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12

UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

14

SECURITIES AND EXCHANGE
15 COMMISSION,

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Plaintiff,

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vs.

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LAMBERT VANDER TUIG (a/k/a

LAMBERT VANDER TAG a/k/a DEAN

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L. VANDER TAG a/k/a DEAN L.

VANDERTAG), THE CAROLINA

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DEVELOPMENT COMPANY, INC.

(a/k/a THE CAROLINA COMPANY

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AT PINEHURST, INC.), AND

JONATHAN CARMAN

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Defendants.

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Case No.:

SACV06-172 AHS(MLGx)

**(1) NOTICE OF MOTION FOR
APPROVAL OF PLAN OF
PARTIAL DISTRIBUTION,
ESTABLISHMENT OF A BAR
DATE FOR THE FILING OF
CLAIMS AND DEADLINE FOR
PROPERTY ELECTION;**

**(2) MEMORANDUM IN
SUPPORT OF MOTION;**

**(3) DECLARATION OF
THOMAS S. SEAMAN; and,**

**(4) PROPOSED PLAN OF
PARTIAL DISTRIBUTION**

Date: June 11, 2007

Time: 10:00 a.m.

Place: Courtroom 10A
411 W. Fourth St.
Santa Ana, CA

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on June 11, 2007, at 10:00
3
4 a.m., or as soon thereafter as counsel may be heard in
5 Department 10A of the above-mentioned court, located at
6 411 West Fourth Street, Santa Ana, California, Plaintiff,
7 United States Securities and Exchange Commission (the
8 "Commission"), will move the Court to approve its Motion
9 for Plan of Partial Distribution, Establishment of a Bar
10 Date for the Filing of Claims and Deadline for Property
11 Election (the "Motion").
12

13 The Commission proposes that a portion of the funds
14 marshaled by the Receiver be distributed. The Commission
15 proposes that most investors share in a pro rata
16 distribution of the funds, with certain investors given an
17 option to opt out of a pro rata distribution in exchange
18 for obtaining a lot upon which they hold a deed of trust.
19 The Commission also proposes that the Court set a bar date
20 for the filing of claims pursuant to the plan of
21 distribution and that a date be established for the
22 elections that a detailed in the plan of partial
23 distribution.
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1 The Commission's plan of partial distribution
2 recommends that a distribution be made on an investor's
3 cash investment, less any funds returned to the investor
4 from the Carolina Company. The Plan also excludes from
5 participation certain individuals and entities, including
6 the defendants and their families, Carolina Company
7 employees and salespeople, and other individuals who
8 should not participate because it would be inequitable to
9 allow them to participate.
10

11 The Commission's plan of partial distribution is fair
12 and equitable. It recognizes that The Carolina Property
13 should be sold as a single unit, effectively maximizing
14 the return to all shareholders. It permits individuals
15 who hold trust deeds encumbering lots on the property
16 surrounding the Mid South Golf Club and The National Club
17 to elect to receive the lot which is encumbered by a trust
18 deed held by that individual or individuals. Individuals
19 choosing to participate in the general pro rata
20 distribution will release their trust deed.
21

22 Notice of this Motion will be given to all affected
23 parties, including those excluded from participation in
24 the plan of partial distribution. Notice will be given by
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1 first class mail, a posting upon the Receiver's website
2 and publication of a notice in the Los Angeles Times, the
3 Orange County Register and USA Today newspapers.
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5 The Commission's Motion is based upon the accompanying
6 memorandum in support of this Motion, the Plan of Partial
7 Distribution and exhibits attached thereto, the
8 Declaration of Thomas A. Seaman and upon such additional
9 evidence and oral argument as the Court may consider in
10 connection with this Motion.
11

12 Any memoranda in opposition or objections to the Plan
13 should be filed with this Court and served upon the
14 Commission, the Defendants and the Receiver no later than
15 14 days prior to the hearing date set for the Plan.
16 Responses to any memoranda in opposition or objections
17 shall be filed and served no later than seven (7) days
18 prior to the hearing date set for the Court's
19 consideration of the Plan.
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21 Dated: May 14, 2007
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23 U.S. SECURITIES AND EXCHANGE COMMISSION
24

25 By _____
26 Thomas M. Melton
27 Karen L. Martinez
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1 MEMORANDUM IN SUPPORT OF MOTION FOR APPROVAL OF PLAN OF
2 PARTIAL DISTRIBUTION, ESTABLISHMENT OF A BAR DATE FOR THE
3 FILING OF CLAIMS AND DEADLINE FOR PROPERTY ELECTION

4 I. INTRODUCTION

5 The Securities and Exchange Commission (the
6 "Commission") hereby moves this Court to grant its Motion
7 for Approval of Plan of Partial Distribution,
8 Establishment of a Bar Date for the Filing of Claims and
9 Deadline for Property Election ("Motion for Approval").
10 On February 16, 2006, the Commission brought an action
11 against Lambert Vander Tuig ("Vander Tuig"), Jonathan
12 Carman ("Carman") and The Carolina Development Company,
13 Inc. ("Carolina Company") (collectively, the "Defendants")
14 alleging numerous violations of the federal securities
15 laws in connection with a Ponzi scheme that attracted
16 investments of more than \$52 million. That same day, the
17 Court granted an *ex parte* temporary restraining order and
18 asset freeze against all defendants restraining them from
19 future violations of the federal securities laws and
20 freezing their assets. The Court also entered an Order
21 appointing a receiver for Carolina Company on that date.

