

## DISBURSING AGENT AGREEMENT

**THIS DISBURSING AGENT AGREEMENT**, dated as of \_\_\_\_\_, 20\_\_ (the "Effective Date") is entered into by and among (i) **JAMES C. GIANULIAS**, an individual ("Gianulias"), James C. Gianulias, as trustee of **THE JAMES CHRIS GIANULIAS TRUST** (the "Trust"), and **CAMEO HOMES**, a California corporation ("Cameo") (each of Gianulias, the Trust and Cameo, and their respective successors, heirs and assigns, a "Debtor" and collectively, "Debtors"), (ii) **TOM SEAMAN**, as Trustee ("Trustee") of the **CREDITORS TRUST** (the "Creditors Trust" or "Secured Party") **FORMED FOR THE BENEFIT OF THE HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS AGAINST JAMES C. GIANULIAS AND CAMEO HOMES** (the "Committee"), and (iii) **MESA MANAGEMENT, INC.**, a California corporation, as Disbursing Agent hereunder ("Mesa Management" or "Disbursing Agent").

### RECITALS

A. On June 6, 2008, three creditors of Gianulias commenced an involuntary case against him under Chapter 7 of Title 11 of the United States Code, as such may be amended from time to time (the "Bankruptcy Code"), thereby commencing case number 8:08-bk-13150-RK (the "JG Case"). Concurrently, the same three creditors commenced an involuntary Chapter 7 case against Cameo, thereby commencing case number 8:08-bk-13151-RK (together with the JG Case, the "Cases"). On July 2, 2008 (the "Petition Date"), the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "Bankruptcy Court") entered Orders for Relief and converted the Cases to Chapter 11 proceedings.

B. Gianulias is both the trustor and trustee of the Trust, and the Trust is part of Gianulias' bankruptcy estate and subject to the Cases. Gianulias owns 100% of the ownership interests in and to Cameo. On December 11, 2008, the Bankruptcy Court entered an order substantively consolidating Cameo's Chapter 11 estate into Gianulias' estate, effective as of June 6, 2008. Since the commencement of the Cases, the Debtors have managed their affairs as debtors and debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

C. On November 9, 2009, Debtors filed (1) the Debtors' First Amended Plan of Reorganization, which sets forth the manner in which claims against and interests in Debtors will be treated, and (2) the First Amended Disclosure Statement for Debtors' First Amended Plan of Reorganization (the "Disclosure Statement"), which describes certain aspects of the Plan, the Debtors' business and related matters.

D. The Plan incorporates the terms of a "Binding Term Sheet" agreement reached between Debtors and the Committee (the "Plan Agreement") concerning, among other things, (1) the payment by Debtors to the holders of Allowed General Unsecured Claims (as defined in the Plan) pursuant to certain notes, (2) the provision for monitoring Debtors' post-confirmation business and operations, and the allocation of available cash from post-confirmation business and operations, and (3) the grant of a security interest in and to certain post-confirmation assets of Debtors to secure prompt performance by Debtors of their respective obligations under the Plan and such notes.

E. The Creditors' Trust is established pursuant to the terms and conditions of the Plan to provide for the orderly payment of amounts due to the holders of Allowed General Unsecured Claims in the Cases.

F. Debtors, as set forth in the Plan, own and may continue to own and operate certain assets post-confirmation, including, without limitation, those certain entities as set forth in Exhibit C attached hereto (each, a "Portfolio Entity," and collectively, the "Portfolio Entities"), and those certain entities as set forth in Exhibit D which, in turn, own an interest in a Portfolio Entity, and/or any new or additional entities that directly or indirectly have or hold an Ownership Interest in and to a Portfolio Entity, and which are directly or indirectly owned from time to time by Debtors (each, an "Intermediate Entity," and collectively, the "Intermediate Entities").

G. Pursuant to the terms and conditions of the Plan and Plan Agreement, and as a condition of the Committee consenting to the Plan and entering into the Plan Agreement, among other things, "Grantors" (as defined below) Debtors entered into and delivered to Secured Party (i) that certain Secured Promissory Note dated as of the Effective Date made by Debtors in favor of Secured Party in the principal amount of \$42 million, subject to adjustment (the "Cash Flow Note"), a copy of which is attached hereto as Exhibit A, and (ii) that certain Security Agreement between Debtors and Secured Party dated as of the Effective Date (the "Security Agreement"), a copy of which is attached hereto as Exhibit B, which Security Agreement, among other things, grants to Secured Party a security interest in the "Collateral" (as defined therein) to secure the "Obligations" (as defined therein).

