 villas at Reunion Square for an average of \$635,000 in a one day event.”
- (e) “At a time when many real estate developers are struggling to sell their product, Reunion Resort continued to use the Echelon System to produce results.”

383. Further, despite the fact that ESI Living f/k/a Echelon was not incorporated until May 2007:

- (a) ESI Living's website states, "ESI has directly managed the sales and marketing for 20 communities *over the last 20 years*, producing \$7.5 billion in sales volume while overseeing more than 12,000 closings." See <http://www.esiliving.com/difference/experience.html> (emphasis added);
- (b) On ESI Living's website, Defendant Greene's biography page states that he was employed with a development in North Carolina "before co-founding ESI in 1998." See <http://www.esiliving.com/team/bios/green.html>;
- (c) In a press release dated February 5, 2008, ESI Living stated that it "served as the in-house marketing arm of Orlando-based Ginn Clubs & Resorts *for the last seven years*, generating over 10,000 sales and \$5.5 billion in sales revenues." See <http://www.esiliving.com/news/index.html> (emphasis added);
- (d) In a press release dated August 11, 2008, ESI Living stated, "*Over the last decade*, ESI has helped developers sell more than 10,000 properties totaling \$5.5 billion." See <http://www.esiliving.com/news/index.html> (emphasis added);
- (e) In a press release dated February 10, 2009, ESI Living stated that it has been involved with "helping developers sell 10,000 properties totaling \$5.5 billion *over the last 20 years*." See http://www.esiliving.com/news/ESI_PR_Feb09.html (emphasis added); and
- (f) In a March 2009 Fairway Living article entitled, "The Green is in Reach," Pinter expressly stated that ESI Living was founded in 1998. See <http://www.esiliving.com/news/index.html>.

384. As the foregoing facts plainly indicate, ESI Living, formerly known as Echelon, is a mere continuation or reincarnation of RMA and is liable for the conduct alleged herein.

385. Pinter served as Vice President of Sales for Tesoro. In this capacity, Pinter led daily sales meetings. Greene served as a broker for all of the Ginn communities. James Matoska served as Vice President of Sales for Ginn and Executive Vice President of Ginn Real Estate;

James Matoska was presented to Ginn salespersons as Wheeler's and Pinter's supervisor and a principal of Ginn.

386. ESI Living's principals—James Matoska, Wheeler, Greene and Pinter—and/or their families received numerous kickbacks from Ginn; they were permitted to purchase properties at substantial “discounts,” including Lot 78, Bella Collina, pictured below:



387. For example, in Liberty Bluff, James Matoska purchased, through a company he formed called Red Earth, Inc., Lot 91. He purchased the lot on or about August 23, 2002 for \$49,600, and then later sold it for \$119,000. Wheeler purchased Lot 119, Liberty Bluff for \$55,200 on or about September 13, 2002, and then later sold it for \$118,900. Greene purchased Lot 125, Liberty Bluff, for \$67,000, and then later sold it for \$130,000. Greene also purchased Lot 81, Bella Collina. James Matoska also purchased Lot 364, Bella Collina.

388. ESI Living orchestrated the marketing and sales at the Ginn Communities, including the presales and launches and the development, execution, direction and management of Ginn Marketing in furtherance of the scheme.

389. Plaintiffs' and Class members' purchase of properties in the Ginn Communities at artificially elevated prices benefitted ESI Living; ESI Living knowingly accepted these benefits at the expense of Plaintiffs and Class members.

390. ESI Living benefitted from its participation in the fraudulent scheme, profiting from the higher sales volume, its commissions and from the kickbacks it received and enjoyed. The scheme also allowed ESI Living to expand its sphere of influence and market its services as a key player in the purported success of the Ginn Communities.

XI. THE PLAINTIFFS' PURCHASES

A. Gordon Lawrie, Margaret Lawrie and Charles McKinlay

391. Plaintiffs Gordon, Margaret Lawrie and Charles McKinlay are British citizens. The Lawries and McKinlay were victims of the illegal acts alleged herein and were injured as a result, suffering substantial losses to their money and property.

392. Gordon Lawrie and McKinlay purchased multiple Ginn lots.

393. On or about October 4, 2002, Gordon Lawrie and Margaret Lawrie purchased Lot 163, Phase II, Parcel 1, Reunion for \$215,000.

394. In May 2004, Gordon Lawrie and McKinlay received solicitations by mail and by telephone regarding the first launch for Bella Collina. Prior to the launch, each completed a reservation certificate, indicating up to 27 lots that they would like to receive. In May 2004, Ginn salesperson Rusty Rogers told McKinlay by telephone that it was highly unlikely that he would receive a lot. Later in May 2004, however, Rogers called to inform them that they had "won" a lot and invited them to attend the launch in June 2004. McKinlay "won" the lot that he

had requested as his first choice. On the call, Rogers stated that Ginn gave priority to cash buyers. This is because cash sales would be used by Defendants as comparables for future appraisals of other lots in the development. During the launch in June 2004, Ginn employees, including Rogers, attempted to convince McKinlay and Gordon Lawrie to pay cash.

395. On or about December 8, 2004, McKinlay purchased Lot 337, Bella Collina for \$784,900 from Ginn-LA Pine Island. Rogers referred him to R-G Crown Bank, where Brady Koegel arranged for a mortgage loan in the amount of \$588,670.

396. On or about December 8, 2004, Gordon Lawrie and Margaret Lawrie, husband and wife, purchased Lot 352, Bella Collina, for \$544,900 from Ginn LA-Pine Island.

397. In February 2005, by email and by telephone, Rogers contacted McKinlay and Gordon Lawrie and told them that they were two of his best investors. Rogers said he had a “special opportunity” for them. Rogers described it as a joint venture with builder Carmen Dominguez with Homes by Carmen Dominguez. Rogers told Gordon Lawrie and McKinlay that the builder would give them a leaseback if they bought a lot on the “Street of Dreams” and that Dominguez and Rogers had an end user who would buy the property for \$8.8 million, once construction of a house on the property was complete. Gordon Lawrie and McKinlay then purchased this property, Lot 390, Bella Collina. Carmen Dominguez, the builder, referred McKinlay and Gordon Lawrie to her friend Jack Koegel, President of R-G Crown Bank. The total purchase price under the contract was \$ 5,349 million, including a \$500,000 furniture package and a two-year leaseback from the builder. R-G Crown Bank arranged for the property to be appraised at \$5.4 million—enough to cover the value of the lot, the home that would be constructed, the leaseback and the furniture package. The lot alone was purportedly appraised at \$900,000, yet purchased for \$460,000, so that the “equity” in the lot could be used to fund the

construction. Interestingly, Dominguez was directly involved in the loan process and knew of the loan approval before McKinlay and Gordon Lawrie. In an email to Gordon Lawrie dated May 5, 2005, Dominguez wrote:

Good news! Your loan was approved by loan committee. Now it goes to Mr. Galan for signature and voila...you sign...

398. In connection with this purchase, Gordon Lawrie and McKinlay executed a mortgage loan dated May 20, 2005 and recorded on July 27, 2005, in the principal amount of \$4,814,100. The builder agreed to provide a two-year leaseback—approximately \$23,000 per month for 24 months. The value of both the leaseback and the \$500,000 furniture package were fraudulently included in the appraisal, in that the contract price included the value of the furniture package for the house and the value of having the two-year the leaseback and R-G Crown Bank purposefully ensured that the property appraised for an amount that exceeded the contract price by providing the appraiser with a predetermined value based upon the contract price. The appraisal for Lot 390 was also fraudulent, in that it relied upon comparables located in Isleworth.

399. On or about July 8, 2005, McKinlay purchased Lot 37, Bella Collina for \$1,560,900 cash. Rogers convinced McKinlay to pay cash by telling him that the lots were selling so quickly that he did not have time to arrange a mortgage.

400. On or about July 15, 2005, Gordon Lawrie and McKinlay purchased Lot 207, Bella Collina West for \$655,900.

401. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, causing Plaintiffs Lawrie and McKinlay to be victims of the illegal acts alleged herein and to suffer substantial losses to their money business and/or property as a result.

B. Alan Siegel and Kimberly Siegel

402. On or about November 12, 2004, Alan Siegel and Kimberly Siegel (formerly husband and wife) purchased Lot 27, Bella Collina, for \$675,000 through R-G Crown Bank. Ginn salesperson Scott Scovill referred the Siegels to R-G Crown Bank. Around the time of closing Scovill guaranteed the Siegels that they would easily make money on the property because the property would increase in value dramatically. Throughout each of their visits to the Ginn properties and through telephone conversations, Ginn employees, including Scovill, would constantly reiterate that the properties were “world class” and that the Siegels had nothing to lose. Scovill told Alan Siegel that the Siegels would be “in the money” immediately following closing.

