

B10 (Official Form 10 (12/07))

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor: JAMES C. GIANULIAS		Case Number: 8:08-13150-RK
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): David Evans and Associates, Inc.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: 320 S.W. Upper Terrace Drive, Suite 200 Bend, OR 97702 Attention: Linda Watanabe-Mitchell		Court Claim Number: (If known)
Telephone number:		Filed on:
Name and address where payment should be sent (if different from above): <div style="text-align: center;">FILED NOV 12 2008 CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA By _____ Deputy Clerk</div>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone number:		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ 65,000.00		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.		Specify the priority of the claim.
If all or part of your claim is entitled to priority, complete item 5.		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4).
2. Basis for Claim: <u>services performed</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5)
3. Last four digits of any number by which creditor identifies debtor: <u>CAMH or GCOS</u>		<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7).
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)(____).
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other		Amount entitled to priority: \$ _____
Describe:		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Value of Property: \$ _____ Annual Interest Rate _____ %		
Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____		
Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		
If the documents are not available, please explain:		
11/10/08 Date: _____ Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <u>Jim Aust</u> , Vice President		FOR COURT USE ONLY

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INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the

claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a). If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim

A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. §101 et seq.), and any applicable orders of the bankruptcy court.

In re James C. Gianulias & Cameo Homes
U.S. Bankruptcy Court for the Central District of California Santa Ana Division
Case No. 8:08-bk-13151-RK

CREDITOR: DAVID EVANS AND ASSOCIATES, INC.

SUMMARY OF AMOUNTS OWING:

<u>DATE</u>	<u>INVOICE #</u>	<u>AMOUNT OWING</u>
11/10/07	236233	\$ 5,612.35
12/12/07	268663	4,694.25
1/10/08	240590	533.20
2/14/08	242915	66.65
3/14/08	244795	458.80
4/10/08	246235	<u>155.00</u>
TOTAL		\$11,520.25

<u>DATE</u>	<u>INVOICE #</u>	<u>AMOUNT OWING</u>
8/9/07	229984	\$21,301.36
9/5/07	231336	5,260.60
10/11/07	234196	18,357.07
11/13/07	235878	1,582.42
12/12/07	238233	1,838.55
1/10/08	240488	5,071.92
2/12/08	242146	<u>87.87</u>
TOTAL		\$53,499.79

GRAND TOTAL **\$65,020.04**

PROFESSIONAL SERVICES AGREEMENT-MODIFIED 12/13/06

Contract No: RC-103

Cost Code:

For Professional Services to be rendered, this agreement ("Agreement") is entered into this 13th day of December, 2006 by and between:

G. COMPANIES CONSTRUCTION, INC. PO BOX 2990 NEWPORT BEACH, CA 92658 TEL: (949) 975-0617 FAX: (949) 975-0625	And	DAVID EVANS AND ASSOCIATES, INC. 800 N. HAVEN AVENUE, SUITE 300 ONTARIO, CA 91764 TEL: (909) 481-5750 FAX: (909) 481-5757
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Hereinafter called "Contractor"

Hereinafter called "Consultant"

RECITAL

Contractor, pursuant to a contract with Cameo Homes, Owner of the Property, proposes to improve, develop and/or subdivide Tract No. 16605, Rancho Cucamonga Townhomes situated in the area of the County of San Bernardino, State of California, ("Project") legally described as follows:

APN: 0207-101-13 and 0207-101-31 and 0207-101-34 and 0207-101-41

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. FINANCING CONDITION AND CANCELLATION: This Agreement is contingent upon Owner obtaining sufficient financing for the Project. If Owner is unable to obtain construction loans sufficient to continue or complete the work necessary for the Project as required by the Owner, then Contractor may, upon written notification to Consultant, either:

- (a) immediately terminate this Agreement; or
- (b) designate which portions of the work covered by this Agreement shall be completed by Consultant.

In the event Contractor is unable to proceed with this Project, for any reason whatsoever, whether wholly or partially, Contractor may, at his sole discretion, cancel this Agreement without recourse by Consultant. Consultant shall be paid in full for any and all contracted work completed through official date of cancellation.

2. DOCUMENTS: This Agreement and Schedules A and B attached hereto together comprise the "Contract Documents." Schedule "A" attached to and incorporated in this Agreement is entitled "Supplement to Professional Services Agreement." Schedule "B" attached to and incorporated in this Agreement, is entitled "Scope of Professional Services," and describes the services to be provided by Consultant under this Agreement. Consultant acknowledges that he has conducted a reasonable examination of Schedule "B" in its entirety. Consultant further acknowledges that the work of the various subcontractors for the Project is interrelated, and Consultant fully understands the character of the work to be performed by him under this Agreement and the "Scope of Professional Services" Documents.

