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12  
13 **UNITED STATES BANKRUPTCY COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **SANTA ANA DIVISION**

16 In re )  
17 )  
18 JAMES C. GIANULIAS, and CAMEO )  
HOMES, a California corporation, )  
19 )  
20 Debtors and Debtors-in-Possession. )

Case No. SA 08-13150-RK  
[Substantively Consolidated With:  
Case No. 8:08-bk-13151-RK]

Chapter 11

**DEBTORS' THIRD AMENDED PLAN OF  
REORGANIZATION (DATED MAY 12,  
2010)**

**Confirmation Hearing:**

Date: \_\_\_\_\_, 2010

Time: \_\_\_\_\_m.

Place: Courtroom 5D

411 West Fourth Street  
Santa Ana, CA 92701

1                                   **DEBTORS' THIRD AMENDED PLAN OF REORGANIZATION**

2                   Pursuant to section 1121(a) of the Bankruptcy Code, James C. Gianulias and Cameo  
3 Homes, the debtors and debtors-in-possession in these substantively-consolidated cases (the  
4 “Debtors”), hereby propose this Plan of Reorganization.

5   **ARTICLE I**

6   **INTRODUCTION**

7                   The purpose of this Plan is to provide the details of the Debtors’ proposed reorganization  
8 and proposed distributions of money or property to their respective creditors. The Plan  
9 incorporates the terms of an agreement reached between the Debtors and the Official Committee  
10 of Unsecured Creditors (the “Committee”) following extensive negotiations among the parties  
11 and, as a result, the Plan is supported by the Committee. After the Plan has been confirmed, the  
12 Bankruptcy Court will retain jurisdiction to determine the allowance of all Claims and to  
13 effectuate and enforce the terms of this Plan. The definitions provided in Article II of the Plan  
14 apply throughout the Plan, including those capitalized terms used in the Plan.

15   **ARTICLE II**

16   **DEFINITIONS AND RULES OF CONSTRUCTION**

17 **A.     Specific Definitions**

18                   In addition to such other terms as are defined in other sections hereof, the following  
19 capitalized terms shall have the following meanings:

- 20                   1.       **“Additional Collateral”** means [to be determined].
- 21                   2.       **“Adjusted Income Taxes”** means an amount equal to income taxes liability of a  
22 Debtor, less the amount of any tax refunds which it is determined such Debtor would be entitled to  
23 based on the computation required under this definition, solely in connection with such Debtor’s  
24 obligations under the Cash Flow Note and such Debtor’s Ownership Interest, and shall be  
25 computed as if such Debtor’s only income, gain, loss and deduction items were those items  
26 directly arising out of the obligations under the Cash Flow Note and such Debtor’s direct and  
27 indirect ownership in the Portfolio Entities and the Intermediate Entities. Such income tax  
28 analysis computation (1) shall be made for each Debtor on an annual basis, (2) shall, to the fullest

1 extent permitted by law, (A) apply all applicable original issue discount deductions with respect to  
2 the Cash Flow Note in determining applicable net operating losses and notional tax liability as  
3 contemplated herein, and (B) all net operating losses available to such Debtor with respect to the  
4 Portfolio Entities and/or the Intermediate Entities against all income and gain arising from each  
5 Debtor's Ownership Interest, (3) shall be based on the application of normal tax accounting rules  
6 and (4) may not reflect the actual tax liability and tax attributes of such Debtor in any given year;  
7 provided, however, that, for purposes of this calculation, the application of any net operating  
8 losses available to Debtors as contemplated herein plus the amount of tax refunds shall not result  
9 in "double counting" associated with the same tax benefits, as applicable. Without limiting the  
10 generality of the foregoing, all income taxes due in connection with any management fees  
11 received by Mesa Management shall be excluded from the determination of Adjusted Income  
12 Taxes hereunder.

13         3.         "**Administrative Claim**" means any right to payment constituting a cost or expense  
14 of administration of the Cases of a kind specified under section 503(b) of the Bankruptcy Code  
15 and entitled to priority under section 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code,  
16 including, without limitation, any actual and necessary costs and expenses of preserving the  
17 Debtors' estates, any actual and necessary costs and expenses of operating the Debtors' business,  
18 any indebtedness or obligations incurred or assumed by the Debtors in connection with the  
19 conduct of their business, including, without limitation, for the acquisition or lease of property or  
20 an interest in property or the rendition of services, all compensation and reimbursement of  
21 expenses to the extent awarded by the Court under sections 330, 331 or 503 of the Bankruptcy  
22 Code, any fees or charges assessed against the Debtors' estates under section 1930 of chapter 123  
23 of title 28 of the United States Code and any Claim for goods delivered to the Debtors within  
24 twenty (20) days of the Petition Date and entitled to administrative priority pursuant to section  
25 503(b)(9) of the Bankruptcy Code.

26         4.         "**Affiliate**" means, with respect to any Person, (a) any other Person which, directly  
27 or indirectly, controls or is controlled by or is under common control with such Person, (b) any  
28 Subsidiary of such Person, as applicable, and (c) any officer or director or such Person or

1 Subsidiary. A Person shall be deemed to be “controlled by” any other Person if such Person  
2 possesses, directly or indirectly, power to vote 50% or more of the securities (on a fully diluted  
3 basis) having ordinary voting power for the election of directors or managers or power to direct or  
4 cause the direction of the management and policies of such Person whether by contract or  
5 otherwise; provided, however, that for purposes hereof, “Affiliate” shall exclude the Portfolio  
6 Entities and the Intermediate Entities.

7 5. “*Allowed Administrative Claim*” means all or that portion of an Administrative  
8 Claim which is an Allowed Claim.

9 6. “*Allowed Gap Claim*” means all or that portion of a Gap Claim which is an  
10 Allowed Claim.

11 7. “*Allowed Priority Claim*” means all or that portion of a Priority Claim which is an  
12 Allowed Claim.

13 8. “*Allowed Priority Tax Claim*” means all or that portion of a Priority Tax Claim  
14 which is an Allowed Claim.

15 9. “*Allowed Secured Claim*” means all or that portion of a Secured Claim which is an  
16 Allowed Claim.

17 10. “*Allowed General Unsecured Claim*” means all or that portion of a General  
18 Unsecured Claim which is an Allowed Claim.

19 11. “*Allowed*” means, with reference to any Claim, (a) any Claim against any of the  
20 Debtors that has been listed by the Debtors in the Schedules, as such Schedules may be amended  
21 by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in  
22 amount and not disputed or contingent, and with respect to which no contrary proof of claim has  
23 been filed, (b) any Claim specifically allowed under the Plan, (c) any Claim that is not a Disputed  
24 Claim by the Claims Objection Deadline or (d) any Claim, the amount or existence of which, if it  
25 is a Disputed Claim, (i) has been determined by a Final Order of a court of competent jurisdiction  
26 other than the Court, or (ii) has been allowed by Final Order of the Court; provided, however, that  
27 any Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an  
28 order of the Court shall not be considered “Allowed Claims” hereunder.

1           12.     ***“Available Cash Flow”*** means, subject to the terms and conditions of the Cash  
2 Flow Note, the amount of Gross Available Cash Flow less the following items (collectively,  
3 ***“Priority Payments”***) in such order of priority as set forth in the Plan: (a) the following payments  
4 to Marilyn Gianulias Robbins, an individual (***“Robbins”***), on account of, and in full satisfaction of  
5 her secured claim with respect to Debtors: (1) \$1,000,000 in the first year following the Effective  
6 Date (83,333.33 per month), (2) \$1,200,000 in the second year following the Effective Date  
7 (\$100,000 per month), (3) \$1,200,000 in the third year following the Effective Date (\$100,000 per  
8 month), (4) \$1,200,000 in the fourth year following the Effective Date (\$100,000 per month), and  
9 (5) \$1,251,481 in the fifth year following the Effective Date, representing the remaining balance  
10 owing to Robbins in connection with her claim in the Cases (\$104,290.08 per month); (b) the  
11 payment of \$1,800,000 per year in each of the first and second year following the Effective Date  
12 to Debtors (\$150,000 per month); (c) payment of all Allowed Administrative Claims, Allowed  
13 Gap Claims, Allowed Priority Claims, and Allowed Priority Tax Claims incurred in the Cases; and  
14 (d) the payment of all Adjusted Income Taxes, subject to the terms and conditions as set forth in  
15 Section 5(b) of the Cash Flow Note.

16           13.     ***“Ballot”*** means each of the ballot forms distributed with the Disclosure Statement  
17 to each holder of an impaired Claim (other than to holders not entitled to vote on the Plan) upon  
18 which is to be indicated, among other things, acceptance or rejection of the Plan.

19           14.     ***“Bankruptcy Code”*** means title 11 of the United States Code, 11 U.S.C. §§ 101 *et*  
20 *seq.*, as in effect on the date hereof.