403. On January 31, 2005, Alan and Kimberly Siegel purchased Lot 48, Tesoro Preserve for \$304,900. The mortgage was provided by R-G Crown Bank, in the amount of \$243,920. The Ginn salesperson was Joe Carney.

404. On or about August 12, 2005, Alan Siegel, Kimberly Siegel and Lou Pearlman purchased Lot 427, Bella Collina, financed through Wachovia. They purchased the Lot for \$1,600,900. The mortgage amount was \$1,465,136. The Ginn salesperson was Scovill. In July 2005, when no other bank would provide financing, Scovill stepped in and referred the Siegels to Wachovia. Scovill assured Alan Siegel that Wachovia would approve the loan and told him to contact loan officer Craig Fairey. Fairey arranged most of Wachovia’s loans in Bella Collina.

405. The appraisal for Lot 427 was fraudulent, in that the wrong lot was used as the subject lot, the appraiser used inappropriate comparables, in that the lots used as comparables were substantially larger than Lot 427. Close to the time of closing, Scovill told Alan Siegel that, during the next launch, lots comparable to Lot 427 would be released for no less than \$2.2

million. Scovill stated, “where else can you make \$600,000 in sixty days?” Once the lots were released, however, they were released for less than \$1.6 million.

406. During the fall of 2006, Scovill informed Alan Siegel that Ginn’s policy was to blacklist borrowers who did not follow through with purchasing Ginn properties, by denying them the “opportunity” to participate in future launches and participate in Ginn’s resale program.

407. Subsequently, on or about December 27, 2006, Alan Siegel and Ron Clapper purchased Unit C-277, Yachts Harbor Village (now known as Unit C-369). SunTrust provided the mortgage. Prior to closing, the appraisal came in hundreds of thousands of dollars below the sales price. Ginn salesperson Billy Neil then arranged to use a different appraiser—one that would appraise the property for the contract price. SunTrust failed to obtain an independent appraisal. The SunTrust loan officer was Pepper Kinser.

408. Each of the foregoing purchases was tainted by Defendants’ conduct and scheme described herein, causing the Siegels to be a victims of the illegal acts alleged herein and to suffer substantial losses to their money, business and/or property as a result.

C. Johnny Miller

409. Plaintiff Johnny Miller, a resident of Orlando, Florida, attended a launch in Reunion for the Nicklaus phase in March 2004 and met Ginn salesperson Rusty Rogers in Bella Collina prior to the launch.

410. Miller purchased two lots in Reunion—Lot 160, Fairway Ridge, for a purchase price of \$200,900, financed by First National Bank of Florida and Lot 89, Heritage Preserve, for a purchase price of \$200,900, financed by R-G Crown Bank. The appraisals for these purchases were inappropriate. As an example, the Heritage Preserve lot did not have golf views, while the other lot did; however, both lots appraised for the same amount.

411. Miller attended a golf lot launch in Bella Collina in April 2005 and purchased Lot 110 Bella Collina West on or about June 22, 2005, for \$680,900, financed through Fifth Third Bank. Miller later discovered that his Fifth Third Bank loan officer, Roy Snoeblen, used a random telephone phone number from the yellow pages as Miller's social security number.

412. In early autumn 2006, Miller received a telephone call from Ginn employee Fysuli Schearer. Schearer informed Miller of the availability of Lot 50, Reunion Heritage Preserve, that a client was "just dying to get rid of." Miller purchased the lot on October 30, 2006 for \$263,000, financed by People's First Community Bank. SunTrust later provided Miller with a construction/perm loan for this lot. The loan officer was Michael Knight. SunTrust's appraisal valued the lot for \$300,000 more than the People's First appraisal.

413. After receiving a solicitation email from a Ginn salesperson named John Burgee, Miller bought Lot 386, Cobblestone in December 2006 for \$259,900, financed with a \$233,900 loan from Wachovia Bank. The loan officer was Roy Snoeblen.

414. Later, in October 2006, Miller attended a launch in Laurelmor and purchased Lot 101 for \$489,900, financed with a \$395,179.20 mortgage from Wachovia.

415. Each of the foregoing purchases was tainted by Defendants' conduct and schedule described herein, causing Plaintiff Milla to be a victim of the illegal acts alleged herein and to substantial losses to their money, business and/or property as a result.

D. Stephen Frieze and Elizabeth Frieze

416. The Friezes purchased Lot 227, Reunion, on or about August 20, 2004 for \$550,000. The property was purchased from Sunshine Builders. Ginn salesperson Jeff Cox referred the Friezes to Brady Koegel of R-G Crown Bank. Cox told Mr. Frieze that he had worked with Brady Koegel before and that Cox was the right person to help the Friezes obtain a mortgage for the Reunion lot. At a meeting set up by Cox in early August 2004 on location at

Reunion, Brady Koegel told the Friezes that he would have no trouble helping them to obtain a mortgage, as R-G Crown Bank was already working extremely closely with Ginn. Brady Koegel told the Friezes that his father was president of R-G Crown Bank and they would, therefore, have no problem with obtaining a mortgage.

417. Brady Koegel then traveled to Reunion to meet with the Friezes. R-G Crown Bank arranged the appraisal and provided a mortgage of \$937,500.

418. For the appraisal for Lot 227, Brady Koegel handpicked David Tremblay of Appraisals of the Treasure Coast from Vero Beach, Florida—approximately 150 miles away from the subject property. Tremblay was one of Defendants’ preferred appraisers. For example, Tremblay did the majority of the appraisals for R-G Crown Bank and for Ginn Financial in Tesoro and Preserve in Port St. Lucie, Florida.

419. The appraiser relied on comparables from Celebration, a thriving, well-established residential community built by Disney which was not at all comparable to the subject property—an empty lot located in a deserted area.

420. In October 2004, Stephen Frieze was approached by Ginn salesperson Rusty Rogers regarding purchasing a house on the Street of Dreams. Rogers told Frieze that he would “make a fortune overnight” and that it was an amazing opportunity. Rogers told Frieze that Brady Koegel of R-G Crown Bank would take care of him and ensure that he received a mortgage for the purchase. Shortly thereafter, the Rogers contacted Brady Koegel and set up a meeting. During their meeting with Brady Koegel, Koegel told the Friezes that R-G Crown Bank was very much interested in being involved in Bella Collina and that some of the bank’s own directors had already purchased lots in the developments. Brady Koegel assured the Friezes that they would have absolutely no problem obtaining a mortgage to build the premium home

and that he foresaw no problem with obtaining the board's approval. Koegel also showed the Friezes a copy of an advertisement off the Ginn website which showed that Jack Koegel, as president of R-G Crown Bank, had been involved with over \$300 million in mortgages for Ginn properties.

421. On or about January 28, 2005, the Friezes purchased Lot 391, Bella Collina, on the "Street of Dreams." The purchase price for Lot 391, including the home, was \$4.5 million. The lot was valued at \$500,000. R-G Crown Bank provided a mortgage in the amount of \$3,600,000.

422. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, causing Plaintiffs Frieze to be victims of the illegal acts alleged herein and to suffer substantial losses to their money, business and/or property as a result.

E. Barry Sobel and Naomi Berger

423. On or about June 11, 2004, Sobel and Berger purchased Lot 24 and Lot 70 in Bella Riva, Tesoro. Lot 24 was purchased for \$314,900. Lot 70 was purchased for \$245,900. Both mortgage loans were provided by R-G Crown Bank. In May 2004, Ginn salesperson Rick Deal referred Sobel and Berger to Brady Koegel of R-G Crown Bank. Deal said that Ginn was working a few select lenders to finance the lots and that R-G Crown Bank would take care of him.

424. On or about April 18, 2006, Sobel and Berger purchased Lot 132 and Bella Villagio, Tesoro. Lot 132 was purchased for \$754,900. SunTrust provided a mortgage loan in the amount of \$679,000. In March 2006, Ginn salesperson Rick Deal referred Sobel and Berger to SunTrust. Deal told Sobel that SunTrust would take care of them.