H. Disbursing Agent is a wholly-owned subsidiary of Gianulias, and manages certain of the Portfolio Entities and Intermediate Entities (both as defined in the Cash Flow Note).

I. Pursuant to the terms and conditions of the Cash Flow Note and Security Agreement, the parties hereto desire to enter into this Agreement to manage the collection, disbursement and reporting obligations associated with the payment of Gross Available Cash Flow (as defined in the Cash Flow Note), subject to the terms and conditions contained herein.

#### AGREEMENTS

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, each of the Debtors, Secured Party and Disbursing Agent(individually, a "Party" and collectively, the "Parties") agree as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms shall have the meanings as set forth in the Cash Flow Note.

2. **Control Account.** Disbursing Agent has established, pursuant to the terms and conditions of the Cash Flow Note and the Security Agreement, the Control Account for the purpose of receiving, managing and distributing Gross Available Cash Flow pursuant to the Cash Flow Note and the Security Agreement. In connection with the management of the Control Account, Disbursing Agent shall only act pursuant to the express terms and conditions contained in the Cash Flow Note, the Security Agreement and this Agreement. Subject to the terms and conditions hereof, Disbursing Agent shall have full authority to deposit all Gross Available Cash Flow into the Control Account, and to distribute Cash by check or wire transfer from the Control Account pursuant to the terms and conditions of the Cash Flow Note and the Security Agreement (each such payment, an "Authorized Payment"). Anything to the contrary contained herein notwithstanding, in the event that Secured Party or elects to exercise its rights under the Security Agreement or in connection with the Control Agreement, Disbursing Agent shall comply with, and not take any actions in violation of the Security Agreement and/or the Control

Agreement.

3. **Deposit.** Pursuant to the terms and conditions of the Cash Flow Note and the Security Agreement, Disbursing Agent shall promptly deposit all Gross Available Cash Flow and other Collateral received from any source only into the Control Account.

4. **Investments.** All Gross Available Cash Flow shall be held in the Control Account until distributed pursuant to the terms and conditions of the Cash Flow Note and the Security Agreement, as applicable. Without limiting the generality of the foregoing, Disbursing Agent shall not invest or hold Gross Available Cash Flow or other Collateral in any other account or investment whatsoever.

5. **Determinations And Actions Under Cash Flow Note and Security Agreement.** Disbursing Agent shall make all determinations concerning the amount of Gross Available Cash Flow, Priority Payments and Available Cash Flow as required pursuant to the Cash Flow Note and the Security Agreement in its good faith reasonable judgment. In connection therewith, by way of illustration and not of limitation, Disbursing Agent shall (a) make all determinations and calculations and provide such supporting materials as set forth in Sections 6(g)(2) and 6(g)(6) of the Security Agreement, (b) deliver to Secured Party the Monthly Activity Statement by no later than the Monthly Activity Statement Due Date as set forth in the Security Agreement, (c) pay the amount of the Designated Secured Party Payment to Secured Party as set forth in the Monthly Activity Statement by the fifth (5<sup>th</sup>) Business Day of each calendar month pursuant to the terms and conditions of the Cash Flow Note and the Security Agreement, and (d) otherwise provide Secured Party with the reports, records and materials, and take such actions, all as required pursuant to Sections 6(g)(2) and 6(g)(6) of the Security Agreement. Without limiting the generality of the foregoing, the Parties expressly acknowledge and agree that all such determinations by Disbursing Agent are subject to the terms and conditions of the Cash Flow Note and the Security Agreement; and, in connection therewith, the Debtors and Secured Party shall have the right to contest any and all such determinations pursuant to the dispute resolution procedures as set forth in the Security Agreement.