22 The Carolina Company offered and sold unregistered
23 securities through fraudulent sales practices. The
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1 Carolina Company offered shares to individuals at prices
2 between one and six dollars per share. The share price
3 was arbitrary, depending upon the cash needs of the
4 Carolina Company at the time. Some investors were offered
5 the opportunity to obtain shares and were given a trust
6 deed on lots located around three golf courses in the
7 Pinehurst, North Carolina area. Other investors obtained
8 deeded lots around one of the three golf courses through
9 tax-advantaged exchanges pursuant to Section 1031 of the
10 United States Tax Code. Some funds were returned to
11 investors by the Carolina Company in the form of
12 "dividends" or interest payments. In reality, these
13 returns were proceeds from later investors.

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17 The Court granted the Receiver, Thomas A. Seaman, the
18 power to marshal and take control of Carolina Company's
19 funds, assets and property. The Receiver is continuing to
20 pursue recovery efforts from professionals associated with
21 the Carolina Company, from sales agents of the Carolina
22 Company who received commissions, and from the principals
23 of the Carolina.
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26 The Commission believes that making a partial
27 distribution is not only appropriate at this time, but in
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1 the best interest of the Carolina Company investors. The
2 Receiver should make a partial distribution on a pro rata
3 basis, as set forth in the accompanying Plan of Partial
4 Distribution. Accordingly, the accompanying Plan
5 identifies a proposed process for the payment of claims of
6 defrauded investors and the exclusion of certain
7 distribution claimants on the basis of their relationship
8 to the Carolina Company or its principals or their status
9 as pre-receivership trade creditors. Therefore, the
10 Commission respectfully requests this Court to approve the
11 Plan of Partial Distribution.

12 **II. STANDARD OF REVIEW**

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15 In formulating a plan of distribution, the Commission
16 must propose a plan that is fair and reasonable. Once the
17 district court satisfies itself that the distribution of
18 funds in a proposed Commission disgorgement plan is fair
19 and reasonable, its review is at an end. See SEC v. Wang,
20 944 F.2d 80, 85 (2d Cir. 1991) ("fair and reasonable ...
21 [is] the standard of review to be applied [by the district
22 court] to [a] distribution scheme [presented by the
23 Commission]"). A district court reviewing a plan of
24 distribution is acting pursuant to its inherent equitable
25 powers. In shaping equity decrees, the trial court is
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1 vested with broad discretionary power, and appellate
2 review is correspondingly narrow. SEC v. Forex Asset
3 Mgmt., LLC, 242 F.3d 325 (9th Cir. 2002).

4 The Commission's Plan meets these requirements. The
5 Plan sets forth a fair and reasonable pro rata
6 distribution of the funds currently in the Receiver's
7 possession. The Plan also balances the interests of those
8 investors who were given a trust deed on specific lots or
9 participated in a Section 1031 tax advantage property
10 exchange in two properties and who are given the choice to
11 participate in the pro rata distribution or have the lot
12 on which they have a trust deed conveyed to them by the
13 Receiver.
14 Receiver.

16 **III. SUMMARY OF SIGNIFICANT ELEMENTS OF THE PROPOSED PLAN**
17 **OF PARTIAL DISTRIBUTION**

18 The proposed Plan of Distribution classifies investors
19 of the Carolina Development Company into four (4) classes
20 for purposes of distributing the assets of the
21 Receivership estate. An investor, or claimant, belongs to
22 a class depending upon the nature of his or her
23 investment. Class 1 consists of investors who contributed
24 cash but did not receive a trust deed encumbering any real
25 property. These investors will share on a pro rata basis
26 the amount to be distributed to the investors by the
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1 Receiver. Class 2 includes investors who hold deeds of
2 trust encumbering certain real property in The Carolina, a
3 contiguous parcel of lots and other properties surrounding
4 the Carolina Golf Club located in North Carolina. These
5 investors will have their trust deeds extinguished and
6 participate in a pro rata share of the amount to be
7 distributed like Class 1 investors. Class 3 investors
8 hold deeds of trust upon which surround either The Mid
9 South Golf Club or The National Golf Club. These
10 investors will have the option to be deeded the lot upon
11 which they hold a trust deed or participate in a pro rata
12 share of the amount to be distributed like Class 1
13 investors. Investors who received real property pursuant
14 to a 1031 Exchange comprise Class 4. These investors will
15 have the option to keep the lot that they have been deeded
16 or re-convey the deed back to the Receiver and participate
17 in a pro rata share of the amount to be distributed to
18 like Class 1 investors.

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22 There are nine (9) classes of non-participants of the
23 plan of distribution. Non-participant individuals and/or
24 entities will not receive any distribution from the
25 Receivership estate or any other possible source of
26 recovery. Included in the non-participants are the
27 individual defendants and their family, former employees
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1 and independent contractors of Carolina, and pre-
2 Receivership creditors.

3 The Plan establishes a bar date of July 16, 2007 as a
4 date by which (a) all claims to participate in the plan
5 must be delivered to the Receiver and (b) all ballots
6 regarding Property Elections (as defined in the Plan) must
7 be returned to the Receiver.
8

9 **IV. OPERATION OF THE PLAN**

10 The Plan establishes a deadline (the "Bar Date") by
11 which claims by investors or other claimants are to be
12 filed. That date is July 16, 2007. The Plan also
13 establishes a date by which investors who were given trust
14 deeds on specific lots by the Carolina Company must choose
15 whether to participate in a pro rata distribution and
16 release the deed of trust, or to have the Receiver
17 transfer the Receivership Estate's interest in the lot
18 into the investor's name. In the event that an investor
19 elects to have the Receiver deed the Receivership Estate's
20 interest in the lot to the investor, the investor will not
21 be entitled to participate in any further distribution.
22