3. WORK COVERED: Consultant agrees to perform its services *under the terms of this Agreement*, in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant shall be obligated to provide his Services in substantial compliance with the Contract Documents and all applicable Federal, State & local laws, ordinances, and regulations (including O.S.H.A. and all other safety laws) as well as with the provisions of this Agreement.

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4. **CONTRACT PRICE:** For the substantial performance of all of Consultant's obligations hereunder, Contractor shall pay to Consultant the amounts set forth in Schedule "A" attached hereto (the "Contract Price"). In no event shall any unit prices as shown in Schedule "A" be subject to any upward adjustments without prior written permission from Contractor as otherwise provided in this Agreement. Except where a different notice period is provided herein for breaches of specific clauses of this Agreement, Contractor shall have the absolute right to terminate this Agreement without cause upon three (3) days prior written notice to Consultant and payment to Consultant of the portion of the Contract Price for the work completed as of the date of termination.

5. **PAYMENT SCHEDULE:** So long as Consultant's services are in substantial conformance with the provisions of this Agreement, payment will be made for the work completed at the unit price or prices specified in accordance with the payment schedule set forth in the Schedule "A" attached hereto. Contractor shall not be obligated to make progress payments to Consultant until Contractor:

- (a) Has received City and County inspections, when applicable;
- (b) Has received material and labor releases as herein provided, when applicable; and
- (c) Is reasonably satisfied that Consultant has corrected all complaints involving the failure of Consultant's work to be in substantial conformance with the provisions of this Agreement. Any payments made hereunder or advances made by Contractor shall not be construed as evidence of acceptance of any of Consultant's work. If construction funds are deposited in a joint control account, Consultant agrees to accept payments from such account and any order given by Contractor to Consultant thereon shall be deemed payment on the part of Contractor and a release of Contractor in the amount of any such order. Contractor shall have the right to make payments to Consultant hereunder by checks payable jointly to Consultant and his suppliers and laborers, or any of them.

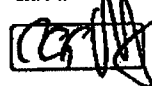
In the event of any dispute between Contractor and Consultant, concerning any matter including but not limited to claims involving change orders, extra work, delay, or performance, such disputes shall be submitted to mediation. Moreover, Consultant expressly agrees that in the event of a dispute, provided the scheduled payments required under this Agreement have been made, then Consultant's claim for any additional compensation shall not justify cessation of work or refusal to proceed with the work unless otherwise stated in the agreement. The parties expressly agree that should they be unable to informally resolve such dispute, they shall thereafter resolve any disputes by submitting the matter to Mediation through the *American Arbitration Association* or such other Mediator or Mediation Service as the parties agree to in writing. Said Mediation is to be held in Orange County, California, unless otherwise agreed to by the parties. If the matter is not resolved through the aforementioned Mediation process, either party may thereafter litigate the matter in the Orange County California Superior Court. The parties further agree that except as other required by law, the laws of the State of California shall apply to the adjudication of any dispute that arises between the parties. Except as otherwise provided within this Agreement, should Consultant refuse to continue with or complete the work, because of a dispute over payments allegedly owed, change orders or extras, such a refusal shall be an independent breach of this Agreement, and shall subject Consultant to liability for any resulting damages, irrespective of the merits of Consultant's claim for additional compensation. CONSULTANT AGREES TO FURNISH TO CONTRACTOR, AND CONTRACTOR MAY REFUSE PAYMENT TO CONSULTANT HEREUNDER UNLESS AND UNTIL CONSULTANT FURNISHES TO CONTRACTOR, RELEASES OF CLAIMS OF, LABORERS, MATERIALMEN, ANY TRUST FUND WHICH MAY ACQUIRE A LIEN ON THE PROJECT PURSUANT TO CIVIL CODE SECTION 3111 OR OTHERWISE, AND OTHERS PERFORMING WORK OR FURNISHING MATERIAL UNDER THIS AGREEMENT, WHICH RELEASES OF CLAIMS SHALL BE MADE EXCEPT AT CONTRACTOR'S OPTION.

6. **ADDITIONS, CHANGES AND MODIFICATIONS TO AGREEMENT:** The terms and conditions of this Agreement are not subject to addition, modification or change, unless such addition, modification or change is made in writing by a duly authorized representative of Contractor or Consultant. Unless otherwise notified in writing, the only duly authorized representative of the Contractor is set forth in Schedule "B", attached hereto. Any addition, change or modification made by any other person or persons shall not be binding upon Contractor, nor shall Contractor have any responsibility or liability for unauthorized additions, change or modification to this Agreement. All written authorization for additions, change or modification shall be attached to and be made a part of this Agreement. No addition, change or modification made as herein provided shall void this Agreement.