6. **Reporting and Other Obligations Under Security Agreement.** Disbursing Agent expressly acknowledges and agrees that (a) it has read and understands the terms and conditions of the Cash Flow Note, the Security Agreement, the Control Agreement, the Plan and this Agreement, (b) it has had the opportunity to consult with counsel prior to entering into this Agreement, (c) it will (1) provide any and all reports, documentation, Records and materials required to be provided by Disbursing Agent under the Cash Flow Note and/or the Security Agreement, including, without limitation, the Monthly Activity Statements and Adjusted Income Taxes Report as required pursuant to the terms and conditions of the Security Agreement, (2) provide Secured Party (and its authorized representatives) access and the opportunity to review, inspect, audit and copy, as applicable, the Collateral and/or the Books and records as provided in the Cash Flow Note and Security Agreement, and (3) otherwise take such actions, including, without limitation, executing and delivering such documents, instruments, certificates and agreements, and otherwise perform such obligations of Disbursing Agent all as provided in the Cash Flow Note and Security Agreement, as if such Disbursing Agent were an original signatory thereto. Without limiting the generality of the foregoing, Disbursing Agent shall provide Secured Party (and its representatives and designees) with (i) online access to the statements and information regarding the Control Account and its activity as provided in the Security Agreement, (ii) copies of monthly bank statements as provided in the Security Agreement, and (iii) such supporting and additional documentation and materials with respect to the foregoing, and any activity with respect to the Control Account, as

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Secured Party may reasonably request from time to time to monitor activity in the Control Account and compliance with the terms and conditions of this Agreement, the Control Agreement, the Cash Flow Note and/or the Security Agreement.

7. **Distributions of Cash From the Control Account.** All distributions of Gross Available Cash Flow (including, without limitation, all Authorized Payments from the Control Account) shall be made by Disbursing Agent pursuant to the terms and conditions of the Cash Flow Note and the Security Agreement. The foregoing notwithstanding, upon receipt of a written notice pursuant to Section 8 of the Security Agreement, or upon a written direction from Judge Goldberg, his duly appointed replacement, or the Bankruptcy Court, as applicable, to refrain from making any distributions to Debtors pursuant to the Security Agreement, Disbursing Agent shall refrain from making (and shall not make) any and all disbursements of Available Cash Flow to Debtors (including, without limitation, any Affiliate of Debtors) and shall retain such Available Cash Flow in the Control Account subject to the terms and conditions of the Security Agreement, the Control Agreement and the Plan.

8. **Termination.** This Agreement shall terminate on the date on which Secured Party has been indefeasibly paid in full with respect to all Obligations.

9. **Default by Disbursing Agent.** All representations, warranties, covenants, agreements, acts or omissions by Disbursing Agent relating to the Control Account, the Cash Flow Note, this Agreement and the other Security Documents, as applicable, and the transactions contemplated herein and therein, shall be imputed to Debtors; and accordingly, in the event that Disbursing Agent breaches the terms and conditions of this Agreement, the Cash Flow Note, the Security Agreement, the Plan and/or the other Security Documents, and/or any act or omission by Disbursing Agent creates an Event of Default under the Cash Flow Note or the Security Documents, (a) Secured Party shall have such rights and remedies as provided under the Security Agreement and the Control Agreement, and (b) Debtors shall not be permitted to assert any defense or claim of whatsoever kind and nature that such Event of Default is not an Event of Default under the Security Agreement by virtue of the fact that such Event of Default (1) was committed by or occurred as a result of Disbursing Agent, and/or (2) was caused by Disbursing Agent, and not by Debtors. Without limiting the generality of the foregoing, the provisions hereof shall not limit the rights of Secured Party with respect to the appointment of a receiver pursuant to the terms and conditions of the Security Agreement.

10. **Removal.** Mesa Management shall be removed only by Debtors, by written direction from Judge Goldberg, his duly appointed replacement, or the Bankruptcy Court, as applicable, or pursuant to the appointment of a receiver pursuant to the terms and conditions of the Security Agreement, at any time. In the event that Mesa Management is removed as Disbursing Agent hereunder by Debtors or Judge Goldberg, his duly appointed replacement, or the Bankruptcy Court, as applicable, then the Person or Persons so removing Mesa Management pursuant to this Agreement shall designate a successor disbursing agent, who (1) shall have agreed to serve as the Disbursing Agent pursuant to all of the terms and conditions set forth in this Agreement, (2) shall execute and deliver a copy of this Agreement to Secured Party, and (3) shall be consented to by Secured Party in writing in Secured Party's reasonable discretion prior to such appointment as disbursing agent hereunder.

