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THOMAS A. SEAMAN, RECEIVER

8

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

11

12 SECURITIES AND EXCHANGE  
COMMISSION,

13

Plaintiff,

14

v.

15

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

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Case No. SACV06-172AHS(MLGx)

- (1) **SHEPPARD, MULLIN,  
RICHTER & HAMPTON LLP'S  
TENTH INTERIM  
APPLICATION FOR  
ALLOWANCE OF  
COMPENSATION AND  
REIMBURSEMENT OF  
EXPENSES FOR  
NOVEMBER 1, 2008  
THROUGH APRIL 30, 2009;**
- (2) **DECLARATION OF  
ALAN H. MARTIN; and**
- (3) **DECLARATION OF  
THOMAS A. SEAMAN**

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

Hearing:  
Date: December 14, 2009  
Time: 10:00 a.m.  
Place: Courtroom 10A  
411 W. Fourth Street  
Santa Ana, California

Complaint Filed: February 16, 2006

1 Sheppard, Mullin, Richter & Hampton LLP ("Sheppard Mullin"),  
2 attorneys for the court-appointed Receiver, Thomas A. Seaman ("Receiver"), hereby  
3 submits its Tenth Interim Fee Application ("Application") for allowance of  
4 compensation and reimbursement of expenses incurred from November 1, 2008  
5 through and including April 30, 2009 (the "Period") on behalf of the Receiver as its  
6 counsel. In support of its Application, Sheppard Mullin respectfully represents as  
7 follows:

8  
9 **I. INTRODUCTION.**

10 **A. Sheppard Mullin is Duly Employed as Counsel for the Receiver.**

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

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

19 In this Application, Sheppard Mullin requests that the Court allow  
20 compensation for legal services rendered on behalf of the Receiver during the Period  
21 in the total amount of Two Hundred Seventy Seven Thousand Sixteen and 27/100  
22 Dollars (\$277,016.27)<sup>1</sup> and expenses incurred in the total amount of Fifty Three  
23 Thousand Eight Hundred Eighty Seven and 98/100 Dollars (\$53,887.98). This is  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Total fees during this Period were \$325,901.50 - \$48,885.23 (reflecting a 15%  
27 fee discount requested by the SEC) = \$277,016.27. For reporting purposes,  
28 the attached Summaries are based on the total fees of \$325,901.50. The SEC supports full approval and payment of fees and costs at the amount requested herein.

1 the Tenth Interim Fee Application filed by Sheppard Mullin. Details of the previous  
 2 nine fee applications submitted by Sheppard Mullin are as follows:

<u>Fee Application</u>	<u>Date Range</u>	<u>Amount Requested</u>	<u>Amount Approved</u>
First	February 16, 2006- April 30, 2006	Fees: \$126,417.50 Costs: \$14,575.65	\$140,993.15
Second	May 1, 2006- July 31, 2006	Fees: \$206,981.00 Costs: \$7,868.00	\$214,849.00
Third	August 1, 2006- October 31, 2006	Fees: \$156,058.50 Costs: \$9,002.89	\$165,061.39
Fourth	November 1, 2006- January 31, 2007	Fees: \$178,954.50 Costs: \$9,238.52	\$188,193.02
Fifth	February 1, 2007- April 30, 2007	Fees: \$241,422.50 Costs: \$7,457.94	\$248,880.44
Sixth	May 1, 2007- July 31, 2007	Fees: \$246,914.50 Costs: \$13,138.58	\$260,053.08
Seventh	August 1, 2007- October 31, 2007	Fees: \$200,484.50 Costs: \$7,011.60	\$207,496.10
Eighth	November 1, 2007- April 30, 2008	Fees: \$251,886.00 Costs: \$19,001.66	\$270,887.66
Ninth	May 1, 2008- October 31, 2009	Fees: \$395,018.50 Costs: \$29,758.10	\$424,776.60

21 Sheppard Mullin understands that there is in excess of \$1 million in  
 22 cash and liquid assets available in the estate.

24 As reflected in the attached declaration of Thomas A. Seaman, the  
 25 Receiver instructed Sheppard Mullin to undertake the tasks discussed below, has  
 26 approved the amounts billed by Sheppard Mullin in connection with these tasks, and  
 27 has instructed Sheppard Mullin to prepare this fee application ("Tenth Fee  
 28

1 Application"). **The Securities and Exchange Commission ("SEC") has also**  
2 **reviewed all of Sheppard Mullin's bills during the Period. The SEC requested**  
3 **that Sheppard Mullin discount its fees during the Period by 15%. Sheppard**  
4 **Mullin agreed to do so. The fees requested by Sheppard Mullin in this**  
5 **Application reflect a 15% reduction from the bills originally submitted by**  
6 **Sheppard Mullin. The SEC is in agreement with the Receiver that Sheppard**  
7 **Mullin's Tenth Interim Fee Application should be approved in full and that the**  
8 **time incurred was reasonable and appropriate.**

9  
10 **II. SHEPPARD MULLIN HAS MAINTAINED TIME RECORDS**  
11 **ACCORDING TO SORT CODES.**

12 **A. Sheppard Mullin Sort Codes Utilized.**

13 Sheppard Mullin has developed a list of sort codes (a brief description  
14 of each is provided below) to categorize its work on this matter. During the Period,  
15 Sheppard Mullin performed services for the Receiver in eight basic categories which  
16 are identified as follows: (i) general miscellaneous services provided to the  
17 Receiver ("Sort Code CA01"); (ii) services related to factual investigation and  
18 analysis ("Sort Code CA02") (iii) services related to legal research ("Sort  
19 Code CA03"); (iv) services related to client meetings ("Sort Code CA04");  
20 (v) services related to court appearances ("Sort Code CA05"); (vi) services related to  
21 preparation and analysis of pleadings, schedules, reports and briefs ("Sort Code  
22 CA06"); (vii) services related to claims issues ("Sort Code CA09"); (viii) services  
23 related to real estate issues ("Sort Code CA10"); and (ix) services related to special  
24 litigation matters ("Sort Code CA11"). No services were performed in Sort Codes  
25 CA07, CA08, CA12, or CA13 during this Period.

