



RESORTS™

Ginn Development Company, LLC

**Battle Mountain
Housing Plan
February 20, 2008**

Commitment:

The Ginn Company has made an extraordinary commitment to provide employee housing for its employees at the Battle Mountain Project. Ginn's commitment is extraordinary because, though the Town of Minturn has no requirement for employee housing, Ginn has proposed a plan that exceeds even the commitments of other projects within the Vail Valley and beyond all of the county and municipal requirements adopted in the region. Our plan was generated based on the recommendation of the Town of Minturn's Planning Commission and Town Council.

The Ginn Company commits to provide employee housing capable of housing 50% of its actual on-site, full-time equivalent, operational work force employed within the Battle Mountain project (the "**Workforce**"). Ginn further commits to provide 50% of this 50% within the municipal boundaries of the Towns of Minturn or Red Cliff, including the approximately 5,300 acres of the Battle Mountain project site. Finally, Ginn commits to provide employee housing capable of housing 50% of the number of full time employees employed directly by the Town of Minturn and the Town of Red Cliff. A full time employee shall be an employee who regularly works in excess of 35 hours a week and is entitled to benefits such as paid sick leave, vacation, and insurance coverage.

In addition to its commitment to make rental and ownership housing available to its Workforce, Ginn will provide other forms of housing assistance for its employees, as well as full time employees employed directly by the Town of Minturn and the Town of Red Cliff, including but not limited to housing payment assistance, low or no interest housing loans, and homeowner education.

Monitoring and Enforcement:

Annually, Ginn will provide to the Town an accounting of its actual Workforce to insure that Ginn is meeting this 50% requirement. This accounting will be provided every year until build-out of the Battle Mountain project. If at any time until build-out there is not enough dedicated housing capable of housing at least 50% of Ginn's Workforce and 50% of the number of full time employees employed directly by the Town of Minturn and the Town of Red Cliff, or if Ginn has not provided at least 50% of the 50% within the municipal boundaries of the Towns of Minturn or Red Cliff, including the approximately 5,300 acres of the Battle Mountain project, Ginn shall commence to cure the deficiency by using commercially reasonable efforts to provide its employees immediate access to temporary housing. In addition to immediately providing a solution, which solution may be temporary, Ginn shall diligently pursue construction,

acquisition, or restriction of additional employee housing, which additional employee housing shall be provided within two (2) years of the date of the accounting that identifies the deficiency. During the immediate cure period, and prior to the expiration of the two (2) year cure period, Ginn shall not be in default in the event the temporary housing it provides causes it to be in violation of its obligation to provide 50% of the housing within the municipal boundaries of the Towns of Minturn or Red Cliff, including the approximately 5,300 acres of the Battle Mountain project. If a deficiency persists for more than two (2) years from the date of the accounting that identifies the deficiency and Ginn has not cured the deficiency, the Town may discontinue issuing Temporary Certificates of Occupancy and/or Certificates of Occupancy or building permits on Ginn's applications.

Schedule for Employee Housing:

It is anticipated that the Workforce needs will be minimal until such time as resort amenities are operational or residences within the project occupied. Consequently, Ginn proposes that its annual reporting commence in the first calendar year following issuance by the Town of the 100th Temporary Certificate of Occupancy within the Project. This will also allow time for such employee housing to be planned, permitted, and constructed. At such time and for each year thereafter, Ginn shall have available employee housing capable of housing 50% of the Workforce, at least 50% of which housing shall be available within the municipal boundaries of the Towns of Minturn or Red Cliff, including the approximately 5,300 acres of the Battle Mountain project.

During construction, Ginn will require construction contractors and subcontractors engaged by Ginn, as well as Ginn's preferred builders, to insure adequate housing for their employees as a condition of their agreement to work on the Battle Mountain project.