11. **Fees and Expenses.** Debtors shall promptly pay all costs, expenses, fees and charges with respect to the services performed hereunder and the establishment and maintenance of the Control Account. Without limiting the generality of the foregoing, Disbursing Agent shall not be entitled to, and

shall not, deduct or offset any and all such costs, expenses, fees and charges against any Cash in the Control Account or with respect to any payment due Secured Party pursuant to the Cash Flow Note. In the event that Mesa Management is removed as Disbursing Agent by Judge Goldberg, his duly authorized replacement, or the Bankruptcy Court, as applicable, pursuant to the terms and conditions of this Agreement, then Debtors shall have the right to request that Judge Goldberg, his duly authorized replacement, or the Bankruptcy Court, as applicable, pursuant to the dispute resolution provisions of the Security Agreement, modify the provisions of this Section 11 with respect the obligations of Debtors to pay all costs, expenses, fees and charges with respect to the services performed hereunder and the establishment and maintenance of the Control Account pursuant to this Agreement.

12. **Notices.** All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, telecopied, sent by nationally recognized overnight courier, sent by electronic transmission or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

**If to the Debtors, to:**

**With a copy to:**

Irell & Manella LLP  
840 Newport Center Drive, Suite 400  
Newport Beach, California 92660  
(949) 760-0991  
(949) 760-5200 (fax)  
E-Mail: [afriedman@irell.com](mailto:afriedman@irell.com)  
Attention: Alan J. Friedman, Esq.

**If to Secured Party, to:**

**With a copy to:**

SulmeyerKupetz  
A Professional Corporation  
333 South Hope Street, Thirty-Fifth Floor  
Los Angeles, CA 90071  
(213) 626-2311  
(213) 629-4520 fax  
E-Mail: [vsahn@sulmeyerlaw.com](mailto:vsahn@sulmeyerlaw.com)  
Attention: Victor A. Sahn, Esq.

All such notices and other communications shall be deemed to have been given and received (i) in the case of personal delivery, on the date of such delivery, (ii) in the case of delivery by telecopy, on the date of such delivery (at time of confirmation of transmission), (iii) in the case of delivery by nationally recognized overnight courier, on the first (1st) Business Day following dispatch, (iv) in the case of delivery by electronic transmission, on the date of such delivery (at the time of confirmation of transmission), and (v) in the case of mailing, on the third (3<sup>rd</sup>) Business Day following such mailing or distribution

13. **Construction.** All words used in this Agreement shall be construed to be of the appropriate gender or number as the context requires. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The captions of paragraphs of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of California without regard to its conflicts of laws principles.

15. **Amendment.** This Agreement may be amended only by the written agreement of the Debtor and Secured Party.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same agreement. For purposes hereof, a facsimile signature shall be deemed an original.

17. **Binding Effect.** This Agreement shall apply to, be binding in all respects upon and inure to the benefit of Parties and their respective successors.

18. **Tax Reporting.** The Parties agree that, all taxes, fees, charges or claims due with respect to interest or other income, if any, attributable to the Cash held from time to time in the Control Account pursuant to this Agreement, shall be the sole obligation of Debtors, and shall not offset Gross Available Cash Flow.

19. **Compliance with the Plan and Cash Flow Note and Security Agreement.** This Agreement is entered into subject to the terms and conditions of the Cash Flow Note, the Security Agreement and the Plan. The provisions of this Agreement shall not be deemed to limit, impair, alter or amend, whether in whole or in part, the terms and conditions of the Cash Flow Note, the Security Agreement, or the Control Agreement.

20. **Due Authorization; Valid and Binding Agreement.** Each of the Parties hereto hereby represents and warrants to the other Parties as follows: (a) such Party is duly authorized to enter into, deliver and perform the obligations of such Party under this Agreement; (b) by its signature below, the undersigned individual signing on behalf of such Party is authorized to execute this Agreement with the power and express authority of such Party on whose behalf he/she has signed this Agreement; (c) upon the execution and delivery of its signature to this Agreement, this Agreement shall be a valid and binding obligation of such Party, enforceable in accordance with its terms and conditions, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights and/or by the application of general principles of equity.

21. **Acknowledgment of Security Interest.** Disbursing Agent expressly acknowledges and agrees that Secured Party has a security interest in and to the Collateral, subject to the terms and

conditions of the Security Agreement. Without limiting the generality of the foregoing, Disbursing Agent shall not take any action in opposition to, or otherwise challenge the validity and enforceability of, the security interest granted to Secured Party pursuant to the terms and conditions contained in the Security Agreement.

