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12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 vs.

18 LAMBERT VANDER TUIG (a/k/a
LAMBERT VANDER TAG a/k/a DEAN
19 L. VANDER TAG a/k/a DEAN L.
VANDERTAG), THE CAROLINA
20 DEVELOPMENT COMPANY, INC.
(a/k/a THE CAROLINA COMPANY AT
21 PINEHURST, INC.), AND JONATHAN
CARMAN

22 Defendants.
23

Case No.:
SACV06-172 AHS(MLGx)

**REVISED PLAN OF PARTIAL
DISTRIBUTION**

Date: July 30, 2007
Time: 10:00 a.m.
Place: Courtroom 10A
411 W. Fourth St.
Santa Ana, CA

1 The Securities and Exchange Commission (the
2 "Commission") hereby submits this proposed Revised Plan of
3 Partial Distribution (the "Plan"). This Revised Plan is
4 intended to replace the Plan filed by the Commission on
5 May 14, 2007 in its entirety.

7 **ARTICLE I - DEFINITIONS**

8
9 1. "Allowed Claim" shall refer to a Claim as to
10 which an Preliminary Investor Response Form has been filed
11 by the Bar Date (defined below), by an Eligible Claimant,
12 with the Receiver or his designee, and in accordance with
13 the provisions set forth in the Plan, and which has been
14 determined by the terms of the Plan as compensable. The
15 amount of investment set forth in the Preliminary Investor
16 Response Form shall serve as the investor's "Allowed
17 Claim" unless subsequently increased or decreased by
18 additional information received or formulated by the
19 Receiver by the Bar Date.

22 2. "Allowed Claimants" shall refer to claimants with
23 Allowed Claims.

25 3. "Approval Order" shall refer to the Order of the
26 Court approving this Plan.

1 4. "Bar Date" shall refer to the date by which all
2 Allowed Claims must be received or amended and shall, for
3 purposes of this Plan, be September 4, 2007 or such other
4 date as the Court may establish.
5

6 5. "Carolina Company" shall collectively refer to
7 the entities and individuals known as The Carolina
8 Development Company, Inc. (a/k/a The Carolina Development
9 Company at Pinehurst, Inc.), Lambert Vander Tuig (a/k/a
10 Lambert Vander Tag a/k/a Dean L. Vander Tag a/k/a Dean L.
11 VanderTag), Jonathan Carman, Jill Kraus and Debra (Moreno)
12 Carman together with all entities under control of the
13 court-appointed Receiver by Order dated February 16, 2006
14 (Docket # 13) as expanded by Order dated April 7, 2006
15 (Docket # 43). It shall also include Brady Partnership,
16 Bretton Woods Partners, Lake Las Vegas Associates and WPM
17 1900 LLC.
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21 6. "The Carolina Property" shall mean the real
22 property comprised of approximately 235 acres and 41 home
23 sites located near Southern Pines, North Carolina
24 surrounding The Carolina Golf Club.
25

26 7. "Claim" shall mean any right to distribution,
27 whether or not such right to payment is reduced to
28

1 judgment, liquidated, unliquidated, fixed or contingent,
2 asserted or unasserted, matured, disputed or undisputed,
3 legal, secured or unsecured.
4

5 8. "Claims Process" shall refer to the procedure
6 established by the Receiver and set forth in Articles II-V
7 of the Plan by which all Claims shall be presented for
8 determination by the Receiver and this Court.
9

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

13 10. "Eligible Claimant" shall refer to any claimant
14 who meets the criterion for filing a Claim established by
15 Articles II-V of the Plan.
16

17 11. "Investment Analysis" shall mean a report, filed
18 by the Receiver, of the amounts invested with Carolina
19 Company by individual investors and, when applicable, the
20 amounts returned or amounts paid as purported interest by
21 Carolina Company to individual investors. The Investment
22 Analysis shall be based on the Allowed Claims filed with
23 the Receiver, documents in the Receiver's possession and
24 the Receiver's review of the financial records of Carolina
25 Company. The Receiver shall prepare the Investment
26
27
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1 Analysis after the Bar Date and submit it to the Court
2 with a Motion to Distribute Funds Pursuant to Plan of
3 Distribution.
4

