

1 ALAN H. MARTIN, Cal. Bar No. 132301  
amartin@sheppardmullin.com  
2 NORMA V. GARCIA, Cal. Bar No. 223512  
ngarcia@sheppardmullin.com  
3 MICHAEL A. WALLIN, Cal. Bar No. 240344  
mwallin@sheppardmullin.com  
4 SHEPPARD MULLIN RICHTER & HAMPTON LLP  
650 Town Center Drive, 4th Floor  
5 Costa Mesa, California 92626-1993  
Telephone: 714-513-5100  
6 Facsimile: 714-513-5130

7 Attorneys for  
THOMAS A. SEAMAN, RECEIVER  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION  
11

12 SECURITIES AND EXCHANGE  
COMMISSION,  
13

14 Plaintiff,  
15

v.  
16

LAMBERT VANDER TUIG (a/k/a/  
16 LAMBERT VANDER TAG a/k/a  
DEAN I. VANDER TAG), THE  
17 CAROLINA DEVELOPMENT  
COMPANY, INC. (a/k/a THE  
18 CAROLINA COMPANY AT  
PINEHURST, INC.), AND  
19 JONATHAN CARMAN,

20 Defendants.  
21  
22  
23  
24

Case No. SACV06-172AHS(MLGx)

Complaint Filed: February 16, 2006

(1) **SHEPPARD, MULLIN,  
RICHTER & HAMPTON LLP'S  
EIGHTH INTERIM  
APPLICATION FOR  
ALLOWANCE OF  
COMPENSATION AND  
REIMBURSEMENT OF  
EXPENSES FOR  
NOVEMBER 1, 2007  
THROUGH  
APRIL 30, 2008;**

(2) **DECLARATION OF  
ALAN H. MARTIN; and**

(3) **DECLARATION OF  
THOMAS A. SEAMAN**

[Notice of Eighth Interim Fee Application of  
Sheppard Mullin Richter & Hampton and  
Proposed Order filed concurrently herewith]

Hearing:

Date: August 4, 2008

Time: 10:00 a.m.

Place: Courtroom 10A  
411 W. Fourth Street  
Santa Ana, California

1 Sheppard, Mullin, Richter & Hampton LLP ("SMR&H"), attorneys for  
2 the court-appointed Receiver, Thomas A. Seaman ("Receiver"), hereby submits its  
3 Eighth Interim Fee Application ("Application") for allowance of compensation and  
4 reimbursement of expenses incurred from November 1, 2007 through and including  
5 April 30, 2008 (the "Period") on behalf of the Receiver as its counsel. In support of  
6 its Application, SMR&H respectfully represents as follows:

7  
8 **I. INTRODUCTION.**

9 **A. SMR&H is Duly Employed as Counsel for the Receiver.**

10 On February 16, 2006, the Court appointed a receiver for Lambert  
11 Vander Tuig (a/k/a Lambert Vander Tag, a/k/a Dean L. Vander Tag, a/k/a Dean L.  
12 Vandertag), The Carolina Development Company, Inc. (a/k/a The Carolina  
13 Company at Pinehurst, Inc.), and Jonathan Carman (collectively, "Carolina"). The  
14 Receiver has employed SMR&H as its counsel in connection with the receivership  
15 since the receivership's creation on February 16, 2006.

16  
17 **B. Compensation Requested/Amounts Available in the Estate.**

18 In this Application, SMR&H requests that the Court allow  
19 compensation for legal services rendered on behalf of the Receiver during the Period  
20 in the total amount of Two Hundred Fifty-One Thousand Eight Hundred Eighty-Six  
21 and No/100 Dollars (\$251,886.00) and expenses incurred in the total amount of  
22 Nineteen Thousand One and 66/100 Dollars (\$19,001.66). This is the Eighth  
23 Interim Fee Application filed by SMR&H. SMR&H's First Interim Fee Application  
24 sought fees in the amount of \$126,417.50 and reimbursement of costs in the amount  
25 of \$14,575.65 for the period from February 16, 2006 until April 30, 2006. On  
26 June 12, 2006, the Court entered an order approving in full the amounts sought in  
27 SMR&H's First Interim Fee Application. SMR&H's Second Interim Fee  
28 Application sought fees in the amount of \$206,981.00 and reimbursement of costs in

1 the amount of \$7,868.00 for the period from May 1, 2006 until July 31, 2006. On  
2 October 19, 2006, the Court entered an order approving in full the amounts sought  
3 in SMR&H's Second Interim Fee Application. SMR&H's Third Interim Fee  
4 Application sought fees in the amount of \$156,058.50 and reimbursement of costs in  
5 the amount of \$9,002.89 for the period from August 1, 2006 until October 31, 2006.  
6 On January 8, 2007, the Court entered an order approving in full the amounts sought  
7 in SMR&H's Third Interim Fee Application. SMR&H's Fourth Interim Fee  
8 Application sought fees in the amount of \$178,954.50 and reimbursement of costs in  
9 the amount of \$9,238.52 for the period from November 1, 2006 until January 31,  
10 2007. On April 2, 2007, the Court entered an order approving in full the amounts  
11 sought in SMR&H's Fourth Interim Fee Application. SMR&H's Fifth Interim Fee  
12 Application sought fees in the amount of \$241,422.50 and reimbursement of costs in  
13 the amount of \$7,457.94 for the period from February 1, 2007 until April 30, 2007.  
14 On July 10, 2007, the Court entered an order approving in full the amounts sought in  
15 SMR&H's Fifth Interim Fee Application. SMR&H's Sixth Interim Fee Application  
16 sought fees in the amount of \$246,914.50 and reimbursement of costs in the amount  
17 of \$13,138.58 for the period from May 1, 2007 until July 31, 2007. On  
18 September 21, 2007, the Court entered an order approving in full the amounts  
19 sought in SMR&H's Sixth Interim Fee Application. SMR&H's Seventh Interim Fee  
20 Application sought fees in the amount of \$200,484.50 and reimbursement of costs in  
21 the amount of \$7,011.60 for the period from August 1, 2007 until October 31,  
22 2007.<sup>1</sup> On February 25, 2008, the Court entered an order approving in full the  
23 amounts sought in SMR&H's Seventh Interim Fee Application. SMR&H  
24 understands that there is in excess of \$9 million in cash and liquid assets available in  
25 the estate.

26 \_\_\_\_\_  
27 <sup>1</sup> Each of SMR&H's previous fee applications sought compensation for services  
28 performed over a 3-month period, whereas this Application seeks  
compensation for services performed over a 6-month period.

1 As reflected in the attached declaration of Thomas A. Seaman, the  
2 Receiver instructed SMR&H to undertake the tasks discussed below, has approved  
3 the amounts billed by SMR&H in connection with these tasks, and has instructed  
4 SMR&H to prepare this fee application ("Eighth Fee Application").<sup>2</sup>

5  
6 **II. SMR&H HAS MAINTAINED TIME RECORDS ACCORDING TO**  
7 **SORT CODES.**

8 **A. SMR&H Sort Codes Utilized.**

9 SMR&H has developed a list of sort codes (a brief description of each  
10 is provided below) to categorize its work on this matter. During the Period,  
11 SMR&H performed services for the Receiver in 12 basic categories which are  
12 identified as follows: (i) general miscellaneous services provided to the Receiver  
13 ("Sort Code CA01"); (ii) services related to due diligence and factual development  
14 ("Sort Code CA02"); (iii) services related to legal research ("Sort Code CA03");  
15 (iv) services related to client meetings ("Sort Code CA04"); (v) services related to  
16 court appearances ("Sort Code CA05"); (vi) services related to preparation and  
17 analysis of pleadings, schedules, reports and briefs ("Sort Code CA06");  
18 (vii) internal office meetings ("Sort Code CA07"); (viii) services related to claims  
19 issues ("Sort Code CA09"); (ix) services related to real estate issues ("Sort Code  
20 CA10"); (x) services related to special litigation matters ("Sort Code CA11");  
21 (xi) services related to preparation and review of transactional and transactional-  
22 related documents ("Sort Code CA12"); and (xii) services related to the disposition  
23 of the Company's real property in Moore County, North Carolina near The Carolina  
24

25 \_\_\_\_\_  
26 <sup>2</sup> The Securities and Exchange Commission ("SEC") has also reviewed all of  
27 SMR&H's bills during the Period. The SEC is in agreement with the  
28 Receiver that SMR&H's Eighth Interim Fee Application should be approved  
in full, without any reduction from the invoices submitted to the SEC and the  
Receiver for review.