21           15.     ***“Bankruptcy Court”*** means the United States Bankruptcy Court for the Central  
22 District of California, Santa Ana Division.

23           16.     ***“Bankruptcy Rules”*** means the Federal Rules of Bankruptcy Procedure as  
24 promulgated by the United States Supreme Court under section 2075 of title 28 of the United  
25 States Code, and local rules of the Court, as the context may require.

26           17.     ***“Books”*** means all of each Grantor’s books and records (regardless of format) for  
27 the Portfolio Entities, the Intermediate Entities and books and records concerning the Ownership  
28 Interests and/or the Collateral, including, but not limited to the following: (a) minute books,

1 ledgers, records indicating, summarizing or evidencing each Portfolio Entity's and Intermediate  
2 Entity's assets, liabilities, the Ownership Interests, the Collateral, the Obligations, and all  
3 information relating thereto; (b) records indicating, summarizing or evidencing each Portfolio  
4 Entity's and Intermediate Entity's business operations or financial condition and Ownership  
5 Interests in connection therewith.

6 18. "**Business Day**" means any day other than a Saturday, a Sunday or a "legal  
7 holiday" (as defined in Bankruptcy Rule 9006(a)), or other day on which banks in the State of  
8 California are authorized or required to close.

9 19. "**Cameo**" means Cameo Homes, a California corporation, and includes any  
10 successors and assigns thereof; provided, however, that, by way of clarification solely with respect  
11 to any such successors and assigns, the following Persons are expressly excluded as successors  
12 and assigns for purposes of this definition: any Person who (A) is an Other Owner or (B) acquires  
13 any Ownership Interest and is not an Affiliate of any Debtor; provided, however, nothing herein  
14 shall limit, affect or abridge the Holder's right to consent to the sale, transfer and/or assignment of  
15 any Ownership Interest pursuant to the provisions of Section 6(a)(2) of the Security Agreement or  
16 any remedies that Holder may have under the Security Agreement for any breach of the provisions  
17 of Section 6(a)(2) of the Security Agreement.

18 20. "**Cases**" means the Debtors' pending cases under chapter 11 of the Bankruptcy  
19 Code.

20 21. "**Cash**" means lawful currency of the United States and equivalents thereof,  
21 including, but not limited to: bank deposits, wire transfers, checks, interests in marketable equity  
22 and marketable debt securities, interests in money market funds and similar liquid investment, and  
23 other similar items.

24 22. "**Cash Flow Note**" means the Secured Promissory Note in the original principal  
25 amount of \$42 million, bearing interest at a rate of 3.75% per annum, and maturing on December  
26 31, 2024, subject to the terms and conditions of the Plan Documents, such note to be issued by the  
27 Reorganized Debtors as of the Effective Date and made payable to the Creditors' Trust solely for  
28

1 the benefit of holders of Allowed General Unsecured Claims, a true and correct copy of which is  
2 attached hereto as Exhibit "C."

3 23. "**Chase**" means secured creditor JP Morgan Chase.

4 24. "**Claim**" or "**Claims**" as defined in the Bankruptcy Code, section 101(5)(A) and  
5 (B), means (a) any right to payment, whether or not such right is reduced to judgment, liquidated,  
6 unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable,  
7 secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such  
8 breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced  
9 to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

10 25. "**Claim Bar Date**" means November 11, 2008 with respect to all Claims, except  
11 for Claims of a Governmental Unit and Administrative Claims. With respect to Claims of a  
12 Governmental Unit, Claim Bar Date shall mean December 29, 2008. With respect to  
13 Administrative Claims, Claim Bar Date shall mean 30 days after the Effective Date.

14 26. "**Claim Objection Deadline**" means (a) 90 days after the Effective Date, unless  
15 extended by an order of the Court, or (b) 30 days after the deadline for filing an Administrative  
16 Claim, unless extended by an order of the Court.

17 27. "**Class**" means a group of Claims or Interests classified together in a class  
18 designated in Article III of the Plan.

19 28. "**Collateral**" means the following, individually and collectively with respect to  
20 Grantors: (a) all Proceeds, (b) any and all claims, deposits, prepayments, refunds, rebates, causes  
21 of action, rights of recovery, rights of set-off and rights of recoupment relating to any of the  
22 above-mentioned Proceeds (to the extent that such Proceeds constitute Gross Available Cash  
23 Flow), but only as permitted by the Governing Documents and the Security Documents, and by  
24 Applicable Law, (c) any and all substitutions, replacements, additions, accessions, products  
25 derived or attributable with respect to any of the above-mentioned Collateral set forth herein, and  
26 (d) "proceeds" (as defined in Section 9102(a)(62) of the UCC) from any and all of the foregoing;  
27 provided, however, that any Cash distributed from the Control Account pursuant to and in  
28 compliance with the terms and conditions of the Cash Flow Note and the other Security

1 Documents shall from and after the time of such release no longer constitute "Collateral" and shall  
2 not be subject to the security interest granted herein.

3 29. "**Committee**" means the Official Committee of Unsecured Creditors appointed by  
4 the Office of the United States Trustee in the Cases as it may be constituted from time to time.

5 30. "**Confirmation Date**" means the date of entry of the Confirmation Order.

6 31. "**Confirmation Hearing**" means the hearing to consider confirmation of the Plan  
7 pursuant to section 1128 of the Bankruptcy Code, as it may be adjourned or continued from time  
8 to time.

9 32. "**Confirmation Order**" means the order of the Court confirming the Plan pursuant  
10 to section 1129 of the Bankruptcy Code.

11 33. "**Consolidation Order**" means the "Order Substantively Consolidating Chapter 11  
12 Estate of Cameo Homes into Chapter 11 Estate of James C. Gianulias" entered by the Court on  
13 December 11, 2008.

14 34. "**Countrywide**" means secured creditor Countrywide Home Loans, Inc.

15 35. "**Control Assets**" means the following assets, in which the Debtors' own a  
16 controlling interest, and their respective successors or assigns: (a) Fountain Valley Senior  
17 Housing, L.P.; (b) Placentia 422, LP; (c) River Knolls, LP; and (d) GVSC, LP.

18 36. "**Control Assets Budgets**" mean the annual budgets for operations of each of the  
19 Control Assets to be established by agreement between the Debtors and the Committee as of the  
20 Confirmation Date.

21 37. "**Control Account**" means a deposit account for deposit of Proceeds received by  
22 the Debtors with a financial institution mutually acceptable to the Creditors' Trust, Robbins and  
23 Debtors pursuant to which a Control Agreement and the Disbursing Agent Agreement, relating to  
24 the ability of the Disbursing Agent and/or any other Person to make distributions of Proceeds from  
25 such Control Account, shall govern.

26 38. "**Control Agreement**" means the deposit account control agreement mutually  
27 acceptable to the Creditors' Trust, Robbins and Debtors concerning the Control Account.

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1 39. **“Creditor”** means any holder of a Claim, as defined by the Bankruptcy Code,  
2 section 101(10).

3 40. **“Creditors’ Trust Agreement”** means that certain “Creditors’ Trust Agreement,” a  
4 true and correct copy of which is attached hereto as Exhibit “A.”

5 41. **“Creditors’ Trust Trustee”** shall mean shall mean the Trustee of the Creditors’  
6 Trust consisting of one (1) individual that is selected by the Committee.

7 42. **“Creditors’ Trust”** means that trust established in accordance with section VII.F  
8 hereof, and which, after the Effective Date, will hold and distribute certain assets and funds for the  
9 benefit of holders of Allowed Claims in Class 3 in accordance with the terms of the Plan, and will  
10 have such powers, duties and obligations as are set forth therein, in the Creditors’ Trust  
11 Agreement, in the Confirmation Order, in other Final Orders, and by applicable law.

12 43. **“Creditors’ Trust Lien”** means the perfected security interest in the Collateral  
13 granted to the Creditors’ Trust to secure the Reorganized Debtors’ obligations under the Cash  
14 Flow Note, pursuant to the Plan Documents.

15 44. **“Debtors”** means, collectively, Gianulias and Cameo, whether as debtors or as  
16 debtors-in-possession, and includes any successors and assigns thereof; provided, however, that,  
17 by way of clarification solely with respect to any such successors and assigns, the following  
18 Persons are expressly excluded as successors and assigns for purposes of this definition: any  
19 Person who (A) is an Other Owner or (B) acquires any Ownership Interest and is not an Affiliate  
20 of any Debtor; provided, however, nothing herein shall limit, affect or abridge the Holder’s right  
21 to consent to the sale, transfer and/or assignment of any Ownership Interest pursuant to the  
22 provisions of Section 6(a)(2) of the Security Agreement or any remedies that Holder may have  
23 under the Security Agreement for any breach of the provisions of Section 6(a)(2) of the Security  
24 Agreement.

