


<b>UNITED STATES BANKRUPTCY COURT</b> Central District of California		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>James C. Gianullias</b>		Case Number: <b>8:08-13150 RK</b>
<i>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</i>		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Wachovia Bank, National Association</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ <i>(if known)</i>  Filed on: _____
Name and address where notices should be sent: <b>Marsha Houston, Esq. Reed Smith LLP 365 South Grand Avenue, Suite 2800 Los Angeles, CA 90071 Telephone number: 213-457-8067</b>		
Name and address where payment should be sent (if different from above): <b>Michael R. Travis, Director Homebuilder Banking Group Wachovia Bank, CA 0847 4 Embarcadero Center 9th Floor San Francisco, CA 94111 Telephone number: 415-490-1204; 415-490-1156 (fax); 925-963-2977 (cell); michael.travis@wachovia.com (email)</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>3,135,577.40</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. <b>See Attached</b>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)( ): _____  Amount entitled to priority: \$ _____
2. Basis for Claim: <u>Money loaned -- Line of Credit</u> (See instruction #2 on reverse side.)  3. Last four digits of any number by which creditor identifies debtor: _____  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____  Value of Property: \$ _____ Annual Interest Rate: _____ %  Amount of arrearage and other charges as of time case filed included in secured claim: If any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: _____		
Date: <u>11/6/08</u>  Michael R. Travis, Director, Homebuilder Bank Group, Wachovia Bank		<b>FOR COURT USE ONLY</b>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**Attachment to Proof of Claim of Wachovia Bank, National Association**

United States Bankruptcy Court, Central District of California

Debtors: James C. Gianulias Case No. 08-13150-RK

Cameo Homes Case No. 08-13151-RK

Creditor: Wachovia Bank, National Association ("Wachovia")

Wachovia's claim is evidenced by the following documents:

1. Loan Agreement dated April 30, 2007, as amended from time to time made by and between James C. Gianulias, Cameo Homes and James Chris Gianulias Trust (individually and collectively, "Borrowers") and Wachovia a copy of which is attached hereto as Exhibit A;

2. That certain Promissory Note ("Note") dated April 30, 2007 in the principal amount of \$3,000,000 executed by Borrower and made payable to Wachovia a copy of which is attached hereto as Exhibit B;

3. Any and all other documents or instruments evidencing, governing or securing the Note ("Loan Documents");

4. As of June 6, 2008, involuntary Chapter 7 petitions were filed by three petitioning creditors against James C. Gianulias and Cameo Homes. On July 1, 2008, James C. Gianulias and Cameo Homes each filed a consent to entry of an order for relief and election to convert Chapter 7 case to case under Chapter 11 of the Bankruptcy Code. On July 2, 2008, this Court entered an order for relief and converted the cases to cases under Chapter 11;

5. As of June 6, 2008, the Petition Date, Borrowers, collectively and individually, are liable to Wachovia as follows:

Principal	\$2,999,979.17
Accrued Interest at Non-Default Rate (from 12-1-2007 to 4-11-2008)	\$75,958.26
Accrued Interest at Default Rate (4-11-2008 through June 6, 2008, and interest continues to accrue at \$666.66 per day at the default rate as of the date hereof)	\$26,062.48
Legal fees and costs through June 6, 2008	\$28,476.73
Late Fees	\$5,101.04
Total:	\$3,135,577.40

6. Nothing contained in this Proof of Claim shall alter or impair the rights of Wachovia available under the Loan Documents.;

7. Wachovia reserves the right to amend and/or supplement this Proof of Claim, and to assert any and all other claims of whatever kind or nature that it has, or it may have, against Borrowers after the filing of this Proof of Claim. The filing of this Proof of Claim shall not be deemed a waiver of any such claims.

# EXHIBIT A

## LOAN AGREEMENT

Wachovia Bank, National Association  
Los Angeles, California 90001  
(Hereinafter referred to as the "Bank")

James C. Gianullias  
1105 Quail Street  
Newport Beach, California 92660

Cameo Homes  
1105 Quail Street  
Newport Beach, California 92660

James Chris Gianullias 1998 Trust  
1105 Quail Street  
Newport Beach, California 92660  
(Individually and collectively, "Borrower")

This Loan Agreement ("Agreement") is entered into April 30, 2007, by and between Bank and Borrower.

This Agreement applies to the loan or loans (individually and collectively, the "Loan") evidenced by one or more promissory notes of even date herewith or other notes subject hereto, as modified from time to time (whether one or more, the "Note") and all Loan Documents. The terms "Loan Documents" and "Obligations," as used in this Agreement, are defined in the Note.