1 golf club ("Sort Code CA13"). No services were performed in Sort Code CA08  
2 during this Period.

3

4 **B. Distribution of Charges.**

5 Attached hereto as Exhibit A and incorporated herein by reference is a  
6 table showing the distribution of hours and costs of services rendered among the  
7 thirteen sort codes. Also included on Exhibit A is a distribution of hours and the  
8 costs of services rendered by the various attorneys utilized by SMR&H in  
9 connection with this case overall and with respect to each sort code. These tables  
10 provide a quick reference to enable the Court to determine the distribution of efforts  
11 by SMR&H among the various tasks required in connection with the receivership  
12 and the seniority mix employed by SMR&H to maximize the efficient delegation of  
13 tasks. As noted below, and at the direction of the Receiver, the significance,  
14 magnitude and timing of certain tasks and issues (e.g., among other things, real  
15 estate transactional issues, preparation of pleadings, court appearances, etc.)  
16 necessitated extensive involvement by more senior SMR&H attorneys such as Alan  
17 Martin or Brent Liljestrom. The steps taken by the Receiver and its counsel (at the  
18 specific direction of the Receiver) are detailed more extensively in the Receiver's  
19 Eighth Interim Fee Application and the Receiver's Fourth Six Month Report (the  
20 "Six Month Report"). SMR&H requests that the Court take judicial notice of the  
21 Receiver's Eighth Interim Fee Application and the Six Month Report.<sup>3</sup>

22

23

24

25

26

27 <sup>3</sup> The Receiver's Eighth Interim Fee Application has been filed of even date  
28 herewith.

28

1 **III. HISTORY AND PRESENT STATUS OF CAROLINA AND THE**  
2 **RECEIVERSHIP.**

3 **A. Events Leading up to Appointment of the Receiver.<sup>4</sup>**

4 Lambert Vander Tuig ("Vander Tuig") and Jonathan Carman  
5 ("Carman") have raised at least \$52 million from hundreds of investors nationwide  
6 through the fraudulent sale of unregistered shares of stock in The Carolina  
7 Development Company, Inc. ("Carolina"). Vander Tuig and Carman marketed  
8 Carolina as a real estate development company specializing in developing resort  
9 communities surrounding prestigious golf courses.

10  
11 In order to induce individuals to invest, Vander Tuig and Carman  
12 prepared and distributed fraudulent private placement memoranda, fraudulent sales  
13 materials, and published a website containing false statements. In addition, Vander  
14 Tuig and Carman oversaw the operation of a "boiler room" operation located in  
15 Orange County, in which potential investors were solicited by telephone. During  
16 communications with potential investors, Vander Tuig, Carman and Carolina  
17 employees made significant misrepresentations, including: (a) leading investors to  
18 believe that Carolina would soon be going public and that Carolina's stock would  
19 likely trade at many times its offering price; (b) failing to disclose that the same  
20 stock being offered through the "boiler room" operation is available to purchase  
21 through the Pink Sheet quotation system at prices well below the "boiler room"  
22 offering price; (c) representing that Carolina owns or is developing a number of  
23 properties that it does not actually own; and (d) representing that the number of  
24 outstanding shares is substantially less than the number actually outstanding. It is  
25

26 <sup>4</sup> The information in this section was derived from, among other things, the  
27 SEC's complaint against Carolina, filed February 16, 2006, the Six Month  
28 Report and the Factual Summary contained in the Receiver's First, Second,  
Third, Fourth, Fifth, Sixth, Seventh, and Eighth Interim Fee Applications.

1 estimated that Carolina has obtained over one thousand investments from  
2 individuals in the United States and Canada.

3

4 **B. The SEC Complaint Against Vander Tuig, Carman and Carolina.**

5 Based on the actions described above, on February 16, 2006, the  
6 Securities and Exchange Commission ("SEC") filed a complaint against Vander  
7 Tuig, Carman and Carolina alleging various securities violations, including  
8 (i) Section 5(a) and 5(c) of the Securities Act, (ii) 15 U.S.C. § 77e(a) and (c),  
9 (iii) Section 17(a) of the Securities Act, (iv) 15 U.S.C. § 77q(a), (v) Section 10(b) of  
10 the Exchange Act, (vi) 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder. The SEC's  
11 complaint seeks the following relief:

12

- 13 1. An order permanently enjoining each defendant from violating  
14 Section 5(a), 5(c), and 17(a) of the Securities Act, and Sections 10(b) of  
15 the Exchange Act and Rule 10b-5 thereunder;
- 16 2. An order permanently enjoining Vander Tuig and Carman from  
17 violating Sections 15(a) of the Exchange Act;
- 18 3. An order permanently enjoining Vander Tuig from violating Section  
19 15(b)(6)(B) of the Exchange Act;
- 20 4. A preliminary injunction freezing the assets of each of the defendants  
21 and prohibiting each of the defendants from destroying documents;
- 22 5. An order appointing a receiver over Carolina and all other entities  
23 directly or indirectly controlled by Vander Tuig or Carman.

24

25 **C. The Court Appoints a Receiver and Grants Other Relief.**

26 On February 16, 2006, the Court ordered that Thomas A. Seaman be  
27 appointed Receiver of Carolina "and all subsidiaries and affiliated entities" (the  
28 "Order"). Pursuant to the Order, "[t]he Receiver shall take control of the

1 Companies' funds, assets and property wherever situated ... including powers over  
2 all funds, assets, premises ... choses in action, books, records, and other property  
3 belonging to or in the possession or control of the Companies." Among other  
4 things, the Order gave the Receiver the authority to:

- 5
- 6 • Have access to and take control of all funds, assets and premises of
- 7 Carolina;
- 8 • Have control of all accounts, securities, funds, or other assets of
- 9 Carolina;
- 10 • Take action as is necessary and appropriate to preserve all assets in the
- 11 possession or custody of Carolina;
- 12 • Make or authorize such payments and disbursements from the funds
- 13 and assets of Carolina as necessary and advisable in discharging his
- 14 duties as Receiver;
- 15 • "Engage and employ persons in his discretion to assist him in carrying
- 16 out his duties and responsibilities hereunder, including, but not limited
- 17 to, accountants, attorneys, securities traders, registered representatives,
- 18 financial or business advisers, liquidating agents, real estate agents,
- 19 forensic experts, brokers, traders or auctioneers." (Order, ¶ f).
- 20
- 21

22 The Order also provided that the Receiver was to receive access to "any  
23 customer or client information, assets, books, records or other property belonging to  
24 or in the custody or control of" Carolina. In addition, the Receiver was given  
25 authority to:

26

27 liquidate and convert into money all of the assets,  
28 property, estate, effects and interests of every nature held  
in his possession and control pursuant to this Order, by



1 selling, conveying, and disposing of the Property, either at  
2 public or private sale, on terms and in the manner the  
Receiver deems most beneficial to the persons or parties  
3 entitled to the proceeds...Order, Art. II, ¶ b.

4 On the same day, the Court also issued an Order Granting Asset Freeze,  
5 Ordering an Accounting, and Prohibiting the Destruction of Documents. This Order  
6 prohibited all parties connected with Carolina from "destroying, mutilating,  
7 concealing, altering, or disposing of any and all items, including, but not limited to,  
8 any books, records, documents, correspondence, contracts, agreements, assignments,  
9 obligations, tape recordings, computer media or other property of the Defendants,  
10 relating to the Defendants or any of their securities, financial or business dealings."