1           **B.     Distribution of Charges.**

2           Attached hereto as Exhibit A and incorporated herein by reference is a  
3 table showing the distribution of hours and costs of services rendered among the  
4 thirteen sort codes. Also included on Exhibit A is a distribution of hours and the  
5 costs of services rendered by the various attorneys utilized by Sheppard Mullin in  
6 connection with this case overall and with respect to each sort code. These tables  
7 provide a quick reference to enable the Court to determine the distribution of efforts  
8 by Sheppard Mullin among the various tasks required in connection with the  
9 receivership and the seniority mix employed by Sheppard Mullin to maximize the  
10 efficient delegation of tasks. As noted below, and at the direction of the Receiver,  
11 the significance, magnitude and timing of certain tasks and issues (e.g., among other  
12 things, litigation against former professionals, real estate transactional issues,  
13 preparation of pleadings, court appearances, etc.) necessitated extensive  
14 involvement by more senior Sheppard Mullin attorneys such as Alan Martin or  
15 Finley Taylor. The steps taken by the Receiver and its counsel (at the specific  
16 direction of the Receiver) are detailed more extensively in the Receiver's Tenth  
17 Interim Fee Application. Sheppard Mullin requests that the Court take judicial  
18 notice of the Receiver's Tenth Interim Fee Application.<sup>2</sup>

19  
20 **III.   HISTORY AND PRESENT STATUS OF CAROLINA AND THE**  
21 **RECEIVERSHIP.**

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

23           Lambert Vander Tuig ("Vander Tuig") and Jonathan Carman  
24 ("Carman") have raised at least \$52 million from hundreds of investors nationwide

25 <sup>2</sup>       The Receiver's Tenth Interim Fee Application has been filed of even date  
26       herewith.

27 <sup>3</sup>       The information in this section was derived from, among other things, the  
28       SEC's complaint against Carolina, filed February 16, 2006, the Receiver's  
      prior Fee Applications, and the Receiver's prior Six Month Reports.

1 through the fraudulent sale of unregistered shares of stock in The Carolina  
2 Development Company, Inc. ("Carolina"). Vander Tuig and Carman marketed  
3 Carolina as a real estate development company specializing in developing resort  
4 communities surrounding prestigious golf courses.

5  
6 In order to induce individuals to invest, Vander Tuig and Carman  
7 prepared and distributed fraudulent private placement memoranda, fraudulent sales  
8 materials, and published a website containing false statements. In addition, Vander  
9 Tuig and Carman oversaw the operation of a "boiler room" operation located in  
10 Orange County, in which potential investors were solicited by telephone. During  
11 communications with potential investors, Vander Tuig, Carman and Carolina  
12 employees made significant misrepresentations, including: (a) leading investors to  
13 believe that Carolina would soon be going public and that Carolina's stock would  
14 likely trade at many times its offering price; (b) failing to disclose that the same  
15 stock being offered through the "boiler room" operation is available to purchase  
16 through the Pink Sheet quotation system at prices well below the "boiler room"  
17 offering price; (c) representing that Carolina owns or is developing a number of  
18 properties that it does not actually own; and (d) representing that the number of  
19 outstanding shares is substantially less than the number actually outstanding. It is  
20 estimated that Carolina has obtained over one thousand investments from  
21 individuals in the United States and Canada.

22  
23 **B. The SEC Complaint Against Vander Tuig, Carman and Carolina.**

24 Based on the actions described above, on February 16, 2006, the  
25 Securities and Exchange Commission ("SEC") filed a complaint against Vander  
26 Tuig, Carman and Carolina alleging various securities violations, including  
27 (i) Section 5(a) and 5(c) of the Securities Act, (ii) 15 U.S.C. § 77e(a) and (c),  
28 (iii) Section 17(a) of the Securities Act, (iv) 15 U.S.C. § 77q(a), (v) Section 10(b) of

1 the Exchange Act, (vi) 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder. The SEC's  
2 complaint seeks the following relief:

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

15

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

17 On February 16, 2006, the Court ordered that Thomas A. Seaman be  
18 appointed Receiver of Carolina "and all subsidiaries and affiliated entities" (the  
19 "Order"). Pursuant to the Order, "[t]he Receiver shall take control of the  
20 Companies' funds, assets and property wherever situated ... including powers over  
21 all funds, assets, premises ... choses in action, books, records, and other property  
22 belonging to or in the possession or control of the Companies." Among other  
23 things, the Order gave the Receiver the authority to:

- 24
- 25 • Have access to and take control of all funds, assets and premises of
- 26 Carolina;
- 27 • Have control of all accounts, securities, funds, or other assets of
- 28 Carolina;

- 1 • Take action as is necessary and appropriate to preserve all assets in the  
2 possession or custody of Carolina;
- 3 • Make or authorize such payments and disbursements from the funds  
4 and assets of Carolina as necessary and advisable in discharging his  
5 duties as Receiver;
- 6 • "Engage and employ persons in his discretion to assist him in carrying  
7 out his duties and responsibilities hereunder, including, but not limited  
8 to, accountants, attorneys, securities traders, registered representatives,  
9 financial or business advisers, liquidating agents, real estate agents,  
10 forensic experts, brokers, traders or auctioneers." (Order, ¶ f).

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

15  
16 liquidate and convert into money all of the assets,  
17 property, estate, effects and interests of every nature held  
18 in his possession and control pursuant to this Order, by  
19 selling, conveying, and disposing of the Property, either at  
20 public or private sale, on terms and in the manner the  
Receiver deems most beneficial to the persons or parties  
entitled to the proceeds...Order, Art. II, ¶ b.