**ADVANCE REQUIREMENT:** Each advance under this note shall be in an amount not less than \$500,000.00 and each advance term shall be determined at Bank's sole discretion. Borrower shall submit transaction information for the use of each advance to Bank for Bank's review and approval and the taking of additional collateral, as may be deemed appropriate by the Bank. Information submitted shall be in the form and content acceptable to Bank, in its sole discretion, including, but not limited to the following:

- (i) detailed description for the use of funds;
- (ii) detailed description of the sources and timing of repayment of the funds;
- (iii) if real property is to be acquired:
  - a. property description (address, square footage, year built and broker's marketing package); and
  - b. transaction description (purchase agreement, escrow instructions, schedules of leases or pro-forma lease for tenant), and tenant profile, if available, including balance sheet and income statement, and capital budget, including rehabilitation costs, if any and pro-forma stabilized income.
- (iv) if land is to be required:
  - a. copy of tentative map, or final map, if available with all back-up information
  - b. land development costs, fees and permit costs
  - c. construction budget for the proposed project
  - d. lease up analysis or absorption analysis

A funding fee of \$2,500 be assessed at the time each advance is funded under this facility.

Relying upon the covenants, agreements, representations and warranties contained in this Agreement, Bank is willing to extend credit to Borrower upon the terms and subject to the conditions set forth herein, and Bank and Borrower agree as follows:

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**REPRESENTATIONS.** Borrower represents that from the date of this Agreement and until final payment in full of the Obligations: **Accurate Information.** All information now and hereafter furnished to Bank is and will be true, correct and complete in all material respects. Any such information relating to Borrower's financial condition will accurately reflect Borrower's financial condition as of the date(s) thereof, (including all contingent liabilities of every type), and Borrower further represents that its financial condition has not changed materially or adversely since the date(s) of such documents. **Authorization; Non-Contravention.** The execution, delivery and performance by Borrower and any guarantor, as applicable, of this Agreement and other Loan Documents to which it is a party are within its power, have been duly authorized as may be required and, if necessary, by making appropriate filings with any governmental agency or unit and are the legal, binding, valid and enforceable obligations of Borrower and any guarantors; and do not (i) contravene, or constitute (with or without the giving of notice or lapse of time or both) a violation of any provision of applicable law, a violation of the organizational documents of Borrower or any guarantor, or a default under any agreement, judgment, injunction, order, decree or other instrument binding upon or affecting Borrower or any guarantor, (ii) result in the creation or imposition of any lien (other than the lien(s) created by the Loan Documents) on any of Borrower's or any guarantor's assets, or (iii) give cause for the acceleration of any obligations of Borrower or any guarantor to any other creditor. **Asset Ownership.** Borrower has good and marketable title to all of the properties and assets reflected on the balance sheets and financial statements supplied Bank by Borrower, and all such properties and assets are free and clear of mortgages, security deeds, pledges, liens, charges, and all other encumbrances, except as otherwise disclosed to Bank by Borrower in writing and approved by Bank ("Permitted Liens"). To Borrower's knowledge, no default has occurred under any Permitted Liens and no claims or interests adverse to Borrower's present rights in its properties and assets have arisen. **Discharge of Liens and Taxes.** Borrower has duly filed, paid and/or discharged all taxes or other claims that may become a lien on any of its property or assets, except to the extent that such items are being appropriately contested in good faith and an adequate reserve for the payment thereof is being maintained. **Sufficiency of Capital.** Borrower is not, and after consummation of this Agreement and after giving effect to all indebtedness incurred and liens created by Borrower in connection with the Note and any other Loan Documents, will not be, insolvent within the meaning of 11 U.S.C. § 101, as in effect from time to time. **Compliance with Laws.** Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all material respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country to the extent subject to a sanctions program administered by OFAC. **Organization and Authority.** Each corporation, partnership or limited liability company Borrower and/or guarantor, as applicable, is duly created, validly existing and in good standing under the laws of the state of its organization, and has all powers, governmental licenses, authorizations, consents and approvals required to operate its business as now conducted. Each corporation, partnership or limited liability company Borrower and/or guarantor, as applicable, is duly qualified, licensed and in good standing in each jurisdiction where qualification or licensing is required by the nature of its business or the character and location of its property, business or customers, and in which the failure to so qualify or be licensed, as the case may be, in the aggregate, could have a material adverse effect on the business, financial position, results of operations, properties

or prospects of Borrower or any such guarantor. **No Litigation.** There are no pending or threatened suits, claims or demands against Borrower or any guarantor that have not been disclosed to Bank by Borrower in writing, and approved by Bank. **Indemnity.** Borrower will indemnify Bank and its affiliates from and against any losses, liabilities, claims, damages, penalties or fines imposed upon, asserted or assessed against or incurred by Bank arising out of the inaccuracy or breach of any of the representations contained in this Agreement or any other Loan Documents.