11  
12 **D. SMR&H is Retained to Help the Receiver Perform His Duties.**

13 After the Order was issued, the Receiver has sought the assistance of  
14 SMR&H to assist the Receiver in, among other things:

- 15
- 16 • Identifying all assets owned by Carolina or acquired with assets of  
17 Carolina, including extensive real and personal property held in such  
18 states as North Carolina, Texas, Nevada and California;
- 19 • Identifying all persons and entities related to Carolina in which  
20 Carolina, Vander Tuig or Carman may attempt to or actually did  
21 illegally transfer assets;
- 22 • After identifying the assets owned by Carolina, which included  
23 potential interests in well over 80 lots and total acreage in excess of  
24 2500 acres, taking steps to protect those assets;
- 25 • After identifying persons or entities related to Carolina, having the  
26 scope of the receivership expanded to include those persons and  
27 entities;
- 28

- 1       •     Assisting in determining the estimated value, development strategy and  
2             disposition strategy of all Carolina assets;
- 3       •     Pursuing claims against former Carolina salespeople, insiders, and  
4             professionals; and
- 5       •     Assisting with the successful disposition of assets and dispersing  
6             collected funds to claimants.

7

8       **1.     Gathering Information and Capturing Funds.**

9             The Receiver and SMR&H's initial efforts involved gathering  
10            considerable information necessary to understand Carolina's general business  
11            "scheme" and identify the type and location of all assets. Much of the initial  
12            information was obtained from Carolina's corporate offices and related locations of  
13            Lambert Vander Tuig. This information revealed many "leads" as to the location of  
14            real and personal property assets and parties that may be holding funds on behalf of  
15            Carolina.

16

17            Carolina's business practices and record keeping have made the  
18            discovery of assets especially difficult. For example, in order to induce investment,  
19            Carolina would often tell investors that it owned properties it did not own. Carolina  
20            would also provide investors with extensive marketing materials regarding these  
21            "fake" holdings. These misrepresentations by Carolina have made it difficult (and  
22            time consuming) to distinguish between these assets and Carolina's actual real estate  
23            interests. In addition, Carolina's accounting was not thorough or well organized,  
24            making it even more difficult to determine the extent of Carolina's assets and the  
25            value of those assets.

26

27

28

1           The Receiver and SMR&H have spent considerable time identifying  
2 assets of Carolina, Lambert Vander Tuig, Jonathan Carman, and their relatives.  
3 Recently, this process has involved, among other things:

- 4
- 5       • Analyzing numerous title documents relating to Carman and Vander  
6 Tuig's real estate interests;
- 7       • Serving numerous subpoenas to banks and escrow companies and  
8 reviewing documents relating to Vander Tuig and Carman's bank  
9 accounts and real estate interests;
- 10      • Receiving and analyzing several document productions made pursuant  
11 to subpoenas served during the period covered in SMR&H's prior  
12 Interim Fee Applications;
- 13      • Numerous and extensive telephone conversations, meetings and other  
14 communications with various former Carolina professionals and third  
15 parties to assess the extent and location of Carolina, Vander Tuig, and  
16 Carman's remaining assets; and
- 17      • Analyzing numerous bank statements, real estate transaction records,  
18 asset search reports, and various other financial records and  
19 documentation.
- 20

21           This diligence revealed that Vander Tuig and Carman repeatedly  
22 violated the Order Appointing Receiver and Freeze Order by transferring several  
23 valuable Company assets to their wives and relatives immediately after the Orders  
24 became effective. Specifically, among many other things, Vander Tuig took  
25 \$1,000,000 from the Company on February 16, 2006, the day that the Orders were  
26 entered. The Receiver also learned that approximately \$117,000 was illegally  
27 transferred to an escrow held by Stewart Title in connection with Vander Tuig's  
28 wife, Jill Kraus', attempted purchase of a condominium in Las Vegas, Nevada with

1 receivership estate funds. In addition, Vander Tuig stole \$573,000 from the  
2 Company by causing William Cannon, the Company's former North Carolina  
3 counsel, to transfer \$573,000 of investor funds directly to his wife, Jill Ann Kraus.  
4 After extensive efforts by the Receiver and SMR&H, Vander Tuig eventually turned  
5 over the \$1,000,000 to the Receiver, but Vander Tuig required that the \$1,000,000  
6 be held in escrow by the Receiver until the Court made a final determination as to  
7 whether those funds belong to the receivership estate. With respect to the \$573,000  
8 stolen by Vander Tuig, none of these funds have been returned to the Receiver.

9  
10 Carman also violated the Orders by, among many other things, taking  
11 at least \$1,400,000 from the Company after the Orders were entered. Most of these  
12 funds were taken on February 17, 2006, the day after the Orders were entered.<sup>5</sup> The  
13 Receiver and SMR&H's diligence during the Period also indicated that Vander Tuig  
14 and Carman deliberately failed to disclose certain other assets to the Receiver.

15  
16 In order to recover these assets, on May 1, 2007, the Receiver filed a  
17 motion seeking an order that the \$1,000,000 turned over to the Receiver and the  
18 \$117,000 held by Stewart Title were property of the receivership estate. The Court  
19 entered an order on October 22, 2007 confirming that these funds were property of  
20 the receivership estate. On May 16, 2007, the Receiver filed a Motion for Contempt  
21 Against Vander Tuig based on his theft of the \$573,000. Similarly, on May 18,  
22 2007, the Receiver filed a Motion for Contempt Against Jonathan Carman. The  
23 Court entered an order granting both of these motions on September 20, 2007 (the  
24 "Carman Order" and the "Vander Tuig Order"). The Carman Order required

25  
26 <sup>5</sup> For a detailed explanation of Vander Tuig and Carman's violation of the  
27 Orders, see the Motion for Contempt Against Jonathan Carman, filed May 18,  
28 2007, and the Motion for Contempt Against Lambert Vander Tuig, filed  
May 16, 2007.

1 Carman to convey approximately \$490,000 to the Receiver on or before  
2 September 30, 2007. The Vander Tuig Order required Vander Tuig to convey  
3 approximately \$635,000 to the Receiver on or before October 15, 2007.

4  
5 Neither Carman nor Vander Tuig have complied with the contempt  
6 orders. Carman has attempted to appeal the Court's ruling but his pleadings were  
7 rejected by the Court. Vander Tuig claims that he is unable to comply with the  
8 Vander Tuig Order. As a result of these failures to comply, SMRH spent  
9 considerable time during the Period attempting to enforce the contempt orders.  
10 These efforts include, among other things:

- 11
- 12 • Preparing and filing an *ex parte* application for order to show cause
- 13 why Vander Tuig should not be held in further contempt and
- 14 incarcerated for his failure to comply with the Vander Tuig Order.
- 15 • Communicating extensively with Vander Tuig's counsel regarding
- 16 Vander Tuig's non-compliance with the Order.
- 17 • Attending the hearing on the order to show cause why Vander Tuig
- 18 should not be held in further contempt and incarcerated.
- 19 • Communicating extensively with Carman's counsel regarding Carman's
- 20 non-compliance with the order.
- 21 • Performing legal research in order to respond to Carman's appeal of the
- 22 Court's order.
- 23

24 On February 4, 2008, the Court entered an order finding Vander Tuig  
25 in contempt of the Court's prior order requiring him to turn over \$573,000, plus  
26 interest, to the Receiver on or before October 15, 2007. The Court continued the  
27 matter until March 3, 2008 to determine what further actions would be necessary to  
28 cause Vander Tuig to turn over the \$573,000. By the time of the March 3, 2008

1 continued hearing, Vander Tuig had still not turned over the \$573,000 to the  
2 Receiver. Therefore, the Court issued additional sanctions against Vander Tuig in  
3 the amount of \$500,000.

