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 8 RECEIVER

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

11
 12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 v.

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

20 Defendants.

Case No. SACV06-172 AHS(MLGx)

**RECEIVER'S SEVENTH SIX-
 MONTH ACCOUNTING REPORT
 FOR THE PERIOD ENDING
 JULY 31, 2009**

Complaint Filed: February 16, 2006

1 Thomas A. Seaman, duly-appointed receiver herein ("Receiver")
2 respectfully submits this Seventh Six-Month Report. The time period covered by
3 this report is from January 31, 2009 through July 31, 2009. Inception-to-date
4 accounting from the time of the Receiver's appointment, February 16, 2006 is also
5 provided.

6
7 **I. PROCEDURAL BACKGROUND**

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9 The Receiver was appointed on February 16, 2006 at a hearing on the
10 *ex parte* motion brought by the Securities and Exchange Commission seeking a
11 Temporary Restraining Order to stop the fraudulent sale of unregistered securities
12 by The Carolina Development Company (the "Company") and its principals and
13 agents, (collectively, the "Defendants"). On February 27, 2006 the Court issued a
14 Preliminary Injunction Order enjoining the Defendants from future violations of
15 securities laws. On April 5, 2006 the Court issued Findings of Fact and Conclusions
16 of Law in support of the Preliminary Injunction ("Findings"). Defendants filed no
17 objection to the Court's Findings which include the Defendants making
18 misrepresentations to investors about sales and revenues of the Company, making
19 false statements about going public, making false statements about restricted stock
20 and failure to disclose stock already publicly traded, making misrepresentations
21 about properties owned by the Company, misrepresenting the amount of authorized
22 shares, misrepresenting the book value of the Company, in the case of Vander Tuig,
23 concealing his real name and not disclosing previous action against him by the
24 Securities and Exchange Commission, operating a Ponzi like scheme,
25 misappropriating investor funds, taking funds from un-accredited investors, and
26 continuing to make misrepresentations to investors after this Court issued the
27 Temporary Restraining Order and Preliminary Injunction. On April 7, 2006 this

1 Court expanded the scope of the receivership by implementing a stay on legal
2 actions against the Defendants, and putting additional entities under the control of
3 the Receiver. On February 22, 2008 this Court granted Plaintiff's motion for
4 summary Judgment against Vander Tuig. On August 9, 2007 this Court approved
5 the Plaintiff's Plan of Partial Distribution. On or around January 21, 2009 the
6 California Department of Justice indicted Lambert Vander Tuig, Jonathan Carman,
7 defendants herein, Robert Waldman, a former attorney for the Company, and Scott
8 Yard, Mark Sostak and Soren Svendsen, who sold securities for the Company.
9 Collectively there were 89 counts of grand theft and securities fraud against these
10 six Carolina Company participants. On or around April 30, 2009 the Receiver
11 distributed \$7,680,363.69 to investor-victims in accordance with the Plaintiff's Plan
12 of Partial Distribution.

13

14 **II. ACCOUNTING SUMMARY AND EXPLANATORY NARRATIVE**

15

16 Exhibit "A" provides an accounting of all receipts and disbursements of
17 the receivership estate and includes a cash basis profit and loss statement, balance
18 sheet and detailed general ledger since the inception of the receivership. Profit and
19 loss statements for both the latest six month reporting period and inception-to-date
20 are also provided.

21

22 For the six month reporting period the Receiver collected funds in the
23 amount of \$3,676.58, which is comprised of interest income of \$2,926.58 and
24 \$750.00 in discovery sanctions.

25

26 The Receiver has diligently invested excess cash in the estate in United
27 States Treasury bills. During the six month period the estate earned interest income

28

1 of \$2,926.58; inception-to-date the estate has earned interest income of \$661,792.40.
 2 Unfortunately with the current financial crisis, the funds earned a lower rate of
 3 interest than in prior reporting periods.

4
 5 Inception-to-date, through July 31, 2009, the Receiver has collected
 6 funds in the amount of \$19,563,479.41 which can be broken down into the
 7 following basic categories, and are discussed below in more detail, where notable:

8		
9	Seized or turned over	\$ 7,241,079.36
10	Litigation proceeds	\$ 435,750.00
11	Real estate escrows terminated by the Receiver	\$ 2,192,349.51
12	Disgorgement proceeds	\$ 304,930.00
13	Return of dividends paid	\$ 173,911.88
14	Other asset recovery	\$ 64,199.59
15	Interest paid to the Receiver	\$ 661,792.40
16	Sales of real property	\$ 8,429,466.67
17	Recovery of professional retainers	<u>\$ 60,000.00</u>
18	TOTAL	\$19,563,479.41
19		

20 For the six month reporting period, the Receiver expended
 21 \$8,400,271.54. Noteworthy among disbursements was the distribution of
 22 \$7,680,363.69 to investors in accordance with the Plan of Partial Distribution,
 23 Receiver's fees in the amount of \$84,445.00, Receiver's counsel's fees in the amount
 24 of \$395,496.55, and Receiver's tax counsel's fees in the amount of \$118,065.99, all
 25 of which were paid in accordance with fee applications approved by this Court.