7. **EXTRAS:** The professional services furnished by Consultant, as are more fully set forth in the Scope of Professional Services, (Exhibit B), attached hereto and incorporated herein by reference, are included within the Contract Price. Contractor, at any time during the progress of this Project, may order in writing changes, additions or modifications to the Contract Documents in

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accordance with Section 6 of this Agreement, and these changes shall not void this Agreement, but the value of the changes, as designated by the parties in a written authorization shall be added to or deducted from the Contract Price as the case may be.

8. **TAXES:** The Contract Price includes the payment by Consultant of any tax under California Sales or Use Tax Law, or any amendments thereto, or any law now existing, or which may thereafter be adopted by Federal, State, local or other governmental authority, taxing the materials, services required, or labor furnished, or any other tax levied by reason of the work performed or to be performed hereunder.

9. **INTERRUPTION OF WORK:** If, as a result of fire, earthquake, act of God, war, strikes, picketing, boycott, lockouts or other causes or conditions beyond the control of Contractor, Consultant discontinues his Services prior to its completion, then Consultant shall resume work as soon as conditions permit, or if Consultant shall discontinue work because Contractor shall consider it inadvisable to proceed with his Services, then Consultant will resume his Services promptly upon receiving written notice from Contractor to do so, and Consultant shall not be entitled to any damages or compensation on account of cessation of work as a result of any of the causes mentioned above.

10. **INSPECTION AND APPROVALS:** Consultant's Services, any portion of his Services and any and all work by Consultant shall be subject to *reasonable* inspection and approval by all applicable governmental authorities, Contractor, and Contractor's representatives. Pursuant this Agreement, Consultant shall produce plans, specifications, and other documents and/or perform field services as required by any or all of the above in order to obtain said approvals. It is agreed that any change or correction required as a result of any such inspections and/or approvals, and which change or correction arises from or is connected with Consultant's breach of professional duty or willful misconduct, shall be made by Consultant without additional charge, unless otherwise specifically agreed upon by Contractor in writing.

11. **PLANS, DRAWINGS, SPECIFICATIONS:** All plans, drawings, reports, original papers, specifications and other work produced by Consultant for the Project pursuant to this Agreement shall be the property of the Owner. Contractor grants to Consultant irrevocable, non-exclusive, unlimited, Royalty-free license to use, including the right to reproduce, distribute copies of, and display any final instruments of services prepared under this Agreement. Contractor acknowledges that incomplete instruments of service are not reviewed for errors or omissions, nor are they appropriate for further use. Contractor shall indemnify and hold harmless Consultant and Consultant's lower tier subconsultants from all claims, damages, losses and expenses, including reasonable attorney fees, arising out of any changes made to any instruments of professional service, final or incomplete, or use except as contemplated under the Scope of Professional Services of this Agreement or otherwise agreed to in writing by the parties.

12. **CORRECTION OF WORK THAT IS BELOW THE STANDARD OF CARE:** Should the work performed by consultant be deemed to be below the applicable Standard of Care by any Governmental Inspector or Contractor or Contractor's representatives upon *reasonable* inspection, and brought to the attention of Consultant by a representative of Governmental entity or Contractor, Consultant shall, within a Professionally reasonable period of time, correct such work to the satisfaction of Contractor and/or the governmental authority. In the event that Consultant is unable to correct such work, for any reason, and Contractor is required to bring in outside personnel/companies to either correct or redo work previously performed by Consultant, Contractor, at its option, may deduct from the payment due or to become due to Consultant an amount that shall represent the difference between the fair and reasonable value of such work and its value had it been executed in conformity with the Contract Documents. Should the Consultant fail to make such corrections to its work with a Professionally reasonable period of time, Contractor may terminate this Agreement.

13. **RELATED WORK:** Consultant will coordinate with Client and agents designated by Client to assist the Client with integrating Consultant's services with the other parts of the Project where necessary and appropriate. Consultant agrees to include sufficient details or notes in the plans to ensure that it is conveyed how the work of related trades should integrate. Consultant ensures this integration only with plans that have been provided to him by client and or agents designated by client. Consultant cannot be responsible for information prepared by others or that is withheld.

14. **RIGHTS OF CONTRACTOR ON TERMINATION:** In the event of termination of this Agreement by Contractor, arising from Consultants material breach of its terms as provide herein, Consultant hereby authorizes Contractor to perform and complete his Services and in connection therewith, Contractor may:

(a) eject Consultant;

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- (b) take possession of all materials, plans, tools and equipment already on the site, as well as all materials, reports, etc., in the course of preparation wherever located, and have any and all rights under all agreements of Consultant; and/or
- (c) go into the open market and secure materials and employ men, or another consultant, necessary to complete his Services, at Consultant's expense.