Housing Types and Location:

Employee housing may take the form of rental or ownership housing at Ginn's discretion. The format or layout of any housing (i.e., four bedroom vs. two bedroom, etc.) shall also be at Ginn's discretion. At the time of the appropriate final subdivision plat application, Ginn and the Town will agree on the housing types and sizes provided to house Minturn and Red Cliff Town employees. If such housing is located within the Battle Mountain PUD, it shall be subject to the zoning restrictions set forth in the PUD Guide, but shall not be required to be within and subject to the same conditions, covenants and regulations as the remainder of the resort's common interest community. On-site employee housing or Ginn housing located within the Towns of Minturn and Red Cliff will be served by Ginn's transit and shuttle services. When locating off-site employee housing consideration will be given to transit facilities to ensure employees have reasonable access to transit facilities.

Occupancy Restrictions:

Each employee housing unit shall be occupied only by a Qualified Occupant. A "*Qualified Occupant*" shall be any person who, during the entire period of his or her occupancy of the employee housing unit, is employed by Ginn, together with such person's spouse and minor children, if any. A Qualified Occupant shall also be any person who, during the entire period of his or her occupancy of the employee housing unit, is directly employed full time (i.e., regularly works in excess of 35 hours a week and is entitled to benefits such as paid sick leave, vacation,

and insurance coverage) by the Town of Minturn or the Town of Red Cliff. A Qualified Occupant may also be any other person, together with such person's spouse and minor children, approved by Ginn in Ginn's sole discretion, provided however that such person shall be employed at least 35 hours per week in Eagle County and shall occupy the employee housing unit as his or her primary residence. In the event Ginn makes its employee housing units available for occupancy by employees who are not employed by Ginn or the Towns of Minturn and Red Cliff, preference shall be given to individuals who reside and/or are employed in the Towns of Minturn and Red Cliff. Qualified Occupants shall not be permitted to own any other residential property in Eagle, Lake, or Summit Counties and a violation of such policy will cause such person to lose his or her status as a Qualified Occupant.

Lease Restrictions:

Each employee housing unit that is leased by Ginn to a Qualified Occupant shall not be leased for a period of less than thirty (30) consecutive days. Lease rates shall be determined by Ginn, and shall be comparable to other similar rental properties in the surrounding area.

Ownership Restrictions:

Each employee housing unit that is offered for sale to a Qualified Occupant shall be subject to a recorded deed restriction which shall constitute a covenant running with the land and which shall contain, at a minimum, the following covenants. Ginn may terminate such covenant at any time so long as Ginn continues to be in compliance with its obligations hereunder.

1. The owner of the property shall be a Qualified Occupant. Such person's spouse may be a co-owner of the property.
2. The property shall be occupied only by Qualified Occupants.
3. In the event the owner desires to sell the property, ceases to be a Qualified Occupant, or in the event title to the property vests by descent or otherwise in an individual or entity who is not a Qualified Occupant, the property shall be offered for sale pursuant to the following regulations:
 - a. Option to Purchase. Ginn or its designee shall have an option to purchase (the "**Option**") each employee housing unit that is offered for sale. Prior to any such Owner other than Ginn (it being specifically acknowledged that the Option shall not apply to any sale of the property by Ginn) (i) listing or advertising the property for sale in any manner, (ii) entering into any contract to convey fee simple absolute title to the property to any other person or entity; or (iii) in fact transferring fee simple title to the property to any other person or entity, whichever shall first occur, the owner shall notify Ginn or its designee in writing of its Option, and Ginn or its designee shall have a period of thirty (30) days after delivery of such notice to exercise the Option, and the date upon which Ginn or its designee exercises the Option (if exercised) shall hereinafter be referred to as the "**Exercise Date**".
 - i. Determination of Maximum Sales Price. Along with notice of the Option, the selling owner shall provide Ginn or its designee with the

owner's calculation of the Maximum Sales Price, including all relevant documentation to support such calculation. Within five (5) business days after notice of the Option is given to Ginn or its designee by the owner, Ginn or its designee shall notify the owner whether it agrees with the calculation of the Maximum Sales Price and, if it does not agree with the owner's calculation, Ginn or its designee's calculation of the Maximum Sales Price (provided, however, that such notice by Ginn or its designee shall not be deemed notice of exercise of the Option). The calculation of the Maximum Sales Price by Ginn or its designee shall be final unless the owner can prove that such calculation is clearly erroneous.