**AFFIRMATIVE COVENANTS.** Borrower agrees that from the date hereof and until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, Borrower will: **Access to Books and Records.** Allow Bank, or its agents, during normal business hours, access to the books, records and such other documents of Borrower as Bank shall reasonably require, and allow Bank, at Borrower's expense, to inspect, audit and examine the same and to make extracts therefrom and to make copies thereof. **Business Continuity.** Conduct its business in substantially the same manner and locations as such business is now and has previously been conducted. **Compliance with Other Agreements.** Comply with all terms and conditions contained in this Agreement, and any other Loan Documents, and swap agreements, if applicable, as defined in 11 U.S.C. § 101, as in effect from time to time. **Estoppel Certificate.** Furnish, within 15 days after request by Bank, a written statement duly acknowledged of the amount due under the Loan and whether offsets or defenses exist against the Obligations. **Insurance.** Maintain adequate insurance coverage with respect to its properties and business against loss or damage of the kinds and in the amounts customarily insured against by companies of established reputation engaged in the same or similar businesses including, without limitation, commercial general liability insurance, workers compensation insurance, and business interruption insurance; all acquired in such amounts and from such companies as Bank may reasonably require. **Maintain Properties.** Maintain, preserve and keep its property in good repair, working order and condition, making all replacements, additions and improvements thereto necessary for the proper conduct of its business, unless prohibited by the Loan Documents. **Notice of Default and Other Notices.** (a) **Notice of Default.** Furnish to Bank immediately upon becoming aware of the existence of any condition or event which constitutes a Default (as defined in the Loan Documents) or any event which, upon the giving of notice or lapse of time or both, may become a Default, written notice specifying the nature and period of existence thereof and the action which Borrower is taking or proposes to take with respect thereto. (b) **Other Notices.** Promptly notify Bank in writing of (i) any material adverse change in its financial condition or its business; (ii) any default under any material agreement, contract or other instrument to which it is a party or by which any of its properties are bound, or any acceleration of the maturity of any indebtedness owing by Borrower; (iii) any material adverse claim against or affecting Borrower or any part of its properties; (iv) the commencement of, and any material determination in, any litigation with any third party or any proceeding before any governmental agency or unit affecting Borrower; and (v) at least 30 days prior thereto, any change in Borrower's name or address as shown above, and/or any change in Borrower's structure. **Other Financial Information.** Deliver promptly such other information regarding the operation, business affairs, and financial condition of Borrower which Bank may reasonably request. **Payment of Debts.** Pay and discharge when due, and before subject to penalty or further charge, and otherwise satisfy before maturity or delinquency, all obligations, debts, taxes, and liabilities of whatever nature or amount, except those which Borrower in good faith disputes. **Reports and Proxies.** Deliver to Bank, promptly, a copy of all financial statements, reports, notices, and proxy statements, sent by Borrower to stockholders, and all regular or periodic reports required to be filed by Borrower with any governmental agency or authority.

**NEGATIVE COVENANTS.** Borrower agrees that from the date hereof and until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, Borrower will not: **Encumbrances.** Create, assume, or permit to exist any mortgage, security deed, deed of trust, pledge, lien, charge or other encumbrance on any of its assets, whether now owned or hereafter acquired, other than: (i) security interests required by the Loan Documents; (ii) liens for taxes contested in good faith; or (iii) Permitted Liens. **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Borrower or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary

judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock. **Change of Control.** Borrowers must have specific written consent from the Bank prior to the sale or transfer of ownership (in part or in whole), liquidation, or further encumbrance of real property held by the Borrowers commonly known as Palm Island Senior Community of Fountain Valley California, and, Benton Park Village/River Knolls of Redding California. **Housing Capital Lending.** Borrowers to maintain no more than \$2,000,000 in unsecured lending from Housing Capital which is related to a affiliate entity that does not maintain the same Borrowers or Guarantors that the Bank maintains on these subject facilities.

**SEMI-ANNUAL REPORTS.** Borrowers to report and/or certify the following on a semi-annual basis within 45 days of each reporting period:

- a. Report any additional secured debt borrowings entered into after June 30, 2002. Stipulation that the aggregate amount of unsecured borrowing (excluding the Bank) is not more than \$500,000.00
- b. Bank or Brokerage statement(s) to document liquidity outside the Bank.
- c. Certification that the debt coverage ratio for the investment properties on a combined basis is 1.30:1 or greater to be defined as Gross Revenue less Operating Expenses / Debt Service.
- d. Borrowers to provide a compliance certificate from the Chief Financial Officer, including all supporting material, within 45 days of each semi-annual reporting period.