425. On or about November 14, 2006, Berger purchased the property located on Lot 20 in Solomar, Tesoro for \$2,718,000. In connection with the purchase, Ginn salesperson Rick

Deal promised Berger and Sobel that they would earn at least \$1 million in profit on the home. Sobel and Berger were unaware of the history of Lot 20; unbeknownst to Sobel and Berger, on January 13, 2004, Ginn executive Alton E. Jones purchased the lot for \$200,000 from Ginn-LA St. Lucie Ltd LLLP. On the same day, Jones obtained a mortgage from Walter Morgan for \$550,000. Seven months later, on August 24, 2004, he obtained another mortgage on the lot from SunTrust for \$400,000. Then, on July 20, 2005, he sold the property to Villa D'Oro LLC for \$780,000. Villa D'Oro LLC was owned by G. Gerald Quickel, father of Ginn salesperson Brook Quickel and sales executive with builder Purucker & Marrano Homes. Villa D'Oro's purchase of the property was financed through R-G Crown Bank. Brady Koegel provided a loan to Villa D'Oro in the amount of \$1.7 million. Before construction of the house was completed, Villa D'Oro sold the property to Berger for \$2,718,000. The seller's address was listed as: c/o G.W. Purucker Homes, J.V., 5608 PGA Blvd., Suite 208, Palm Beach Gardens, FL 33418. This series of transactions was purposefully designed to produce windfall, artificial profits for Jones, Quickel and Koegel. The property was grossly overvalued. Indicative of this, Purucker & Marrano Homes advertised a similar home with a construction cost of \$655,000. Thus, even if the Lot 20 had somehow doubled in value during the two years between the initial purchase of \$200,000 and the sale to Berger, the value of the property was far less than \$2,718,000.

426. To make matters worse, despite the fact that it was not a builder's model home, the purchase price of Lot 20 included amounts to cover a leaseback from Villa D'Oro in the amount of \$18,300 per month and a furniture package worth \$244,500. These amounts were improperly included within the selling price and the appraised value of the property.

427. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, causing Plaintiffs Sobel and Berger to be victims of the illegal acts alleged herein and to suffer substantial losses to their money, business and/or property as a result.

F. Andrew Billington and Charlotte Billington

428. As a result of the first launch at Bella Collina (which occurred in early June 2004), on or about July 2, 2004, Andrew Billington purchased Lot 2, Bella Collina, through a previously-executed power of attorney in favor of Richard T. Davis. The purchase price was \$377,900. A Ginn salesperson named Brett Campbell, who was onsite at Bella Collina, referred Andrew Billington to a mortgage brokerage company called Investors Mortgage Services, which was owned by mortgage brokers Gary Harmon and Samuel Trafelet. Harmon and Trafelet shared in the profits resulting from the scheme alleged herein. For example, in addition to receiving fees and referring borrowers to Ginn's "preferred lenders," in June 2004, Harmon and Trafelet personally purchased Lot 321, Bella Collina for approximately \$277,000. Subsequently, Larry Smith, a Ginn sales executive, purchased Lot 321 from Harmon and Trafelet for \$427,500 and then flipped it to Michael J. Adams for \$750,000. Smith shared the profits with Harmon and Trafelet.

429. Not surprisingly, Andrew Billington's mortgage loan for Lot 321 was placed with R-G Crown Bank. Brady Koegel of R-G Crown Bank provided Billington with a mortgage loan for \$264,530. Ginn employee Nicole Costello notarized the documents, stating that Billington was personally known to her—despite the fact that Andrew Billington actually executed his loan documents in the United Kingdom, rather than in person.

430. On July 4, 2004, Andrew Billington purchased Lot 134, Bella Collina, for \$1,340,900. This was key because it was the first purchase in Bella Collina for over \$1 million. Andrew Billington's purchase was later used by Defendants to further the scheme, in that it was

utilized as a comparable for appraisals for other lots in the development and used to fraudulently convince other buyers of the extraordinary “value” of the Bella Collina lots. For example, on or about January 12, 2005, Andrew Billington’s brother, Ian Billington, paid \$1,340,900 in cash for Lot 137, based on the appraisal for Lot 134.

431. The appraisal for Lot 134 was fraudulent. The appraiser used as comparables properties located in Isleworth, one of the most expensive and exclusive communities in the United States.

432. In July 2004, Andrew Billington inquired of Ginn salesperson Brett Campbell as to who else was buying in the development and was told by Campbell that James Matoska, Ginn’s Vice President of Marketing and Sales and a principal with ESI Living, had bought lots in the development. This representation was false. In actuality, James Matoska had not yet purchased lots in Bella Collina. Later, on August 6, 2004, Matoska purchased Lots 78 and 79 in Bella Collina—which were comparable to Lot 134. While Andrew Billington paid \$1,340,900 for his lot, Matoska purchased these two comparable lots for \$255,000 each. For the financing of Andrew Billington’s purchase, Campbell recommended R-G Crown Bank, which had the property appraised and provided a mortgage loan in the amount of \$938,630.

433. In late March 2004, Sean Barrett of Ginn showed Andrew Billington Lot 331, Bella Collina. Andrew Billington expressed an interest in purchasing Lot 331. However, Ginn pulled Lot 331 back from the launch, purportedly because Bobby Ginn personally desired to purchase it. Later, however, in June 2004, Andrew Billington received a telephone call from Ginn salesperson Brett Campbell. Campbell told Andrew Billington that Bobby Ginn may be willing to sell Lot 331 and offered Andrew Billington the “opportunity” to purchase it. In August 2004, both verbally and via a written list of Ginn’s preferred lenders, Campbell referred

Andrew Billington to First National Bank of Florida. Roy Snoeblen of First National Bank of Florida arranged a mortgage loan for Andrew Billington for the purchase of Lot 331.

434. Andrew Billington purchased Lot 331 on or about October 29, 2004. Unbeknownst to him, Bobby Ginn and Dean Adler, through their company known as A&G Enterprises, “purchased” Lot 331 from Ginn-LA Pine Island, Ltd., LLLP on the day of Billington’s closing for \$550,320 and simultaneously flipped it to Billington for \$854,900. The appraisal was arranged by First National Bank of Florida and performed by Brad Long. One of the comparables was located in Isleworth. Another comparable was a lot that actually did not close until after the appraisal was performed.

435. As detailed below, the Billingtons received six mortgage loans in one day to purchase lots in Reunion.

436. On or about March 22, 2004, Andrew Billington attended the Reunion launch. He attended a lavish party on the Friday night before the launch. On March 23, 2004, Billington toured the property with Sean Barrett. Prior to the launch, in early March 2004, Andrew Billington received a telephone call from a Ginn salesperson, informing him that he had “won” the right to purchase Lots 8, 9 and 10 in the Reunion Villages, west side, as well as Lots 54, 56 and 85, while a number of other interested buyers were allocated no lots.

437. The Reunion lots were purchased on or about December 16, 2004. Ginn referred Andrew Billington to First National Bank of Florida. Roy Snoeblen of First National Bank of Florida arranged the mortgages for the lots. In December 2004, Snoeblen told Andrew Billington that he could arrange six mortgage loans in one day by listing three of the loans under the name of Andrew Billington’s wife, Charlotte Billington, while leaving Andrew’s name off of the loan documents. Snoeblen did not request any financial information for Charlotte Billington,

yet provided three mortgage loans in her name. The mortgage loans in Andrew Billington's name listed "Andrew Billington, a married man," but did not include Charlotte Billington. The mortgage loans in Charlotte Billington's name listed "Charlotte Billington, a married woman," but did not include Andrew Billington. Andrew Billington offered to provide financial information to Snoeblen, but was told by Snoeblen to provide no more than Snoeblen requested. In an email dated October 29, 2004, Snoeblen sent an email to the Billingtons that stated: "you sign the paperwork, I will take care of the notary." The Billingtons never attended a closing—they signed their documents in the United Kingdom—yet, Snoeblen caused the documents to indicate that the Billingtons were present and signed in person.

438. On or about September 12, 2005, Andrew Billington purchased Lot 330, Conservatory, for \$449,900 cash. This cash purchase was later used as a comparable for appraisals for other lots in the development.

439. On or about April 26, 2007, Andrew Billington purchased Unit A-380, Lots Harbor Village Condominium, for \$950,000. The mortgage was provided by Ginn Financial. The appraisal used oceanfront condominiums as comparables, whereas the subject property was on the intercoastal waterway.