4  
5 During the Period, the Receiver and SMR&H also learned that Vander  
6 Tuig and Kraus further violated the Court's orders by failing to return the \$117,000  
7 held in escrow by Stewart Title to the Receiver. Instead of returning these funds to  
8 the Receiver as ordered by the Court, Vander Tuig and Kraus caused the \$117,000  
9 to be transferred to the seller of the Las Vegas condominium in order to complete  
10 Kraus' purchase of the condominium. SMR&H spent time during the Period  
11 attempting to resolve this issue and is in the process of pursuing potential claims  
12 against Stewart Title, Vander Tuig, and Kraus as a result of this illegal \$117,000  
13 transfer.

14  
15 **2. Pursuing Claims Against Former Carolina Professionals, Insiders,**  
16 **and Salespeople**

17 During the Period, SMR&H continued to pursue the Receiver's claims  
18 against William Cannon, Penny Hayes, Robert Waldman, Gary Wykidal, and Kelley  
19 Moreno. Cannon and Hayes were Carolina's former legal counsel in North  
20 Carolina. Waldman was Carolina's former general counsel and also served as a  
21 director on Carolina's board. Wykidal assisted the Company in preparing various  
22 securities documents in connection with the Company's efforts to raise investor  
23 funds. During the Period, SMR&H prepared and filed a motion for summary  
24 judgment against Kelley Moreno, which was recently granted. In addition, SMR&H  
25 and the Receiver negotiated a near-final settlement with Penny Hayes. SMR&H  
26 also communicated extensively with the other defendants to move the lawsuits  
27 forward to judgment or potential settlement.

28

1 SMR&H also spent considerable time during the Period researching  
2 applicable facts and law, preparing and serving discovery, reviewing pleadings, and  
3 analyzing numerous documents produced by defendants as part of their Rule 26  
4 disclosures.

5  
6 **3. Disgorgement Motion**

7 SMR&H spent a significant amount of time during the Period resolving  
8 issues regarding the Receiver's "disgorgement" motion and numerous ancillary  
9 items which concern the return of commissions paid to former Company  
10 salespeople. During the Period, several of the disgorgement orders previously  
11 entered against former sales agents were vacated due to the decision in *SEC v. Ross*,  
12 504 F.3d 1130 (9<sup>th</sup> Cir. 2007). As a result of this development, SMR&H spent time  
13 preparing and filing amended disgorgement motions and personally serving the  
14 target sales agents.

15  
16 **4. Selling Real Estate Assets and Resolving Real Estate Related**  
17 **Claims.**

18 After reviewing the voluminous documents produced in response to the  
19 subpoenas, the Receiver and SMR&H have a thorough understanding of Carolina's  
20 real property interests and other asset holdings. Specifically, the Receiver and  
21 SMR&H have assessed the location and status of each major property (legal  
22 description, assessor's parcel number, etc.), the current owner of record of each  
23 property, the significant encumbrances on each property, the development status of  
24 each property, and the marketability of each property. These actions have allowed  
25 the Receiver to successfully market many of Carolina's assets for sale. In fact, the  
26 Receiver has already received Court approval and closed the sale of the following  
27 assets:

28

- 1 • An approximately 768 acre parcel of land in Celina, Texas, commonly  
2 known as "Celina Bridges" for a purchase price of \$30,000,000.
- 3 • Numerous unencumbered lots and parcels in Moore County, North  
4 Carolina.
- 5 • The personal residence of Jonathan Carman, located in Aliso Viejo,  
6 California, for a purchase price of \$879,000.

7  
8 At the Receiver's request, SMR&H has worked extensively with the  
9 Receiver in developing evolving strategies for each property, compiling due  
10 diligence information for properties, and communicating with miscellaneous  
11 potential bidders. These efforts have led to the successful marketing of several of  
12 Carolina's real estate assets. These efforts also allowed the Receiver to favorably  
13 settle a dispute regarding certain real property in Nevada.

14  
15 **a. Fountainhead**

16  
17 During the Period, SMR&H worked extensively toward recovering a  
18 portion of the \$2,000,000 that Carolina Development invested in a real estate project  
19 known as "Fountainhead" in Clark County, Nevada. Fountainhead Partners IV,  
20 LLC ("FPIV") is the developer of a condominium project known as Galileo located  
21 on approximately 18 acres of land near Lake Las Vegas in Henderson, Nevada. In  
22 or about December 2005, FPIV offered to grant Carolina Development a "Class C"  
23 membership interest in FPIV in consideration of Carolina Development agreeing to  
24 provide funds for the Project in the aggregate amount of \$15,000,000 as set forth in  
25 a Memorandum of Understanding dated December 27, 2005 (the "MOU").

26  
27 Carolina Development paid FPIV \$2,000,000 of the \$15,000,000 in  
28 December 2005. Carolina Development was scheduled to pay FPIV the remaining



1 \$13,000,000 on February 10, 2006, on the eve of the Receiver's appointment, but  
2 did not. Shortly after the Receiver's appointment, the Receiver caused a Notice of  
3 Pendency of Receivership (the "Notice") to be recorded against the land to impart  
4 constructive notice of the estate's interest to third parties. The Receiver believes that  
5 the receivership estate has an interest in the Fountainhead project due to the  
6 \$2,000,000 paid to FPIV. FPIV argues that the receivership estate has no interest in  
7 the Fountainhead project because Carolina Development breached its obligations  
8 under the MOU by failing to pay FPIV the additional \$13,000,000. As a result of  
9 the Notice, FPIV contends that it has been unable to negotiate a refinance of its  
10 existing loan and has therefore defaulted on its loan. FPIV contends that it suffered  
11 significant damage as a result of Carolina Development's failure to invest the  
12 additional \$13,000,000 as required by the MOU.

13  
14 On or about January 10, 2008, the holder of the first deed of trust  
15 against the Fountainhead property initiated foreclosure proceedings by filing a  
16 Notice of Breach and Election to Sell Under Deed of Trust. FPIV was negotiating a  
17 refinance loan, the proceeds of which would repay the foreclosing lender. Such  
18 refinancing, however, could not proceed without the Receiver releasing the Notice  
19 currently encumbering the land. Understandably, the Receiver did not want to  
20 release the Notice without receiving appropriate compensation for the interest held  
21 by the receivership estate. During the Period, the Receiver and FPIV engaged in  
22 extensive settlement discussions in order to determine how much, if any, the  
23 receivership estate should receive in order to remove its Notice. The parties entered  
24 into a settlement agreement in which the receivership estate would receive \$400,000  
25 on or before March 15, 2008, in exchange for the Receiver's agreement to remove  
26 the Notice. On February 25, 2008, the Receiver filed a motion for approval of the  
27 settlement agreement with FPIV. The Court entered an order granting the  
28 Receiver's motion on March 4, 2008. However, FPIV has not paid \$400,000 to the

1 Receiver as required by the settlement agreement. The Receiver and SMR&H are  
2 assessing how best to proceed given FPIV's failure to pay.

3  
4 **b. Moore County, North Carolina**

5  
6 The Company's largest remaining real estate asset consists of property  
7 in Moore County, North Carolina, surrounding golf courses known as The Carolina,  
8 The Mid-South, and The National. This real estate is comprised of numerous  
9 single-family residential lots surrounding the three golf clubs and an additional  
10 approximately 207 acres surrounding The Carolina. Virtually all of the remaining  
11 lots owned by the Company are encumbered with investor deeds of trust. These  
12 deeds of trust secure investment amounts that substantially exceed the market value  
13 of the lots. Therefore, there is no equity in these encumbered lots. During the  
14 Period, SMR&H worked with the Receiver and the SEC to address the distribution  
15 of these encumbered lots in the SEC's Plan of Distribution (discussed below).

16  
17 In connection with the property election form process, several investors  
18 have elected to reconvey their deeds of trust in order to participate in distributions  
19 from the receivership estate. SMR&H is coordinating the reconveyance of these  
20 deeds of trust. After the reconveyances are complete, the Receiver will be able to  
21 market these lots for sale.