**SALES REPORT.** Borrowers to provide a sales report for the single-family operations semi annually. Said report to provide a description of the real estate asset held by entity, showing location and project status. Project status to be as of each quarter end and detailing the land holdings as follows: raw land, mapped unfinished lots, and finish lots fees paid or finished lots fees unpaid. For homes under construction, provide number of homes under construction and if possible, list homes as; sold, unsold, standing unsold, and, completed models.

**PERIODIC FINANCIAL STATEMENTS.** Borrower shall deliver to Bank, within 45 days after the end of each interim fiscal half-year, unaudited management-prepared semi-annual financial statements including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules; all in reasonable detail and prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. Such statements shall be certified as to their correctness by a principal financial officer of Borrower and in each case, if audited statements are required, subject to audit and year-end adjustments.

**TAX RETURNS.** Borrower shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.


**FINANCIAL COVENANTS.** Borrower agrees to the following provisions from the date hereof until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, using the financial information for Borrower, its subsidiaries, affiliates and its holding or parent company, as applicable: **Deposit Relationship.** Borrower shall maintain its primary depository account with Bank. **Limitation on Debt.** Borrower shall not, directly or indirectly, create, incur, assume or become liable for any additional indebtedness, whether contingent or direct, if, giving effect to such additional debt on a pro forma basis causes the aggregate amount of Borrower's debt, including obligations to Bank, to exceed \$500,000.00, unsecured. **Liquidity Requirement.** Borrower shall, at all times, maintain unencumbered Liquid Assets of not less than \$2,000,000.00. "Liquid Assets" shall mean the sum of all cash, time deposits and marketable securities.

**CONDITIONS PRECEDENT.** The obligations of Bank to make the loan and any advances pursuant to this Agreement are subject to the following conditions precedent: **Additional Documents.** Receipt by Bank of such additional supporting documents as Bank or its counsel may reasonably request.




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IN WITNESS WHEREOF, Borrower and Bank, on the day and year first written above, have caused this Agreement to be duly executed under seal.

 (SEAL)  
James C. Gianullias


Cameo Homes

By:  (SEAL)  
James C. Gianullias, President

James Chris Gianullias 1998 Trust

By:  (SEAL)  
James C. Gianullias, Trustee

Wachovia Bank, National Association

By:  (SEAL)  
Anne McNeil, Vice President

Doc Tracking #: 239209 - rke  
CAT - Deal # 802586 Facility ID 603023

# EXHIBIT B

**PROMISSORY NOTE**

**\$3,000,000.00**

April 30, 2007

**James C. Glanulias**  
1105 Quail Street  
Newport Beach, California 92660

**Cameo Homes**  
1105 Quail Street  
Newport Beach, California 92660

**James Chris Glanullas 1998 Trust**  
1105 Quail Street  
Newport Beach, California 92660  
(Individually and collectively, "Borrower")

**Wachovia Bank, National Association**  
Los Angeles, California 90001  
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Three Million and No/100 Dollars (\$3,000,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

**RENEWAL/MODIFICATION.** This Promissory Note renews, extends and/or modifies that certain Promissory Note dated October 12, 2004 (the "Original Promissory Note"), evidencing an original principal amount of \$2,000,000.00. This Promissory Note is not a novation.

**LOAN AGREEMENT.** This Note is subject to the provisions of that certain Loan Agreement between Bank and Borrower dated October 12, 2004, as modified from time to time.

**LINE OF CREDIT.** Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

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**USE OF PROCEEDS.** Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: finance working capital needs.

**INTEREST RATE.** Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the Bank's Prime Rate plus 0.50%, as that rate may change from time to time in accordance with changes in the Bank's Prime Rate ("Interest Rate"). "Bank's Prime Rate" means that rate announced by Bank from time to time as its prime rate and is one of several interest rate bases used by Bank. Bank lends at rates both above and below Bank's Prime Rate, and Borrower acknowledges that Bank's Prime Rate is not represented or intended to be the lowest or most favorable rate of interest offered by Bank.

**DEFAULT RATE.** In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

**INTEREST AND FEE(S) COMPUTATION (ACTUAL/360).** Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

**REPAYMENT TERMS.** This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on May 1, 2007, and continuing on the first day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on April 10, 2009.