21 On the same day, the Court also issued an Order Granting Asset Freeze,  
22 Ordering an Accounting, and Prohibiting the Destruction of Documents. This Order  
23 prohibited all parties connected with Carolina from "destroying, mutilating,  
24 concealing, altering, or disposing of any and all items, including, but not limited to,  
25 any books, records, documents, correspondence, contracts, agreements, assignments,  
26 obligations, tape recordings, computer media or other property of the Defendants,  
27 relating to the Defendants or any of their securities, financial or business dealings."  
28



1           **D. Sheppard Mullin is Retained to Help the Receiver Perform His**  
2           **Duties.**

3           After the Order was issued, the Receiver has sought the assistance of  
4 Sheppard Mullin to assist the Receiver in, among other things:

- 5
- 6           • Identifying all assets owned by Carolina or acquired with assets of
- 7           Carolina, including extensive real and personal property held in such
- 8           states as North Carolina, Texas, Nevada and California;
- 9           • Identifying all persons and entities related to Carolina in which
- 10          Carolina, Vander Tuig or Carman may attempt to or actually did
- 11          illegally transfer assets;
- 12          • After identifying the assets owned by Carolina, which included
- 13          potential interests in well over 80 lots and total acreage in excess of
- 14          2500 acres, taking steps to protect those assets;
- 15          • After identifying persons or entities related to Carolina, having the
- 16          scope of the receivership expanded to include those persons and
- 17          entities;
- 18          • Assisting in determining the estimated value, development strategy and
- 19          disposition strategy of all Carolina assets;
- 20          • Pursuing claims against former Carolina salespeople, insiders, and
- 21          professionals; and
- 22          • Assisting with the successful disposition of assets and dispersing
- 23          collected funds to claimants.

24

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

26           The Receiver and Sheppard Mullin's initial efforts involved gathering  
27 considerable information necessary to understand Carolina's general business  
28 "scheme" and identify the type and location of all assets. Much of the initial

1 information was obtained from Carolina's corporate offices and related locations of  
2 Lambert Vander Tuig. This information revealed many "leads" as to the location of  
3 real and personal property assets and parties that may be holding funds on behalf of  
4 Carolina.

5  
6 Carolina's business practices and record keeping have made the  
7 discovery of assets especially difficult. For example, in order to induce investment,  
8 Carolina would often tell investors that it owned properties it did not own. Carolina  
9 would also provide investors with extensive marketing materials regarding these  
10 "fake" holdings. These misrepresentations by Carolina have made it difficult (and  
11 time consuming) to distinguish between these assets and Carolina's actual real estate  
12 interests. In addition, Carolina's accounting was not thorough or well organized,  
13 making it even more difficult to determine the extent of Carolina's assets and the  
14 value of those assets.

15  
16 Throughout the receivership, the Receiver and Sheppard Mullin have  
17 spent considerable time assessing the nature and extent of Carolina's assets and  
18 accounting for Carolina's numerous transactions. This diligence revealed that  
19 Vander Tuig and Carman repeatedly violated the Order Appointing Receiver and  
20 Freeze Order by transferring several valuable Company assets to their wives and  
21 relatives immediately after the Orders became effective. Specifically, among many  
22 other things, Vander Tuig took \$1,000,000 from the Company on February 16,  
23 2006, the day that the Orders were entered. The Receiver also learned that  
24 approximately \$117,000 was illegally transferred to an escrow held by Stewart Title  
25 in connection with Vander Tuig's wife, Jill Kraus', attempted purchase of a  
26 condominium in Las Vegas, Nevada with receivership estate funds. In addition,  
27 Vander Tuig stole \$573,000 from the Company by causing William Cannon, the  
28 Company's former North Carolina counsel, to transfer \$573,000 of investor funds

1 directly to his wife, Jill Ann Kraus. After extensive efforts by the Receiver and  
2 Sheppard Mullin, Vander Tuig eventually turned over the \$1,000,000 to the  
3 Receiver, but Vander Tuig required that the \$1,000,000 be held in escrow by the  
4 Receiver until the Court made a final determination as to whether those funds  
5 belong to the receivership estate. With respect to the \$573,000 stolen by Vander  
6 Tuig, none of these funds have been returned to the Receiver.

7  
8 Carman also violated the Orders by, among many other things, taking  
9 at least \$1,400,000 from the Company after the Orders were entered. Most of these  
10 funds were taken on February 17, 2006, the day after the Orders were entered.<sup>4</sup> The  
11 Receiver and Sheppard Mullin's diligence also indicated that Vander Tuig and  
12 Carman deliberately failed to disclose certain other assets to the Receiver. As  
13 described in Sheppard Mullin's prior fee application, the Receiver and Sheppard  
14 Mullin have taken numerous steps to enforce the Orders against Vander Tuig and  
15 Carman and to recover as many assets as possible from Vander Tuig and Carman.  
16 These efforts have been successful. Among other things, the Court has entered  
17 Contempt Orders against both Vander Tuig and Carman.

18  
19 The Receiver's and Sheppard Mullin's diligence also revealed that  
20 Vander Tuig and Kraus further violated the Court's orders by failing to return  
21 \$117,000 held in escrow by Stewart Title to the Receiver. Instead of returning these  
22 funds to the Receiver as ordered by the Court, Vander Tuig and Kraus caused the  
23 \$117,000 to be transferred to the seller of a Las Vegas condominium in order to  
24 complete Kraus' purchase of the condominium. Sheppard Mullin spent time during  
25

26 <sup>4</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 May 16, 2007.

1 the Period attempting to resolve this issue, including preparing a complaint against  
2 Stewart Title.