22  
23 **c. Lake Las Vegas Associates**

24  
25 Carolina Development is a member of Lake Las Vegas Associates,  
26 LLC ("Lake Las Vegas Associates"), which has been promised approximately 160  
27 acres from the Bureau of Land Management ("BLM") in settlement of Lake Las  
28 Vegas Associates' pending claim against the BLM. Substantial information about

1 both of these properties has been obtained through letters, subpoenas and other  
2 communications with various professionals. The Receiver and SMR&H previously  
3 learned that Carolina's interest in Lake Las Vegas Associates was held in Vander  
4 Tuig's name. Therefore, the Receiver and SMR&H worked with Vander Tuig's  
5 attorney in order to have Vander Tuig's interest in Lake Las Vegas Associates  
6 transferred to Carolina. The Receiver and SMR&H are in communications with  
7 Lake Las Vegas Associates' attorney in order to remain informed as to the potential  
8 settlement with the BLM. The Receiver is also in discussions with parties interested  
9 in purchasing Carolina's interest in Lake Las Vegas Associates. The Receiver  
10 believes he will be able to market this asset for sale more thoroughly once more  
11 information regarding the BLM settlement is known.

#### 12

#### 13 **5. SEC Plan of Distribution**

14 SMR&H devoted considerable time during the Period assisting the  
15 SEC and the Receiver with various aspects of the SEC's Plan of Distribution (the  
16 "Plan").

17

18 The Plan makes the Receiver responsible for assessing investors'  
19 claims, sending out numerous documents to investors, and monitoring the receipt of  
20 numerous documents sent by investors. SMR&H has assisted the Receiver with all  
21 of these tasks. Specifically, during previous periods SMR&H prepared "Property  
22 Election Forms" which were sent to all investors holding deeds of trust against lots  
23 in North Carolina. These investors were given the option of either (1) receiving a  
24 non-warranty deed to the lot subject to the deed of trust, or (2) participating in pro  
25 rata distributions from the receivership estate. The preparation of the over 100  
26 Property Election Forms took a substantial amount of time because it required the  
27 review of numerous deeds, title commitments, and investor response forms.  
28 Furthermore, after the election forms were mailed out, many issues arose with

1 respect to certain investors. These issues related to, among other things, the amount  
2 of certain investments, the amount of dividends received by investors, and how  
3 certain deeds should be drafted. SMR&H communicated extensively with the  
4 Receiver and numerous investors to resolve these issues.

5  
6 During this Period, most of the investors returned their property  
7 election forms. For all investors that elected Option 1 – to receive a non-warranty  
8 deed and forego distributions from the receivership estate – SMR&H prepared  
9 general releases to be executed by the investor and a non-warranty deed to be  
10 recorded upon return of the general release. For all investors that elected Option 2 –  
11 to release their deed of trust and participate in distributions – SMR&H prepared  
12 general releases to be executed by the investors and Satisfactions of Security  
13 Instruments to allow the investors to release their deeds of trust. As general releases  
14 are returned to the Receiver, SMR&H coordinates the recording of the non-warranty  
15 deed or the Satisfaction, as the case may be. The Receiver is in the process of  
16 preparing his Investment Analysis detailing the amount of each investment and  
17 various other issues. SMR&H will assist the Receiver in preparing this analysis.

18  
19 **IV. DESCRIPTION OF BENEFITS SMR&H PROVIDED TO THE**  
20 **RECEIVER AND THE RECEIVERSHIP ESTATE, OUTLINE AND**  
21 **SUMMARY OF SERVICES RENDERED, TIME EXPENDED, AND**  
22 **FEES CHARGED FOR EACH CATEGORY DURING THE PERIOD**  
23 **COVERED BY THIS APPLICATION.**

24 As detailed in the above-referenced summary, Carolina holds  
25 substantial real estate in North Carolina and has several claims against insiders,  
26 professionals, and former salespeople. In addition, Vander Tuig and Carman have  
27 not complied with the Order Appointing Receiver and the Freeze Order and  
28 Carolina is entitled to recover substantial sums from Vander Tuig and Carman as a

1 result. SMR&H spent a great deal of time during the Period taking steps to recover  
2 the assets illegally held by Vander Tuig, Carman, and their relatives.

3  
4 Moreover, during the Period, SMR&H worked towards implementing  
5 the SEC's Plan of Distribution. These efforts have put the SEC and the Receiver in  
6 position to make a distribution to investors in the near future. In addition, SMR&H  
7 successfully settled its lawsuit against Penny Hayes and was successful in its motion  
8 for summary judgment against Kelley Moreno. SMR&H also successfully settled  
9 several disgorgement claims and obtained numerous orders requiring former  
10 salespeople to return all commissions they received from Carolina.

11  
12 As this Application details, SMR&H and the Receiver have worked  
13 diligently and efficiently to increase the potential recovery for investors. Among  
14 many other things, SMR&H has:

- 15
- 16 • Prepared numerous general releases in connection with the property  
17 election process.
- 18 • Prepared numerous non-warranty deeds in connection with the property  
19 election process.
- 20 • Prepared numerous Satisfactions of Security Instruments in connection  
21 with the property election process.
- 22 • Attempted to enforce the Court orders entered against Vander Tuig.
- 23 • Attempted to enforce the Court orders entered against Carman.
- 24 • Negotiated a favorable settlement of the dispute relating to the  
25 "Fountainhead" property.
- 26 • Negotiated a favorable settlement with Penny Hayes.
- 27 • Obtained summary judgment against Kelley Moreno.
- 28

- 1 • Prepared numerous transactional documents in order to effectuate the
- 2 Fountainhead settlement.
- 3 • Continued to pursue claims against several professionals that assisted
- 4 Carolina.
- 5 • Performed significant research re numerous disgorgement-related
- 6 issues.

7

8 As a result of the combined efforts of the SEC, the Receiver and

9 SMR&H, the identification, valuation, protection, marketing, sale, and distribution

10 of Carolina's assets has been very successful and is continuing.

11

12 During the Period covered by this Application, SMR&H activities were

13 segregated into thirteen categories. The work performed, the time spent, and the

14 fees incurred with respect to each of these categories are described in detail below.

15 Notably, the amount requested by SMR&H in this Application is significantly less

16 (on a per month basis) than the amounts requested in SMR&H's previous fee

17 applications.

18

19 **A. Sort Code CA01: General/Miscellaneous.**

20 Sort Code CA01 reflects work by SMR&H attorneys which, while

21 necessary to the effective representation of the Receiver in this case, does not fit into

22 the other categories of work described below. Only a relatively small portion of the

23 work undertaken by SMR&H attorneys is categorized as "General/Miscellaneous"

24 tasks. In connection with Sort Code CA01, SMR&H attorneys, among other things,

25 accomplished the following tasks at the Receiver's request:

- 26
- 27 • Communicated with the SEC regarding miscellaneous items.
- 28

- 1       • Reviewed and resolved issues regarding the Moore County tax
- 2       assessor's office.
- 3       • Assisted the Receiver in resolving fee issues with title companies.
- 4       • Reviewed and resolved issues regarding unpaid HOA dues in Moore
- 5       County, North Carolina.

6

7               In connection with Sort Code CA01, SMR&H expended approximate

8 time and fees during this Period as follows:

9

10           Hours:	12.0
11           Fees Incurred:	\$5,329.50
12           Blended Rate:	\$444.13

13

14       **B. Sort Code CA02: Factual Development.**

15               As with any receivership, one of the most important issues for

16 Receiver's counsel is accomplishing a prompt and accurate assessment of the facts

17 surrounding the subject company. SMR&H's prompt assessment of the facts

18 surrounding this case allowed the Receiver to evaluate its options very quickly and

19 promptly take steps to protect and preserve receivership assets. In connection with

20 Sort Code CA02, SMR&H attorneys, among other things, accomplished the

21 following tasks at the Receiver's request:

- 22
- 23       • Prepared subpoenas to third parties with knowledge of the Celina
  - 24       Bridges transaction in order to assess potential claims.
  - 25       • Analyzed documents produced by third parties in response to
  - 26       subpoenas.
  - 27       • Reviewed several formation documents regarding the Fountainhead
  - 28       property and related entities.