24 Notice of this Motion, together with distribution of
25 this Plan, provides investors with the opportunity to
26 object to the Commission's determinations in the Plan or
27 the deadlines set forth therein by filing a memorandum in
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1 opposition to the Distribution Memo with this Court. The
2 Distribution Motion, together with this Memorandum and the
3 Plan will be sent to all investors and known creditors at
4 their last known address. The Commission also intends to
5 file a notice regarding the hearing on the Plan of
6 Distribution in the Los Angeles Times, the Orange County
7 Register and USA Today so that any person who invested in
8 the Carolina Company and who is not known to the
9 Commission or the court-appointed Receiver may receive
10 notice of this Plan.
11

12 Giving notice and allowing investors the opportunity
13 to object to this Distribution Motion provides sufficient
14 due process. Use of summary procedures is permissible for
15 nonparty claims to property held by a receiver. CFTC v.
16 Topworth, 205 F.3d 1107, 1113 (9th Cir. 1999). Due
17 process requires notice and an opportunity to be heard.
18 Mullane v. Central Hanover Bank & Trust Co., 339 US 306,
19 313 (1950). The response allowed is sufficient to provide
20 investors with the opportunity to dispute this Motion
21 and/or any portion of the Plan. Service of this Motion
22 and accompanying documents upon investors at their last
23 known address is reasonably calculated to provide notice
24 to investors. Investors will be given reasonable notice
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1 and ample time to have their objection heard in a
2 meaningful way by this Court. A full hearing is not
3 required to provide due process to investors claiming
4 property. SEC v. Elliot, 953 F.2d 1560, 1571 (11th Cir.
5 1992). Accordingly, since investors will be provided with
6 the opportunity to present evidence and be heard in a
7 meaningful manner, they will be afforded due process.
8

9
10 **V. THE PLAN SHOULD BE APPROVED**

11 This Court has the authority and discretion to approve
12 of the Plan. Federal courts have inherent equitable power
13 to issue ancillary relief, including the imposition of a
14 receivership. SEC v. Wencke, 622 F.2d 1363, 1369 (9th
15 Cir. 1980). Disgorgement is an appropriate equitable
16 remedy and within the discretion of the district court to
17 adopt. SEC v. Patel, 61 F.3d 137, 139-140 (2nd Cir.
18 1995). The purpose of the disgorgement remedy is not to
19 compensate the victims of a fraud; rather, it is to
20 deprive the wrongdoer of ill-gotten gains. SEC v.
21 Commonwealth Sec., Inc., 574 F.3d 90, 102 (2nd Cir. 1978).
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23 While it is extremely unlikely that the victims of
24 Carolina Company's Ponzi scheme will ever be fully
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1 compensated, the Plan represents an equitable distribution
2 of the Defendants' remaining ill-gotten gains.

3
4 The power of the court to fashion an appropriate
5 equitable remedy is very broad. SEC v. Certain Unknown
6 Purchasers of the Common Stock of & Call Options for the
7 Common Stock of Santa Fe Int'l Corp., 817 F.2d 1018, 1020
8 (2nd Cir. 1987); see also, SEC v. Safety Fin. Serv., Inc.,
9 674 F.2d 368, 372 (5th Cir. 1982)(holding that district
10 court has broad powers to supervise an equity
11 receivership); SEC v. Lincoln Thrift Ass'n, 577 F.2d 600,
12 606 (9th Cir. 1978)(stating, "the district court has broad
13 powers and wide discretion to determine the appropriate
14 relief in an equity receivership"); SEC v. Arkansas Loan &
15 Thrift, 427 F.32d 1171, 1172 (8th Cir. 1970)(holding that
16 district court decisions related to the supervision of an
17 equity receivership will only be disturbed if there is a
18 clear showing of an abuse of discretion). In general,
19 when addressing the issue of an equitable receivership,
20 the court can institute reasonable procedures necessary to
21 insure the "orderly and efficient administration of the
22 receivership for the benefit of creditors." Topworth, 205
23 F.3d at 1115.
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1 When an equitable receivership has been established,
2 courts are empowered to employ broad procedures in the
3 administration of the receivership. In Unknown
4 Purchasers, the adoption of a distribution plan that went
5 so far as to exclude a victimized investor who had managed
6 to recoup his losses by other means was deemed to be
7 within the court's discretion when shaping an equitable
8 remedy. Unknown Purchasers, 817 F.2d at 1021. In making
9 this determination, the Unknown Purchasers Court was
10 concerned with the limited size of the disgorgement pool
11 and wanted to avoid any unnecessary dilution. The Court
12 also rejected the victim's claim that a failure to
13 compensate investors for losses, regardless of character,
14 would violate the policy of securities laws. Id.

15
16 Similarly, in U.S. v Real Prop., the Court used its
17 broad discretionary authority to implement a pro rata plan
18 to distribute the funds of a disgorgement pool, rejecting
19 one investor's claim that he was entitled to recover the
20 entire proceeds. U.S. Real Prop., 89 F.3d 551, 553 (9th
21 Cir. 1996). The Court stated, "the equities demand that
22 all ... defrauded customer[s] share equally in the fund of
23 pooled assets in accordance with the SEC plan." Id. In
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1 Topworth, the Court again exercised its discretion to
2 adopt a pro rata plan of distribution despite the fact
3 that one investor's records clearly indicated he was
4 entitled to much more money than he received pursuant to
5 the plan. 205 F.3d at 1116. The Court determined that
6 the pro rata approach was the best way to reach an
7 equitable compromise given the facts of the case and the
8 limited funds available. Id.