Consultant shall not be entitled to receive any further payment until acceptance of the entire Project and then only after the direct and indirect costs incurred by Contractor to complete Consultant's work, plus a reasonable allowance for profit for Contractor, have been determined. The direct and indirect costs and the allowances for profit shall apply against the Contract Price, and, if in excess of the balance due Consultant, the amount of the excess shall be a debt immediately due and owing from Consultant to Contractor. If the balance of the Contract Price shall exceed Contractor's direct and indirect cost, plus a reasonable allowance for profit, as above provided, such excess shall be paid to Consultant at the time of acceptance of the entire Project.

15. CLAIMS OF CONSULTANT FOR DELAY OR DAMAGE: Consultant expressly waives the right to additional compensation for services only when the Contractor's or other Consultants' performance delays the Consultant's performance of its services; provided however that the Contractor's or other Consultants' delay does not require any change in the service to be provided by Consultant.

16. INSURANCE: Consultant shall, during the continuance of the work under this Agreement, including extra work in connection therewith, maintain the following insurance coverage:

A. ALL INSURANCE MUST BE PLACED WITH A COMPANY WHOSE LATEST BEST'S FINANCIAL STRENGTH RATING IS "A" OR BETTER, AND WHOSE FINANCIAL SIZE CATEGORY IS 9 OR BETTER.

- i. Worker's Compensation Employer's Liability Insurance, and any and all insurance required by Employee Benefit Acts or other statutes applicable where the work is to be performed. Such insurance shall be in amounts sufficient to protect the Consultant or any of its sub-consultants or subcontractors from any liability for bodily injury, sickness or disease (including death resulting at any time therefrom) or any of its employees, including any liability or damage which may arise by virtue of any statute or law in force which may hereinafter be enacted, but in not event shall such be policy provide less than \$1,000,000 of coverage.
- ii. Comprehensive: General Liability & Property Damage Insurance with minimum liability requirements in the amounts of \$1,000,000 Combined Single Limit, per occurrence, Completed Operations Coverage of \$1,000,000 per occurrence and a \$2,000,000 Aggregate for each aforementioned such coverage, unless higher limits are specified in Schedule "B". Such insurance shall be written on ISO Form No. CG0001101 or it's equivalent provide however that Contractor has provided advanced written approval of such an equivalent insurance policy.
- iii. Comprehensive Auto: Automobile Liability Insurance, including Property Damage covering all of Consultant's owned or rented equipment used in connection with the Project or his Services, (or that owned or rented equipment of Consultant's agents, officers, principals and employees used in connection with the Project or his Services) with minimum liability requirements in the amount of \$1,000,000, Combined Single Limit, per occurrence for bodily injury (including death resulting at any time therefrom) and property damage.
- iv. Professional Liability/Errors & Omissions: Consultant shall maintain Professional Liability and/or Errors & Omissions Insurance with \$1,000,000 policy limits per claim; covering all professional liability which may be or is incurred by Consultant arising out of his Services provided by Consultant to the Project.
- v. Excess Insurance: Consultant shall procure Excess Automobile insurance in the amount of \$2,000,000 and Excess General Liability Insurance (including Completion Operations coverage) in the amount of \$5,000,000. Such Excess coverage shall be primary to any other coverages purchased by, or on behalf of Contractor.