- 1 • Prepared subpoenas to banks regarding potential Vander Tuig and  
2 Kraus accounts.

3  
4 In connection with Sort Code CA02, SMR&H expended approximate  
5 time and fees during this Period as follows:

6

7	Hours:	5.2
8	Fees Incurred:	\$1,532.00
9	Blended Rate:	\$294.62

10

11 **C. Sort Code CA03: Legal Research.**

12 One of the services provided by SMR&H to the Receiver was research  
13 and analysis of various legal issues, including analysis of the impact of key rules of  
14 law on various factual circumstances in this case. SMR&H spent considerable time  
15 researching issues pertaining to the Receiver's disgorgement claims. The law in this  
16 area is complicated and not well established. Given that the disgorgement motion  
17 seeks the return of several million dollars, thorough legal research in this area is  
18 warranted. In addition, SMR&H performed legal research regarding the Receiver's  
19 contempt motions against Vander Tuig and Carman, issues of the appropriateness of  
20 incarcerating Vander Tuig for his failure to comply with the Court's orders, issues of  
21 the appealability of the Court's orders, and issues regarding the Fountainhead MOU.  
22 SMR&H also researched numerous legal issues impacting the Receiver's claims  
23 against Gary Wykidal. In connection with Sort Code CA03, SMR&H attorneys,  
24 among other things, accomplished the following tasks at the Receiver's request:

- 25  
26 • Performed extensive legal research to determine a recent decision's  
27 effect on the Court's disgorgement orders.
- 28



- 1       • Performed legal research regarding the appealability of the Carman  
2 contempt order.
- 3       • Performed legal research regarding the validity of the Fountainhead  
4 MOU and the possibility of bringing a partition action to preserve the  
5 estate's interest in the asset.
- 6       • Performed legal research re unpaid HOA dues and potential liens  
7 against lots.
- 8       • Performed legal research regarding numerous issues impacting claims  
9 against Gary Wykidal.
- 10      • Performed legal research regarding issues impacting claims against  
11 Penny Hayes.
- 12      • Performed legal research regarding motion for summary judgment  
13 against Kelley Moreno.

14  
15               In connection with Sort Code CA03, SMR&H expended approximate  
16 time and fees during this Period as follows:

17		
18	Hours:	27.3
19	Fees Incurred:	\$7,963.00
20	Blended Rate:	\$291.69
21		

22       **D. Sort Code CA04: Client Meetings.**

23               In order to keep all parties up-to-date on all pertinent information,  
24 SMR&H regularly met with the Receiver to discuss key issues. Most of these  
25 meetings were over the telephone, with a few especially important meetings  
26 occurring in person. In addition to discussing recent factual discoveries, these  
27 meetings also focused on important issues regarding the Plan of Distribution, claims  
28 against professionals, disgorgement, and the protection and marketing of certain

1 Carolina assets. In connection with Sort Code CA04, SMR&H attorneys, among  
2 other things, accomplished the following tasks at the Receiver's request:

- 3
- 4 • Attended meetings with the Receiver to discuss issues relating to
- 5 property election forms, non-warranty deeds, and general releases.
- 6 • Attended meetings with the Receiver to analyze several disgorgement-
- 7 related issues, including the effect of recent decisions on the validity of
- 8 the Court's disgorgement orders.
- 9 • Attended meetings with the Receiver to develop strategies to settle the
- 10 dispute relating to the Fountainhead project.
- 11

12 In connection with Sort Code CA04, SMR&H expended approximate  
13 time and fees during this Period as follows:

14		
15	Hours:	36.3
16	Fees Incurred:	\$16,347.50
17	Blended Rate:	\$450.34
18		

19 **E. Sort Code CA05: Court Appearances.**

20 SMR&H's representation of the Receiver requires it to prepare for and  
21 occasionally attend hearings on motions brought before the Court. In connection  
22 with Sort Code CA05, SMR&H attorneys accomplished the following tasks at the  
23 Receiver's request:

- 24
- 25 • Prepared for and attended hearing on the order to show cause why
- 26 Vander Tuig should not be held in contempt of the Court's orders.
- 27 • Prepared for and attended hearing on Gary Wykidal's motion to
- 28 dismiss.

1 In connection with Sort Code CA05, SMR&H expended approximate  
2 time and fees during this Period as follows:

3  
4 Hours: 15.6  
5 Fees Incurred: \$6,138.50  
6 Blended Rate: \$393.49  
7

8 **F. Sort Code CA06: Preparation and Analysis of Pleadings,**  
9 **Schedules, Reports and Briefs.**

10 During the Period, SMR&H spent considerable time preparing  
11 documents relating to the Plan of Distribution, including Property Election Forms,  
12 Non-Warranty Deeds, Satisfactions of Security Instruments, and General Releases.  
13 These documents are necessary to complete the distribution process set forth in the  
14 Plan of Distribution. SMR&H also spent considerable time preparing and reviewing  
15 pleadings regarding the contempt orders and Vander Tuig and Carman's violations  
16 of the contempt orders. In addition, time was spent preparing the motion for  
17 summary judgment against Kelley Moreno. In connection with Sort Code CA06,  
18 SMR&H attorneys, among other things, accomplished the following tasks at the  
19 Receiver's request:

- 20
- 21 • Prepared numerous non-warranty deeds in order to grant certain lots to  
22 investors that elected Option 1 – to receive a non-warranty deed and  
23 forego distributions from the receivership estate.
  - 24 • Prepared numerous Satisfactions of Security Instruments to be executed  
25 by Option 2 investors in order to reconvey their deeds of trust  
26 encumbering Moore County lots.
  - 27 • Prepared numerous general releases to be executed by investors in  
28 furtherance of the property election process.

- 1 • Prepared property election forms to be sent to investors that engaged in
- 2 1031 exchange transactions with Carolina Development.
- 3 • Prepared numerous correspondence to certain investors that have not
- 4 yet returned the dividends and/or interest they received from Carolina
- 5 Development.
- 6 • Prepared ex parte application seeking an order to show cause why
- 7 Vander Tuig has not violated the contempt order.
- 8 • Prepared numerous pleadings relating to the Vander Tuig and Carman
- 9 contempt orders and the Kraus turnover order.
- 10 • Assisted the Receiver with the preparation of his six-month report.
- 11 • Prepared ex parte pleadings regarding Fountainhead settlement.
- 12 • Prepared motion for summary judgment against Kelley Moreno.

13 In connection with Sort Code CA06, SMR&H expended approximate  
14 time and fees during this Period as follows:

15		
16	Hours:	195.8
17	Fees Incurred:	\$67,763.00
18	Blended Rate:	\$346.08
19		

20 **G. Sort Code CA07: Internal Office Meetings.**

21 In order to coordinate strategy, monitor progress, efficiently arrange  
22 discrete task assignments, minimize overlap and duplication, and otherwise  
23 maximize efficiency, it was critical for SMR&H attorneys to meet with each other,  
24 to facilitate expeditious communication and optimize staffing. Nonetheless,  
25 SMR&H kept general meetings on this case not otherwise connected with a specific  
26 task to a minimum. In connection with Sort Code CA07, SMR&H attorneys, among  
27 other things, accomplished the following tasks at the Receiver's request:

28

- 1 • Attended meeting to discuss the preparation of numerous non-warranty  
2 deeds and general releases.