25 45. **“Disclosure Statement”** means the “Third Amended Disclosure Statement for  
26 Debtors’ Third Amended Plan of Reorganization (Dated May 12, 2010)” (and all exhibits and  
27 attachments thereto or referenced therein) that relates to the Plan and is approved pursuant to  
28

1 section 1125 of the Bankruptcy Code in an order entered by the Court, as such Disclosure  
2 Statement may be amended, modified or supplemented.

3 46. ***“Disbursing Agent”*** means mean the Grantor Disbursing Agent or an authorized  
4 successor not controlled by Grantors and appointed as provided in the Disbursing Agent  
5 Agreement.

6 47. ***“Disbursing Agent Agreement”*** means that certain Disbursing Agent Agreement, a  
7 true and correct copy of which is attached hereto as Exhibit “F.”

8 48. ***“Dispute Resolution Procedure”*** means the procedures set forth in the Plan  
9 Documents to address all determinations and conflicts and otherwise resolve any disputes arising  
10 between the Debtors and the Committee or the Reorganized Debtors and the Creditors’ Trust in  
11 connection with the Plan Documents and/or the terms or interpretation of the Plan Documents,  
12 including, without limitation, the determination of a default under the Plan Documents, and the  
13 resolution of any dispute concerning the Control Assets Budgets, established in accordance with  
14 the terms set forth in section VII.J of the Plan and/or the Plan Documents, but excluding any  
15 dispute regarding whether the Creditors’ Trust has been overpaid by the Disbursing Agent.

16 49. ***“Disputed Claim”*** means, with reference to any Claim, (a) any Claim, (i) proof of  
17 which was not timely or properly filed by the Claim Bar Date and that has been or hereafter is  
18 listed on the Schedules as unliquidated, disputed or contingent, or (ii) that is not listed in the  
19 Schedules; or (b) any Claim as to which the Debtors or any other party in interest has filed an  
20 objection or request for estimation on or before such limitation period fixed by the Plan, the  
21 Bankruptcy Code, the Bankruptcy Rules or the Court, except to the extent that such objection or  
22 request for estimation is withdrawn or determined by a Final Order in favor of the holder of such  
23 Claim.

24 50. ***“Disputed Claims Reserve”*** has the meaning set forth in section VII.F.11 hereof.

25 51. ***“Distribution Fund”*** means the proceeds to be collected by the Creditors’ Trust  
26 Trustee for distribution to Creditors in Class 3 pursuant to the Plan, including the proceeds of the  
27 Cash Flow Note and the Secondary Note.

28

1 52. **“Effective Date”** means the first Business Day following the date the Confirmation  
2 Order becomes a Final Order.

3 53. **“Entity”** means an individual, a corporation, a general partnership, a limited  
4 partnership, a limited liability company, a limited liability partnership, an association, a joint stock  
5 company, a joint venture, an estate, a trust, an unincorporated organization, a government or any  
6 subdivision thereof.

7 54. **“Estate”** means, with respect to any Debtor, the estate created by section 541(a) of  
8 the Bankruptcy Code upon the Petition Date.

9 55. **“Equity Interest”** means any (1) partnership interest, (2) membership interest, (3)  
10 shareholder interest or other ownership or equity interest, and/or (4) economic or other interest  
11 owned or held by Debtors in any Portfolio Entity or Intermediate Entity.

12 56. **“Final Claim Order”** means a Final Order regarding an objection to and/or  
13 allowance of a Claim.

14 57. **“Final Order”** means an order or judgment of the Court the operation or effect of  
15 which has not been stayed, and as to which the time to appeal or to seek reargument or rehearing  
16 has passed, and as to which no appeal, reargument, or petition for rehearing or certiorari has been  
17 taken or is pending.

18 58. **“Gap Claims”** means Claims arising between the Petition Date and the Order for  
19 Relief Date which are accorded priority in right of payment under section 507(a)(3) of the  
20 Bankruptcy Code.

21 59. **“General Unsecured Claims”** means those Claims included in Class 3 herein.

22 60. **“Gianulias”** means James C. Gianulias, an individual, and includes any heirs,  
23 successors and assigns thereof; provided, however, that, by way of clarification solely with respect  
24 to any such successors and assigns, the following Persons are expressly excluded as successors  
25 and assigns for purposes of this definition: any Person who (A) is an Other Owner or (B) acquires  
26 any Ownership Interest and is not an Affiliate of any Debtor; provided, however, nothing herein  
27 shall limit, affect or abridge the Holder’s right to consent to the sale, transfer and/or assignment of  
28 any Ownership Interest pursuant to the provisions of Section 6(a)(2) of the Security Agreement or

1 any remedies that Holder may have under the Security Agreement for any breach of the provisions  
2 of Section 6(a)(2) of the Security Agreement.

3 61. **"Gianulias Trust"** means The James Chris Gianulias Trust executed December 22,  
4 1998, and amended in its entirety October 14, 2003, and shall include all successors and assigns  
5 thereof; provided, however, that, by way of clarification solely with respect to any such successors  
6 and assigns, the following Persons are expressly excluded as successors and assigns for purposes  
7 of this definition: any Person who (A) is an Other Owner or (B) acquires any Ownership Interest  
8 and is not an Affiliate of any Debtor; provided, however, nothing herein shall limit, affect or  
9 abridge the Holder's right to consent to the sale, transfer and/or assignment of any Ownership  
10 Interest pursuant to the provisions of Section 6(a)(2) of the Security Agreement or any remedies  
11 that Holder may have under the Security Agreement for any breach of the provisions of Section  
12 6(a)(2) of the Security Agreement.

13 62. **"Governmental Unit"** has the meaning ascribed to such term in section 101(27) of  
14 the Bankruptcy Code.

15 63. **"Governing Documents"** means the certificate or articles of incorporation, by-  
16 laws, operating agreement, partnership agreement or other organizational or governing documents  
17 of any Portfolio Entity and/or Intermediate Entity.

18 64. **"Grantor"** means Gianulias, the Gianulias Trust, Cameo, and any Parent,  
19 Subsidiary, Affiliate, heir, successor and/or assign of any of the foregoing; providing, however,  
20 that, for purposes hereof, the term "Grantors" shall (a) only include any Affiliate, successor or  
21 assign that holds, directly or indirectly, from time to time, an Ownership Interest in and to the  
22 Portfolio Interest and to the Portfolio Entities and/or Intermediate Entities, and (b) expressly  
23 exclude the Portfolio Entities and the Intermediate Entities, and those successors and assigns  
24 expressly excluded from the definition of Debtor pursuant to Section 2(w) of the Cash Flow Note.

25 65. **"Gross Available Cash Flow"** means Cash received by Debtors from or in  
26 connection with any Ownership Interest (including any adjustments set forth in Section 4(b) of the  
27 Cash Flow Note), including, without limitation, any Cash resulting from the ownership,  
28 hypothecation, sale, financing or other transfer, whether in whole or in part and regardless of form,

1 with respect to any and all rights in and to the Ownership Interests and/or Collateral; provided,  
2 however, that, with respect to a sale, financing or other transfer as contemplated above, Gross  
3 Available Cash Flow shall be net of all reasonable fees, costs and expenses which are (1) directly  
4 related to such sale, financing or transfer transaction, and (2) paid to Persons other than Debtors or  
5 their Affiliates, or, upon the Holder's prior written consent, paid to Debtors or their Affiliates. By  
6 way of illustration and not of limitation, Gross Available Cash Flow shall include Cash received  
7 by or on behalf of Debtors from any Portfolio Entity, any Intermediate Entity in connection with  
8 any Ownership Interest, and/or from any Person that (i) acquires any or all of the Ownership  
9 Interests or Collateral or otherwise acquires any rights in and thereto, and/or (ii) provides any  
10 financing (regardless of form, and including, without limitation, any loans or other consideration)  
11 to or for the benefit of Debtors in connection with the Ownership Interests and/or the Collateral.

12 66. **"Gus Gianulias"** means secured creditor Gus Gianulias, as an individual and as a  
13 trustee of the Gus C. and Julie M. Gianulias Family Revocable Trust established January 20, 1983  
14 and all amendments thereto.

15 67. **"Holder"** means the Creditors' Trust Trustee, on behalf of the Creditors' Trust, or  
16 any successor or assign thereof.

17 68. **"Initial Distribution Date"** means the first Business Day on which a distribution is  
18 made under the Plan to holders of Allowed Claims in Class 3.

19 69. **"Insider"** as defined in section 101(31) of the Bankruptcy Code, means (a) a  
20 director of a Debtor; (b) an officer of a Debtor; (c) a person in control of a Debtor; (d) a  
21 partnership in which a Debtor is a general partner; (e) a general partner of a Debtor; (f) a relative  
22 of a general partner in, general partner of, or person in control of a Debtor; (g) an affiliate (as  
23 defined in section 101(2) of the Bankruptcy Code) of a Debtor, or an Insider of an affiliate as if  
24 such affiliate were a Debtor; and (h) a managing agent of a Debtor.