440. On or about May 22, 2007, Andrew Billington purchased Lot 7 North Shore, Plat Four, Hammock Beach for \$850,000. Ginn referred Billington to SunTrust. SunTrust loan officer Celeta Ryan-Quinn arranged a mortgage loan in the amount of \$680,000. Celeta Ryan-Quinn was made aware of the other mortgage loans that Andrew Billington had, but made no attempt to ensure he had the ability to pay.

441. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, causing the Billingtons to be a victim of the illegal acts alleged herein and to suffer substantial losses to their money, business and/or property as a result.

G. James C. Ramey

442. On or about March 7, 2007, James C. Ramey purchased Lot 56, Laurelmor, for \$589,900, with a \$560,405 mortgage from SunTrust.

443. On or about July 14, 2006, Ramey purchased the lot located at 841 Desert Mountain Court, Lot 29, Reunion West Villages 3A, through a partnership with Mark Shipley, known as Converge Realty, LLC, for \$360,000. Ginn Real Estate collected a \$25,200 commission with respect to this transaction. On the same day, through simultaneous closing, SunTrust provided a construction/perm loan in the amount of \$1,362,000, including the lot payoff. The property was appraised at \$1.85 million. The purchase price included a two-year leaseback and a furniture package. The comparables were 55' lots; whereas Lot 29 was a 35' lot. The closing was done by Ginn Title. The appraisal was performed by Duane & Associates.

444. With respect to both Laurelmor and Reunion, Ramey often received emails from Ginn salespersons, stating that a property had "just sold" for certain prices. Ramey would often later discover that the property actually sold for 50%-60% less.

445. As described above, SunTrust actively participated in the scheme to use leasebacks and furniture packages to artificially raise selling prices. For example, SunTrust loan officer Michael Knight encouraged Ramey's builder to structure the contract so as to fraudulently conceal the value of the leaseback and furniture package within the cost of construction.

446. Each of Ramey's purchases was tainted by Defendants' conduct and scheme described herein, causing Ramey to be a victim of the illegal acts alleged herein and to suffer substantial losses to his money, business and/or property as a result.

H. John Migyanka, Flora Migyanka and Christopher Delaney

447. In early 2005, Ginn salesperson Josh Estes gave John and Flora Migyanka a tour of Tesoro. Ginn provided a free hotel and other gifts.

448. Following this, John and Flora Migyanka received numerous gifts and marketing materials from Ginn, through the mail.

449. Estes showed him properties he himself had purchased and said that the lots would increase. Estes said that he personally owned \$3 million worth of Ginn properties.

450. Estes promised that Ginn, if the Migyanka's purchased property, Ginn would re-sell the property for them for a profit.

451. John Migyanka, Flora Migyanka and Christopher Delaney placed a deposit down in the spring of 2005 for the property located at 164 SE Santa Gardenia (Lot 8, Tesoro Plat 6). Between this time and closing, they would receive emails from their Ginn salesperson, saying that they were in great shape because the property had already increased in value.

452. On or about November 30, 2005, John Migyanka, Flora Migyanka and Christopher Delaney closed on the property located at 164 SE Santa Gardenia (Lot 8, Tesoro Plat 6) for a total purchase price of \$1,332,737. The purchase was financed with a \$1,266,100 mortgage from R-G Crown Bank. Ginn Real Estate collected a \$50,519.85 commission in connection with this transaction.

453. During the spring of 2005, Josh Estes referred the Migyankas to Wachovia Bank. The loan officer was Scott Ferguson.

454. On or about July 25, 2005, John and Flora Migyanka purchased Lot 8, Block 12, First Replat of River Point, for \$585,000, financed with a \$579,033 mortgage from Wachovia. Ginn Real Estate collected a \$40,950 commission in connection with this transaction.

455. On or about May 13, 2005, John and Flora Migyanka purchased Lot 8, Tesoro Plat No. 4, for \$620,000, financed with a \$595,000 mortgage from Wachovia. The closing was performed by Cameron, Davis & Gonzalez. Ginn Real Estate collected a \$43,000 commission in connection with this transaction.

456. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, in that the properties values were less than represented, and as a result John and Flora Migyanka were victims of the illegal acts alleged herein and suffered substantial losses to their money, business and/or property as a result.

I. Heather Petts and Philip Button

457. At the about that time, Roy Snoeblen (then with First National Bank of Florida) and R-G Crown Bank's Brady Koegel at the second Reunion launch befriended Button and Petts at the second Reunion launch. After they returned to the United Kingdom, Roy Snoeblen called and emailed Button and Petts to say that he could arrange mortgages for them, as well as for their friends, business associates and clients. From this time on, Roy Snoeblen maintained continuous contact with Petts and Button, both as their American banker who arranged and completed their banking transactions in Ginn properties and also served as their advisor upon whom they relied. Petts and Button acknowledge relying on Roy Snoeblen's advice when they evaluated property transactions and in fact continued working with him as he changed his place of employment from First National Bank of Florida to Fifth Third to Wachovia in where Roy Snoeblen was a Bank officer. As Petts later explained, "This is why foreign nationals built at Reunion, because the information came from the bank so we thought it was accurate and conservative."

458. Petts and Button made their first purchases in Reunion in late 2004, after receiving substantial marketing materials for the Ginn properties through the mails and wires. Patrick Lenihan and Sean Barret, among others, served as their sales people for their Reunion purchases.

459. On or about October 25, 2004, Button paid \$215,900 for Lot 26, Desert Mountain Court, Reunion. The mortgage was provided by R-G Crown Bank in the amount of \$161,925.

460. Once at Fifth Third Bank, loan officer Roy Snoeblen encouraged Petts and Button to purchase lots in Cobblestone and advise their clients to do the same. On July 13, 2005, Lenihan sent an email to Button, stating, in part:

I just wanted to touch base with you regarding the Cobblestone Park release. We are tentatively scheduling our release for the 2nd or 3rd week of October. We will be releasing between 780-810 homesites in this release. The prices will range from \$70k-\$333k.

Just a reminder that we must have all assignments in by August 1st. I have attached the assignment form and the previous addendum regarding the assignment of incentives for your clients...

461. During early 2005, Ginn salesperson Patrick Lenihan was in regular contact with Petts and Button regarding the launch for the Ginn project in the Bahamas, originally titled 'Caona', then 'Versailles sur Mer', then Ginn sur Mer. Lenihan also sent to Button and Petts numerous marketing materials concerning the project.

462. At the same time that Petts and Button were being pitched on Ginn sur Mer, Lenihan also encouraged them to purchase lots in Cobblestone and advise their friends/business associates and clients to do the same. Lenihan also sent to Button and Petts numerous marketing materials concerning the project. Lenihan told them that the Cobblestone project would be heavily oversubscribed and that not all their clients would receive the lots they wanted.

463. In reliance upon Patrick Lenihan's and Roy Snoeblen's representations Button took out 50 reservations on Ginn sur Mer properties and 50 reservations on Cobblestone Properties. Petts and Button later withdrew these reservations on behalf of Brookes & Co.'s clients, who expressed interest and completed reservation forms.

464. In July 2005, Button expressed concern to Ginn salesperson Patrick Lenihan about the advisability of an investment in Cobblestone. Petts and Button became concerned and sought confirmation that Cobblestone would be a good investment. In response, Lenihan told Button, "This is going to be a huge success without question. I would not hesitate to place your clients in Cobblestone."

465. Button eventually closed on a lot in Cobblestone in December 2005. Specifically, on or about December 20, 2005, Button purchased Lot 78, Blanding Ridge, Cobblestone for \$324,900, with a \$243,675 mortgage provided by Fifth Third Bank. Ginn Real Estate collected a \$25,608 commission with respect to this transaction.

466. In July 2005, Brady Koegel contacted Button by phone and said that he had a lot under contract in Bella Collina that he could not close on and asked whether Button, Petts or any of their clients would be interested in buying it for \$650,000. Koegel promised Button that the lot, located at 206 Vetta Dr., was a great buy and that it was worth more than the purchase price. Koegel told Button that these lots would double in price and that, although he wanted the lot for himself, he was over exposed in the development.

467. Before purchasing 2006 Vetta Drive, Petts and Button sought the advice of their banker, Roy Snoeblen. Snoeblen assured them that the lot was a good deal and recommended that they buy it. In fact, Snoeblen told them the lot was actually worth between \$800,000 and \$850,000.