11 The proposed Plan offered by the Commission is a fair
12 and equitable remedy in this case. The Plan excludes
13 claims from investors who were employed by or affiliated
14 with the Carolina Company and other parties. It also
15 provides that for an option for investors who received
16 trust deeds in land surrounding two golf courses, the
17 National and the Mid-South. "This kind of line-drawing -
18 which inevitably leaves out some potential claimants - is,
19 unless commanded otherwise by the terms of a consent
20 decree, appropriately left to the experience and expertise
21 of the SEC in the first instance." Wang, 944 F.2d 80, 87
22 (2nd Cir. 1991) (citing Certain Unknown Purchasers of the
23 Common Stock of & Call Options for the Common Stock of
24 Santa Fe Int'l Corp., 817 F.2d at 1021). The Commission
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1 feels that the distinctions drawn in the Plan provide the
2 most equitable form of distribution to investors.

3 Investors who received a return of any funds from the
4 Carolina Company will have those returns credited against
5 their investment. Similarly, the Plan bars any claims for
6 interest or returns that were promised as a part of the
7 Carolina Company investment scheme.
8

9
10 The Commission has determined that it is fair and
11 equitable to exclude these parties because these
12 distinctions provide for the maximum return to deserving
13 investors. Specifically, it is inappropriate to allow
14 Insiders to participate in the Plan. Although some
15 Insiders may have lost money with their investment in
16 Carolina Company, their conduct leaves them with unclean
17 hands. It would be unfair to allow those who perpetrated,
18 or those who assisted in the perpetration, of this
19 elaborate and fraudulent scheme to have equal footing with
20 innocent investors. Thus, the exclusion of Insiders
21 results in a greater return to victims who had no
22 knowledge of, or participation in, the fraudulent nature
23 of the operation.
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1 The Commission also believes that the distinction made
2 between individuals who hold trust deeds in the real
3 property surrounding the Carolina golf course and those
4 individuals holding trust deeds in lots surrounding the
5 Mid-South and the National golf courses is fair and
6 equitable. The real property owned by the Carolina
7 Company surrounding the Carolina golf course consists of
8 individual lots surrounding a 200-acre parcel of open
9 space around the Carolina golf course. Selling the
10 individual lots is infeasible because of the unitary
11 nature of the property. For example, if lots were sold
12 individually, the Receivership estate would be left with a
13 200-acre parcel that has little commercial value.
14 Therefore it makes economic sense, and benefits all
15 investors, for the Receiver to market and sell the entire
16 parcel, free and clear of all liens and encumbrances. The
17 investors who hold trust deeds on property located around
18 The Carolina real property will be able to participate in
19 the pro rata distribution along with all other Class 1
20 investors.

21 In contrast, the Carolina Company-owned lots
22 surrounding the Mid-South and the National golf courses
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1 are separate and, for the most part, non-contiguous.

2 There is no benefit to all of the investors to sell these
3 lots in a single sale. Typically, the lots surrounding
4 the National and the Mid-South golf courses can be
5 marketed individually for a higher price per lot.
6

7 Similarly, it is also fair and equitable to all
8 investors to permit the investors to elect to obtain the
9 real property upon which they hold a trust deed in
10 exchange rather than participate in the pro rata
11 distribution afforded other investors. These investors
12 were promised a deed of trust in an amount equal to the
13 value of their investment. In no case was that
14 representation true. In many cases, they were promised
15 that the Carolina Company, would at some future date, deed
16 them the real property which was putatively the security
17 for their investment. Some investors may elect to receive
18 the security in the form of the lot in lieu of further
19 participation in the pro rata distribution from all
20 investors. If investors so elect, there will not be a
21 material loss in the overall value of the estate. These
22 investors, however, having made that election and taking
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1 their lot(s), should not be able to participate in further
2 distribution(s).

3
4 Finally, there are a small number of investors who
5 elected to participate in a Section 1031 real property
6 exchange with the Carolina Company. Again, while Carolina
7 promised these investors a lot that would be equivalent to
8 the amount of their investment, this was merely another
9 false representation. The lots transferred to investors
10 pursuant to a Section 1031 exchange, however, are discrete
11 lots, and those investors participating in the pro rata
12 distribution will not be materially affected.
13
14

15 In general, a pro rata distribution plan is an
16 appropriate solution that is within the discretion of this
17 Court. It is not equitable to give some investors a
18 preferential claim to the detriment of other similarly
19 situated investors where investors' funds were commingled
20 - "equality is equity." Cunningham v. Brown, 265 U.S. 1,
21 12-13 (1924). A pro rata distribution is within the
22 district court's broad discretion. Elliot, 953 F.2d at
23 1569-1570. Investor's funds were not held in separate and
24 distinct accounts, but were pooled together and commingled
25 throughout the operation of the Carolina Company. Thus,
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1 with a limited amount of recovery and no principled
2 distinction between investors, a pro rata distribution is
3 the most equitable and appropriate method of distribution.
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5 There remains a substantial uncertainty as to the
6 ultimate amount that will be recovered by the Receiver.
7 Therefore, the Plan provides that the Receiver shall be
8 governed by future Orders of this Court with respect to
9 his duties as Receiver and any future distribution(s) to
10 the investors.
11

12 Dated this 14th day of May 2007.
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14
15 U.S. SECURITIES AND EXHCHANGE COMMISSION
16

17 By _____
18 Thomas M. Melton
19 Karen L. Martinez
20

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24 DECLARATION OF THOMAS A. SEAMAN
25

26 I, Thomas A. Seaman, hereby declare and say that:
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1 1. I am the Receiver for the Carolina Development
2 Company, Inc. and related subsidiaries and affiliates (the
3 "Company").

4 2. I am over the age of eighteen and competent to
5 testify in a court of law. If called to testify as a
6 witness regarding the statements set forth below, I could
7 and would competently testify thereto.