5 12. "Investor Claims" shall mean a Claim for monies
6 invested in Carolina Company. This term shall be limited
7 to an Allowed Claim for the principal balance invested
8 with Carolina Company less any and all funds paid to the
9 claimant by the Carolina Company including all funds
10 received from Carolina Company in the form of any and all
11 dividends, loans or other monies. The Investor Claim
12 shall be limited to cash or cash equivalent investments
13 only. The number of shares issued by Carolina Company
14 shall not be considered as a part of an Investor Claim.
15 Claims for interest on the principal sum, any promised
16 returns on the amount invested, legal fees, taxes due and
17 owing on amounts or promised returns on the amount
18 invested will not be allowed or paid.
19
20
21

22 13. The "Mid South Club" shall mean real property
23 comprising lots surrounding the Mid South Golf Club course
24 located near Pinehurst, North Carolina. The lots owned by
25 the Carolina Company are separate, non-contiguous, single
26 family home parcels.
27
28

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

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

1 receive any initial or future distribution pursuant to the
2 Plan, and will receive nothing from the Receivership
3 estate or any other possible source of recovery.
4

5 2. Non-participants of the Plan are defined by eight
6 (8) 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. Bison Capital or its officers,
19 directors or employees
20
21 vii. Any other broker-dealer who sold
22 securities in the Carolina Company
23
24 viii. Any entities controlled by
25 individuals listed in 2.A.i-vii,
26 above including, but not limited to
27 Brady Partnership, Bretton Woods
28 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
9 Vander Tuig's relatives, general or limited
10 partners, partnerships in which Carman and
11 Vander Tuig have an interest, limited
12 liability companies in which Carolina Company
13 was a member or a corporation in which
14 Carolina was a director, officer or person in
15 control. The term "insider" shall also
16 include Carolina Company's directors,
17 officers, control persons, partnerships in
18 which the Carolina Company was a partner,
19 limited liability companies in which Carolina
20 was a member or relatives of any officer,
21 director, or control person of Carolina
22 Company.
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28 ¹ A list of Carolina Company sales associates defined as Non-participants is
Footnote continued on next page

- 1 D. Eleventh-hour Investors²
- 2 E. William Cannon Investors³
- 3 F. Any person who has not delivered a
- 4 Preliminary Investor Response Form to the
- 5 Receiver on or before September 4, 2007.
- 6
- 7 G. Other Claims of any kind including, but not
- 8 limited to, all pre-receivership unpaid
- 9 accounts payable.
- 10
- 11 H. No third parties will be permitted to receive
- 12 distributions in place of the individuals or
- 13 entities that actually invested in the
- 14 Carolina Company.
- 15

16 **ARTICLE III - CLASSIFICATION OF CLAIMS AND INTERESTS**

17 For the purpose of the Plan, the Claims against

18 Defendants and the property of Defendants are classified

19 as set forth in this Article. The rights of claimants and

20 the responsibilities of the Receiver with respect to such

21 claimants shall be based upon their classification herein,

22

23

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25 _____
attached hereto as Exhibit "A-1".

26 ² See Docket #s 101, 116.

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

1 September 4, 2007. All Property Elections must be made on
2 the Ballot provided by the Receiver and returned to the
3 Receiver by September 4, 2007. All Property Elections
4 shall be deemed final upon receipt by the Receiver. A
5 Claimant in Class 2 shall elect from one of two
6 alternatives as follows: (a) forego any Investor or other
7 Claim and return to the Receiver any and all payments
8 received from Carolina Company as interest, dividends,
9 commissions or any other monies, and in return receive a
10 quitclaim deed from the Receiver granting the Class 2
11 Claimant all of Carolina Company's right, title and
12 interest in the real property against which the Class 2
13 Claimant holds a recorded trust deed or other lien (real
14 property which is conveyed pursuant to this or any future
15 distribution shall remain subject to any existing or
16 future liens or non-Carolina Company claims);⁶ or (b)
17 surrender his or her recorded deed of trust and surrender
18 any right, title and interest in the real property
19 encumbered by the deed of trust, and in exchange receive a
20 pro rata share in distributions from the receivership
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27 ⁵ A list of Carolina Company investors who received real property pursuant to a
28 1031 Exchange is attached hereto at Ex. "A-3".