25 70. **"Inter-Debtor Claim"** means any Claim held by one of the Debtors against the  
26 other Debtor, including, without limitation, (a) any account reflecting intercompany book entries  
27 by such Debtor with respect to the other Debtor, (b) any Claim not reflected in book entries that is  
28

1 held by a Debtor against the other Debtor, and (c) any derivative Claim asserted or assertable by or  
2 on behalf of such Debtor against the other Debtor.

3 71. **“Interest”** means (a) the membership interests or any ownership rights in Cameo,  
4 and (b) any right or option, however arising, to acquire membership interests or any other equity  
5 interest, or any rights therein, of Cameo.

6 72. **“Interest in the Creditors’ Trust”** means the beneficial interests in the Creditors’  
7 Trust on or after the Effective Date in accordance with section VII.F of the Plan.

8 73. **“Interest Holder”** means the holder of an Interest on or before the date of the  
9 Confirmation Hearing.

10 74. **“Intermediate Entities”** means the (a) the following entities: Fountain Valley  
11 Senior Housing II, LLC, Parkewood Village, LLC, Park Glen, LLC, Park Mesa, LLC, Picadilly  
12 Square, LLC, River Knolls, LLC, Villa Buena, LLC, Emerald Isle (Placentia), LP, Emerald Isle  
13 (Placentia), LLC, Placentia 422, LLC, Grass Valley Shopping Center, LLC, and Dana Centre,  
14 LLC; and (b) and/or any new or additional entities that directly or indirectly have or hold an  
15 Ownership Interest in and to a Portfolio Entity, and which are directly or indirectly owned from  
16 time to time by Debtors, and any successors, transferees or assigns in connection therewith.

17 75. **“Mediator”** means the Honorable Mitchel Goldberg (Ret.). If, for any reason,  
18 Judge Goldberg is unable to serve as the Mediator, the Mediator shall be an individual mutually  
19 agreed upon by the parties involved in the dispute using the following procedure: (i) each party  
20 may propose the names of five neutral, qualified individuals to serve as Mediator; (ii) each party  
21 may strike three names from the opposing party’s list peremptorily; and (iii) the parties shall then  
22 mutually select one of the remaining four individuals to serve as Mediator. To the extent that the  
23 parties are unable to mutually agree on a Mediator, the parties shall request that the Court appoint  
24 a Mediator from the list of the remaining four individuals.

25 76. **“Mesa Management”** means Mesa Management, Inc., and shall include(1) its  
26 successors and assigns, with respect to ownership and/or control, (2) any Affiliate of any Debtor  
27 who succeeds Mesa Management as the entity that provides management services or functions to  
28

1 any of the Portfolio Entities and/or the Intermediate Entities, and (3) any Person appointed as  
2 successor manager by Debtors.

3 77. **“National Bank”** means secured creditor National Bank of Arizona.

4 78. **“Negative Pledge”** means that certain Negative Pledge, a true and correct copy of  
5 which is attached hereto as Exhibit “G.”

6 79. **“Order for Relief Date”** means July 2, 2008, the date on which the Court entered  
7 its “Order on Debtor’s Election to Convert Chapter 7 Case to a Case Under Chapter 11 of the  
8 Bankruptcy Code” for each Debtor.

9 80. **“Other Owner”** means any Person that holds or owns a Venture Interest and is not  
10 an Affiliate of Debtors.

11 81. **“Ownership Interest”** means, subject to the terms and conditions (including any  
12 adjustments) of Section 4(b) of the Cash Flow Note: (1) any Equity Interest as of the date of  
13 execution of the Cash Flow Note, (2) any and all replacement, exchange or substitution with  
14 respect thereto, and/or (3) any and all distributions of any Equity Interest (of whatsoever kind and  
15 nature) issued and/or distributed on account of any Ownership Interests; provided, however, that  
16 (i) the term “Ownership Interest” shall not include an Equity Interest (of whatsoever kind and  
17 nature) sold, transferred or assigned (but not encumbered) by Debtors to any Person, including,  
18 without limitation, in connection with the dilution of any Debtor’s Equity Interest.

19 Notwithstanding the foregoing, if (A) an Ownership Interest in a Portfolio Entity or Intermediate  
20 Entity is reduced by means of dilution resulting from a Capital Call Transaction (as defined in the  
21 Security Agreement), subject to the terms and conditions under any Governing Document, and (B)  
22 Debtors subsequently acquire a Venture Interest pursuant to Section 4(b)(3) of the Cash Flow  
23 Note by means of Debtors’ making a loan to, or otherwise acquiring a Venture Interest in and to,  
24 such Portfolio Entity or Intermediate Entity, the term “Ownership Interest” in such Portfolio  
25 Entity or Intermediate Entity shall include the Venture Interest so reacquired in an amount not to  
26 exceed the Equity Interest lost to dilution. Anything to the contrary contained herein  
27 notwithstanding, the parties acknowledge and agree that Debtors may not use Collateral to  
28 purchase or acquire any Ownership Interests, including, without limitation, any rights in and to

1 Ownership Interests or Venture Interests of whatsoever kind and nature, without the prior written  
2 consent of Holder in its sole and absolute discretion.

3 82. ***“Pacific Mercantile”*** means secured creditor Pacific Mercantile Bank.

4 83. ***“Pacific Mercantile Note”*** means that certain promissory note dated as of October  
5 26, 2005, in the original principal sum of \$2 million (as subsequently modified to \$3 million),  
6 executed by Gianulias.

7 84. ***“Person”*** means any individual, corporation, partnership, limited liability  
8 company, association, indenture trustee, organization, joint stock company, joint venture, estate,  
9 trust, governmental unit or any political subdivision thereof, or any other entity.

10 85. ***“Petition Date”*** means June 6, 2008.

11 86. ***“Plan”*** means this “Debtors’ Third Amended Plan of Reorganization (Dated May  
12 12, 2010)” (including all exhibits and attachments, each of which is hereby incorporated and made  
13 part of the Plan), as modified or amended from time to time in accordance with section 1127 of the  
14 Bankruptcy Code.

15 87. ***“Plan Documents”*** means, collectively, the Creditors’ Trust Agreement, the Cash  
16 Flow Note, the Secondary Note, the Security Agreement, the Disbursing Agent Agreement, the  
17 Control Agreement, the Negative Pledge and the Written Instructions.

18 88. ***“Portfolio Entities”*** means the following Entities: (a) East Coast Properties –  
19 Country Gardens, a New York General Partnership; (b) East Coast Properties – Grenadier Village,  
20 a New York General Partnership; (c) East Coast Properties – Country Estates, a New York  
21 General Partnership; (d) East Coast Properties – Woodwind Gardens, a New York General  
22 Partnership; (e) Fountain Valley Senior Housing, LP, a California limited partnership; (f) LG  
23 Parkewood Village, LP, a California limited partnership; (g) Park Glen, LP, a California limited  
24 partnership; (h) Park Mesa, LP, a California limited partnership; (i) Piccadilly Square, LP, a  
25 California limited partnership; (j) Placentia 422, LP, a California limited partnership; (k) River  
26 Knolls, LP, a California limited partnership; (l) Villa Buena, LP, a California limited partnership;  
27 (m) Coast Business Center (Coast Business Center, LP, a California limited partnership); (n)  
28 Crown Building (Crown Building, LLC, a California limited liability company); (o) Dana Centre,



1 a California general partnership; (p) Dana Center, LP, a California limited partnership; (q)  
2 Greenhaven Plaza, a California general partnership; (r) GVSC, LP, a California limited  
3 partnership; (s) Lahaina Cannery Mall, LLC, a Hawaii limited liability company; (t) Lucas-  
4 Gianulias, a California limited partnership; and (u) Sunrise Village, LP, a California limited  
5 partnership, and any successors, transferees and assigns of any of the foregoing.

6 89. **"Priority Payments"** means the following items, in such order of priority as set  
7 forth in the Plan: (a) the following payments to Robbins on account of, and in full satisfaction of  
8 her secured claim with respect to Debtors: (1) \$1,000,000 in the first year following the Effective  
9 Date (83,333.33 per month), (2) \$1,200,000 in the second year following the Effective Date  
10 (\$100,000 per month), (3) \$1,200,000 in the third year following the Effective Date (\$100,000 per  
11 month), (4) \$1,200,000 in the fourth year following the Effective Date (\$100,000 per month), and  
12 (5) \$1,251,481 in the fifth year following the Effective Date, representing the remaining balance  
13 owing to Robbins in connection with her claim in the Cases (\$104,290.08 per month); (b) the  
14 payment of \$1,800,000 per year in each of the first and second year following the Effective Date  
15 to Debtors (\$150,000 per month); (c) payment of all Allowed Administrative Claims, Allowed  
16 Gap Claims, Allowed Priority Claims, and Allowed Priority Tax Claims incurred in the Cases; and  
17 (d) the payment of all Adjusted Income Taxes, subject to the terms and conditions as set forth in  
18 Section 5(b) of the Cash Flow Note.