8 3. Lambert Vander Tuig ("Vander Tuig") and
9 Jonathan Carman ("Carman") have raised at least \$52
10 million from over 1,400 investors nationwide. Vander Tuig
11 and Carman marketed the Company as a real estate
12 development company specializing in developing resort
13 communities surrounding prestigious golf courses.

14 4. Vander Tuig and Carman, through the Carolina
15 Company purchased lots and other real property surrounding
16 three golf courses between Southern Pines and Pinehurst,
17 North Carolina. The golf courses are known as The
18 Carolina Golf Club ("The Carolina"), The National Club
19 ("National") and the Mid-South Golf Club ("Mid-South"). I
20 have visited all three golf course developments, and have
21 reviewed title records, property tax bills, valuation
22 appraisals, correspondence and other information about the
23 three golf course developments. I have also spoken with
24 real estate agents, appraisers, developers, potential
25 investors and attorneys in the area regarding the real
26 property surrounding the three golf courses.

27 5. The National Club: This development is the
28 most mature and desirable of the three developments. The

1 homes are very large custom built homes with expensive
2 finishes located on large wooded lots in private gate
3 guarded community. Many of the homes could fairly be
4 considered mansions. The National, designed by Jack
5 Nicklaus, is a private golf club with an attractive large
6 new clubhouse with a tennis and swim club. All of the
7 lots owned by the Company are separate non-contiguous
8 single family home parcels. The Company owns 21 single
9 family lots which are encumbered by trust deeds in favor
10 of Company investor-victims.

11 6. The Mid South Club: This development is just
12 east of the National on Midland Road. The Mid South Club
13 was designed by Arnold Palmer. It is not as fully
14 developed as The National and the homes are smaller.
15 However, the development is attractive and desirable and
16 is on a private golf course with a new clubhouse and
17 tennis and pool facilities. All of the 16 lots owned by
18 the Company are separate non-contiguous single family home
19 parcels. The Company owns 16 single family lots which are
20 encumbered by trust deeds in favor of Company investor-
21 victims.

22 7. The Carolina: The Company owns approximately
23 235 acres (this includes the 1031 exchange investors land)
24 in addition to 41 single family home sites, 29 of which
25 are encumbered by deeds of trust in favor of Company
26 investor-victims, which is essentially all of the land
27 adjacent to and intermingled around the golf course, but
28 not the golf course itself or tee boxes, fairways and

1 greens. The golf course was designed by Arnold Palmer and
2 is reportedly a quality golf course with extensive water
3 hazards and woods. The course is open to the public and
4 is reportedly an excellent value. The course appears to
5 be well maintained, however, it does not appear to be
6 financially profitable, perhaps due the fact that there
7 has not been any significant progress towards development
8 of the land around it. The largest of the adjacent
9 parcels owned by the Company is 201 acres in size and is
10 extremely irregularly shaped; it intermingled with and
11 adjacent to the golf course. I have previously referred
12 to this parcel as being like a piece of "Swiss cheese" and
13 is considered to be of diminished value without the land
14 adjacent to it.

15 8. In my capacity as receiver I have listed all of
16 the parcels of land located at all three of the
17 aforementioned golf course developments. With the
18 exception of one lot at the Mid South which just fell out
19 of escrow due to a default of the buyer, and another lot
20 at National, which is in an odd location and has not sold
21 because of that fact, I was able to quickly sell all of
22 the unencumbered lots at The National and The Mid South
23 clubs. However, none of the unencumbered lots at The
24 Carolina have been sold. In fact, few if any inquiries
25 were received by the brokers I retained to list the
26 properties. I have conducted significant due diligence to
27 ascertain the value and condition of the Company's
28 Pinehurst area land holdings. I have consulted with

1 several real estate brokers and agents, as well as real
2 estate appraisers and other real estate experts located in
3 or around the Pinehurst, North Carolina regarding The
4 Carolina property. I have also had discussions with
5 prospective buyers of the Carolina Company's entire
6 interest in The Carolina land. As a result of my due
7 diligence, I have learned that there is no demand for the
8 individual lots or the other parcels such as the 200 acre
9 so called "Swiss Cheese" parcels located at The Carolina
10 because the land there is in the very early stages of
11 development. There is essentially nothing other than the
12 golf course there to attract prospective homeowners.
13 Therefore the individual lots and parcels have limited
14 value in and of themselves as separate parcels. This
15 conclusion is confirmed by my lack of success in selling
16 them individually as compared to the relative ease of
17 selling the lots at The National and Mid South. It
18 therefore became clear to me, which was confirmed to me by
19 the three appraisals I obtained, that the best way to
20 liquidate the Company's land at The Carolina is to sell it
21 as one complete parcel to a builder/developer.

22 9. As I have reported to this Court in the past,
23 as part of the investment scheme operated by the Carolina
24 Company and its principals, certain investors were
25 promised an additional security interest for their
26 investment in the Carolina Company. This security
27 interest took the form of a trust deed in the name of an
28 investor, encumbering a specific lot in one of the three

1 Carolina Company properties. These trust deeds were given
2 in addition to I have, from the records of the Carolina
3 Company, and records received from third parties, compiled
4 a list of lots in each of the three properties, the name
5 of the trust deed holder, and the value given to the
6 Carolina Company in exchange for the trust deed. This
7 list is attached to the Plan of Distribution as Exhibit B.

8 10. In every case, the value of the lot upon
9 which a trust deed is held by a Carolina investor is
10 significantly less than the actual value of the lot,
11 typically be a factor of three or more. In other words, a
12 \$150,000 investor would receive a deed of trust secured by
13 a lot worth only \$50,000. One investor made a \$950,000
14 investment and was given a deed of trust secured by a
15 parcel of land only worth \$68,000. Investors were falsely
16 told that the lots were worth far more than the actual
17 value of the lots. Therefore, the face amount of the
18 trust deed that encumbers an individual lot is
19 substantially greater than the lot's value.