3  
4 **2. Pursuing Claims Against Former Carolina Professionals, Insiders,  
5 and Salespeople**

6 During the Period, the vast majority of Sheppard Mullin's time was  
7 spent pursuing the Receiver's claims against Gary Wykidal, Robert Waldman, Rex  
8 Glendenning, and several others. The following is a brief summary of these actions:

9  
10 **a. Gary Wykidal**

11  
12 Gary Wykidal ("Wykidal") represented Carolina as securities counsel  
13 from May 17, 2005 through February 2006. His role at Carolina was to bring  
14 Carolina into compliance with securities laws, including its offering documents.  
15 The Receiver's diligence into Wykidal's actions reveals that as early September 2005  
16 Wykidal knew Carolina used deficient and false offering documents to raise funds,  
17 that Carolina had not properly screened investors for suitability, i.e., to accredit  
18 investors, and that Carolina had authority to issue 2,500 shares, but had over-issued  
19 millions of shares by that time. Wykidal also knew or should have known by  
20 October 18, 2005 that Vander Tuig had several aliases. Indeed, the Articles of  
21 Incorporation he received from Carolina on September 8, 2005 revealed that the  
22 "incorporator" of Carolina was "Lambert Vander Tuig". On October 18, 2005, he  
23 filed a document with the Securities and Exchange Commission ("SEC") on behalf  
24 of Carolina where a "Dean L. Vander Tag" was listed as "beneficial owner" of  
25 Carolina. On or about October 25, 2005, Wykidal filed a false and misleading Form  
26 D, Notice of Sale of Securities, with the SEC. He did so knowing there was no way  
27 Carolina could claim a valid exemption under Regulation D, Rule 506. As a result  
28 of his conduct, Carolina was allowed to raise \$43,303,228.10 during Wykidal's

1 tenure as securities counsel for Carolina, and Vander Tuig and Carman were able to  
2 loot over \$3,000,000 in that timeframe.

3  
4 Pursuant to an arbitration agreement between Wykidal and Carolina,  
5 Wykidal made a motion to this Court compelling arbitration. As a result, the dispute  
6 was submitted to arbitration. Wykidal refused to negotiate a settlement with the  
7 Receiver. The Receiver and Sheppard Mullin were therefore forced to fully litigate  
8 the action. During the Period, Sheppard Mullin prepared for and completed the  
9 arbitration hearing. This necessitated a great deal of work on the part of Sheppard  
10 Mullin, as the Receiver was seeking several million dollars in damages. Sheppard  
11 Mullin's preparation was made more difficult when the Attorney General filed  
12 criminal charges against several of the Receiver's planned witnesses – Lambert  
13 Vander Tuig, Jonathan Carman, Robert Waldman, Soren Svendsen, Mark Sostak,  
14 and Scott Yard. Among many other things, Sheppard Mullin took the following  
15 actions on behalf of the Receiver in the Wykidal litigation:

- 16  
17
- 18 • Analyzed thousands of documents to be produced to Wykidal during  
19 the discovery process, including hundreds of investor questionnaires,  
20 the Receiver's audit, various deposition transcripts, subpoenaed files  
21 from attorneys William Cannon, Pendleton Hayes, Nancy Hampton,  
22 and auditor Ramirez International.
  - 23 • Prepared for and attended the depositions of the Receiver, expert  
24 witnesses, and others.
  - 25 • Prepared the Receiver's detailed arbitration brief in advance of the  
26 arbitration hearing.
  - 27 • Prepared numerous witnesses to testify at the arbitration hearing.
- 28

- 1 • Performed extensive legal research regarding numerous issues,  
2 including whether the incarcerated witnesses could be ordered to testify  
3 at the arbitration hearing.
- 4 • Performed extensive legal research into issues of professional  
5 negligence, breach of fiduciary duties, securities fraud, breach of  
6 contract, and damages resulting from same in the context of a securities  
7 offering.
- 8 • Attended the several day arbitration hearing.
- 9 • Preparing the Receiver's detailed closing brief following the conclusion  
10 of the arbitration hearing.
- 11 • Preparing the Receiver's opposition to Wykidal's application for  
12 attorney fees and costs.

13 At the arbitration hearing, the arbitrator ruled in favor of Wykidal.  
14 However, the Receiver contends that the arbitrator's ruling is in manifest disregard  
15 of the law. The Receiver has therefore filed a motion to vacate the arbitration  
16 award. In opposition to the Receiver's motion to vacate, Wykidal does not dispute  
17 that the arbitrator disregarded the law. Rather, Wykidal argues that an arbitration  
18 award cannot be vacated for manifest disregard of the law. In support of this  
19 argument, Wykidal asserted that the Supreme Court would overturn the court's  
20 decision in *Comedy Club, Inc. v. Improv West Assoc.*, 553 F. 3d 1277 (9th Cir.  
21 2009) ("*Comedy Club II*"). However, the Supreme Court has declined to review  
22 *Comedy Club II*. Therefore, Wykidal appears to have no remaining grounds to  
23 oppose the Receiver's motion to vacate the arbitrator's award. The motion to vacate  
24 is scheduled to be heard November 30, 2009, as is Wykidal's motion to approve the  
25 arbitration award.

26  
27  
28

1                                   **b.     Robert Waldman**

2

3                   Robert Waldman ("Waldman") was Carolina's former general counsel

4 and also served as a director on Carolina's board. The Receiver's diligence revealed

5 that Waldman was at minimum negligent in his representation of Carolina. While

6 serving as general counsel and as an officer and director of Carolina, Waldman had

7 knowledge of Carolina's wrongdoing, including the fact that (1) the company was

8 not registered to sell securities, (2) Vander Tuig had been enjoined from selling

9 securities in March 2000, (3) the company was fraudulently misrepresenting its real

10 estate assets to potential investors, and (4) the company was failing to disclose to

11 potential investors that the same stock being offered through the "boiler room"

12 operation was available for purchase at a far lower price through the Pink Sheet

13 quotation system. Despite Waldman's knowledge of these facts, Waldman was

14 actively engaged in furthering Carolina's fraudulent activities. Waldman spoke

15 directly with numerous potential investors in order to provide reassurance that

16 Carolina was a trustworthy and profitable company worthy of investment. Carolina

17 often induced investment by granting investors deeds of trust on single family home

18 lots owned by the company in Moore County, North Carolina as collateral for their

19 investments. Waldman was directly involved with the process of granting these

20 deeds of trust and spoke directly with hundreds of potential investors. Waldman

21 failed to disclose to shareholders that the value of the lots being given as security to

22 shareholders was far less than the amount invested by any particular investor. For

23 example, Waldman knowingly and intentionally would grant an investor who

24 purchased \$150,000 in Carolina stock a deed of trust on a lot worth \$50,000.