- B. All insurance policies shall contain appropriate endorsements extending the coverage thereof to include the liability assumed by the Consultant under this Agreement. Higher limits of insurance may be required under the provisions of Schedule "B", attached hereto.
- C. Consultant will procure and forward to Owner, prior to commencement of work or within ten (10) days of signing this Agreement, whichever is first, Certificates of Insurance verifying it has met the insurance requirements specified in this section. Consultant shall provide written evidence, including but not limited to Certificates of Insurance, that equivalent renewal or replacement insurance has been procured prior to the time that any previously existing insurance policy that consultant is required to maintain pursuant to the terms of this Agreement, terminates. Upon request, any subconsultant shall also provide a full and complete copy of the operative insurance policy, including the Declaration Page and all endorsements.
- D. Consultant shall procure and forward to the Owner, prior to commencement of work or within ten (10) days of signing this Agreement, whichever is first, endorsements to each insurance policy (except the worker's compensation and professional liability insurance policies) identified in this section naming Owner, Contractor, and their officers, directors, agents, servants, employees, divisions, subsidiaries, joint venturers, members, partners, principals, shareholders and affiliated companies (collectively referred to in this contract as "The Group") as additional insureds under each policy. Relevant to naming The Group as Additional Insured, the wording shall be as follows:
- Rancholuxanona 212 LLC Companies Construction Inc. Housing Capital Company Newmaster Capital*
- "It is understood and agreed that coverage afforded by this policy shall also apply to INSERT NAME(S) OF OWNER(S), CONTRACTOR AND MEMBERS OF THE GROUP (AND NAME OF LENDER OF SO REQUIRED); their officers, directors, agents, servants, employees, divisions, subsidiaries, joint venturers, members, partners, principals, shareholders and affiliated companies (collectively referred to in the Agreement as "the Group") as additional insureds. This insurance is primary, and any other insurance maintained by such additional insured is non-contributing with this insurance as respects claims or liability arising out of or resulting from the acts or omissions of the named insured, or of others performing work on behalf of the named insured."
- If required by any Lender for the Project, Consultant shall also name the Lender as an additional insured under the aforementioned insurance policy or policies and any and all references to "The Group" shall apply equally to Lender throughout Paragraph 19.
- Such policy of insurance shall also provide that any losses shall be payable to the insureds (or any mortgage as to the insurance in Section 19(A)(ii), as their interests may appear. Such insurance shall provide that any waiver of subrogation rights by the insured does not void the coverage otherwise provided, and Consultant and Contractor each hereby waive any and all rights of recovery against the other for loss or damage to such waiving party or others under its control or any of their property, to the extent, and only to the extent, that such loss or damage is covered by the insurance policies required to be provided under this Agreement, which insurance policies are in force at the time of such loss.
- E. The additional insured endorsements required by this section shall waive any right of subrogation against the Group with regard to any loss or damages arising out of or incidental to the perils insured against by the policy of insurance described herein.
- F. All insurance policies procured hereunder shall provide that no material change or cancellation in insurance shall be made by the Consultant or its carrier without thirty (30) days written notice to Owner and Owner's written approval thereof.
- G. Compliance or failure to comply by the Consultant with the foregoing insurance requirements as to carrying insurance and furnishing certificates shall not relieve the Consultant of his liabilities and obligations under this clause, nor shall it relieve Consultant from his indemnification and warranty obligations to the Group arising out of this Agreement or otherwise.

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- H. No acceptance of insurance certificates or additional insured endorsements by Contractor shall in any way limit or relieve Consultant of its duties and responsibilities under this Agreement.

17. INDEMNIFICATION/WAIVER:

- A. To the fullest extent permitted by law for claims involving professional liability, Consultant agrees to *defend*, indemnify and hold Contractor harmless from any claims, damages, losses and expenses, including reasonable attorney's fees, to the extent arising out of or resulting from the negligent acts or omissions or alleged negligent acts or omissions of Consultant in the performance and furnishing of its services under this Agreement."

To the fullest extent permitted by law for claims not involving professional liability, Consultant agrees to *defend*, indemnify and hold Contractor harmless from any claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or resulting from the acts or omissions of Consultant, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property including loss of use resulting therefrom, but only to the extent caused in whole or in part by the acts or omissions of Consultant, its agents, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder."

The parties have negotiated this indemnification/waiver provision pursuant to California Civil Code Section 2782.5 and expressly agree to its provisions. The parties understand that should any claim for construction defects and/or construction defect lawsuits or causes of action be asserted against the Group, which claims, lawsuits or causes of action arise from Residential Construction, Subcontractor's indemnity obligations shall be determined pursuant to the provisions of California Civil Code Section 2782.

- B. To the extent applicable under California Law, where Consultant's work is not in compliance with the standards "Standards" set forth in the Right to Repair Act (California Civil Code sections 895 et seq.), the scope of the defense and indemnity obligations described in this subsection also include any and all costs incurred by the Group to repair, replace or redesign any item, which repair, replacement or redesign is necessary because Consultant's negligent performance of the work caused or contributed to such non-compliance with the Standards. This cost shall include having the repair, replacement or redesign made by a contractor or professional other than the Consultant, pursuant to the Right to Repair Act.
- C. Consultant will pay when due valid liability created or incurred by the negligence of the Consultant, its agents, servants and employees, and Contractor shall not have any obligation or liability whatsoever unto Consultant, its agents, servants or employees excepting only the payment to Consultant of the Contract Price at the time and in installments as provided in the SCHEDULE "A", subject to the obligations of this Agreement.
- D. Notwithstanding the foregoing, to the extent so required under the law of this jurisdiction, the indemnity agreement created herein shall not apply to nor purport to indemnify or hold harmless any person or entity included in the Group against any liability to the extent arising from the sole negligence or willful misconduct of that person or entity, its agents, servants or independent contractors who are directly responsible for damages for:
- i. death or bodily injury to persons; and
 - ii. injury to property;
- E. In case any suit or other proceedings shall be brought against the Group at any time on account of or by reason of any negligent performance of Consultant (or its officers, agents or employees), Consultant agrees to assume the defense thereof at the request of any or all of the Group and to defend the same at Consultant's own expense and to pay all judgments and other expenses in connection therewith. To the extent such judgments or other expenses resulted from Consultant's negligent performance of the services.