20 11. There are two unencumbered single family home
21 lots, a handful of very small parcels, and two larger
22 parcels including approximately 203 acres of land at The
23 Carolina. The remaining lots are encumbered by trust
24 deeds held by investors. In order for me to sell The
25 Carolina property as a single parcel, which would maximize
26 its value to the entire receivership estate, the sale
27 would need to be free and clear of all liens.

28

1 I declare under penalty of perjury under the laws of
2 the United States of America that the foregoing is true
3 and correct. Executed by me this 11th day of May, 2007 at
4 Irvine, California.

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6 Thomas A. Seaman
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PROPOSED PLAN OF PARTIAL DISTRIBUTION

1 purposes of this Plan, be July 16, 2007 or such other date
2 as the Court may establish.

3 5. "Carolina Company" shall collectively refer to
4 the entities and individuals known as The Carolina
5 Development Company, Inc. (a/k/a The Carolina Development
6 Company at Pinehurst, Inc.), Lambert Vander Tuig (a/k/a
7 Lambert Vander Tag a/k/a Dean L. Vander Tag a/k/a Dean L.
8 VanderTag), Jonathan Carman, Jill Kraus and Debra (Moreno)
9 Carman together with all entities under control of the
10 court-appointed Receiver by Order dated February 16, 2006
11 (Docket # 13) as expanded by Order dated April 7, 2006
12 (Docket # 43). It shall also include Brady Partnership,
13 Bretton Woods Partners, Lake Las Vegas Associates and WPM
14 1900 LLC.

15 6. "The Carolina Property" shall mean the real
16 property comprised of approximately 235 acres and 41 home
17 sites located near Southern Pines, North Carolina
18 surrounding The Carolina Golf Club.

19 7. "Claim" shall mean any right to distribution,
20 whether or not such right to payment is reduced to
21 judgment, liquidated, unliquidated, fixed or contingent,
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1 | asserted or unasserted, matured, disputed or undisputed,
2 | legal, secured or unsecured.

3 | 8. "Claims Process" shall refer to the procedure
4 | established by the Receiver and set forth in Articles II-V
5 | of the Plan by which all Claims shall be presented for
6 | determination by the Receiver and this Court.
7 |

8 | 9. "Class" shall mean a group of Claims which are
9 | substantially similar to each other as classified pursuant
10 | to the Plan.
11 |

12 | 10. "Eligible Claimant" shall refer to any claimant
13 | who meets the criterion for filing a Claim established by
14 | Articles II-V of the Plan.
15 |

16 | 11. "Investment Analysis" shall mean a report of the
17 | amounts invested with Carolina Company by individual
18 | investors and, when applicable, the amounts returned or
19 | amounts paid as purported interest by Carolina Company to
20 | individual investors. The Investment Analysis shall be
21 | based on the Allowed Claims filed with the Receiver,
22 | documents in the Receiver's possession and the Receiver's
23 | review of the financial records of Carolina Company. The
24 | Receiver shall prepare an Investment Analysis after the
25 |
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1 Bar Date and submit it to the Court with a Motion to
2 Distribute Funds Pursuant to Plan of Distribution.

3 12. "Investor Claims" shall mean a Claim for monies
4 invested in Carolina Company. This term shall be limited
5 to an Allowed Claim for the principal balance invested
6 with Carolina Company less any and all funds paid to the
7 claimant by the Carolina Company including all funds
8 received from Carolina Company in the form of any and all
9 dividends, loans or other monies. The Investor Claim
10 shall be limited to cash or cash equivalent investments
11 only. The number of shares issued by Carolina Company
12 shall not be considered as a part of an Investor Claim.
13 Claims for interest on the principal sum, any promised
14 returns on the amount invested, legal fees, taxes due and
15 owing on amounts or promised returns on the amount
16 invested will not be allowed or paid.

17 13. The "Mid South Club" shall mean real property
18 comprising lots surrounding the Mid South Golf Club course
19 located near Pinehurst, North Carolina. The lots owned by
20 the Carolina Company are separate, non-contiguous, single
21 family home parcels.
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1 14. The "National Club" shall mean the real property
2 comprising lots surrounding the National Club golf course
3 located near Pinehurst, North Carolina. The lots owned by
4 the Carolina Company are separate, non-contiguous single
5 family home parcels.
6

7 12. "Property Election" shall refer to the option
8 provided in the Plan for Mid-South Club and National Club
9 investors who hold trust deeds or other liens against the
10 National Club property and the Mid-South property held by
11 the Carolina Company, or National Club or Mid-South Club
12 property acquired in a Section 1031 real property exchange
13 with the Carolina Company. Following approval of the
14 Plan, the Receiver will be mailing ballots to those
15 individuals or entities in Classes two (2) through four
16 (4) in order for them to make the required elections as
17 described in Article IV, Section 2, below. A Property
18 Election must be made in writing, and the ballot delivered
19 to the Receiver by July 16, 2007, or such other date as
20 the Court may establish.
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25 **ARTICLE II - DEFINITION OF NON-PARTICIPANTS IN THE PLAN**
26

27 1. Non-participants, as defined below, of the Plan
28 will not be considered Allowed Claimants and shall not

1 receive any initial or future distribution pursuant to the
2 Plan, the Receivership estate or any other possible source
3 of recovery.
4

5 2. Non-participants of the Plan are defined by nine
6 (9) classes,

7 A. Specific Individuals and/or Entities:

- 8 i. Lambert Vander Tuig
9
10 ii. Jill Kraus (Vander Tuig)
11
12 iii. Jonathan Carman
13
14 iv. Debra (Moreno) Carman
15
16 v. Maria Giesige
17
18 vi. Ted Bajer
19
20 vii. Bison Capital or its officers,
21 directors or employees
22
23 viii. Any other broker-dealer who sold
24 securities in the Carolina Company
25
26 ix. Any entities controlled by
27 individuals listed in 2.A.i-vii,
28 above including, but not limited to
Brady Partnership, Bretton Woods
Partners, Lake Las Vegas Associates,
and WPM 1900 LLC.