**APPLICATION OF PAYMENTS.** Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

**DEFINITIONS. Loan Documents.** The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

**LATE CHARGE.** If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 10 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

**ATTORNEYS' FEES AND OTHER COLLECTION COSTS.** Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

**USURY.** If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

**DEFAULT.** If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise. **Due On Sale Or Further Encumbrance Or Transfer Of An Interest In Owner of Property.** If this Note is secured by real property containing or on which will be constructed 4 or fewer residential units (the "Property"), without the prior written consent of Bank in each instance, (i) the sale, conveyance, transfer or encumbering of the Property, or any part thereof or interest therein, whether legal or equitable, (ii) causing or permitting any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) entering into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if the owner of the Property ("Owner") or any general partner or member of Owner, is a corporation, partnership, limited liability company, trust or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members,

managers, trustees, beneficiaries, or their respective interests; (d) if Owner, or any general partner or member of Owner, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Owner leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder, or a sale, assignment or other transfer of or the grant of a security interest in and to any leases.

**REMEDIES UPON DEFAULT.** If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

**FINANCIAL AND OTHER INFORMATION.** Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

**WAIVERS AND AMENDMENTS.** No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower. Each Borrower waives any rights and defenses that are or may become available to such Borrower by reason of Sections 2787 to 2855 inclusive, of the California Civil Code.

**MISCELLANEOUS PROVISIONS.** **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in


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accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the State of California. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.


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**ARBITRATION.** Upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any claim or controversy arising out of or relating to the Loan Documents between parties hereto (a "Dispute") shall be resolved by binding arbitration conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association (the "AAA") and the Federal Arbitration Act. Disputes may include, without limitation, tort claims, counterclaims, a dispute as to whether a matter is subject to arbitration, or claims arising from documents executed in the future, but shall specifically exclude claims brought as or converted to class actions. A judgment upon the award may be entered in any court having jurisdiction. Notwithstanding the foregoing, this arbitration provision does not apply to disputes under or related to swap agreements. **Special Rules.** All arbitration hearings shall be conducted in the city named in the address of Bank first stated above. A hearing shall begin within 90 days of demand for arbitration and all hearings shall conclude within 120 days of demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of 60 days. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000.00. Arbitrators shall be licensed attorneys selected from the Commercial Financial Dispute Arbitration Panel of the AAA. The parties do not waive applicable Federal or state substantive law except as provided herein. **Preservation and Limitation of Remedies.** Notwithstanding the preceding binding arbitration provisions, the parties agree to preserve, without diminution, certain remedies that any party may exercise before or after an arbitration proceeding is brought. The parties shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale or under applicable law by judicial foreclosure including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to any party's entitlement to such remedies is a Dispute. **Waiver of Jury Trial.** THE PARTIES ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION THEY HAVE IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO JURY TRIAL WITH REGARD TO A DISPUTE AS TO WHICH BINDING ARBITRATION HAS BEEN DEMANDED.

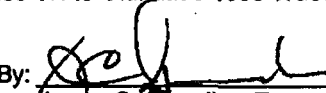
IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

 (SEAL)  
James C. Gianullias

Cameo Homes

By:  (SEAL)  
James C. Gianullias, President

James Chris Gianullias 1998 Trust

By:  (SEAL)  
James C. Gianullias, Trustee



**CERTIFICATE OF SERVICE**

In re JAMES C. GIANULIAS  
Case No. 8:08-13150 RK

I hereby certify that on November 11, 2008 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

**PROOF OF CLAIM**

**No CM/ECF Recipients**

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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I declare under penalty of perjury under the laws of the State of California and the United States that the above is true and correct. Executed on November 11, 2008 at Los Angeles, California.

/s/  
Donna Martin  
dmartin@reedsmith.com

# Central District Of California Claims Register

**8:08-bk-13150-RK James C Gianulias** CASE CONVERTED on 07/02/2008

**Judge:** Robert N. Kwan


**Chapter:** 11

**Office:** Santa Ana

**Last Date to file claims:** 11/12/2008

**Trustee:**

**Last Date to file (Govt):**

<i>Creditor:</i> (20513642) Wachovia Bank NA attn: Marsha Houston 355 S Grand #2900 Los Angeles CA 90071	<b>Claim No: 29</b> <i>Filed:</i> 11/11/2008 <i>Entered:</i> 11/11/2008	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Rivas, Christopher <i>Modified:</i>
Unsecured claimed: \$3135577.40 <b>Total      claimed: \$3135577.40</b>		
<i>History:</i>  <a href="#">29-1</a> 11/11/2008 Claim #29 filed by Wachovia Bank NA , total amount claimed: \$3135577.4 (Rivas, Christopher)		
<i>Description:</i>		
<i>Remarks:</i>		

## Claims Register Summary