468. On or about August 29, 2005, relying upon the recommendations of Brady Koegel and Roy Snoeblen, Button and Petts purchased the lot for \$655,900.00, with a mortgage from Fifth Third Bank, arranged by Roy Snoeblen, in the amount of \$514,425 and a total of \$160,000 cash down at closing. After Button and Petts agreed to purchase the lot, upon Koegel's recommendation, Petts executed an addendum to Koegel's purchase agreement on July 22, 2005. Koegel told Petts that they should both appear on the deed and on the mortgage, and that Koegel would quitclaim the property to Petts after closing, which he later did.

469. The appraisals which the bank obtained for this property were based on inappropriate comparables and resulted in an appraised value of \$660,000. Appraiser Brad Long compared the lot to Lot 194, Bella Collina, which had yet to actually sell, and two other lots that were much larger and were inappropriate comparables.

470. The closing documents were notarized by Ginn employee Nicole Costello. Costello notarized the documents to falsely indicate that Petts personally appeared and that Costello examined her passport.

471. Petts and Button relied on Roy Snoeblen's advice regarding the desirability of investing in Bella Collina and acted in accordance with it. Petts emphasized that, "The purchase at Cobblestone was definitely on the back of advice from Roy [Snoeblen] as the Ginn developments were making huge profits and on the sales pitch from the realtors who worked for Ginn."

472. Following the Cobblestone purchases, Ginn continued to market aggressively to Petts and Button promoting presales. On March 26, 2006, Lenihan sent an email to Petts, attaching a list of lots available in Ginn sur Mer and stating:

We had our first presentation to reservation holders last night at Hammock Beach. There was a great turn out and several sales to

Ginn owners that evening. We have a presentation tonight in Orlando for about 500 people and another one in Ft. Lauderdale on Thursday. I would anticipate most if not all of the owner inventory to be sold by the time our presentations are complete.

This is the current inventory available...

473. On May 25, 2006, Lenihan sent an email to Petts, stating:

I wanted to give you a quick update on our Grand Opening release in Grand Bahama Island. We are now in preparation for a fall release of ocean front, golf, intracoastal, and lake homesites. This is the most anticipated property release in Ginn history.

474. Petts made one last purchase in the Ginn Communities. In June 2006, she purchased Lot 169, Briar Rose, for \$200,900, financed by Wachovia.

475. By July 2006, Petts became concerned about the value of the properties she and her partner had purchased. She expressed her concerns to Lenihan regarding the Cobblestone property and indicated that she and Phil Button wanted confirmation of the value of Button's Cobblestone property, Lot 78 Blanding Ridge and wanted an independent appraisal. Lenihan responded by providing a list of recommended appraisers that "we use most often."

476. In September 2006, after obtaining a second appraisal for Lot 78, Blanding Ridge, Cobblestone and discovering its true value, Petts and Button advised their friends, business associates and clients to pull out and not purchase Ginn properties. In fact, following this warning from Petts and Button, every such person, save one, heeded Petts and Button's warning and cancelled their reservations.

477. In early 2007, unsolicited by Petts or Button, Wachovia loan officer, Roy Snoeblen, attempted to convince Petts and Button to build on their lots in Reunion. For the purpose of inducing reliance by Petts and Button, Wachovia arranged for an appraisal, stating that the lot value had increased dramatically since the original purchase date. Wachovia arranged for an appraisal from Diana David of David Appraisals. That appraisal found that Lot

235 Desert Mountain Court had more than tripled in value from \$205,900 to \$650,000 and that the value of the property, once construction was complete, would be \$1,501,000.

478. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, causing Petts and Button to be victims of the illegal acts alleged herein and to suffer substantial losses to their money and property as a result.

J. Paul Tipton

479. Paul Tipton purchased three lots in Bella Collina and one in Quail West.

480. On or about June 8, 2005, Tipton purchased Lot 84, Bella Collina for \$1,625,000, with a \$1,000,000 mortgage from Fifth Third Bank. The lot was purchased with Richard Brookshaw.

481. On or about June 8, 2005, Tipton purchased Lot 230, Bella Collina for \$740,000, with a \$555,000 mortgage from Fifth Third Bank. The lot was purchased with Richard Brookshaw.

482. On or about June 30, 2005, Tipton purchased Lot 182, Bella Collina West for \$655,900, with a \$491,925 mortgage from Fifth Third Bank. In 2007, after property values had decreased, Fifth Third refinanced the loan for \$505,000.

483. On or about March 1, 2006, Tipton purchased Quail West Phase II, Block 3, Lot J86, Unit 2 for \$1,320,900, with a \$1,056,720 mortgage from Ginn Financial.

484. Paul deal with Ginn salesperson Scott Scovill in both Bella Collina and in Quail West. Scovill referred Tipton to Fifth Third Bank and to Ginn Financial.

485. Scovill told Tipton that prices were going up daily.

486. Each of the foregoing purchases was tainted by Defendants' conduct and scheme described herein, causing Tipton to be a victim of the illegal acts alleged herein and to suffer substantial losses to his money, business and/or property as a result.

XII. DEFENDANTS' CONDUCT HAS INJURED PLAINTIFFS AND THE CLASS

487. As set forth above, Plaintiffs and Class members relied on Defendants' deceptions, misleading conduct, fraud, omissions and misrepresentations in buying property within the Ginn developments at issue at substantially and artificially inflated prices. Absent Defendants' misrepresentations, omissions, fraud, misleading conduct, and unconscionable conduct, Plaintiffs and Class members would not have bought the property at issue or would have bought the property at a significantly reduced price.

488. As a result of Defendants' actions, Plaintiffs and Class members have suffered significant injury to their property and/or business including but not limited to the deposits and payments Plaintiffs and Class members paid for the property and closing costs and other costs and fees. Plaintiffs and Class members were also injured because the properties they purchased were significantly less valuable than represented by Defendants and have become even less valuable as a result of Defendants' conduct.

489. Defendants actively concealed their conduct, their manipulation of property values and their concerted efforts to sell the Ginn properties at issue at amounts that were far in excess of their true value. As a result, Plaintiffs and Class members could not have uncovered the unlawful conduct any earlier with the exercise of reasonable diligence.

XIII. RICO ALLEGATIONS

A. Enterprise Allegations

(1) The Ginn Company Enterprise

490. Plaintiffs, the Class members and Defendants are "persons" within the meaning of 18 U.S.C. § 1961(3).

491. Based upon Plaintiffs' current knowledge, the following persons constitute a group of individuals persons associated in fact who constitute a RICO enterprise that is referred

to herein as the “Ginn Company Enterprise”: The Ginn Companies, LLC, and Ginn Development Company, LLC including all of the myriad affiliates and subsidiaries through which they operated (*i.e.* Ginn-LA, LLC; Ginn-LA Pine Island, Ltd., LLLP; Ginn-LA Orlando Ltd., LLLP; Ginn-LA Hammock Beach, Ltd., LLLP; Ginn-LA Wilderness, LLC; Ginn-LA Naples, LLC; Ginn-LA Hutchinson Island, LLC; Ginn BriarRose Holding, GP, LLC; Ginn LA-BriarRose Holdings, Ltd., LLLP; and Ginn-LA Hamlet, LLC); Ginn Real Estate Company, LLC; Ginn Financial Services, LLC; Ginn Title, LLC; ESI Living, LLC; Lubert-Adler Partners, L.P.; Fifth Third Bancorp; Fifth Third Bank (Michigan); SunTrust Mortgage, Inc.; Wachovia Bank, N.A.

492. The Ginn Company enterprise is an organization which operated in furtherance of a common purpose beginning in or around 1998 and ceasing operation at a date in or around 2008 or such other date as shall be determined from the books and records of the Defendants and whose activities affected interstate commerce.

493. While the Defendants participated in and are members and part of the Ginn Company Enterprise, they also have an existence separate and apart from the enterprise.

494. In order to successfully and convincingly market properties at artificially inflated prices and get purchasers to pay and finance purchases at inflated prices, Defendants needed an organization and system that enabled them to effectively establish an aura of bona fide values and demand. The Ginn Company Enterprise provides that organization and system. While each of the Defendants would typically act independently, the participation of lenders, appraisers, Ginn Title with Ginn and Lubert-Adler, allows the Enterprise to function effectively and eliminates the checks and balances that would normally protect purchasers and conceals the true and common objective of the Defendants.