1 B. All Carolina Company Sales Associates¹ and
2 all independent contractors and employees of
3 Carolina Company or individuals or entities
4 against whom the Receiver is pursuing a claim
5 on behalf of the Receivership Estate.
6

7 C. Any other insider of the Carolina Company,
8 including but not limited to, Carman and Vander Tuig's
9 relatives, general partners, partnerships in which Carman
10 and Vander Tuig have an interest or a corporation in which
11 they are a director, officer or person in control. The
12 term insider shall also include Carolina Company's
13 directors, officers, control persons, partnerships in
14 which the Carolina Company was a partner, limited
15 liability companies in which Carolina was a member or a
16 relative of any officer, director, or control person of
17 Carolina Company.
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21 D. Eleventh-hour Investors²

22 E. William Cannon Investors³
23

24 ¹ A list of Carolina Company sales associates defined as Non-
25 participants is attached hereto as Exhibit "A".

26 ² See Docket #s 101, 116.

27 ³ These individuals are Stephanie K. Plante, Jerry and Karen
28 Prefontaine and Gregory Hansen. Docket # 201. Jerry and Karen
Prefontaine's portion of their investment, if any, made directly to
the Carolina Company shall be treated as a Class 1 Claim.

- 1 F. Any person who has not delivered a
2 Preliminary Investor Response Form to the
3 Receiver on or before July 16, 2007.
4
- 5 G. Other Claims of any kind including, but not
6 limited to, all pre-receivership unpaid
7 accounts payable.
8
- 9 H. No third parties will be permitted in
10 distributions in place of the individuals or
11 entities that actually invested in the
12 Carolina Company.

13 **ARTICLE III - CLASSIFICATION OF CLAIMS AND INTERESTS**
14

15 For the purpose of the Plan, the Claims against
16 Defendants and the property of Defendants are classified
17 as set forth in this Article. The rights of claimants and
18 the responsibilities of the Receiver with respect to such
19 claimants shall be based upon their classification herein,
20

- 21 1. Class 1 shall consist of all Investor Claims
22 which are Allowed Claims for investors that are
23 not otherwise in Classes 2, 3 or 4.
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- 1 2. Class 2 shall consist of Carolina Company
2 investors who hold trust deeds in the property
3 known as the "The Carolina."⁴
4
5 3. Class 3 shall consist of Carolina Company
6 investors who hold trust deeds in the properties
7 known as the Mid-South Club or the National Club.⁵
8
9 4. Class 4 shall consist of those Claimants who
10 received real property pursuant to a 1031
11 Exchange.⁶

12 **ARTICLE IV - TREATMENT OF CLASSES**

13 1. Class 1. Class 1 Claimants shall be eligible for
14 a distribution from the funds held by the Receiver based
15 on the amount of each Investor Claim. Given that the
16 Receiver has determined there will be insufficient funds
17 or other assets to compensate all eligible claimants, the
18 amount to be distributed shall be on a pro rata basis.

19 2. Class 2. Class 2 Claimants shall be eligible for
20 a distribution from the funds held by the Receiver. Upon
21

22
23
24 ⁴ A list of Carolina Company investors who hold trust deeds in the
25 Carolina is attached hereto as Exhibit "B" ("Ex. B").

26 ⁵ A list of Carolina Company investors who hold trust deeds in the
27 Mid-South Club and/or the National Club is attached hereto at Ex.
28 "B".

1 court approval of the Receiver's Motion to Sell Real
2 Property known as the The Carolina, all Class 2 Claimants
3 shall be eligible to participate in the distribution of
4 assets as a Class 1 Claimant, subject to the same rights
5 and restrictions.
6

7 3. Class 3. Class 3 Claimants shall be eligible for
8 a distribution pursuant to this Plan. The Class 3
9 Claimants will be entitled to make a Property Election on
10 or before July 16, 2007. All Property Elections must be
11 made on the ballot provided by the Receiver and returned
12 to the Receiver by July 16, 2007. All Plan Elections
13 shall be deemed final upon receipt by the Receiver. A
14 Claimant in this Class shall elect from one of two
15 alternatives as follows: (a) forego any Investor or other
16 claim, in return for the receipt of a quitclaim deed from
17 the Receiver of Carolina's right, title and interest in
18 the real property against which the Class 3 Claimant holds
19 a trust deed or other lien. Real property which is
20 conveyed pursuant to this or any future distribution shall
21 be subject to any existing or future liens or non-Carolina
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27 ⁶ A list of Carolina Company investors who received real property
28 pursuant to a 1031 Exchange is attached hereto at Ex. "B".