ii. Exercise of Option. Ginn or its designee may exercise the Option, if at all, by the delivery of a standard real estate contract (approved by the Colorado Real Estate Commission) to the selling owner that is signed by Ginn or its designee and that provides for the following minimum terms:

1. Purchase Price in the amount of the Maximum Sales Price for the property;
2. Earnest Money in an amount not less than Five Thousand and No/100 Dollars (\$5,000.00);
3. Closing not later than sixty (60) calendar days after the Exercise Date;
4. All purchaser inspection periods, title review and other contingency periods must expire within thirty (30) calendar days after the Exercise Date;
5. The selling owner shall agree to credit to Ginn the estimated cost of repairing or replacing any items objected to pursuant to the Inspection Objection provision of the contract, provided such credit does not exceed 10% of the purchase price;
6. The contract shall provide that Ginn's possession shall not be subject to post-Closing by anyone, including possession by any lessee permitted pursuant to this covenant.
7. Ginn or its designee and the selling owner will each pay their respective closing costs at the Closing, and Ginn or its designee will pay the documentary fee on the deed conveying the property, the fee for recording that deed,
8. The transfer fee, tax or assessment relating to the transaction, if any, shall be split equally by the selling owner and Ginn or its designee; and

9. All other form provisions of such contract are unchanged.

- iii. **Selling Owner Obligations.** If Ginn or its designee exercises the Option as described above, then the selling owner shall immediately execute and perform on the real estate contract tendered by Ginn or its designee. If Ginn or its designee tenders an offer to purchase the property on any other terms than those described above, the selling owner shall negotiate with Ginn or its designee in good faith, but shall be under no obligation to enter into such agreement and may accept or reject any such non-conforming offer in the selling owner's sole and absolute discretion.
- iv. **Administrative Fee.** The selling owner acknowledges and agrees that in the event of the exercise of the Option, in recognition of the savings to the selling owner of not having to pay a real estate commission to sell the property and of the costs incurred by Ginn, Ginn or its designee may charge the selling Owner a fee of two percent (2%) of the sales price of the property pursuant to the Option, which amount shall be paid at closing.
- v. **Extension of Closing Date.** Upon written notice to the selling owner prior to Closing, Ginn or its designee shall be entitled to one (1) extension of the closing date for a period not to exceed thirty (30) calendar days in the event that, through no fault of Ginn or its designee, it is unable to close on the purchase and sale of the property on the date initially set for closing, including, without limitation, the failure of Ginn or its designee's assignee to close.
- vi. **Assignment.** One purpose of the Option is to allow Ginn or its designee to facilitate the sale of the property to other Qualified Occupants whom Ginn or its designee has identified as a prospective purchaser. Therefore, Ginn or its designee may assign its rights under the Option, without the consent of the selling owner. In the event of such assignment, however, Ginn or its designee shall remain liable for performance under the Option and shall not be released therefrom.
- vii. **Failure to Exercise Option.** If Ginn or its designee shall not exercise the Option, or if Ginn or its designee shall fail to close upon the Option after exercise pursuant to the terms and conditions above for any reason other than default by the selling owner, then the Option shall terminate and be of no further force and effect and the owner may proceed to sell the property to a third party strictly in conformance with the provisions of this covenant. Any failure of Ginn or its designee to respond to notice of the Option within the prescribed period shall constitute election by Ginn or its designee not to exercise the Option.