495. The Ginn Company Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which Defendants have engaged.

496. The Defendants control and operate the Ginn Company Enterprise through a variety of means, including, but not limited to, the following:

- (a) investing funds to secure and preliminarily develop the property to be developed for sale in lots to individual purchasers such as Plaintiffs and the Class;
- (b) developing and utilizing a common marketing plan designed to mislead prospective buyers regarding the high value and high demand for the real estate within the development;
- (c) agreeing to orchestrate, finance and/or participate in filing inaccurate and false title records, using inappropriate appraisals and other tactics to create comparable sales data that appears to support the representations of high value and high demand;
- (d) agreeing to facilitate the approval and funding of loans at amounts that do not correspond to the true value of the properties, but rather which are based upon inflated/manipulated values;
- (e) agreeing to manipulate the values of the properties; and
- (f) retaining inflated profits from the sale of real estate and services resulting from the conduct of the Ginn Company Enterprise.

B. Alternative Enterprise Allegations

497. Plaintiffs, the Class members and Defendants are “persons” within the meaning of 18 U.S.C. § 1961(3).

498. Based upon Plaintiffs’ current knowledge, the following persons constitute a group of individuals persons associated in fact who constitute a RICO enterprise that is referred to herein as the “Ginn/Lubert-Adler Enterprise”: The Ginn Companies, LLC, and Ginn Development Company, LLC including all of the myriad affiliates and subsidiaries through which they operated (*i.e.* Ginn-LA, LLC; Ginn-LA Pine Island, Ltd., LLLP; Ginn-LA Orlando Ltd., LLLP; Ginn-LA Hammock Beach, Ltd., LLLP; Ginn-LA Wilderness, LLC; Ginn-LA

Naples, LLC; Ginn-LA Hutchinson Island, LLC; Ginn BriarRose Holding, GP, LLC; Ginn LA-BriarRose Holdings, Ltd., LLLP; and Ginn-LA Hamlet, LLC); Ginn Real Estate Company, LLC; Ginn Financial Services, LLC; Ginn Title, LLC; ESI Living, LLC; and Lubert-Adler Partners, L.P.

499. The Ginn/Lubert-Adler Enterprise is an organization which operated in furtherance of a common purposed beginning in or around 1998 and ceasing operations a date in or around 2008 or such other date as shall be determined from the books on record of the Defendants and whose activities affected interstate commerce.

500. While the Defendants participated in and are members and part of the Ginn/Lubert-Adler Enterprise, they also have an existence separate and apart from the enterprise.

501. In order to successfully and convincingly market properties at artificially inflated prices and get purchasers to pay and finance purchases at inflated prices, Defendants needed an organization and system that enabled them to effectively establish an aura of bona fide values and demand. The Ginn/Lubert-Adler Enterprise provides that organization and system. The participation of the Ginn subsidiaries and affiliates Ginn Title and Ginn Financial allows the Enterprise to function effectively and eliminates the checks and balances that would normally protect purchasers and conceals the true and common objective of the Defendants.

502. The Ginn/Lubert-Adler Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which Defendants have engaged.

503. The Defendants control and operate the Ginn/Lubert-Adler Enterprise through a variety of means, including, but not limited to, the following:

- (a) investing funds to secure and preliminarily develop the property to be developed for sale in lots to individual purchasers such as Plaintiffs and the Class;

- (b) developing and utilizing a common marketing plan designed to mislead prospective buyers regarding the high value and high demand for the real estate within the development;
- (c) agreeing to orchestrate, finance and/or participate in straw purchases and other tactics to create comparable sales data that appears to support the representations of high value and high demand;
- (d) agreeing to facilitate the approval and funding of loans at amounts that do not correspond to the true value of the properties, but rather which are based upon inflated/manipulated values;
- (e) agreeing to manipulate the values of the properties; and
- (f) retaining inflated profits from the sale of real estate and services resulting from the conduct of the enterprise.

C. Predicate Acts Mail and Wire Fraud: 18 U.S.C. § 1341 AND 18 U.S.C. § 1343

504. Section 1961(1) of RICO provides that “racketeering activity” includes any act indictable under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud). As set forth below, Defendants have engaged and continue to engage in conduct violating each of these laws to effectuate their scheme. *See, e.g.*, paragraph numbers, including but not limited to 53, 74-79, 81-84, 86-91, 124-127, 139, 148-149, 150, 163, 168, 214-219, 222, 222-223, 233, 235, 237, 244, 247, 263-266, 274, 276, 278, 280, 283, 317, 321, 337, 361, 397, 413, 437, 444, 451, 457, 466, and 472.

505. For the purpose of executing and/or attempting to execute the above described scheme to defraud or obtain money by means of false or fraudulent pretenses, representations or promises, Defendants in violation of 18 U.S.C. § 1341, caused matter and things to be delivered by the Postal Service or by private or commercial interstate carriers. These acts were done intentionally and knowingly with the specific intent to advance Defendants’ scheme, or with knowledge that the use of the mails would follow in the ordinary course of business, or that such use could have been foreseen, even if not actually intended.

506. Defendants carried out their scheme in different states and internationally and could not have done so unless they used the Postal Service or private or commercial interstate carriers.

507. For the purpose of executing and/or attempting to execute the above described scheme to defraud or obtain money by means of false pretenses, representations or promises, Defendants, in violation of 18 U.S.C. § 1343, transmitted, caused to be transmitted and/or received by means of wire communication in interstate and foreign commerce, various writings, signs and signals. These acts were done intentionally and knowingly with the specific intent to advance Defendants' scheme, or with knowledge that the use of wire communications would follow in the ordinary course of business, or that such use could have been foreseen, even if not actually intended.

508. The Defendants knew or should have foreseen that the use of the mails and wires would be required to carry out the scheme.

509. The matter and things sent by Defendants via the Postal Service, private or commercial carrier, wire or other interstate media include, inter alia:

- (a) Correspondence and marketing materials that intentionally misled Plaintiffs and Class members regarding the interest in and availability of property within each Ginn Development;
- (b) Correspondence and marketing materials that intentionally misrepresented the value of the properties in the Ginn Developments that were the subject of the scheme;
- (c) Correspondence, contracts, agreements, appraisal reports, financing documents, powers of attorney and other materials used to further Defendants' fraudulent scheme and buttress misrepresentations regarding the amount of interest in and value of properties within each Ginn development;
- (d) Correspondence and e-mails between Defendants regarding the scheme and conduct to be undertaken in furtherance of the scheme; and

- (e) Other matters and things sent through or received from the Postal Service, private or commercial carrier or interstate wire transmission by Defendants included information or communications in furtherance of or necessary to effectuate the scheme.

510. Defendants' misrepresentations, omissions, deceptions and acts of concealment were knowing and intentional, and made for the purpose of deceiving Plaintiffs and the Class and obtaining their property for Defendants' gain.

511. Defendants either knew or recklessly disregarded the fact that the misrepresentations and deceptions relating to the value and demand for Ginn properties described above were material, and Plaintiffs and the Class relied on the misrepresentations and omissions set forth above.

D. Pattern of Racketeering Activity

512. Defendants did knowingly, willfully and unlawfully engage in a "pattern of racketeering activity," within the meaning of 18 U.S.C. §§ 1961(5), by committing at least two acts of racketeering activity, *i.e.* indictable violations of 18 U.S.C. §§ 1341 and 1343 as described above, within the past four years. In fact, each of the Defendants has committed multiple acts of racketeering activity. Each act of racketeering was related, had a similar purpose, involved the same or similar participants and means of commission, had similar results and impacted similar victims, including Plaintiffs and Class members.

513. The multiple acts of racketeering activity which Defendants committed and/or conspired to or aided and abetted in the commission of, were related to each other and amount to and pose a threat of continued racketeering activity, and therefore constitute a "pattern of racketeering activity" as defined in 18 U.S.C. § 1961(5).

E. Defendants' Conduct Caused Direct Injury to Plaintiffs

514. Plaintiffs and Class members suffered direct and proximate harm as a result of Defendants' misrepresentations, omissions, deceptions and acts of concealment.

515. As a result of Defendants' fraudulent scheme, Defendants have obtained money and property belonging to Plaintiffs and Class members, and the Plaintiffs and the Class have been injured in their business and/or property by the Defendants' overt acts of mail and wire fraud.