19 90. **"Proceeds"** means Gross Available Cash Flow and any other Cash received by  
20 Grantors from time to time from any Collateral identified in subsections (b), (c) and (d) of the  
21 definition of Collateral set forth above.

22 91. **"Projection"** means the projection prepared by the Debtors estimating cash flow  
23 generated by the Portfolio Entities and the payments on account of the Cash Flow Note, which is  
24 intended as a guide only and is not a guarantee of any specific payment stream, and attached to the  
25 Disclosure Statement as Exhibit 2.

26 92. **"Priority Claim"** means a Claim other than an Administrative Claim or a Tax  
27 Claim which, if allowed, would be entitled to priority under section 507(a) of the Bankruptcy  
28 Code.

1 93. **“Priority Tax Claim”** means a Claim entitled to priority under section 507(a)(8) of  
2 the Bankruptcy Code.

3 94. **“Pro Rata”** means proportionately. Distributions to holders of Allowed Claims in  
4 a Class are Pro Rata when the ratio of (a)(i) the amount of Cash distributed on account of each  
5 such Allowed Claim to (ii) the amount of such Claim, is the same as the ratio of (b)(i) the amount  
6 of Cash distributed on account of all Allowed Claims of the Class in which such Claim is included  
7 to (ii) the amount of all Allowed Claims in that Class. Allocations to holders of Allowed and  
8 Disputed Claims in a Class are Pro Rata when (a)(i) the amount of property allocated to each such  
9 Claim to (ii) the amount of such Claim, is the same as the ratio of (b)(i) the amount of property  
10 allocated to all Allowed and Disputed Claims of the Class to (ii) the total amount of all Claims  
11 (including Disputed Claims) in that Class.

12 95. **“Professionals”** means those Entities (a) employed in the Cases under sections 327  
13 or 1103 of the Bankruptcy Code, and (b) entitled, under sections 328, 330, 331, 503(b), 506(b),  
14 507(a)(2) of the Bankruptcy Code, to seek compensation for legal, accounting or other  
15 professional services and the costs and expenses related to such services from the Debtors or the  
16 Estates.

17 96. **“Recovery Rights”** means any and all manner of causes of action, claims,  
18 obligations, suits, debts, judgments and demands whatsoever, whether in law or in equity,  
19 including, but not limited to, actions to subordinate Claims under Section 510 of the Bankruptcy  
20 Code and avoidance power actions set forth in Sections 544 through 550, inclusive, of the  
21 Bankruptcy Code.

22 97. **“Rejection Damages Deadline”** means the later of the Claim Bar Date, or thirty  
23 (30) days after the entry of an order approving the rejection of an executory contract or unexpired  
24 lease.

25 98. **“Reorganized Debtors”** means the Debtors, or any successors, heirs or assigns with  
26 respect thereto, including, without limitation, any successors by merger, consolidation, intestacy  
27 or otherwise, on and after the Effective Date; provided, however, that, by way of clarification  
28 solely with respect to any such successors and assigns, the following Persons are expressly

1 excluded as successors and assigns for purposes of this definition: any Person who (A) is an Other  
2 Owner or (B) acquires any Ownership Interest and is not an Affiliate of any Debtor; provided,  
3 however, nothing herein shall limit, affect or abridge the Holder's right to consent to the sale,  
4 transfer and/or assignment of any Ownership Interest pursuant to the provisions of Section 6(a)(2)  
5 of the Security Agreement or any remedies that Holder may have under the Security Agreement  
6 for any breach of the provisions of Section 6(a)(2) of the Security Agreement.

7 99. **"Robbins"** means secured creditor Marilyn Gianulias Robbins, an individual.

8 100. **"Schedules"** means the schedules of assets and liabilities, statements of financial  
9 affairs, and lists of holders of Claims and Equity Interests filed with the Court by each of the  
10 Debtors, including any amendments or supplements thereto.

11 101. **"Secondary Note"** means the promissory note in the original principal amount of  
12 \$5 million, which shall not bear interest, and maturing on December 31, 2025, to be issued by the  
13 Reorganized Debtors as of the Effective Date and made payable to the Creditors' Trust solely for  
14 the benefit of holders of Allowed General Unsecured Claims, a true and correct copy of which is  
15 attached hereto as Exhibit "D."

16 102. **"Secured Claim"** means a Claim secured by a lien on any property of any of the  
17 Estates, but only to the extent of the value of the interest of the holder of such Allowed Claim in  
18 the interest of the Estate in such property, the calculation of which shall not include any demand  
19 for default interest, penalty interest or other similar demands.

20 103. **"Security Agreement"** means that certain Security Agreement, a true and correct  
21 copy of which is attached hereto as Exhibit "E."

22 104. **"Subordinated Claims"** means: (a) any Claim, or a portion of a Claim, that is  
23 subject to subordination under section 510 of the Bankruptcy Code, and (b) any Claim, or portion  
24 of a Claim, for fines, penalties, forfeitures, or for multiple, exemplary, or punitive damages, or  
25 other non-pecuniary, direct or non-proximate damages.

26 105. **"Subsidiary"** means any corporation, limited liability company, partnership, trust  
27 or other entity (whether now existing or hereafter organized or acquired) of which any Debtor or  
28 one or more Subsidiaries of any Debtor at the time owns or controls directly or indirectly more

1 than fifty percent (50%) of the shares of stock or partnership or other ownership interest having  
2 general voting power under ordinary circumstances to elect a majority of the board of directors,  
3 managers or trustees or otherwise exercising control of such corporation, limited liability  
4 company, partnership, trust or other entity (irrespective of whether at the time stock or any other  
5 form of ownership of any class or classes shall have or might have voting power by reason of the  
6 happening of any contingency.

7 106. **"Tax Code"** means title 26 of the United States Code, as amended from time to  
8 time.

9 107. **"Term Sheet"** means the Binding Term Sheet entered into by Gianulias, Cameo  
10 and the Committee in October 2009, which formed the basis for further negotiations to agree to a  
11 series of documents which implement the Plan terms agreed to by the Debtors and the Committee.

12 108. **"Treasury Regulations"** means final and temporary regulations promulgated by the  
13 U.S. Treasury Department in respect of the Tax Code.

14 109. **"UCC"** means the Uniform Commercial Code as adopted and in effect in the State  
15 of California from time to time.

16 110. **"Unclaimed Property"** means any funds or other Property to be distributed to  
17 Creditors pursuant to the Plan, which, after an attempted distribution, has not been received by the  
18 rightful Creditor. Unclaimed property shall include checks and any other property that have been  
19 returned as undeliverable without a proper forwarding address, or which were not mailed or  
20 delivered because of the absence of a proper address to which to mail or deliver such property.  
21 Such Unclaimed Property that remains unclaimed at the end of one (1) year following the date of  
22 an attempted distribution shall be reallocated and paid to other holders of Allowed Claims in  
23 accordance with the Plan. After the expiration of one (1) year following the date of an attempted  
24 distribution, each Claim with respect to Unclaimed Property shall be treated as if it had been  
25 disallowed in its entirety.

26 111. **"United States Trustee"** means the United States Trustee for the District of  
27 California.

28

1 112. *“Venture Interest”* means any partnership interest, membership interest,  
2 shareholder interest or other ownership or equity interest and/or economic or other interest in a  
3 Portfolio Entity and/or Intermediate Entity.

4 113. *“Voting Deadline”* means \_\_\_\_\_, 2010, or such other deadline established by  
5 the Bankruptcy Court for parties in interest entitled to vote to submit their ballots accepting or  
6 rejecting the Plan.

7 114. *“Wells Fargo”* means secured creditor Wells Fargo Bank.

8 115. *“Written Instructions”* means that certain Form of Written Direction, a true and  
9 correct copy of which is attached hereto as Exhibit “H.”

10 **B. Rules of Interpretation, Construction, and Computation of Time**

11 1. Any term used in the Plan that is not defined herein, whether in this Article or  
12 elsewhere, or other exhibits hereto, but that is used in the Bankruptcy Code or the Bankruptcy  
13 Rules has the meaning ascribed to that term in (and shall be construed in accordance with the rules  
14 of construction under) the Bankruptcy Code or the Bankruptcy Rules.

15 2. Any capitalized term used in the Plan that is not defined herein, or other exhibits  
16 hereto, but that is defined and used in the Disclosure Statement has the meaning ascribed to that  
17 term in the Disclosure Statement.

18 3. The words “herein,” “hereof,” “hereto,” “hereunder” and others of similar import  
19 refer to the Plan as a whole and not to any particular article, section, subsection or clause  
20 contained in the Plan.

21 4. Unless specified otherwise in a particular reference, a reference to an article or a  
22 section is a reference to that article or section of the Plan.

23 5. Any reference in the Plan to a document being in a particular form or on particular  
24 terms and conditions means that the document shall be substantially in such form or substantially  
25 on such terms and conditions.