22. **Further Assurances.** Each of the Parties hereto shall execute and deliver such documents, instruments, certificates and agreements, and take such actions as reasonable and appropriate and/or as may be reasonably requested from time to time by the other Parties, in furtherance of the terms and conditions of this Agreement and the transactions contemplated herein. Without limiting the generality of the foregoing, (a) each Debtor hereby irrevocably makes, constitutes and appoints Disbursing Agent as such Debtor's true and lawful attorney-in-fact, with power to sign the name of such of such Debtor on any of the documents required in connection with the deposit of Gross Available Cash Flow in the Control Account as contemplated herein, and (b) Disbursing Agent shall promptly advise Secured Party in writing and vigorously defend the Control Account, the Cash deposited or to be deposited therein, and the secured claim of Secured Party in the Collateral, against any and all Liens whatsoever and/or actions to attach, seize or take control over the Cash in the Control Account.

23. **Dispute Resolution Procedures; Prevailing Party Recovery.** The Parties agree that, in the event that the Parties hereto cannot reach an agreement concerning any determination or other issue with respect to this Agreement, the Cash Flow Notes and/or the Security Documents, and/or there is any dispute, conflict or challenge with respect to the terms and conditions hereof or thereof, including, without limitation, a conflict concerning the interpretation and enforcement of this Agreement, the Cash Flow Note and/or the Security Documents, all such disputes, conflicts, determinations or challenges, shall be governed by the dispute resolution provisions of the Security Agreement, including, without limitation, the right of a Party to recover losses, damages, costs and expenses (including, without limitation, reasonably attorneys' fees and expenses) against Disbursing Agent and Debtors pursuant to the terms and conditions of the dispute resolution provisions of the Security Agreement.

**[SIGNATURE PAGE IMMEDIATELY FOLLOWING]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed  
as of the Effective Date.

**DEBTORS:**

\_\_\_\_\_  
**JAMES C. GIANULIAS**, an individual,

\_\_\_\_\_  
James C. Gianulias, as Trustee of **THE JAMES CHRIS  
GIANULIAS TRUST**

**CAMEO HOMES**, a California corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SECURED PARTY:**

\_\_\_\_\_  
**Tom Seaman**, as Trustee of the **CREDITORS TRUST  
FORMED FOR THE BENEFIT OF THE  
HOLDERS OF ALLOWED GENERAL  
UNSECURED CLAIMS AGAINST JAMES C.  
GIANULIAS AND CAMEO HOMES**

**DISBURSING AGENT:**

**MESA MANAGEMENT, INC.**, a California  
corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT A**

**Copy of Cash Flow Note**

(see attached)

**EXHIBIT B**

**Copy of Security Agreement**

(see attached)

**EXHIBIT C**

**List of Portfolio Entities**

The following, along with any successor, assign, transferee thereof, shall be deemed a Portfolio Entity:

1. East Coast Properties—Woodwind Gardens, a New York General Partnership
2. East Coast Properties—Country Estates, a New York General Partnership
3. East Coast Properties—Country Gardens, a New York General Partnership
4. East Coast Properties—Grenadier Village, a New York General Partnership
5. Fountain Valley Senior Housing, LP, a California limited partnership
6. LG Parkewood Village, LP, a California limited partnership
7. Park Glen, LP, a California limited partnership
8. Park Mesa, LP, a California limited partnership
9. Picadilly Square, LP, a California limited partnership
10. Placentia 422, LP, a California limited partnership
11. River Knolls, LP, a California limited partnership
12. Villa Buena, LP, a California limited partnership
13. Coast Business Center (Coast Business Center, LP, a California limited partnership)
14. Crown Building (Crown Building, LLC, a California limited liability company)
15. Dana Center, a California general partnership
16. Dana Centre, LP, a California limited partnership
17. Greenhaven Plaza, a California General Partnership
18. GVSC, LP, a California limited partnership
19. Lahaina Cannery Mall, LLC, a Hawaii limited liability company
20. Lucas-Gianulias, a California general partnership
21. Sunrise Village Retail Center, LP, a California limited partnership

**EXHIBIT D**

**Intermediate Entities**

The following, along with any successor, assign, transferee thereof, any new or additional entities that have a direct or indirect Ownership Interest in a Portfolio Entity (and which are owned, directly or indirectly, by Debtors), shall be deemed an Intermediate Entity:

1. Fountain Valley Senior Housing II, LLC
2. Parkewood Village, LLC
3. Park Glen, LLC
4. Park Mesa, LLC
5. Picadilly Square, LLC
6. River Knolls, LLC
7. Villa Buena, LLC
8. Emerald Isle (Placentia), LP
9. Emerald Isle (Placentia), LLC
10. Placentia 422, LLC
11. Grass Valley Shopping Center, LLC
12. Dana Centre, LLC