XIV. CLASS ACTION ALLEGATIONS

516. Plaintiffs bring this action against Defendants on their own behalf and, pursuant to Rules 23(a) and (b) of the Federal Rules of Civil Procedure, as a Class action on behalf of a Class of all persons or entities that purchased real estate in Ginn developments, including but not limited to:

- (a) Hammock Beach in Palm Coast, Florida;
- (b) Tesoro Preserve in Port St. Lucie, Florida;
- (c) Reunion Resort in Orlando, Florida;
- (d) Bella Collina in Montverde, Florida;
- (e) Yacht Harbor Village at Hammock Beach, in Palm Coast, Florida;
- (f) Conservatory at Hammock Beach in Palm Coast, Florida;
- (g) Quail West in Naples, Florida;
- (h) Cobblestone Park in Blythewood, South Carolina;
- (i) The BriarRose in Hancock County, Georgia;
- (j) Laurelmor in Boone, North Carolina;
- (k) Burke Mountain in East Burke, Vermont;
- (l) Ginn Sur Mer, Bahamas;

- (m) Mahogany Run in the Virgin Islands;
- (n) Tesoro Club;
- (o) Tesoro Beach Club;
- (p) Admirals Cove Condominiums;
- (q) Hammock Beach Club Villas;
- (r) Hammock Beach Club; and
- (s) The Towers at Hammock Beach Club.

517. Excluded from the Class are Defendants, any entity in which any defendant has a controlling interest or is a parent or subsidiary of, or any entity that is controlled by a defendant and any of Defendants' officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns.

518. There are likely thousands of members of the Class. Accordingly, the Class is so numerous that joinder of all members is impracticable. Although the exact number of Class members is not yet known, thousands of persons or entities have purchased property from Defendants. These customers are geographically dispersed throughout the United States and abroad. The Class members are ascertainable, as the names and addresses of all Class members can be identified in business records maintained by Defendants or from other readily accessible records.

519. Plaintiffs will fairly and adequately protect the interests of the Class and have no interest adverse to, or which directly or irrevocably conflicts with, the interests of other Class members. Plaintiffs are represented by counsel experienced and competent in the prosecution of complex Class action litigation and other complex litigation including federal RICO claims.

520. There are questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Regardless of the specific

appraisal, recording or other tactic was used with regard to a particular Class member, each member of the Class was harmed by Defendants' overarching scheme. Common questions of law and fact include, inter alia:

- (a) Whether Defendants have engaged in the schemes or artifices described herein to improperly and unlawfully sell property within the Ginn Developments at significantly inflated values;
- (b) Whether Defendants have engaged in mail and wire fraud;
- (c) Whether Defendants have engaged in a pattern of racketeering activity;
- (d) Whether the Ginn Company Enterprise is an enterprise within the meaning of 18 U.S.C. 1961(4);
- (e) Whether Defendants conducted or participated in the affairs of the Ginn Company Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c);
- (f) Whether the Ginn/Lubert-Adler Enterprise is an enterprise within the meaning of 18 U.S.C. 1961(4);
- (g) Whether Defendants conducted or participated in the affairs of the Ginn Lubert-Adler Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c);
- (h) Whether Defendants conspired to violate 18 U.S.C. § 1962(c) as prohibited by 18 U.S.C. § 1962(d);
- (i) Whether Defendants engaged in a civil conspiracy to defraud Plaintiffs and Class members;
- (j) Whether the Lender Defendants failed to properly supervise their employees and agents;
- (k) Whether Defendants have violated the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes §§ 501.201 et seq.;
- (l) Whether Defendants' violations of FDUTPA caused losses to Plaintiffs and the Class;
- (m) Whether the Lender Defendants failed to properly supervise the activities of its executives, loan officers, employees and agents.
- (n) Whether Defendants have been unjustly enriched;

- (o) Whether Plaintiffs and Class members have been harmed as a result of Defendants' conduct as set forth herein;
- (p) Whether, and to what extent, Defendants are liable for the conduct alleged herein;
- (q) Whether Defendants fraudulently concealed their scheme;
- (r) What is the measure of relief to which Plaintiffs and Class members are entitled; and
- (s) What relief is due to Plaintiffs and Class members.

521. Plaintiffs' claims are typical of the claims of the members of the Class because they originate from the same illegal and fraudulent practices of Defendants and Defendants acted in the same way toward Plaintiffs and the Class members.

522. Plaintiffs will fairly and adequately protect the interests of the members of the Class, is committed to the vigorous prosecution of this action, has retained counsel competent and experienced in Class litigation and has no interests antagonistic to or in conflict with those of the Class. As such, Plaintiffs are adequate representatives of the Class.

523. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties opposing the Class.

524. A Class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable and because of the many questions of law and fact that are common to Plaintiffs' claims and those of the Class. Further, the expense and burden of individual litigation make it impossible for all the members of the Class individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a Class action.

525. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessarily duplicating evidence, effort, and expense that numerous individual actions would engender.

XV. COUNT I

VIOLATION OF 18 U.S.C. § 1962(C) – RICO (AS TO ALL DEFENDANTS)

526. Plaintiffs hereby incorporate by reference paragraphs 2-12, 33-37, 48-390, 391-486, 487-489, 490-503 and 504-515 as if fully set forth herein.

527. As set forth above, Defendants have violated 18 U.S.C. § 1962(c) by conducting, or participating directly or indirectly in the conduct of the affairs of the Ginn Company Enterprise, and/or in the alternative, the Ginn/Lubert-Adler Enterprise through a pattern of racketeering, including acts indictable under 18 U.S.C. §§ 1341 and 1343.

528. As a direct and proximate result of Defendants' misrepresentations, manipulations, fraud and omissions as herein alleged, Plaintiffs and the members of the Class have been injured in their business and/or property by the predicate acts which make up the Defendants' pattern of racketeering activity through the Ginn Company Enterprise, or in the alternative, the Ginn/Lubert-Adler Enterprise.

XVI. COUNT II

VIOLATION OF 18 U.S.C. § 1962(D) – RICO (AS TO ALL DEFENDANTS)

529. Plaintiffs hereby incorporate by reference paragraphs 2-12, 33-37, 48-390, 391-486, 487-489, 490-503, and 504-515 as if fully set forth herein.

530. In violation of 18 U.S.C. § 1962(d), Defendants have, as set forth above, conspired to violate 18 U.S.C. § 1962(c). The conspiracy commenced at least as early as 1998

and ceded in or about 2008 as alleged herein. The object of the conspiracy was to sell real estate in Ginn developments at inflated prices resulting in increased profits for Defendants.

531. As set forth above, each of the Defendants knowingly, willfully, and unlawfully agreed and combined to conduct or participate, directly or indirectly, in the conduct of the affairs and activities of the Ginn Company Enterprise, or in the alternative, the Ginn/Lubert-Adler Enterprise through a pattern of racketeering activity, including acts indictable under 18 U.S.C. §§ 1341 and 1343 in violation of 18 U.S.C. § 1962(c).

532. Defendants committed numerous overt acts of racketeering activity or other wrongful activity in furtherance of such conspiracy.

533. The purpose of the acts that caused injury to Plaintiffs and Class members was to advance the overall objective of the conspiracy and the harm to Plaintiffs and Class members was a reasonably foreseeable consequence of Defendants' scheme.

534. As a direct and proximate result of Defendants misrepresentations, manipulations, fraud and omissions as alleged herein, Plaintiffs and Class members have been injured in their business or property by the Defendants' conspiracy and by the predicate acts which make up the Defendants' pattern of racketeering activity through the Ginn Company Enterprise, or in the alternative, the Ginn/Lubert-Adler Enterprise.

XVII. COUNT III

VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, FLORIDA STATUTES ("FDUTPA") §§ 501.201 ET SEQ. (AS TO ALL DEFENDANTS)

535. Plaintiffs hereby incorporate by reference paragraphs 2-12, 33-37, 48-390, 391-486, 487-489 as if fully set forth herein.

536. The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) provides for a civil cause of action for "[u]nfair methods of competition, unconscionable acts or practices, and

unfair or deceptive acts or practices in the conduct of any trade or commerce.” § 501.204(1), Fla. Stat. (2005).

537. The conduct of Defendants as alleged herein, including the use of misrepresentations, lies, collusions, manipulations, kickbacks, omissions, mail and wire fraud, and other tactics in furtherance of an overarching scheme to artificially inflate the apparent values and demand for the properties purchased by Plaintiffs and members of the Class, is unfair, unconscionable and/or deceptive in that it is immoral, unethical, oppressive, and unscrupulous and further, is injurious to consumers, including Plaintiffs and members of the Class.

538. Each Defendant’s unfair, unconscionable and/or deceptive acts contributed to the fraudulently inflated prices prevalent in Ginn Communities.