25

26                   Sheppard Mullin therefore prepared and filed a lawsuit against

27 Waldman. Sheppard Mullin also propounded written discovery and took Waldman's

28 deposition. This allowed Sheppard Mullin and the Receiver to assess the likelihood

1 of success in the litigation and, more importantly, what the Receiver could  
2 ultimately expect to recover from Waldman. The Receiver determined that  
3 Waldman's assets were insufficient to justify expending additional legal fees  
4 prosecuting the Receiver's claims against Waldman. Therefore, Sheppard Mullin  
5 negotiated a dismissal of the Waldman litigation.

6  
7 **c. Rex Glendenning**

8  
9 Rex Glendenning ("Glendenning") is a real estate broker that  
10 represented Carolina in connection with Carolina's purchase of the Celina Bridges  
11 Property in Collin County, Texas. As the Celina Bridges Property was Carolina's  
12 largest real property acquisition, the Receiver spent a great time of deal researching  
13 this transaction. This research revealed that Glendenning defrauded Carolina out of  
14 \$1.2 million by creating a sham purchase agreement with one of his business  
15 associates. As a result, during the Period, Sheppard Mullin prepared a detailed  
16 complaint against Glendenning. Sheppard Mullin also spent time during the Period  
17 researching potential lawsuits against other individuals involved with Carolina's  
18 purchase of Celina Bridges. To preserve the estate's resources, the Receiver is  
19 considering engaging a local Texas counsel to represent the Receiver in these  
20 lawsuits on a contingency fee basis.

21  
22 **3. Enforcement of Judgments Against Sales Agents**

23 In connection with the Receiver's "disgorgement" motion, the Receiver  
24 obtained judgments against four of Carolina's former sales agents – Donald  
25 Anderson, Sean Brazney, Fred Miller, and Elizabeth Quiroz. During the Period,  
26 Sheppard Mullin took steps to enforce and collect on these judgments. These efforts  
27 included, among other things, recording personal property and real property  
28 judgment liens in California. Sheppard Mullin also analyzed information regarding



1 the sales agents' assets to identify potential sources of recovery. It was determined  
2 that Sean Brazney may have sufficient assets to warrant additional efforts to collect  
3 on the Receiver's judgment. Therefore, Sheppard Mullin took several steps to  
4 enforce the judgment against Mr. Brazney, including obtaining a writ of execution  
5 and recently levying on certain of Mr. Brazney's bank accounts in Orange County.  
6 The exact amount obtained as a result of these levies will soon be known.

#### 7 8 **4. Preserving and Selling Real Estate Assets**

9 After reviewing the voluminous documents produced in response to the  
10 subpoenas, the Receiver and Sheppard Mullin have a thorough understanding of  
11 Carolina's real property interests and other asset holdings. Specifically, the Receiver  
12 and Sheppard Mullin have assessed the location and status of each major property  
13 (legal description, assessor's parcel number, etc.), the current owner of record of  
14 each property, the significant encumbrances on each property, the development  
15 status of each property, and the marketability of each property. These actions have  
16 allowed the Receiver to successfully market and sell all of Carolina's real property,  
17 except for a few remaining lots in Moore County, North Carolina. During the  
18 Period, Sheppard Mullin took steps to prevent the foreclosure of one of the lots in  
19 Moore County. In addition, Sheppard Mullin obtained a Court order permitting the  
20 Receiver to sell certain of the remaining real property in Moore County. The  
21 Receiver is now close to selling all of the receivership's remaining real estate assets.

#### 22 23 **5. SEC Plan of Distribution**

24 Sheppard Mullin spent time during the Period assisting the SEC and the  
25 Receiver with various aspects of the SEC's Plan of Distribution (the "Plan"). The  
26 Plan makes the Receiver responsible for assessing investors' claims, sending out  
27 numerous documents to investors, monitoring the receipt of numerous documents  
28 sent by investors, and finally making distributions to investors. During the Period,

1 Sheppard Mullin assisted the Receiver in making distributions to investors. Certain  
2 tax issues previously prevented the Receiver from making distributions. Those tax  
3 issues were recently resolved, as explained in the Receiver's Motion to Approve  
4 Distribution of Funds. This allowed the Receiver to distribute approximately \$7.75  
5 million to investors during the Period. Sheppard Mullin assisted the Receiver with  
6 several aspects of the distribution process.

7  
8 **IV. DESCRIPTION OF BENEFITS SHEPPARD MULLIN PROVIDED TO**  
9 **THE RECEIVER AND THE RECEIVERSHIP ESTATE, OUTLINE**  
10 **AND SUMMARY OF SERVICES RENDERED, TIME EXPENDED,**  
11 **AND FEES CHARGED FOR EACH CATEGORY DURING THE**  
12 **PERIOD COVERED BY THIS APPLICATION.**

13 As detailed above, during the Period the Receiver and Sheppard Mullin  
14 actively pursued several claims against several former professionals. The Wykidal  
15 litigation was by far the most active, requiring Sheppard Mullin to prepare and  
16 attend a multi-million dollar arbitration hearing. Sheppard Mullin also pursued  
17 litigation against Waldman, Glendenning, Kraus, and Stewart Title.

- 18  
19 • In addition, Sheppard Mullin took several important steps to enforce its  
20 judgments against the four sales agents, including recording personal  
21 property and real property judgment liens against the sales agents and  
22 levying on the bank accounts of Sean Brazney.