1 The Receiver and his professionals will file fee applications in October
2 2009 for the period from November 1, 2008 through April 30, 2009.

3
4 Since the inception of the case, the Receiver has expended funds to
5 preserve the assets of the Company and incurred other expenses in the total amount
6 of \$18,533,603.39. These disbursements/expenses can be broken down into the
7 following basic categories.

8		
9	Distribution to victims	\$ 7,680,363.69
10	Interest and principal	\$ 5,112,788.12
11	Payments to "11 th Hour Investors"	\$ 1,087,268.02
12	Appraisers, technical advisers and consultants	\$ 794,624.61
13	Receiver's counsel fees and expenses	\$ 2,070,756.71
14	Tax accountants and related legal	\$ 118,065.99
15	Receiver's fees	\$ 1,067,885.50
16	Other cost as set forth on the P&L	<u>\$ 601,850.75</u>
17		
18	TOTAL	\$18,533,603.39

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20 The Receiver is holding cash in the amount of \$1,029,876.02.

1 **III. REMAINING ASSETS**

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1. Moore County, The Carolina. The Receiver is in discussions with the golf course owner who may potentially purchase the remaining real property owned by the Company. The prospective buyer has been contacting the other land owners who are investor-victims of the Company in order to potentially purchase all of the land located in the tract, however, has thus far been unsuccessful and to date has not concluded an agreement with the Receiver. It appears from local brokers that there is currently little demand for land in Moore County.

2. Moore County, Single Family Lots. The Receiver currently has four lots for sale in Moore County; three at The Mid-South golf course, and one at The National golf course. The Receiver has lowered the prices to attract offers.

3. Partnership Interests. The Company is a member of a partnership known as Silverado Nevada, Inc. This asset has not yet been liquidated. The Company owns a 50% voting interest in the partnership which has an appeal pending before the Bureau of Land Management. The Company's interest gives it a potential 10% interest in 160 acres of land in Nevada. This interest was purchased by the Company for \$1,000,000 but vested in the name of Lambert Vander Tuig personally and later transferred to the Company at the Receiver's request. At first, Vander Tuig asserted that the Company had loaned him the funds to purchase the asset and that it belonged to him. Next he asserted the \$1,000,000 paid by the Company was "payment in

1 kind." When informed by the Receiver of the implausibility of either
2 of these events, Vander Tuig assigned his interest to the Company. The
3 Receiver is evaluating the Company's position and his options for
4 disposition including a potential legal action for fraudulent conveyance.
5

6 4. Other Pending Sources of Recovery.
7

8 Sales Agent Disgorgement. Following the Court's ruling with
9 respect to the Receiver's disgorgement motion, the Receiver is
10 assessing the estate's options, including possibly filing and
11 personally serving lawsuits against many of the Company's
12 former sales agents.
13

14 Actions Against Former Professionals. The Receiver filed
15 lawsuits against four separate and unrelated attorneys who
16 represented the Company. These lawsuits were actions for
17 breach of fiduciary duty and malpractice, among other causes of
18 action. The actions against William Cannon and Pendleton
19 Hayes have been settled and the Receiver has been paid
20 \$300,000 and \$135,000 respectively. The Receiver lost his
21 action against Gary Wykidal. The Receiver has filed a motion to
22 set aside the arbitrator's award of fees. Waldman was recently
23 charged with securities fraud and grand theft in connection with
24 his involvement with the Company and the Receiver has
25 dismissed his action against Waldman.
26
27

1 Dated: October 6, 2009

2 THOMAS SEAMAN COMPANY

3
4 */s/ Thomas A. Seaman*

5 By _____
6 THOMAS A. SEAMAN, RECEIVER

7 Dated: October 6, 2009

8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

9
10 */s/ Michael A. Wallin*

11 By _____
12 MICHAEL A. WALLIN
13 Attorneys for
14 THOMAS A. SEAMAN, RECEIVER

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