1 claims; or (b) assign to the Receiver any right, title and
2 interest in any real property owned by Carolina or its
3 principals. Upon the conveyance to the Receiver of the
4 Class 3 Claimant's interest, the Class 3 Claimant shall be
5 eligible to participate in the distribution of assets as a
6 Class 1 Claimant, subject to the same rights and
7 restrictions. In the event that a Class 3 Claimant, upon
8 receiving notice and a copy of this Plan, fails to make a
9 Property Election, the Class 3 Claimant shall be deemed to
10 have elected to receive a quitclaim deed from the Receiver
11 and will not be eligible to participate in any future
12 distribution from Carolina Company.
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16 4. Class 4. Class 4 Claimants will be eligible for
17 a distribution from this Plan. The Class 4 Claimants will
18 be entitled to make a Property Election on the ballot
19 provided by the Receiver and returned to the Receiver by
20 July 16, 2007. All Plan Elections shall be deemed final
21 upon receipt by the Receiver. A Claimant in this Class
22 shall elect from one of two alternatives as follows: (a)
23 forego any Investor or other claim, in return for the
24 Receiver's release of Carolina Company's right, title,
25 interest, and/or claim to the real property which the
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1 Class 4 Claimant possesses pursuant to a previously
2 negotiated Section 1031 real property exchange. Real
3 Property which is conveyed pursuant to this or any future
4 distribution shall remain subject to any existing or
5 future liens or non-Carolina claims; or (b) assign to the
6 Receiver any right, title and interest in any real
7 property which was the subject of a previously negotiated
8 Section 1031 real property exchange. Upon the conveyance
9 to the Receiver of the Class 4 Claimant's interest, the
10 Class 4 Claimant shall be eligible to participate in the
11 distribution of assets as a Class 1 Claimant, subject to
12 the same rights and restrictions. In the event that a
13 Class 4 Claimant, upon receiving notice and a copy of this
14 Plan, fails to make a Property Election, the Class 4
15 Claimant shall be deemed to have elected to continue to
16 possess the real property which was the subject of a
17 Section 1031 real property exchange and will not be
18 eligible to participate in any future distributions from
19 Carolina. Irrespective of the Property Election the Class
20 4 Claimants shall be responsible for any tax consequences
21 as a result of their election.
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1 | this Court, until this Court enters an order concluding
2 | this case and discharging the Receiver.

3 | 2. The Receiver shall retain all powers and
4 | authority provided in this Court's Orders until the
5 | discharge of the Receiver by this Court.
6 |

7 | 3. The Court shall retain jurisdiction over the Case
8 | for all purposes allowed by law including, but not limited
9 | to,
10 |

- 11 | A. the interpretation, implementation,
12 | enforcement, and consummation of the Plan;
- 13 | B. the allowance or disallowance of any Claim;
- 14 | C. the determination of validity and priority of
15 | any Claim;
- 16 | D. the modification of the Plan as may be
17 | necessary to carry out its purposes and
18 | intent;
- 19 | E. the resolution of all litigation that has
20 | been or may be filed by or against the
21 | Receiver;
- 22 | F. any future plans of partial or final
23 | distributions; and,
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1 G. the entry of an Order concluding this Case
2 and discharging the Receiver.

3 **ARTICLE VII - MISCELLANEOUS PROVISIONS**
4

5 1. Upon application of the Commission, the Receiver
6 or any party of interest, this Court may issue an Order
7 directing any necessary party to execute, deliver or join
8 in the extension or delivery of any instrument or document
9 and perform any other act necessary for the consummation
10 of the Plan.
11

12 2. The Receiver shall be authorized to exclude from
13 the distribution a reserve which shall include any funds
14 he deems necessary to pay for the ongoing operations,
15 current obligations and potential liabilities of the
16 receivership. This amount shall be used, subject to this
17 and other Orders of the Court, to pay administrative
18 expenses of the receivership, pay for any applicable
19 taxes, provide for future distribution on Claims not
20 included in the Plan and for any other purpose approved by
21 this Court.
22
23

24 3. The Receiver shall be authorized, empowered and
25 permitted to enter into an agreement or agreements with
26 any claimant, subsequent to the Approval Order, which
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1 provide(s) for payment or treatment of such claimant's
2 Claim; provided, however, that no such agreement or
3 agreements shall provide for payment or treatment of such
4 claimant's Claim upon terms more favorable to such
5 claimant than the payment or treatment provided to
6 claimants of the same class.
7

8 4. The provisions of the Plan, upon Court
9 confirmation, shall be binding upon all claimants and
10 parties in interest.
11

12 5. The Plan may be modified both before and after
13 approval, on such notice and hearing as this Court deems
14 appropriate. Any modification of the Plan subsequent to
15 the initial distribution made pursuant to the Plan shall
16 apply only to any future distributions.
17

18 6. Where applicable, distributions under the Plan
19 shall be made by sending a check in the name of the
20 claimant to the last known address of said claimant or to
21 the address specified by any change of address notices
22 received by the Receiver before the funds are distributed.
23 Claimants are required to advise the Receiver, in writing,
24 of any change of address or party in interest.
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1 7. Upon approval of the Plan, the Receiver will be
2 required to provide notice of any proposed action or
3 relief related to the Plan or Distributions pursuant to
4 the Plan requested from this Court to the Commission,
5 those parties in interest who have already filed a notice
6 of appearance in the Case, and those parties in interest
7 who file a request with this Court to receive all notices.
8 This provision shall not apply to any litigation filed by
9 the Receiver with this Court, which need only be served on
10 any defendant(s) named therein.

11 8. In the event a claimant fails to negotiate a
12 distribution check that was mailed to claimant's last
13 known address within 90 days after said check's date of
14 issue, such Claim shall be considered abandoned and
15 disallowed in its entirety. The funds, which would
16 otherwise be distributed to such claimant, shall revert to
17 the receivership estate.

18 9. The Receiver, his agents, attorney and employees,
19 shall be held harmless for any damages or liability that
20 may arise through the discharge of his duties under the
21 Plan, in accordance with the Court's February 16, 2006
22 Order Appointing Receiver (Docket # 13).