23  
24 Possibly most importantly, Sheppard Mullin assisted the Receiver in  
25 making approximately \$7.75 million in distributions to the investors of Carolina  
26 Development. These distributions were much awaited and finally reimbursed the  
27 investors for a portion of the losses suffered as a result of Carolina Development's  
28

1 fraudulent business scheme. The Receiver hopes to be able to make an additional  
2 distribution to investors in the future.

3  
4 During the Period covered by this Application, Sheppard Mullin  
5 activities were segregated into thirteen categories. The work performed, the time  
6 spent, and the fees incurred with respect to each of these categories are described in  
7 detail below.

8  
9 **A. Sort Code CA01: General/Miscellaneous.**

10 Sort Code CA01 reflects work by Sheppard Mullin attorneys which,  
11 while necessary to the effective representation of the Receiver, does not fit into the  
12 other categories of work described below. Only a relatively small portion of the  
13 work undertaken by Sheppard Mullin is categorized as "General/Miscellaneous"  
14 tasks. In connection with Sort Code CA01, Sheppard Mullin attorneys, among other  
15 things, accomplished the following tasks at the Receiver's request:

- 16  
17
  - Communicated with investors regarding the Receiver's Motion to  
18 Approve Distribution of Funds and related distribution issues.
  - Performed research regarding Component Forging Manufacturing and  
19 Newport Earth Developers, two entities controlled by Carman and  
20 Vander Tuig, to track certain potentially illegal transfers.  
21

22  
23 In connection with Sort Code CA01, Sheppard Mullin expended  
24 approximate time and fees during this Period as follows:

1	Hours:	7.3
2	Fees Incurred:	\$3,125.00
3	Blended Rate:	\$428.08
4		

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

6 As with any receivership, one of the most important issues for  
7 Receiver's counsel is accomplishing a prompt and accurate assessment of the facts  
8 surrounding the subject company. Sheppard Mullin's prompt assessment of the facts  
9 surrounding this case allowed the Receiver to evaluate its options very quickly and  
10 promptly take steps to protect and preserve receivership assets. Fortunately, the vast  
11 majority of this diligence was performed during prior periods. During this Period,  
12 significant time was spent assessing facts relating to the Wykidal litigation.  
13 Specifically, a crucial issue in the Wykidal litigation was the amount of damage  
14 suffered by Carolina Development as a result of Wykidal's malpractice and other  
15 wrongful conduct. Sheppard Mullin prepared a detailed analysis of the numerous  
16 pieces of real property purchased by Carolina Development to determine, among  
17 other things, the total value of the real property acquired by the Company and the  
18 amount by which the Company overpaid for real property assets. This factual  
19 analysis allowed Sheppard Mullin to present a damage assessment during the  
20 arbitration hearing.

21  
22 In connection with Sort Code CA02, Sheppard Mullin expended  
23 approximate time and fees during this Period as follows:

24  
25  
26  
27  
28

1                   Hours:                   51.1  
2                   Fees Incurred:               \$14,163.50  
3                   Blended Rate:               \$277.17  
4

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

6                   One of the services provided by Sheppard Mullin to the Receiver was  
7 research and analysis of various legal issues, including analysis of the impact of key  
8 rules of law on various factual circumstances in this case. During the Period,  
9 Sheppard Mullin researched numerous issues in the Wykidal and Glendenning  
10 litigation. Both cases involve difficult legal questions. In connection with Sort  
11 Code CA03, Sheppard Mullin attorneys, among other things, accomplished the  
12 following tasks at the Receiver's request:  
13

- 14           •       Performed extensive legal research regarding negligent  
15                   misrepresentation, professional negligence, and conspiracy to defraud  
16                   with respect to Glendenning.
- 17           •       Performed legal research regarding unfair competition with respect to  
18                   Glendenning.
- 19           •       Performed legal research regarding Texas statute of limitations issues  
20                   as it applies to the Glendenning litigation.
- 21           •       Performed extensive legal research to determine if incarcerated  
22                   witnesses could be compelled to testify at the Wykidal arbitration  
23                   hearing.
- 24           •       Performed legal research to determine the proper measure of damages  
25                   in the Wykidal litigation.  
26  
27  
28

1 In connection with Sort Code CA03, Sheppard Mullin expended  
2 approximate time and fees during this Period as follows:

3  
4 Hours: 43.0  
5 Fees Incurred: \$13,366.00  
6 Blended Rate: \$310.84  
7

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

9 In order to keep all parties up-to-date on all pertinent information,  
10 Sheppard Mullin regularly met with the Receiver to discuss key issues. Most of  
11 these meetings were over the telephone, with a few especially important meetings  
12 occurring in person. In addition to discussing recent factual discoveries, these  
13 meetings also focused on important issues regarding the litigation against former  
14 professionals, the Plan of Distribution, disgorgement, and the protection and  
15 marketing of certain Carolina assets. In connection with Sort Code CA04, Sheppard  
16 Mullin attorneys, among other things, accomplished the following tasks at the  
17 Receiver's request:

- 18
- 19 • Telephone conferences with the Receiver to discuss various Plan of  
20 Distribution issues.
  - 21 • Telephone conferences with the Receiver to discuss tax issues.
  - 22 • Attended meetings with the Receiver to assess future litigation steps  
23 with respect to Wykidal, Waldman, and Glendenning.  
24

25 In connection with Sort Code CA04, Sheppard Mullin expended  
26 approximate time and fees during this Period as follows:  
27  
28

1                   Hours:                   4.6  
2                   Fees Incurred:               \$2,258.00  
3                   Blended Rate:               \$490.87  
4

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

6                   Sheppard Mullin's representation of the Receiver requires it to prepare  
7 for and occasionally attend hearings on motions brought before the Court. In  
8 connection with Sort Code CA05, Sheppard Mullin attended the hearing on the  
9 Receiver's Motion to Approve Distribution of Funds, which the Court granted.  
10