26 6. Any reference in the Plan to an existing document means such document, as it may  
27 have been amended, modified or supplemented from time to time as of the Effective Date.

28

1 7. Whenever from the context it is appropriate, each term stated in either the singular  
2 or the plural shall include both the singular and the plural.

3 8. The rules of construction set forth in section 102 of the Bankruptcy Code shall  
4 apply to the Plan.

5 9. In computing any period of time prescribed or allowed by the Plan, the provisions  
6 of Bankruptcy Rule 9006(a) shall apply.

7 10. All exhibits to the Plan are incorporated into the Plan, and shall be deemed to be  
8 part of the Plan.

9 11. The provisions of the Plan shall control over the contents of the Disclosure  
10 Statement. The provisions of the Confirmation Order shall control over the contents of the Plan.

11 12. Unless otherwise specified in the Plan, whenever a distribution of property must be  
12 made, or an act required on a particular date, the distribution or act shall occur on such date, or as  
13 soon as practicable thereafter.

### 14 ARTICLE III

#### 15 PAYMENT OF ADMINISTRATIVE EXPENSES

#### 16 AND TREATMENT OF CERTAIN UNCLASSIFIED CLAIMS

##### 17 A. Summary

18 Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Claims for  
19 Professional Fees and Priority Tax claims against the Debtors are not classified for purposes of  
20 voting on, or receiving distributions under, the Plan. Holders of such Claims are not entitled to  
21 vote on the Plan. All such Claims are instead treated separately in accordance with this Article III  
22 and in accordance with the requirements set forth in section 1129(a)(9)(A) of the Bankruptcy  
23 Code.

##### 24 B. Administrative Claims

25 Subject to section 330(a) and 331 of the Bankruptcy Code and the bar date provisions of  
26 paragraph C of this Article III, on the later of the Effective Date, or as soon thereafter as practical,  
27 or the date on which the Administrative Claim is allowed, the Debtors will pay to each Creditor  
28 holding an Allowed Administrative Claim, unless that Creditor agrees to different treatment, Cash

1 equal to the unpaid portion of such Allowed Administrative Claim; *provided, however*, that  
2 Allowed Administrative Claims representing obligations incurred in the ordinary course of  
3 business or otherwise assumed by the Debtors pursuant to this Plan and unpaid as of the Effective  
4 Date, shall be assumed on the Effective Date and paid or performed by the Debtors when due in  
5 accordance with the terms and conditions of the particular agreements governing such obligations.

6 **C. Bar Date For Administrative Claims**

7 All applications for final compensation of Professionals for services rendered and for  
8 reimbursement of expenses incurred on or before the Effective Date, and any other request for  
9 compensation by any Entity for making a substantial contribution in the Cases, and all other  
10 requests for payment of an Administrative Claim incurred before the Effective Date under sections  
11 507(a)(2) or 503(b) of the Bankruptcy Code (except only for Claims under 28 U.S.C. § 1930) shall  
12 be filed no later than thirty (30) days after the Effective Date.

13 Any Administrative Claim required to be filed within the foregoing deadlines that is not  
14 filed within such deadlines shall be forever barred and the Debtors shall be discharged of any  
15 obligation on such Claim. Any Creditor required to file a request for payment of such Claim and  
16 who does not file such request by the applicable bar date shall be forever barred from asserting  
17 such Claim against the Estates or the Debtors, or any of their respective properties.

18 **D. Payment of Allowed Administrative Claims of Professionals**

19 The Allowed Administrative Claims of Professionals shall not be paid in full on the  
20 Effective Date. Instead, Allowed Administrative Claims of Professionals shall be paid, Pro Rata,  
21 from the cash generated by the Portfolio Entities and Intermediate Entities and received by the  
22 Reorganized Debtors, subject to the payment of \$1.8 million annually to the Reorganized Debtors  
23 in the first and second year following the Effective Date and the payments to be made to Robbins  
24 on account of her Secured Claim as set forth herein. All Professionals have agreed to this deferral.

25 **E. Payment of Priority Tax Claims**

26 Each holder of an Allowed Priority Tax Claim against the Debtors shall receive, on the  
27 Effective Date, in full satisfaction, release, and discharge of such Allowed Priority Tax Claim, at  
28 the election of the Debtors, either: (i) Cash payment in the amount of the holder's Allowed

1 Priority Tax Claim; (ii) deferred Cash payments over a period not to exceed five (5) years, from  
2 the Petition Date, equal to the Allowed amount of such claim; (iii) in a manner not less favorable  
3 than the most favored nonpriority unsecured claim provided for by the Plan; or (iv) such other  
4 terms as may be agreed upon by such holder and the Debtors. The rate of interest to be paid on  
5 Priority Tax Claims paid out over a period not to exceed five (5) years from the Petition Date shall  
6 be equal to the underpayment rate specified in 26 U.S.C. § 6621 (determined without regard to 26  
7 U.S.C. § 6621(c)) as of the Effective Date or such higher rate as required by 11 U.S.C. § 511(a).

8 Holders of Allowed Priority Tax Claims shall not be entitled to receive any payment on  
9 account of post-Petition Date interest on, or penalties with respect to or arising in connection with,  
10 such Priority Tax Claims, except as allowed by the Court, and all Claims or demands by holders of  
11 Priority Tax Claims for post-Petition Date interest or penalties thereon, except as may be allowed  
12 by the Court, shall be disallowed by the Plan and the Confirmation Order, and the holders of  
13 Priority Tax Claims shall not assess or attempt to collect interest or penalties from the Estates or  
14 their properties.

15 **F. Payment of Gap Claims**

16 Each holder of an Allowed Gap Claim shall receive in full satisfaction of such holder's  
17 Allowed Claim (a) the amount of such holder's Allowed Claim in one cash payment on the  
18 Effective Date, or as soon thereafter as practical, or (b) such other treatment as may be agreed  
19 upon in writing by such holder.

20 **ARTICLE IV**

21 **CLASSIFICATION OF CLAIMS AND INTERESTS**

22 **A. Manner of Classification of Claims and Interests**

23 Except for Claims of a kind specified in sections 507(a)(2) or 507(a)(8) of the Bankruptcy  
24 Code, all Claims against, and Interests in the Debtors and with respect to all property of the  
25 Debtors and the Estates, are defined and hereinafter designated in respective Classes. The Plan is  
26 intended to deal with all Claims against and Interests in the Debtors, of whatever character,  
27 whether known or unknown, whether or not with recourse, whether or not contingent or  
28 unliquidated, and whether or not previously allowed by the Court pursuant to section 502 of the



1 Bankruptcy Code. Only holders of Allowed Claims, however, will receive any distribution under  
2 the Plan. For purposes of determining Pro Rata distributions to holders of Allowed Claims under  
3 the Plan, Disputed Claims shall be included in the Class in which such Claims would be included  
4 if they were Allowed Claims.

5 **B. Classification**

6 Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the  
7 classes of Claims and Interests in the Debtors. A Claim or Interest is placed in a particular Class  
8 only to the extent such Claim or Interest is an Allowed Claim or Interest in that Class and such  
9 Claim or Interest has not been paid, released, or otherwise settled or paid prior to the Effective  
10 Date. Any Claims not described in Article IV of this Plan are unclassified, and therefore, are not  
11 included in the Classes below. The Allowed Claims and Interests, except for Claims described  
12 above and which are not required to be classified pursuant to section 1123(a)(1) of the Bankruptcy  
13 Code, are divided into the following Classes.

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**SUMMARY OF CLASSIFICATION**

<u>Class</u>	<u>Status</u>	<u>Voting Rights</u>
Class 1A: Secured Claims of Pacific Mercantile	Impaired	Entitled to Vote
Class 1B-1: Secured Claim of Wells Fargo on Account of the Colorado Note	Impaired	Entitled to Vote
Class 1B-2: Secured Claim of Wells Fargo on Account of the Hawaii Note	Impaired	Entitled to Vote
Class 1C: Secured Claims of National Bank	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 1D: Secured Claims of Robbins	Impaired	Entitled to Vote
Class 1E: Secured Claims of Gus Gianulias	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 1F: Secured Claims of Countrywide	Impaired	Entitled to Vote
Class 1G: Secured Claims of Chase	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 1H: Other Secured Claims	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 2: Priority Claims	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 3: General Unsecured Claims	Impaired	Entitled to Vote
Class 4: Inter-Debtor Claims	Impaired	Entitled to Vote
Class 5: Subordinated Claims	Unimpaired	Deemed Accepted; Not Entitled to Vote
Class 6: Interests in Cameo	Unimpaired	Deemed Accepted; Not Entitled to Vote

**ARTICLE V**

**TREATMENT OF CLAIMS AND INTERESTS**

**A. Class 1A ~ Secured Claims of Pacific Mercantile**

Class 1A consists of all Secured Claims of Pacific Mercantile.