18. INDEPENDENT CONTRACTOR RELATIONSHIP: The relationship of Consultant during the term of this Agreement shall be that of any independent contractor. Consultant shall take any and all action necessary to maintain said independent contractor relationship throughout the term of this Agreement, and Consultant shall at no time be considered an employee of Contractor.

19. PERMITS, LICENSES AND LAWS: Before beginning any portion of the Project, Consultant shall obtain, at his expense, all certifications, permits and licenses required for his work on the Project. Consultant shall comply with all laws, ordinances, rules, regulations, orders and requirements of the applicable city and county governments, the State and Federal governments, and of any board or commission or any other duly qualified body having jurisdiction, which shall or might affect or apply to the Project. Consultant shall exhibit each such required permit or license to Contractor upon its request. Any fines, penalties or judgments incurred at the Project which are due to the Consultant's failure to obtain a required certification or permit shall be borne and paid solely by Consultant.

20. ASSIGNMENT: Consultant shall not assign or subcontract all or any portion of this Agreement without first obtaining in each and every instance permission in writing from Contractor, and then only subject to, and upon the same terms and conditions, as the provisions of this Agreement. Any permission granted by Contractor shall not be deemed permission to any subsequent assignment or subcontract. Any assignment or subcontract that Consultant made without the consent of Contractor as herein provided shall be null and void and shall at the option of Contractor be grounds for termination of this Agreement, and Contractor shall have the right to elect to terminate the Agreement or, at Contractor's sole discretion, to proceed in accordance with the provisions of this Agreement. Any such assignment or subcontract shall contain all of the provisions of this Agreement and shall require the assignee or subcontractee thereafter to be directly liable to Contractor in all respects as therein required of Consultant. Any assignment of this Agreement or assignment of payments shall be submitted to the Contractor for its prior written approval and shall not be binding upon Contractor until so approved. No assignment shall relieve Consultant or Consultant from his duties, obligations and liability hereunder, unless specifically relieved in writing by Contractor and Consultant.

21. LIENS: Consultant shall pay when due all claims for labor or materials incurred by him in the performance of this Agreement. If any lien of mechanics, materialmen or a trust fund pursuant to Civil Code Section 3111 or attachments garnishments, or suits affecting title to real property are filed against the Project, or any portion of it, Consultant shall within ten (10) days after written demand of him by Contractor, cause the effect of such lien, attachment or suit to be removed from the Project, or any portion thereof, and in the event Consultant shall fail to do so, Contractor is hereby authorized to use whatever means it may deem best to cause the lien, attachment or suit, together with its effect upon title, to be removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including reasonable attorneys' fees incurred by Contractor, shall become immediately due from Consultant to Contractor. Consultant may contest any such lien, attachment or suit, provided that first he shall cause the effect to be removed from the Project, or any part thereof, and shall do such further things as is necessary to cause an Contractor of any portion of the Project not to withhold, by reason of such liens, attachments or suits, monies due to Contractor from such Contractor.

22. INSOLVENCY OR BANKRUPTCY:

- A. In the event of an appointment of a receiver for Consultant or in the event Consultant makes an assignment for the benefit of creditors, Contractor may terminate this Agreement by giving three (3) working days written notice to Consultant and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Consultant, Contractor may terminate this Agreement by giving three (3) working days written notice to Consultant, its trustee and its surety, if any, unless the Consultant, the surety, or the trustee: (i) promptly cures all defaults, (ii) provides Contractor with adequate assurances of its future performance, (iii) compensates Contractor for any actual pecuniary loss resulting from such defaults, and (iv) assumes the obligations of Consultant within the statutory time limits.
- B. If Consultant is not performing the Project in accordance with this Agreement at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Consultant or its trustee to accept or reject and provide adequate assurances of its ability to perform hereunder, may immediately avail itself of such remedies as are reasonably necessary to maintain the progress of the Project. Contractor may offset against the Contract Price all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable profit, overhead and attorneys' fees and expenses. Consultant shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

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- C. In the event that Consultant has proceeded to file a petition with the Bankruptcy Court under the applicable Bankruptcy Laws during the pendency of any dispute between them, Consultant agrees, that upon request by Contractor, it shall immediately stipulate to an order granting relief from the automatic stay then in effect so as to allow Contractor to proceed against any insurance carrier covering Consultant for the Project and/or any obligations described in this Agreement as well as any insurance carrier having issued certificates or additional insured endorsements to the Group.

If insolvency or bankruptcy causes Consultant not to perform its obligations under this Agreement, this Agreement may be terminated at the option of Contractor upon twenty-four (24) hours written notice to Consultant, and Contractor shall have all the rights or remedies provided at law or in equity, including those specified in Paragraph 17. Consultant hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Consultant's financial status, credit and manner of meeting obligations.