3  
4 In connection with Sort Code CA07, SMR&H expended approximate  
5 time and fees during this Period as follows:

6  
7 Hours: .3  
8 Fees Incurred: \$82.50  
9 Blended Rate: \$275.00

10  
11 **H. Sort Code CA08: Employment.**

12  
13 In connection with Sort Code CA08, SMR&H expended approximate  
14 time and fees during this Period as follows:

15  
16 Hours: .4  
17 Fees Incurred: \$116.00  
18 Blended Rate: \$290.00

19  
20 **I. Sort Code CA09: Claims Issues.**

21 A critical component to maximizing the return to investors is to  
22 properly address and develop potential claims against the named defendants, former  
23 employees, professionals, and third parties. During the Period, SMR&H spent  
24 considerable time attempting to enforce the terms of the contempt orders entered  
25 against Vander Tuig and Carman. SMR&H also continued to pursue its claims  
26 against several former professionals, as well as against Kelley Moreno, a relative of  
27 Vander Tuig who was impermissibly transferred several hundred thousand dollars.  
28 This involved the preparation of discovery and analysis of documents produced by

1 the various defendants. In connection with Sort Code CA09, SMR&H attorneys,  
2 among other things, accomplished the following tasks at the Receiver's request:

- 3
- 4 • Corresponded with Stewart Title to determine the location of the
- 5 \$117,000 that was required to be transferred to the Receiver pursuant to
- 6 the Court's turnover order.
- 7 • Analyzed numerous issues regarding disgorgement and prepared for the
- 8 hearing on disgorgement issues.
- 9 • Prepared for order to show cause hearing on Vander Tuig's failure to
- 10 comply with contempt order.
- 11 • Communicated extensively with attorneys for Vander Tuig, Carman,
- 12 and Kraus regarding the failure to comply with the contempt orders and
- 13 the turnover order.
- 14 • Prepared proposed orders in connection with order to show cause
- 15 against Kraus.
- 16 • Analyzed the SEC's ex parte application for final judgment against
- 17 Carman.
- 18 • Prepared special interrogatories, requests for production, and requests
- 19 for admission to be served on Kelley Moreno.
- 20 • Prepared motion seeking recover of attorney's fees from Vander Tuig in
- 21 connection with contempt motion.
- 22 • Prepared numerous pleadings and documents regarding disgorgement
- 23 claims.
- 24
- 25
- 26
- 27
- 28

1 In connection with Sort Code CA09, SMR&H expended approximate  
2 time and fees during this Period as follows:

3  
4 Hours: 112.1  
5 Fees Incurred: \$39,668.50  
6 Blended Rate: \$353.87  
7

8 **J. Sort Code CA10: Real Estate/Asset Issues.**

9 Real estate issues continue to be a major focus area of the receivership  
10 because the potential return to investors rests in large part on the success of the real  
11 estate disposition. In the past, these efforts included identifying all real estate  
12 owned by Carolina, determining the encumbrances on each property, estimating the  
13 value of each property, locating potential buyers, identifying potential claims  
14 relating to each property, and assessing and carrying out the best disposition strategy  
15 under the circumstances. During the Period, the focus was on settling the dispute  
16 regarding the Fountainhead project.  
17

18 SMR&H spent considerable time analyzing the Fountainhead dispute.  
19 This included an analysis of the MOU, a review of numerous formation documents,  
20 and a review of the status of the Fountainhead project. After this initial review was  
21 complete, SMR&H expended considerable time negotiating the settlement and  
22 preparing the pleadings necessary to obtain Court approval of the settlement. In  
23 connection with Sort Code CA10, SMR&H attorneys, among other things,  
24 accomplished the following tasks at the Receiver's request:  
25

- 26 • Analyzed the terms of the potential refinance of the Fountainhead  
27 project.  
28

- 1       • Analyzed several formation documents regarding the entity that owns  
2       the Fountainhead project.
- 3       • Analyzed the MOU in order to assess its terms and its potential  
4       enforceability.
- 5       • Negotiated extensively with Fountainhead's counsel regarding  
6       settlement terms.
- 7       • Assessed issues regarding unpaid HOA dues and potential liens against  
8       lots.

9  
10               In connection with Sort Code CA10, SMR&H expended approximate  
11 time and fees during this Period as follows:

12		
13	Hours:	61.5
14	Fees Incurred:	\$27,061.50
15	Blended Rate:	\$440.02
16		

17       **K. Sort Code CA11: Special Litigation Matters.**

18               During the Period, SMR&H addressed issues pertaining to the  
19 Receiver's claim against Wykidal, Cannon, Hayes, and Moreno and served and  
20 responded to numerous sets of discovery regarding these lawsuits. SMR&H spent a  
21 considerable amount of time preparing for mediation with Penny Hayes (which  
22 resulted in a settlement being reached) and preparing several pleadings in the  
23 Wykidal lawsuit. In addition, SMR&H engaged in various other communications  
24 with counsel for Cannon, Hayes, and Waldman that is properly included in Sort  
25 Code CA11.

26  
27               In connection with Sort Code CA11, SMR&H attorneys, among other  
28 things, accomplished the following tasks at the Receiver's request:



- 1 • Communicated several times with Wykidal regarding arbitration issues.
- 2 • Communicated several times with counsel for Hayes regarding
- 3 mediation.
- 4 • Analyzed meet and confer documents provided by counsel for Cannon.
- 5 • Worked on several discovery issues regarding William Cannon.
- 6 • Worked on several discovery issues regarding Penny Hayes.
- 7 • Assessed numerous issues re Wykidal arbitration.
- 8 • Prepared mediation brief in Hayes lawsuit.
- 9 • Researched numerous issues and prepared pleadings in Wykidal action.
- 10 • Engaged in extensive settlement negotiations with counsel for Hayes.

11  
12 In connection with Sort Code CA11, SMR&H expended approximate  
13 time and fees during this Period as follows:

14  
15 Hours: 218.9  
16 Fees Incurred: \$76,218.50  
17 Blended Rate: \$348.19  
18

19 **L. Sort Code CA12: Preparation / Review of Transactional and**  
20 **related Transactional Documents.**

21 During the Period, SMR&H prepared transactional documents to  
22 effectuate certain North Carolina real estate transactions. Specifically, SMR&H  
23 finalized the Receiver's repurchase of Lot 2198. In connection with Sort Code  
24 CA12, SMR&H attorneys, among other things, accomplished the following tasks at  
25 the Receiver's request:

- 26  
27 • Prepared documents to finalize the Receiver's repurchase of Lot 2198.
- 28

1 In connection with Sort Code CA12, SMR&H expended approximate  
2 time and fees during this Period as follows:

3  
4 Hours: 1.2  
5 Fees Incurred: \$580.00  
6 Blended Rate: \$483.33  
7

8 **M. Sort Code CA13: Real Estate Issues.**

9 The Company's only remaining financially unencumbered real estate  
10 surrounds The Carolina Golf Club. The Receiver previously identified a party  
11 willing to purchase The Carolina real estate for \$2,750,000, subject to a due  
12 diligence period in which the buyer was given the right to terminate the agreement.  
13 However, the sale of The Carolina real property was not consummated because the  
14 potential purchaser elected to terminate the agreement during the due diligence  
15 period. During the Period, SMR&H assisted the Receiver in his continued efforts to  
16 market and sell this real property.  
17

18 In connection with Sort Code CA13, SMR&H attorneys, among other  
19 things, accomplished the following tasks at the Receiver's request:

- 20
- 21 • Prepared a revised legal description for inclusion in purchase and sale
  - 22 agreements to be distributed to potential purchasers.
  - 23 • Assisted the Receiver in communicating with parties interested in
  - 24 potentially purchasing The Carolina real property.
- 25

26 In connection with Sort Code CA13, SMR&H expended approximate  
27 time and fees during this Period as follows:  
28

1                   Hours:                   8.0  
2                   Fees Incurred:               \$3,085.50  
3                   Blended Rate:               \$385.69  
4

5 **V.    DETAILED ANALYSIS OF ALL TIME RECORDED BY**  
6 **PROFESSIONALS IN CONNECTION WITH THIS CASE.**

7                   Exhibit A to this Application is an analysis of time expended and fees  
8 incurred by SMR&H attorneys in connection with this case. Exhibit A shows the  
9 total activity of each attorney who has billed time on this case, as well as a  
10 breakdown of time and fees incurred on a sort code by sort code basis. Thus,  
11 Exhibit A allows for the review of the total involvement of each attorney in this  
12 case. Information provided in Exhibit E includes hours expended, billing rate, total  
13 dollars billed and percentage of total dollars billed allocable to each attorney.  
14

15                   Included in Exhibit C to this Application is a monthly and total  
16 summary of fees. The chart attached in Exhibit C allows the Court to see how much  
17 work was accomplished during each month of SMR&H's employment on a sort  
18 code by sort code basis. In addition, full billing reports for each month of  
19 SMR&H's employment are attached in Exhibit C.  
20

21                   The amounts sought in this Application are reasonable for the  
22 professional services performed by SMR&H on behalf of the Receiver. SMR&H  
23 believes that the services that SMR&H has rendered constitute necessary and  
24 appropriate services incident to the representation of the Receiver. Moreover,  
25 SMR&H believes that the services rendered have also provided substantial benefit  
26 to the Receiver and Carolina's investors. As such, SMR&H submits that the fees  
27 requested are properly compensable.  
28

1 **VI. REASONABLE AND NECESSARY EXPENSES INCURRED BY**  
2 **SMR&H.**

3 In connection with its representation of the Receiver in this case,  
4 SMR&H has incurred reasonable and necessary expenses. SMR&H requests  
5 reimbursement of these expenses because such expenses were both necessary and  
6 reasonable under the circumstances.