Except to the extent that Pacific Mercantile agrees to a different treatment, Pacific Mercantile's Note shall be modified as follows:

1           1.     Principal Amount. The Pacific Mercantile Note shall have a principal amount  
2 equal to the principal balance as of the Petition Date, plus all amounts that have accrued on the  
3 Pacific Mercantile Note through and including the Effective Date.

4           2.     Interest. Simple interest shall accrue on the unpaid principal balance of the Pacific  
5 Mercantile Note at the rate of 5.5% per annum.

6           3.     Payments. The first monthly payment under the Pacific Mercantile Note will be  
7 due on the fifteenth (15th) day of the first calendar month following the Effective Date and will be  
8 in an amount equal to the interest accrued on the Pacific Mercantile Note from the Effective Date  
9 through the end of the calendar month in which the Effective Date occurs. Thereafter, until  
10 maturity, a monthly payment will be due on the fifteenth (15th) day of each successive month in  
11 an amount equal to the interest accrued on the unpaid principal balance of the Pacific Mercantile  
12 Note during the previous month.

13           4.     Maturity. The maturity date of the Pacific Mercantile Note shall be extended, and  
14 the Pacific Mercantile Note will be due and payable in full on the last Business Day of the 84th  
15 calendar month after the Effective Date.

16           5.     Pre-Payment. At any time after the Effective Date, without penalty or premium,  
17 the Pacific Mercantile Note may be prepaid, in whole or in part, in the sole discretion of the  
18 Reorganized Debtors provided, however, that pre-payment cannot act to impact payments due to  
19 the Creditors' Trust.

20           6.     Retention of Collateral. Except to the extent inconsistent herewith or with the law,  
21 the validity and priority of the security interest securing the Pacific Mercantile Note shall remain  
22 in full force and effect following the Effective Date.

23           To the extent that a Creditor in Class 1A does not hold an Allowed Secured Claim, such  
24 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

25           **Class 1A is impaired under the Plan.**

26 **B.     Class 1B ~ Secured Claims of Wells Fargo**

27           Class 1B consists of all Secured Claims of Wells Fargo. Wells Fargo's Secured Claims  
28 arise from two promissory notes, secured by two properties: (1) a property located at 747 S.

1 Galena, Aspen, Colorado (the "Colorado Property"); and (2) a property located at 13 Coconut  
2 Grove Lane, Lahaina, Hawaii (the "Hawaii Property"). The note secured by the Colorado  
3 Property shall be referred to below as the Colorado Note, the note secured by the Hawaii Property  
4 shall be referred to below as the Hawaii Note and collectively the modified Hawaii Note and the  
5 Colorado Note shall be referred to as the Wells Fargo Notes.

6 (a) Class 1B-1: the Colorado Note

7 Class 1B-1 consists of the Secured Claims of Wells Fargo arising from the Colorado Note.  
8 Except to the extent that Wells Fargo agrees to a different treatment, the Colorado Note shall be  
9 modified as follows:

10 1. Principal Amount. The Colorado Note shall have a principal amount equal to the  
11 principal balance as of the Petition Date, plus all amounts that have accrued on the Colorado Note  
12 through and including the Effective Date.

13 2. Interest. Simple interest shall accrue on the unpaid principal balance of the  
14 Colorado Note at the rate of a 5.75% per annum.

15 3. Payments. The first monthly payment under the Colorado Note will be due on the  
16 fifteenth (15th) day of the first calendar month following the Effective Date and will be in an  
17 amount equal to (a) the interest accrued on the Colorado Note from the Effective Date through the  
18 end of the calendar month in which the Effective Date occurs plus (b) principal calculated on the  
19 basis of a 30-year amortization schedule. Thereafter, until maturity, a monthly payment will be  
20 due on the fifteenth (15th) day of each successive month in an amount equal to (a) the interest  
21 accrued on the unpaid principal balance of the Colorado Note during the previous month plus (b)  
22 an installment of principal calculated on the basis of a 30-year amortization schedule.

23 4. Maturity. The maturity date of the Colorado Note shall be extended, and the  
24 Colorado Note will be due and payable in full on the last Business Day of the 180th calendar  
25 month after the Effective Date.

26 5. Pre-Payment. At any time after the Effective Date, without penalty or premium,  
27 the Colorado Note may be prepaid, in whole or in part, in the sole discretion of the Reorganized  
28

1 Debtors provided, however, that pre-payment cannot act to impact payments due to the Creditors'  
2 Trust.

3 6. Retention of Collateral. Except to the extent inconsistent herewith or with the law,  
4 the validity and priority of the security interest securing the Colorado Note shall remain in full  
5 force and effect following the Effective Date.

6 To the extent that a Creditor in Class 1B-1 does not hold an Allowed Secured Claim, such  
7 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

8 **Class 1B-1 is impaired under the Plan.**

9 (b) Class 1B-2: the Hawaii Note

10 Class 1B-2 consists of the Secured Claims of Wells Fargo arising from the Hawaii Note.  
11 Except to the extent that Wells Fargo agrees to a different treatment, the Hawaii Note shall be  
12 modified as follows:

13 1. Principal Amount. The Hawaii Note shall have a principal amount equal to \$3.7  
14 million.

15 2. Interest. Simple interest shall accrue on the unpaid principal balance of the Hawaii  
16 Note at the rate of a 6.25% per annum.

17 3. Payments. The first monthly payments under the Hawaii Note will be due on the  
18 fifteenth (15th) day of the first calendar month following the Effective Date and will be in an  
19 amount equal to (a) the interest accrued on the Hawaii Note from the Effective Date through the  
20 end of the calendar month in which the Effective Date occurs plus (b) principal calculated on the  
21 basis of a 30-year amortization schedule. Thereafter, until maturity, a monthly payment will be  
22 due on the fifteenth (15th) day of each successive month in an amount equal to (a) the interest  
23 accrued on the unpaid principal balance of the Hawaii Note during the previous month plus (b) an  
24 installment of principal calculated on the basis of a 30-year amortization schedule.

25 4. Maturity. The maturity date of the Hawaii Note shall be extended, and the Hawaii  
26 Note will be due and payable in full on the last Business Day of the 240th calendar month after the  
27 Effective Date.

28

1           5.     Pre-Payment. At any time after the Effective Date, without penalty or premium,  
2 the Hawaii Note may be prepaid, in whole or in part, in the sole discretion of the Reorganized  
3 Debtors provided, however, that pre-payment cannot act to impact payments due to the Creditors'  
4 Trust.

5           6.     Retention of Collateral. Except to the extent inconsistent herewith or with the law,  
6 the validity and priority of the security interest securing the Hawaii Note shall remain in full force  
7 and effect following the Effective Date.

8           To the extent that a Creditor in Class 1B-2 does not hold an Allowed Secured Claim, such  
9 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

10           **Class 1B-2 is impaired under the Plan.**

11 **C.     Class 1C ~ Secured Claims of National Bank**

12           Class 1C consists of all Secured Claims of National Bank.

13           Except to the extent that the holder of an Allowed Secured Claim in Class 1C agrees to a  
14 different treatment, the holder of the Allowed Secured Claim in Class 1C shall, at the sole election  
15 of the Debtors (made prior to the Effective Date), receive one of the following treatments: (i) the  
16 legal, equitable and contractual rights to which the holder of such Allowed Secured Claim is  
17 entitled shall remain unaltered; or (ii) the Debtors shall surrender to the holder of the Allowed  
18 Secured Claim such property of the applicable Estate as may be security and collateral for its  
19 Claim.

20           To the extent that a Creditor in Class 1C does not hold an Allowed Secured Claim, such  
21 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

22           **Class 1C is unimpaired under the Plan.**

23 **D.     Class 1D ~ Secured Claims of Robbins**

24           Class 1D consists of all Secured Claims of Robbins.

25           Robbins shall receive the following treatment on account of her Allowed Secured Claims:

26           1.     Principal Amount. The principal amount to be paid to Robbins under the Plan shall  
27 be \$4,830,000.

28

1           2.     Interest. Simple interest shall accrue on the unpaid principal balance owed to  
2 Robbins at the rate of 7.5% per annum.

3           3.     Payments. Payments to Robbins shall be made on a monthly basis commencing on  
4 the Effective Date, based on the following schedule:

<u>Year</u>	<u>Annual Payment Amount</u>
Year 1	\$1,000,000
Year 2	\$1,200,000
Year 3	\$1,200,000
Year 4	\$1,200,000
Year 5	Approximately \$1,251,481 (remaining balance of the Robbins Secured 11 Claim)

12           Robbins shall receive monthly payments of \$83,333.33 per month for the first through  
13 twelfth calendar months following the Effective Date. Thereafter, until maturity, a monthly  
14 payment of \$100,000.00 will be due on the fifteenth (15th) day of each successive month until  
15 month 60, when Robbins shall receive a final payment of \$151,481.04. In the event that payments  
16 for a particular month are insufficient to pay the accrued interest for the current month, the excess  
17 accrued interest shall be added to the principal amount owed to Robbins.