- b. Sale to Third Parties. In the event that Ginn or its designee declines to exercise or fails to close upon the Option after exercise as described above, the selling Owner may market and sell the property to the public only in conformance with the requirements of this Section.
- i. Continuous Marketing. The selling owner shall continuously market the Property for sale to the public for a period of at least one hundred eighty (180) days immediately following the expiration of the Option, or, if earlier, until the property is sold. In order to continuously market the property for sale to the public as described in this subsection, the selling owner must either (i) enter into and maintain a valid listing agreement for the sale of the property with a licensed real estate agent who practices regularly in Eagle County, Colorado, or (ii) advertise the property no less frequently than three times weekly in the real estate advertising section of one or more local Eagle County, Colorado, newspapers of general circulation. IF AT ANY TIME THE SELLING OWNER SHALL FAIL TO CONTINUOUSLY MARKET THE PROPERTY FOR SALE AS REQUIRED IN THIS SUBSECTION, THE SELLING OWNER MAY NOT THEREAFTER MARKET THE PROPERTY FOR SALE PURSUANT TO THIS SECTION UNLESS AND UNTIL HE OR SHE OFFERS THE OPTION TO PURCHASE THE PROPERTY AGAIN TO GINN OR ITS DESIGNEE AS PROVIDED ABOVE. IF GINN OR ITS DESIGNEE AGAIN DECLINES TO EXERCISE THE OPTION, THEN THE SELLING OWNER MUST COMPLY WITH ALL REQUIREMENTS OF THIS SECTION FOR CONTINUOUSLY MARKETING THE PROPERTY TO THE PUBLIC.
 - ii. Sale to Qualified Occupants. The selling owner may only enter into a contract for sale of the property, at no more than the Maximum Sales Price, to a person who can prove that he or she is a Qualified Occupant.
- c. Ginn May Bring Buyers. Ginn or its designee may, at any time after expiration of its Option, bring a potential purchaser to the attention of the selling owner, and, so long as the property is not then under contract to another purchaser, the selling owner shall negotiate with such potential purchaser in good faith for the sale of the property.
- d. Final Option to Ginn. If the property has not sold during the one hundred eighty (180) day time period after expiration of the Option, then at any time thereafter (so long as the owner continuously markets the Property for sale up to the date of notice) the selling owner may give notice of a final option to purchase the property (the "**Final Option**") to Ginn or its designee, at an option price equal to the Maximum Sales Price. Ginn or its designee may exercise the Final Option, if at all, by giving notice of exercise of the Final Option to the selling owner within thirty (30) days after the date the selling

Owner gives notice of the Final Option (the "***Final Option Exercise Date***"), and subject to the terms and conditions of the Option described above. In addition to the provisions above, the Final Option shall be subject to the following terms and conditions:

- i. If Ginn or its designee shall believe that the fair market value of the property is less than the Maximum Sales Price, then Ginn or its designee may exercise the Final Option by giving notice to the selling Owner of such fact on or before the Final Option Exercise Date, accompanied by the written report (at no cost to the selling owner) of a licensed appraiser who practices in Eagle County, Colorado, of the fair market value of the property. In such event, the selling owner shall sell the property to Ginn or its designee at the fair market value established by the appraiser unless sale of the property at the fair market value established by the appraiser would require the selling owner to contribute cash to the transaction to satisfy debt secured by a bona fide first priority lien against the property and costs of the sale and within ten (10) days after receipt of such notice from Ginn or its designee, the selling owner withdraws and terminates the Final Option by written notice to Ginn or its designee.
 - ii. If Ginn or its designee fail to exercise the Final Option as provided in this subsection, then the selling owner may market and sell the property to a purchaser who is not a Qualified Occupant, provided however that such purchaser shall be bound by the requirements of this Covenant.
4. The owner of the property may rent the property for a period not less than ninety (90) days so long as (1) the owner continues to occupy the property as his or her sole, exclusive and permanent place of residence, (2) each occupant under the lease is a Qualified Occupant, and (3) the lease expressly provides that the occupant under the lease shall have no right to possession of the property in the event of a sale of the property.
5. No owner of the property (other than Ginn) shall sell the Property for an amount greater than the Maximum Sales Price for the property, which "Maximum Sales Price" shall be calculated as follows:
 - a. Start with the purchase price paid for the property by the selling owner upon such owner's acquisition of the Property (the "***Prior Purchase Price***"), which Prior Purchase Price may include all reasonable and customary expenses of the purchase incurred at the time of purchase by the selling owner as evidenced by a title company settlement sheet (including, but not limited to, title insurance premiums, transfer assessments or real estate commissions, but specifically excluding any costs of financing);