23. DEATH OF CONSULTANT: If Consultant is a sole proprietor, his death shall, at Contractor's sole option, automatically terminate this Agreement.

24. CONSULTANT'S WARRANTIES AND REPRESENTATIONS: As a material inducement to Contractor to enter into this Agreement, Consultant warrants and represents as follows:

- (a) Consultant is familiar with all requirements of the Agreement and Contract Documents.
- (b) Consultant has conducted a reasonable investigation of the Project and has satisfied himself regarding the character of the work and local conditions that may affect it or its performance.
- (c) Consultant is satisfied that his Services can be performed and completed as required in this Agreement.
- (d) Subject to the terms of this Agreement, Consultant warrants that in entering into this Agreement he has not been influenced by any statement or promise of Contractor or its representatives but only by the Contract Documents.
- (e) Consultant is financially solvent.
- (f) Consultant is experienced and competent to perform this Agreement.
- (g) Consultant is qualified, licensed in good standing and authorized to do business in the State of California.
- (h) Consultant is familiar with all general and special laws, ordinances, and regulations in existence at time of the execution of this Agreement, that may affect his Services, its performance, or those persons employed therein.
- (i) Consultant is familiar with the tax and labor regulations and with rates of pay that will affect the work hereunder.

In addition to such other warranties and guaranties required by this Agreement, Consultant acknowledges that this warranty and guaranty is for the express benefit of The Group and Lenders, which may now or hereafter have security interest in the real property upon which improvements are to be constructed on the Tract, described more fully above, and shall further be for the benefit of Purchasers of the improvements to be so constructed, to the extent provided pursuant to California Civil Code Sections 895 et seq., (also known as SB 800). Further, Consultant hereby indemnifies and agrees to hold The Group and Lenders harmless from any and all claims, demands, damages, liabilities, costs and expenses, either of a punitive or compensatory nature (including attorney's fees) arising from the failure by Consultant to comply with any applicable local, state or federal statute or regulation in existence that this Agreement is signed, or the failure to comply with the applicable standards of Consultant's profession.

25. PUBLICITY: Consultant shall not disclose or make public to any news media or any persons associated with the news media or by advertisement or by public release of any kind or nature the fact that Consultant has entered into this Agreement with Contractor, unless such public release is first approved in writing by Contractor.

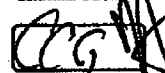
26. CONFLICT OF LAW: The laws of the State of California shall govern the interpretation, validity and construction of the terms and conditions of this Agreement.

27. PLACE OF PERFORMANCE: Execution of this Agreement shall be at Contractor's principal place of business in the City of Newport Beach, County of Orange, State of California and the County of Orange, State of California, shall be deemed the place of performance of all this Agreement for all legal purposes. In the event of arbitration proceedings or legal proceedings, the venue will be the County of Orange, California.

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28. **HEIRS AND ASSIGNS:** This Agreement shall inure to the benefits of and be binding on the heirs, executors, administrators and successors of the respective parties hereto, and the assigns of Contractor.

29. **NOTICES:** Any notices or statements required or designed to be give under this Agreement, unless otherwise provided herein, shall be personally served or sent by United States mail to the address as set forth on the first page of this Agreement, until notice of a different address be given. Notices not personally served shall be deemed given one (1) day after deposit in the United States mail, properly addressed and with postage prepaid.

30. **SCHEDULES "A" and "B":** Schedule "A" and Schedule "B", that are attached, are hereby incorporated herein by this reference as if wholly set forth at length.

31. **SAFETY REGULATIONS:** Consultant shall comply with all applicable safety regulations and orders, including, but not limited to, regulations and orders of all Federal, State and local agencies and the State of California Department of Industrial Relations, Division of Industrial Safety and any regulations issued by any governmental agency in connection therewith, and shall hold Contractor free and harmless from any and all claims by reason of Consultant's failure to fully comply with such laws, acts, or regulations.

32. **ACCIDENT REPORTS:** Consultant shall report to Contractor all accidents incidental on his Services, which result in death or injury to persons or in damage to property.

33. **ARBITRATION:**

- A. Contractor and Consultant agree that all disputes (except for actions for collections) between them arising out of or related to this Agreement will be submitted to Mediation through the American Arbitration Association or such other Mediator or Mediation Service as the parties agree to in writing. Said Mediation is to be held in Orange County, California, unless otherwise agreed to by the parties. If the matter is not resolved through the aforementioned Mediation process, either party may thereafter institute litigation in the State of California, Orange County Superior Court, only. The parties further agree that except as other required by law, the laws of the State of California shall apply to the adjudication of any dispute that arises between the parties.