18           4.     Maturity. The maturity date of the Robbins obligation shall be the last Business  
19 Day of the 60th calendar month after the Effective Date.

20           5.     Pre-Payment. At any time after the Effective Date, without penalty or premium,  
21 the Robbins Allowed Secured Claim may be prepaid, in whole or in part, in the sole discretion of  
22 the Reorganized Debtors.

23           6.     Retention of Collateral. Robbins' current lien shall be released as of the Effective  
24 Date. As of the Effective Date, Robbins shall be granted the following:

- 25                   a)     A first priority security interest in the Collateral. Robbins shall retain this  
26                             first priority security interest in the Collateral until such time as the  
27                             Allowed Class 1D Claim has been paid in full. Robbins' security interest  
28

1 in the Collateral shall, at all times until paid in full, be senior to the  
2 Creditors' Trust Lien.

3 b) A first priority security interest in the Additional Collateral. Robbins shall  
4 retain the first priority security interest in the Additional Collateral until  
5 such time as the Allowed Class 1D Claim has been paid in full.

6 To the extent that a Creditor in Class 1D does not hold an Allowed Secured Claim, such  
7 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

8 **Class 1D is impaired under the Plan.**

9 **E. Class 1E – Secured Claims of Gus Gianulias**

10 Class 1E consists of all Secured Claims of Gus Gianulias.

11 Except to the extent that the holder of an Allowed Secured Claim in Class 1E agrees to a  
12 different treatment, the holder of the Allowed Secured Claim in Class 1E shall, at the sole election  
13 of the Debtors (made prior to the Effective Date), receive one of the following treatments: (i) the  
14 legal, equitable and contractual rights to which the holder of such Allowed Secured Claim is  
15 entitled shall remain unaltered; or (ii) the Debtors shall surrender to the holder of the Allowed  
16 Secured Claim such property of the applicable Estate as may be security and collateral for its  
17 Claim.

18 To the extent that a Creditor in Class 1E does not hold an Allowed Secured Claim, such  
19 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

20 **Class 1E is unimpaired under the Plan.**

21 **F. Class 1F ~ Secured Claims of Countrywide**

22 Class 1F consists of all Secured Claims of Countrywide.

23 Except to the extent that Countrywide agrees to a different treatment, Countrywide's Note  
24 shall be modified as follows:

25 1. **Principal Amount.** The modified Countrywide Note shall have a principal amount  
26 equal to the outstanding balance of the note as of the Effective Date (estimated at \$509,372.60 as  
27 of Oct. 26, 2009, plus interest thereon through the Effective Date at the rate of 5.625% per  
28 annum).



1           2.     Interest. Interest shall accrue on the unpaid principal balance of the Countrywide  
2 Note at the fixed rate of 5.75% per annum.

3           3.     Payments. The first monthly payment under the Countrywide Note will be due on  
4 the fifteenth (15th) day of the first calendar month following the Effective Date and will be in an  
5 amount equal to (a) the interest accrued on the Countrywide Note from the Effective Date through  
6 the end of the calendar month in which the Effective Date occurs plus (b) principal calculated on  
7 the basis of a 30-year amortization schedule. Thereafter, until maturity, a monthly payment will  
8 be due on the fifteenth (15th) day of each successive month in an amount equal to (a) the interest  
9 accrued on the unpaid principal balance of the Countrywide Note during the previous month plus  
10 (b) an installment of principal calculated on the basis of a 30-year amortization schedule.

11          4.     Maturity. The maturity date of the Countrywide Note shall be extended, and the  
12 Countrywide Note will be due and payable in full on the last Business Day of the 360th calendar  
13 month after the Effective Date.

14          5.     Pre-Payment. At any time after the Effective Date, without penalty or premium,  
15 the Countrywide Note may be prepaid, in whole or in part, in the sole discretion of the  
16 Reorganized Debtors provided, however, that pre-payment cannot act to impact payments due to  
17 the Creditors' Trust.

18          6.     Retention of Collateral. Except to the extent inconsistent with any other term of the  
19 Plan or with the law, the validity and priority of the deed of trust securing the Countrywide Note  
20 shall remain in full force and effect following the Effective Date.

21                To the extent that a Creditor in Class 1F does not hold an Allowed Secured Claim, such  
22 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

23                **Class 1F is impaired under the Plan.**

24 **G.     Class 1G ~ Secured Claims of Chase**

25                Class 1G consists of all Secured Claims of Chase.

26                To the extent that the Debtors continue to hold such property, the Debtors shall surrender  
27 to the holder of the Allowed Secured Claim such property of the applicable Estate as may be  
28 security and collateral for its Claim.

1 To the extent that a Creditor in Class 1G does not hold an Allowed Secured Claim, such  
2 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

3 **Class 1G is unimpaired under the Plan.**

4 **H. Class 1H~ Other Secured Claims**

5 Class 1H consists of all Secured Claims not included in the Classes described above. Each  
6 holder of an Allowed Secured Claim in Class 1H shall be deemed to be a separate subclass of  
7 Class 1H.

8 Except to the extent that the holder of an Allowed Secured Claim in Class 1H agrees to a  
9 different treatment, the holder of the Allowed Secured Claim in Class 1H shall, at the sole election  
10 of the Debtors (made prior to the Effective Date), receive one of the following treatments: (i) the  
11 Allowed Secured Claim shall be cured and reinstated pursuant to section 1124(2) of the  
12 Bankruptcy Code, and the Debtors shall fund all amounts and take all actions otherwise necessary  
13 to reinstate such Allowed Secured Claim, on or prior to the tenth (10th) Business Day following  
14 the Effective Date; or (ii) the legal, equitable and contractual rights to which the holder of such  
15 Allowed Secured Claim is entitled shall remain unaltered. Notwithstanding the foregoing,  
16 alternatively, the Debtors may elect to satisfy an Allowed Secured Claim in Class 1H by one of  
17 the following treatments: (x) the surrender to the holder of the Allowed Secured Claim of such  
18 property of the applicable Estate as may be security and collateral for its Claim, or (y) the payment  
19 in Cash of the amount of such Allowed Secured Claim, as set forth in the Confirmation Order or  
20 other Final Order.

21 To the extent that the County of Riverside has a Secured Claim for real property taxes  
22 under 11 U.S.C. § 506(b), any payment made to the County of Riverside upon the sale or transfer  
23 of such real property will include all applicable state law interest under 11 U.S.C. § 511. The  
24 County of Riverside will retain any applicable lien until such Secured Claim is paid in full. A  
25 failure by the Debtors to make a payment based on a Secured Claim to the County of Riverside  
26 pursuant to the terms of the Plan shall be an Event of Default. If the Debtors fail to cure any such  
27 Event of Default within ten (10) days after service of written notice of default from the County of  
28 Riverside, then the County of Riverside may enforce the entire amount of its Secured Claim,

1 including all penalties and interest accrued under state law, against the applicable Debtor in  
2 accordance with applicable state law remedies.

3 To the extent that a Creditor in Class 1H does not hold an Allowed Secured Claim, such  
4 Claim, if it becomes an Allowed Claim, shall be included in Class 3.

5 **Class 1H is unimpaired under the Plan.**

6 **I. Class 2 ~ Priority Claims**

7 Class 2 consists of all Allowed Priority Claims against the Debtors. Class 2 does not  
8 include any Priority Tax Claims, all of which shall be treated in accordance with section III.E of  
9 the Plan.

10 Except to the extent that the holder of such Claim agrees to a different treatment, the  
11 Debtors shall pay Cash on the Effective Date to each holder of an Allowed Claim in Class 2 the  
12 amount of such Allowed Claim.

13 **Class 2 is unimpaired under the Plan.**

14 **J. Class 3 ~ General Unsecured Claims**

15 Class 3 consists of all Allowed Claims against the Debtors (including Claims arising from  
16 the rejection of executory contracts and/or unexpired leases) other than: (a) Administrative  
17 Claims; (b) Priority Tax Claims; and (c) Claims included within any other Class designated in the  
18 Plan. Class 3 shall be deemed to include those Creditor(s) holding an alleged Secured Claim  
19 against the Debtors for which: (i) no collateral exists to secure the alleged Secured Claim; and/or  
20 (ii) liens, security interests, or other encumbrances that are senior in priority to the alleged Secured  
21 Claim exceed the fair market value of the collateral securing such alleged Secured Claim as of the  
22 Petition Date.

23 Due to the substantive consolidation of the Estates resulting from the Consolidation Order,  
24 the Creditors' Trust shall, subject to the terms and conditions of the Creditors' Trust Agreement,  
25 including, without limitation, after consideration of applicable reserves established by the  
26 Creditors' Trust Trustee pursuant to the terms and conditions thereof, make periodic Pro Rata  
27 distributions of Cash to Creditors holding Allowed Claims in Class 3 against the Debtors, except  
28 that Cash previously allocated to the Disputed Claims Reserve shall be distributed net of the