7  
8 A detailed statement of expenses, including a breakdown of expenses  
9 by category, is attached to this Application as Exhibit B. SMR&H is seeking  
10 reimbursement for filing fees, service of process, overnight delivery services,  
11 messenger services, in-house photocopying, computerized legal research, transcript,  
12 long distance telephone charges and telecopier charges, duplication, and postage.  
13 As detailed in Exhibit B, SMR&H has made every effort to limit expenses and to  
14 use the most economical means available for accomplishing the task requiring  
15 expenditure of cost.

16  
17 All of SMR&H's out-of-pocket expenses were incurred in the best  
18 interest of Carolina investors and represent reasonable and necessary expenses of  
19 the Receiver. Reimbursement is appropriate. An explanation of each specific  
20 category of costs is set forth below:

21  
22 **a. Document Duplication/Copying Expenses:**

23 SMR&H incurred moderate document duplication expenses  
24 during the Period. The bulk of these expenses were incurred  
25 through the copying of documents relating to the SEC's Plan of  
26 Distribution, including Property Election Forms, Non-Warranty  
27 Deeds, and General Releases, the disgorgement motions, and the  
28 various motions filed against Vander Tuig, Carman, Kraus, and

1 others. SMR&H incurred duplication charges of \$4,945.40 in  
2 connection with its representation of the Receiver during the  
3 applicable Period.

4  
5 **b. Facsimile and Telephone Charges:** SMR&H has  
6 incurred facsimile and telephone charges totaling \$12.02 in  
7 connection with its representation of the Receiver during the  
8 applicable Period. As noted above, numerous complaints have  
9 been filed against former Carolina employees and professionals.  
10 For the vast majority of these complaints, telephone  
11 conversations were needed to grant extensions, answer questions  
12 and respond to potential objections. In order to reduce costs and  
13 maximize efficiency, many of these communications took place  
14 via email. Moreover, several telephone conversations were  
15 needed between SMR&H and the Receiver's legal counsel in  
16 North Carolina.

17  
18 **c. Attorney Service (including Filing, Recording and**  
19 **Witness Fees and Messenger Costs):** SMR&H has incurred  
20 attorney service charges of \$992.40 in connection with its  
21 representation of the Receiver during the applicable Period.  
22 These charges were incurred in connection with the service and  
23 filing of various pleadings, including pleadings relating to the  
24 contempt motions and the turnover motion, and the replies  
25 thereto.

26  
27 **d. Federal Express/Overnight Mail Charges:**  
28 SMR&H has incurred certain Federal Express/overnight mail

1 charges in connection with its representations. Given that the  
2 SEC and various Carolina professionals are located substantial  
3 distances away from each other and SMR&H, next day mail was  
4 the most efficient and appropriate way of distributing certain time  
5 sensitive information. SMR&H incurred Federal Express and  
6 overnight delivery charges of \$542.51 in connection with its  
7 representation of the Receiver during the applicable Period.

8  
9 e. **Miscellaneous Charges:** SMR&H has incurred and  
10 personally reimbursed expenses of \$40.00 for a witness fee,  
11 \$36.55 in postage, \$501.35 in online research, and \$1,798.40 on  
12 asset investigations. SMR&H also incurred \$10,133.03 in  
13 advanced fees to JAMS for the Hayes arbitration.

14  
15 f. **Secretarial Overtime or Word Processing**  
16 **Expenses:** SMR&H has not requested reimbursement for word  
17 processing or secretarial overtime, notwithstanding the fact that  
18 SMR&H has incurred such expenses that are normally charged to  
19 clients of SMR&H.

20  
21 **VII. STATEMENT OF QUALIFICATIONS OF SMR&H PROFESSIONALS**  
22 **CHARGING MATERIAL TIME IN CONNECTION WITH THIS**  
23 **CASE.**

24 The professional qualifications of those attorneys who have performed  
25 most work on this matter to date — Brent R. Liljestrom, Alan H. Martin, Robert S.  
26 Beall, Norma V. Garcia-Guillén, and Michael A. Wallin — are attached as  
27 Exhibit D.

28

1 **VIII. SUMMARY.**

2 Exhibit E provides a summary of (i) the total compensation requested;  
3 and (ii) attorneys' applicable billing rates, time incurred, total billing amount, and  
4 date of bar admission for each professional.

5  
6 **IX. CONCLUSION.**

7 Based on the foregoing, SMR&H requests that its fees and costs be  
8 approved and awarded as set forth in this Application.

9  
10 Dated: July 7, 2008

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12  
13 */s/ Michael A. Wallin*  
14 By \_\_\_\_\_  
15 MICHAEL A. WALLIN  
16 Attorneys for  
17 THOMAS A. SEAMAN, RECEIVER  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF ALAN H. MARTIN

I, Alan H. Martin, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California and am a member of the bar of this Court. I am a partner in the law firm of Sheppard, Mullin, Richter & Hampton LLP ("SMR&H"), and one of the attorneys with principal responsibility for this matter. I have responsibility for overseeing the billing in this matter. I have personal knowledge of the facts set forth herein, and if called as a witness could testify competently thereto.

2. The Receiver has reviewed the fee and expense statements reflected in this Application and the Receiver has approved the Application.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on July 7, 2008.

*/s/ Alan H. Martin*

\_\_\_\_\_  
ALAN H. MARTIN



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF THOMAS A. SEAMAN

I, Thomas A. Seaman, hereby declare as follows:

1. I am the Receiver for The Carolina Development Company, Inc. and related subsidiaries and affiliates.
  
2. The following facts are within my personal knowledge unless otherwise stated. I am over the age of eighteen and competent to testify in a court of law. If called to testify as a witness regarding the statements set forth below, I could and would competently testify thereto.
  
3. I have reviewed the time records and expense records of Sheppard, Mullin, Richter & Hampton LLP ("SMR&H") reflected in the within Application for compensation and expenses incurred in representing the Receiver in this matter. Based upon my knowledge of the Receiver's needs in this matter, I believe the legal services performed and the fees and expenses incurred by SMR&H were reasonably required to represent the Receiver adequately. Thus, I have no objection to the award of the compensation and reimbursement of expenses sought by SMR&H in the Application.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on July 7, 2008.

*/s/ Thomas A. Seaman*

---

THOMAS A. SEAMAN

**List of Exhibits**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- Exhibit A Distribution of hours / costs of services rendered among the thirteen sort codes, by attorney
- Exhibit B Detailed statement of expenses (including breakdown by category)
- Exhibit C Monthly and total summary of fees, by sort code; detailed monthly billing reports
- Exhibit D Descriptions of professional education, experience and expertise of each attorney who billed time
- Exhibit E Summary of total compensation requested, attorneys' applicable billing rates and date of bar admission, breakdown of hours expended, time incurred, total billing amount, and percentage of total dollars billed allocable to each attorney