34. **ATTORNEYS' FEES:** In the event of any dispute or litigation to enforce any of the provisions of this Agreement, or to declare any right of the parties hereto, the non-prevailing party shall pay all costs and expenses, including reasonable attorney's fees, incurred therein by the prevailing party, all of which may be included in and as a part of the judgment rendered in such dispute or litigation.

35. **SUBCONTRACT DRAFTED BY BOTH PARTIES:** The language of this Agreement shall be construed as a whole, according to its fair meaning and intent. Unless a word is expressly defined, it has been used in its ordinary sense. No presumption or inference shall be drawn against the person principally responsible for the drafting of this Agreement or any specific portion of this Agreement. It is acknowledged that all parties to this Agreement have had an opportunity to consult with their respective attorneys concerning the terms and conditions of this Agreement. Both parties have had the opportunity to request and negotiate changes to the Agreement. As a consequence, this Subcontract shall be deemed to have been drafted by all parties to the Agreement and neither Consultant nor Contractor shall maintain otherwise.

36. **SEVERABILITY:** Should any of the provisions of this Agreement prove to be invalid, unenforceable or otherwise ineffective, the other provisions of this Agreement shall remain in full force and effect. Any invalid, unenforceable or otherwise ineffective provision of this Agreement shall be enforced to the maximum extent allowed by law.

37. **NO INTENDED THIRD PARTY BENEFICIARY OF THIS AGREEMENT:** Except as otherwise stated within this Agreement, Contractor and Consultant herein agree that there are NO INTENDED THIRD PARTY BENEFICIARIES of this Agreement.

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G. COMPANIES CONSTRUCTION, INC.

DATED:

By:

Title:

DAVID EVANS AND ASSOCIATES, INC.

DATED:

By:

Title:

By:

Title:

DAVID EVANS AND ASSOCIATES, INC.

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- B. SCOPE OF PROFESSIONAL SERVICES**

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SCHEDULE "A"
SUPPLEMENT TO PROFESSIONAL SERVICES AGREEMENT

CONSULTANT: DAVID EVANS AND ASSOCIATES, INC.
CONTRACT: LANDSCAPE ARCHITECT
PROJECT/TRACT NO.: RANCHO CUCAMONGA TOWNHOMES

This Supplement to Professional Services Agreement is incorporated by this reference in the Agreement between Contractor and Consultant. "Agreement" as used throughout these documents includes the Professional Services Agreement and all attached Schedules and Exhibits.

If there is any conflict between the Professional Services Agreement and this Supplemental Schedule, the terms and provisions of this Supplemental Schedule shall supercede those existing in the Professional Services Agreement.

1. **CONTRACT PRICE:** The total contract amount is \$138,450 for the full and complete obligations under this Agreement, subject to all authorized additions, deletions, or adjustments.

2. **PAYMENT:** Lump Sum (or as per payment schedule as set forth in paragraph 3. below).

3. **SCHEDULE OF PAYMENT (Draw Schedule)**

4. **OFFSETTING ACCOUNTS:** If Consultant is or becomes indebted to Contractor on any other job or for any other reason, then Contractor may offset such indebtedness against any amounts due and owing to Consultant under this Agreement.

5. **PAYMENT DATE:** Payments by Contractor to Consultant will be made no later than the tenth of the month for all invoices received no later than the first (1st) of the previous month ("Progress Billings").

6. **PAYMENTS TO CONSULTANT CONDITIONED UPON PAYMENTS FROM OWNER:** Contractor will pay Consultant for work performed under this Subcontract only from funds paid by the owner of the Property ("Owner") to Contractor for the Project. If Owner wrongfully fails to pay Contractor monies owed to Contractor under Contractor's agreement with Owner for work on the Project (the "Prime Contract"), then Contractor's obligation of payment to Consultant under this Agreement shall be excused, on a pro rata basis with the unpaid portion of all other subcontracts on the Project, to the extent of Owner's failure to pay Contractor. It is expressly agreed that Owner's payments to Contractor under the Prime Contract shall be a condition precedent to payments by Contractor to Consultant. Consultant shall have the right to cease work on the project if any invoice is not paid within 90 days of the date the invoice is received by Contractor.

7. **DESIGNATED REPRESENTATIVE:** Contractor designates Victor J. Mahony as the only individual authorized to make additions, changes or modifications to the Subcontract and/or the Project Documents. All additions, changes or modifications to the Subcontract and/or the Project Documents must be in writing, signed by both parties to this Agreement.

9. **LIMITS OF INSURANCE:** Paragraph 19Aii, of the Professional Services Agreement is hereby modified to require minimum limits of \$ 1,000,000 per occurrence and \$ 2,000,000 aggregate for the general liability and property damage coverages that shall include the broad form and completed operations coverage.

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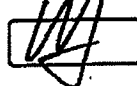
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SCHEDULE "B"
SCOPE OF PROFESSIONAL SERVICES

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