539. The artificially inflated apparent high value and purportedly limited supply of the properties at issue were necessarily material to the purchase decisions of Plaintiffs and members of the Class and, in making their decisions to purchase, Plaintiffs and members of the Class relied on the false and misleading illusion of high value of and high demand for the Ginn properties at issue created by Defendants’ unfair and deceptive conduct as alleged herein and the omissions of material fact that supported that illusion.

540. Plaintiffs and members of the Class, each of whom purchased Ginn properties as a result of the Defendants’ unfair, unconscionable, misleading and deceptive conduct alleged herein, suffered losses and actual damages as a result including the deposits and payments Plaintiffs and members of the Class paid for the property and closing costs and other costs and fees, as well as, the difference between the true and represented values of the properties and the artificially high carrying costs associated with the properties.

541. The unfair, unconscionable, misleading and deceptive acts of the Defendants were likely to mislead the average consumer, and did, in fact, mislead the Plaintiffs and Class members.

542. Defendants are liable to Plaintiffs and the members of the Class under the FDUPTA for the losses resulting from their unfair, deceptive and unlawful conduct alleged herein and Plaintiffs and the members of the Class are therefore entitled to all of the remedies provided by the statute for Defendants' unlawful conduct.

XVIII. COUNT IV

CIVIL CONSPIRACY (AS TO ALL DEFENDANTS)

543. The Plaintiffs reallege and incorporate herein by reference paragraphs 2-12, 33-37, 48-390, 391-486, and 487-489.

544. The Defendants entered into an agreement to artificially inflate the value of properties in the Ginn Communities through numerous acts of fraud and misrepresentations with intent to defraud the Plaintiffs and members of the Class.

545. The Defendants were aware of and participated in the conspiracy to defraud the Plaintiffs.

546. Each of the Defendants engaged in multiple overt acts in furtherance of the conspiracy, including misrepresenting the true value of the properties the Plaintiffs purchased through a variety of conduct including obtaining fraudulent appraisals for properties in the Ginn Communities, employing marketing tactics such as those described herein to create the false impression of extremely high demand and value - to inflate their price and knowingly mislead the Plaintiffs about the availability of properties in the Ginn Communities thereby inducing them to purchase properties that they would not have purchased had they known the truth.

547. The Defendants made or directed others to make false statements or omissions of material facts to the Plaintiffs in connection with their property dealings in the Ginn Communities.

548. The Plaintiffs relied to their detriment on the Defendants misrepresentations, lies, omissions and deceptive behavior of Defendants which were done in furtherance of their conspiracy.

549. The Plaintiffs were damaged by the Defendants concerted effort to defraud them through misrepresentations and misleading statements, by saddling them with properties that are worth far less than they were lead to believe, a loss of value which the market downturn does not explain, by the Defendants acting in collusion with each other and by taking on more debt and obligations than they would have absent the Defendants fraudulent and misleading behavior. Each of the Defendants benefitted as herein alleged through their participation in the conspiracy.

XIX. COUNT V

NEGLIGENT SUPERVISION (AS TO THE LENDER DEFENDANTS)

550. Plaintiffs hereby incorporate by reference paragraphs 2-12, 33-37, 48-390, 391-486, 487-489, and 543-549 as if fully set forth herein, and with respect to each Lender specifically refer to the paragraphs herein that name and describe the conduct of their executives, loan officers, agents and/or employees.

551. The Lender Defendants engaged in a civil conspiracy to defraud the Plaintiffs of their money or property as hereinabove alleged.

552. The unlawful, deceptive, fraudulent, collusive, self-dealing, and misleading conduct employed by the Lender Defendants' executives, loan officers, agents and/or employees

as alleged herein in furtherance of the alleged civil conspiracy as well as the conspiracy itself was harmful to and caused injury to Plaintiffs and members of the Class.

553. The Lender Defendants had a duty to act in good faith and not to pursue a civil conspiracy employing conduct that is unlawful, deceptive, fraudulent, collusive, self-dealing, misleading and harmful to their customers.

554. Each, Lender Defendant, by and through its executives, loan officers, agents and/or employees, engaged in unlawful, deceptive, fraudulent, collusive, self-dealing and misleading behavior in furtherance of the civil conspiracy alleged herein.

555. Each of the Lender Defendants had notice that its executives, loan officers, agents and/or employees were involved in conduct that made them unfit to perform their duties and which harmed the Plaintiffs and Class members.

556. By virtue of the very nature of the conduct alleged, as well as, the rapid, numerous and substantial value of the mortgage loans for Ginn properties generated by the conduct alleged, the Lender Defendants were aware, or should have been aware, of the unlawful, deceptive, fraudulent, collusive, self-dealing, and misleading conduct of their executives, loan officers, agents and/or employees in furtherance of the civil conspiracy alleged herein.

557. Although the Lender Defendants were aware, or should have been aware, of the unlawful, deceptive, fraudulent, collusive, self-dealing, and misleading conduct of their executives, loan officers, agents and/or employees as alleged herein, and although the Lender Defendants had the ability to take action to control their executives, loan officers, agents and/or employees, they did not take the steps necessary and available to prevent the conduct, such as investigation, discharge, reassignment, reprimand or referral to appropriate law enforcement authorities.

558. The Lender Defendants' failure to take action to control their executives, loan officers, agents and/or employees, although they aware, or should have been aware, of the unlawful, deceptive, fraudulent, collusive, self-dealing, and misleading conduct of their executives, loan officers, agents and/or employees in furtherance of a civil conspiracy as alleged herein constitutes negligent supervision and a breach of the Lender Defendants' duties to act in good faith and not to engage in conduct that is unlawful, deceptive, fraudulent, collusive, self-dealing, misleading and harmful to their customers.

559. The Lender Defendants' failure to take action to control their executives, loan officers, agents and/or employees, although they aware, or should have been aware, of the unlawful, deceptive, fraudulent, collusive, self-dealing, and misleading conduct of their executives, loan officers, agents and/or employees in furtherance of a civil conspiracy as alleged herein caused injury to Plaintiffs and members of the Class for which the Lender Defendants are liable.

XX. COUNT VI

UNJUST ENRICHMENT (AS TO ALL DEFENDANTS)

560. Plaintiffs hereby incorporate by reference paragraphs 2-12, 33-37, 48-390, 391-486, and 487-489 as if fully set forth herein.

561. As a result of the scheme alleged herein, Defendants sold and/or financed properties within the Ginn developments to Plaintiffs and the other Class members at inflated prices, and benefitted therefrom through the receipt of money and fees that were unreasonably high.

562. Defendants are aware of their receipt of the above-described benefits.

563. Defendants received the above-described benefits to the detriment of Plaintiffs and each of the other members of the Class.

564. Defendants' continued retention of the above-described benefits, to the detriment of Plaintiffs and the Class, is inequitable.

565. As a result of Defendants' unjust enrichment, Plaintiffs and the Class have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of Defendants' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

566. Further, Plaintiffs and the Class, individually and on behalf of the public, seek restitution and disgorgement of profits realized by Defendants as a result of their unfair, unlawful and/or deceptive practices.

XXI. PRAYER FOR RELIEF

The Plaintiffs and Class Members request that this Court grant the following relief:

A. Determine that this action is a proper Class action and certify Plaintiffs as Class representatives and Plaintiffs' counsel as counsel for the Class under Federal Rule of Civil Procedure 23;

B. Find that Defendants have violated 18 U.S.C. §§ 1962(c) and (d);

C. Enjoin Defendants from further violations of 18 U.S.C. §§ 1962(c) and (d);

D. Find that Defendants have violated the FDUTPA;

E. Find the Lender Defendants liable for Negligent Supervision;

F. Find that Defendants have unlawfully engaged in a civil conspiracy to defraud the Plaintiffs and Class members;

G. Find that Defendants have been unjustly enriched and are liable to Plaintiffs and the Class therefore;

H. As to all Counts, order Defendants to pay damages in an amount to be determined at trial;

I. As to Counts I and II, order Defendants to pay treble damages to Plaintiffs and Class members;

J. Order restitution of all improperly collected charges and interest, and the imposition of an equitable constructive trust over all such amounts for the benefit of the Class;

K. Award Plaintiffs and members of the Class, the costs and disbursements of this action, including reasonable attorneys' fees (including pursuant to FDUPTA) and the reimbursement of expenses in amounts to be determined by the Court;

L. Award pre-judgment and post-judgment interest; and

M. Grant such other and further relief as the Court may deem just and proper.

XXII. DEMAND FOR TRIAL BY JURY

Plaintiffs request a jury trial on any issue so triable.

DATED: October 15, 2009.

Respectfully submitted,

By: _____

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