11                   In connection with Sort Code CA05, Sheppard Mullin expended  
12 approximate time and fees during this Period as follows:  
13

14                   Hours:                   1.8  
15                   Fees Incurred:               \$900.00  
16                   Blended Rate:               \$500.00  
17

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

20                   During the Period, Sheppard Mullin spent time preparing pleadings and  
21 court filings in order to obtain an order to sell the receivership estate's remaining  
22 real property assets in Moore County, North Carolina and to enforce the Receiver's  
23 judgments against the former sales agents. In addition, Sheppard Mullin helped the  
24 Receiver prepare his required Six Month Report for filing with the Court. In  
25 connection with Sort Code CA06, Sheppard Mullin attorneys, among other things,  
26 accomplished the following tasks at the Receiver's request:  
27  
28

- 1 • Prepared a proposed order permitting the Receiver to sell several lots in
- 2 Moore County, North Carolina.
- 3 • Prepared and filed personal property liens with respect to four former
- 4 sales agents.
- 5 • Prepared and filed real property judgment liens with respect to four
- 6 former sales agents.
- 7 • Obtained a writ of execution with respect to Sean Brazney.
- 8 • Took several steps to levy on Mr. Brazney's bank accounts in Orange
- 9 County.
- 10 • Assisted the Receiver in preparing his most recent Six Month Report.
- 11 • Assisted the Receiver in preparing his Motion to Approve the
- 12 Distribution of Funds.

13  
14 In connection with Sort Code CA06, Sheppard Mullin expended  
15 approximate time and fees during this Period as follows:

16		
17	Hours:	36.5
18	Fees Incurred:	\$12,094.00
19	Blended Rate:	\$331.34
20		

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

22 No work was performed within this Sort Code during the Period.

23  
24 **H. Sort Code CA08: Employment.**

25 No work was performed during the Period within this Sort Code.

26  
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28



1           **I.       Sort Code CA09: Claims Issues.**

2           A critical component to maximizing the return to investors is to  
3 properly address and develop potential claims against the named defendants, former  
4 employees, professionals, and third parties. During the Period, Sheppard Mullin  
5 actively pursued its litigation against Wykidal, Waldman, Glendenning, Kraus, and  
6 Stewart Title. This work was divided between Sort Code CA09 (Claims Issues) and  
7 Sort Code CA11 (Special Litigation Matters). As detailed above, Sheppard Mullin  
8 spent considerable time preparing for and completing the Wykidal arbitration  
9 hearing, including attending numerous depositions, completing extensive written  
10 discovery, preparing witnesses, briefing the numerous legal and factual issues, and  
11 attending the hearing itself. The Waldman litigation was active as well, requiring  
12 Sheppard Mullin to prepare discovery and eventually prepare a stipulation to  
13 dismiss the litigation. The Kraus and Stewart Title litigation required Sheppard  
14 Mullin to prepare a contempt motion and take various other steps. The Glendenning  
15 litigation caused Sheppard Mullin to spend significant time preparing a detailed  
16 complaint against Glendenning. All of these efforts are worthwhile, as they allow  
17 the Receiver to fully assess the receivership estate's claims against third parties. In  
18 connection with Sort Code CA09, Sheppard Mullin attorneys, among other things,  
19 accomplished the following tasks at the Receiver's request:

- 20
- 21           •       Prepared a motion for contempt against Jill Kraus and Stewart Title.
  - 22           •       Prepared discovery motions and related documents in the Waldman  
23                   litigation.
  - 24           •       Prepared pleadings to attempt to secure the attendance of incarcerated  
25                   witnesses at the Wykidal arbitration hearing.
  - 26           •       Analyzed numerous exhibits to be used at the Wykidal arbitration  
27                   hearing.
- 28

- 1 • Prepared for the arbitration hearing, including witnesses preparation
- 2 and document analysis.
- 3 • Prepared pleadings to effectuate the dismissal of the Waldman
- 4 litigation.
- 5 • Prepared an opening arbitration brief in the Wykidal litigation.
- 6 • Prepared a closing brief in the Wykidal litigation.
- 7

8 In connection with Sort Code CA09, Sheppard Mullin expended  
9 approximate time and fees during this Period as follows:

11	Hours:	183.3
12	Fees Incurred:	\$51,698.50
13	Blended Rate:	\$282.04

14

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

16 During the Period, Sheppard Mullin resolved certain issues relating to  
17 the potential foreclosure of a lot owned by the receivership estate (Lot 24) and  
18 resolved issues pertaining to the potential sale of the receivership estate's remaining  
19 real property assets in Moore County, North Carolina.

20

21 In connection with Sort Code CA10, Sheppard Mullin expended  
22 approximate time and fees during this Period as follows:

24	Hours:	4.2
25	Fees Incurred:	\$1,218.00
26	Blended Rate:	\$290.00

27  
28

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

2                     As with Sort Code CA09, Sheppard Mullin's work within this sort code  
3 relates largely to the Wykidal litigation.

4  
5                     In connection with Sort Code CA11, Sheppard Mullin attorneys,  
6 among other things, accomplished the following tasks at the Receiver's request:

- 7
- 8           •     Analyzed thousands of documents to be produced in Wykidal  
9                 arbitration.
  - 10          •     Analyzed thousands of documents to potentially be used as exhibits in  
11                 the Wykidal arbitration.
  - 12          •     Prepared the Receiver's expert witness to be deposed and to testify at  
13                 the arbitration.
  - 14          •     Attended the expert's deposition.
  - 15          •     Prepared the Receiver to be deposed and attended the Receiver's  
16                 deposition.
  - 17          •     Prepared numerous witnesses to testify at the arbitration.
  - 18          •     Analyzed numerous documents to assess the damage suffered by the  
19                 Company as a result of Wykidal's conduct.
  - 20          •     Analyzed numerous legal issues in order to prepare the Receiver'  
21                 arbitration brief and closing brief.
  - 22          •     Prepared the Receiver's opening and closing arbitration briefs.
- 23  
24  
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28