1 estate. For Class 2 Class Claimants that elect option (b)
2 above, upon the conveyance to the Receiver of the Class 2
3 Claimant's interest, the Class 2 Claimant shall be
4 eligible to participate in the distribution of assets as a
5 Class 1 Claimant, subject to the same rights and
6 restrictions. In the event that a Class 2 Claimant fails
7 to make a Property Election by September 4, 2007, that
8 Class 2 Claimant shall be deemed to have elected to
9 receive a quitclaim deed from the Receiver and will not be
10 eligible to participate in any future distributions from
11 the Carolina Company, or any other source. The Class 2
12 Claimants shall be responsible for any tax consequences as
13 a result of their election.

17 3. Class 3. Class 3 Claimants will be eligible for
18 a distribution from this Plan. The Class 3 Claimants will
19 be entitled to make a 1031 Property Election on the ballot
20 provided by the Receiver and returned to the Receiver by
21 September 4, 2007. All 1031 Property Plan Elections shall
22 be deemed final upon receipt by the Receiver. A Claimant
23 in this Class shall elect from one of two alternatives as
24 follows: (a) forego any Investor or other Claim, and in
25 _____

28 ⁶ Proposed election forms are attached as Exhibit A-5 and A-6.

1 return receive a release of Carolina Company's right,
2 title, interest, and/or claim to the real property which
3 the Class 3 Claimant possesses pursuant to a previously
4 negotiated Section 1031 real property exchange (real
5 property which is released pursuant to this or any future
6 distribution shall remain subject to any existing or
7 future liens or non-Carolina claims); or (b) assign to the
8 Receiver any and all right, title and interest in the real
9 property which was the subject of a previously negotiated
10 Section 1031 real property exchange and in exchange
11 participate in the distribution of receivership estate
12 assets as a Class 1 Claimant, subject to the same rights
13 and restrictions. In the event that a Class 3 Claimant
14 fails to make a 1031 Property Election by September 4,
15 2007, the Class 3 Claimant shall be deemed to have elected
16 to continue to possess the real property which was the
17 subject of a Section 1031 real property exchange and will
18 not be eligible to participate in any future distributions
19 from the receivership estate. Regardless of the 1031
20 Property Election, the Class 3 Claimants shall be
21 responsible for any tax consequences as a result of their
22 election.
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1 4. Several investors made investments that would
2 include them in more than one Class. ("Mixed Class"
3 investors). "Mixed Class" investors may separately
4 participate in each class in which they are an investor.
5 A "Mixed Class" investor is defined as an investor that
6 received a recorded deed of trust in exchange for one
7 investment but did not receive a recorded deed of trust in
8 connection with another separate investment. Mixed Class
9 investors will participate as Class 1 Claimants, to the
10 extent of their "unsecured" investment amount, and will
11 participate as Class 2 Claimants, to the extent of their
12 "secured" investment amount.

16 5. Several investors made investments and obtained a
17 trust deed on lots in the golf course developments as a
18 group. In order to make either election as set forth in
19 Article IV.2, all investors who are named on the trust
20 deed must be unanimous in their election. In the event
21 that the investors identified on a trust deed are not
22 unanimous, they shall be deemed to have elected to receive
23 a quitclaim deed from the Receiver and will not be
24 eligible to participate in any future distributions from
25 The Carolina, or any other source

1 amount of money to be distributed to each Eligible
2 Claimant pursuant to the Plan. All interested parties
3 shall be given notice and an opportunity to be heard on
4 the Motion Approving Distribution of Funds.
5

6 **ARTICLE VI - RETENTION OF JURISDICTION**

7 1. The Order Appointing Receiver (Docket # 13),
8 dated February 16, 2006, and any related orders of this
9 Court dealing with the Receiver's power and authority,
10 shall remain in full force and effect, except as modified
11 in the Approval Order or any subsequent Order entered by
12 this Court, until this Court enters an order concluding
13 this case and discharging the Receiver.
14
15

16 2. The Receiver shall retain all powers and
17 authority provided in this Court's Orders until the
18 discharge of the Receiver by this Court.
19