b. For each year from the date that the selling owner acquired the property until the date of closing of the transfer of the property, multiply the Prior Purchase Price and any increases thereto as a result of the application of this subsection for prior years (in order to effect a compounding of the increase in the Prior Purchase Price) by three percent (3%). Any such increase shall be prorated for any partial years;

c. For each such year add the product of the multiplication described in subsection b. above to the Prior Purchase Price; and

d. Add the cost of any Permitted Capital Improvements (hereinafter defined) made by the selling owner during the time that the selling owner held title to the property; provided, however, that in no event shall said amount for Permitted Capital Improvements exceed ten percent (10%) of the Prior Purchase Price for each 10-year period (or fraction thereof, it being understood that such percentage is not to be prorated for the actual length of the owner's ownership of the Property) of the selling owner's ownership of the property. The term "***Permitted Capital Improvements***" shall only include those items of improvement to the Property that are defined from time to time as Permitted Capital Improvements by Ginn or its designee. When determining the items of improvements to the property that are Permitted Capital Improvements, Ginn or its designee shall only include (A) improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement and/or maintenance improvements; (B) improvements for energy and water conservation; (C) improvements for health and safety protection devices; (D) improvements to add and/or finish permanent/finished storage space; (E) replacement, repair and maintenance of a home or its appliances, plumbing and mechanical fixtures, paint or stain, carpets or other flooring materials, and other similar items included as part of the original construction of the Property, but only to the extent that the cost of replacement, repair or maintenance of any single item is \$1,000.00 or more; provided, however, that replacement of items shall be permitted only following expiration of their useful life and so long as such replacements are of similar kind and quality as the item they replace when the replaced item was new; and provided further, however, the owner shall only be entitled to include within the Maximum Sales Price of the property one-half (1/2) of the total cost of any Permitted Capital Improvement described in this clause E; and (F) improvements to finish unfinished space. When determining the items of improvements to the property that are Permitted Capital Improvements, Ginn or its designee shall not include: (W) upgrades to and additions of appliances, plumbing and mechanical fixtures, paint or stain, carpets or other flooring materials, and other similar items included as part of the original construction of the Property; (X) patios, decks and balconies, and any extension thereto; (Y) jacuzzis, saunas, steam showers and other similar items; and (Z) upgrades or addition of decorative items, including lights, window coverings and other similar items. Upon the request of an owner, Ginn or its designee shall certify in writing whether an expense will be allowed as a cost of a Permitted Capital Improvement, and no expense shall be allowed as a

Permitted Capital Improvement hereunder unless same has been approved by Ginn or its designee. In order to verify the cost of a Permitted Capital Improvement, an owner shall provide to Ginn or its designee original or duplicate receipts evidencing the actual costs thereof and a copy of any building permit or certificate of occupancy required for the improvements, if any, along with the owner's affidavit verifying that the receipts are valid and correct receipts tendered at the time of payment.

THE MAXIMUM SALES PRICE REPRESENTS ONLY THE HIGHEST PRICE THAT A SELLING OWNER MAY OBTAIN UPON SALE OF THE PROPERTY SUBJECT TO THIS COVENANT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE THAT UPON TRANSFER OF THE PROPERTY THE SELLING OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE.

IN ADDITION, NOTHING CONTAINED IN THIS COVENANT SHALL BE DEEMED TO PREVENT A SELLING OWNER AND ANY PURCHASER FROM ENTERING INTO AN AGREEMENT TO PURCHASE AND SELL THE PROPERTY AT ANY PRICE, NOT IN EXCESS OF THE MAXIMUM SALES PRICE, TO WHICH SUCH PARTIES AGREE.