20 3. The Court shall retain jurisdiction over the Case
21 for all purposes allowed by law including, but not limited
22 to,
23

- 24 A. the interpretation, implementation,
25 enforcement, and consummation of the Plan;
26 B. the allowance or disallowance of any Claim;
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28

- 1 C. the determination of validity and priority of
2 any Claim;
3
4 D. the modification of the Plan as may be
5 necessary to carry out its purposes and
6 intent;
7
8 E. the resolution of all litigation that has
9 been or may be filed by or against the
10 Receiver;
11
12 F. any future plans of partial or final
13 distributions; and,
14
15 G. the entry of an Order concluding this Case
and discharging the Receiver.

16 **ARTICLE VII - MISCELLANEOUS PROVISIONS**

17 1. Upon application of the Commission, the Receiver
18 or any interested party, this Court may issue an Order
19 directing any necessary party to execute, deliver or join
20 in the extension or delivery of any instrument or document
21 and perform any other act necessary for the consummation
22 of the Plan.
23

24 2. The Receiver shall be authorized to exclude from
25 all distributions a reserve which shall include any funds
26 he deems necessary to pay for the ongoing operations,
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1 current obligations and potential liabilities of the
2 receivership estate. This amount shall be used, subject
3 to this and other Orders of the Court, to pay
4 administrative expenses of the receivership, pay for any
5 applicable taxes, provide for future distribution on
6 Claims not included in the Plan and for any other purpose
7 approved by this Court.
8

9
10 3. The Receiver shall be authorized, empowered and
11 permitted to enter into an agreement or agreements with
12 any Claimant, subsequent to the Approval Order, which
13 provide(s) for payment or treatment of such Claimant's
14 Claim; provided, however, that no such agreement or
15 agreements shall provide for payment or treatment of such
16 Claimant's Claim upon terms more favorable to such
17 Claimant than the payment or treatment provided to
18 Claimants of the same class.
19
20

21 4. The provisions of the Plan, upon Court
22 confirmation, shall be binding upon all Claimants and
23 parties in interest.
24

25 5. The Plan may be modified both before and after
26 approval, on such notice and hearing as this Court deems
27 appropriate. Any modification of the Plan subsequent to
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1 the initial distribution made pursuant to the Plan shall
2 apply only to any future distributions.

3 6. Where applicable, distributions under the Plan
4 shall be made by sending a check in the name of the
5 claimant to the last known address of said claimant or to
6 the address specified by any change of address notices
7 received by the Receiver before the funds are distributed.
8 Claimants are required to advise the Receiver, in writing,
9 of any change of address or party in interest.
10

11 7. Upon approval of the Plan, the Receiver will be
12 required to provide notice of any proposed action or
13 relief related to the Plan or Distributions pursuant to
14 the Plan requested from this Court to the Commission,
15 those parties in interest who have already filed a notice
16 of appearance in the Case, and those parties in interest
17 who file a request with this Court to receive all notices.
18 This provision shall not apply to any litigation filed by
19 the Receiver with this Court, which need only be served on
20 any defendant(s) named therein.
21

22 8. In the event a Claimant fails to negotiate a
23 distribution check that was mailed to claimant's last
24 known address within 90 days after said check's date of
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1 | issue, such Claim shall be considered abandoned and
2 | disallowed in its entirety. The funds, which would
3 | otherwise be distributed to such claimant, shall revert to
4 | the receivership estate.
5 |

6 | 9. The Receiver, his agents, attorney and employees,
7 | shall be held harmless for any damages or liability that
8 | may arise through the discharge of his duties under the
9 | Plan, in accordance with the Court's February 16, 2006
10 | Order Appointing Receiver (Docket # 13).
11 |

12 | 10. When the Receiver determines that further efforts
13 | to liquidate the assets of Carolina Company are not
14 | required or would not be economical, he shall file a
15 | motion with the Court to close the Case, wherein he may
16 | request such relief as he deems necessary for the final
17 | resolution of this Case.
18 |

19 | 11. This Plan and distributions made pursuant to this
20 | Plan shall be the complete distributions of the
21 | Receivership Estate. There shall be no recourse for
22 | Claims of any kind outside of the process provided for in
23 | this Plan.
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