1 In connection with Sort Code CA11, Sheppard Mullin expended  
2 approximate time and fees during this Period as follows:

3  
4 Hours: 643.9  
5 Fees Incurred: \$227,078.50  
6 Blended Rate: \$352.66  
7

8 **L. Sort Code CA12: Preparation / Review of Transactional and**  
9 **related Transactional Documents.**

10 No work was performed within this Sort Code during the Period.  
11

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

13 No work was performed within this Sort Code during the Period.  
14

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

17 Exhibit A to this Application is an analysis of time expended and fees  
18 incurred by Sheppard Mullin attorneys in connection with this case. Exhibit A  
19 shows the total activity of each attorney who has billed time on this case, as well as  
20 a breakdown of time and fees incurred on a sort code by sort code basis. Thus,  
21 Exhibit A allows for the review of the total involvement of each attorney in this  
22 case. Information provided in Exhibit E includes hours expended, billing rate, total  
23 dollars billed and percentage of total dollars billed allocable to each attorney.  
24

25 Included in Exhibit C to this Application is a monthly and total  
26 summary of fees. The chart attached in Exhibit C allows the Court to see how much  
27 work was accomplished during each month of Sheppard Mullin's employment on a  
28

1 sort code by sort code basis. In addition, full billing reports for each month of  
2 Sheppard Mullin's employment are attached in Exhibit C.

3  
4 The amounts sought in this Application are reasonable for the  
5 professional services performed by Sheppard Mullin on behalf of the Receiver.  
6 Sheppard Mullin believes that the services that Sheppard Mullin has rendered  
7 constitute necessary and appropriate services incident to the representation of the  
8 Receiver. Moreover, Sheppard Mullin believes that the services rendered have also  
9 provided substantial benefit to the Receiver and Carolina's investors. As such,  
10 Sheppard Mullin submits that the fees requested are properly compensable.

11  
12 **VI. REASONABLE AND NECESSARY EXPENSES INCURRED BY**  
13 **SHEPPARD MULLIN.**

14 In connection with its representation of the Receiver in this case,  
15 Sheppard Mullin has incurred reasonable and necessary expenses. Sheppard Mullin  
16 requests reimbursement of these expenses because such expenses were both  
17 necessary and reasonable under the circumstances.

18  
19 A detailed statement of expenses, including a breakdown of expenses  
20 by category, is attached to this Application as Exhibit B. Sheppard Mullin is  
21 seeking reimbursement for expert witness fees, filing fees, service of process,  
22 overnight delivery services, messenger services, in-house photocopying,  
23 computerized legal research, transcript, long distance telephone charges and  
24 telecopier charges, duplication, and postage. As detailed in Exhibit B, Sheppard  
25 Mullin has made every effort to limit expenses and to use the most economical  
26 means available for accomplishing the task requiring expenditure of cost.

1 All of Sheppard Mullin's out-of-pocket expenses were incurred in the  
2 best interest of the Company's investors and represent reasonable and necessary  
3 expenses of the Receiver. Reimbursement is appropriate. An explanation of each  
4 specific category of costs is set forth below:

5  
6 a. **Expert Witness Fees to James Spindler:** Sheppard  
7 Mullin's largest expense during the Period was expert witness fees paid  
8 to James Spindler. Mr. Spindler is a law professor at the University of  
9 Southern California. His area of expertise is securities law and  
10 regulation. Mr. Spindler was engaged to act as the Receiver's expert  
11 witness in connection with the Wykidal litigation. The Receiver's  
12 action against Wykidal is primarily a malpractice action. The Receiver  
13 alleges that Wykidal, the Company's former securities counsel, did not  
14 act as a reasonable securities counsel should have acted. To establish  
15 this, the Receiver is required to show how a reasonable securities  
16 counsel would have acted, and then establish how Wykidal's conduct  
17 was not reasonable. Mr. Spindler was engaged to provide expert  
18 testimony as to Wykidal's alleged malpractice. Mr. Spindler was the  
19 Receiver's key witness at the arbitration hearing. Without  
20 Mr. Spindler's involvement, the Receiver's action against Wykidal  
21 would have had no chance of success. Mr. Spindler spent a great deal  
22 of time assisting the Receiver. His work included, among other things:

- 23  
24
- Analyzed thousands of pages of documents to assess Wykidal's  
25 conduct.
  - Prepared for and attended deposition.  
26
  - Prepared expert report.  
27
- 28

- 1 • Prepared detailed and heavily-researched expert's rebuttal report
- 2 regarding federal securities laws.
- 3 • Attended several meetings with Sheppard Mullin to prepare for
- 4 the arbitration hearing.
- 5 • Attended several days of the arbitration hearing to provide expert
- 6 testimony.
- 7

8 Mr. Spindler billed Sheppard Mullin a total of approximately \$59,000  
9 for his services. However, Sheppard Mullin negotiated with  
10 Mr. Spindler to reduce his fees. The end result was that Sheppard  
11 Mullin paid Mr. Spindler \$47,000 in full payment of Mr. Spindler's  
12 services to the Receiver, a discount of approximately 20%. The fees  
13 charged by Mr. Spindler were reasonable given his experience,  
14 education and expertise in the area of securities laws and regulation, and  
15 given the tremendous amount of time Mr. Spindler spent on this matter.  
16 Mr. Spindler's fees were especially reasonable given that Sheppard  
17 Mullin was able to negotiate the fees from \$59,000 down to \$47,000,  
18 \$35,000 of which was paid to Mr. Spindler during this Period.  
19

20 **b. Document Duplication/Copying Expenses:** Sheppard  
21 Mullin incurred document duplication expenses during the Period. The  
22 bulk of these expenses were incurred through the copying of documents  
23 to be used in the Wykidal litigation. Numerous documents needed to be  
24 copied in connection with the arbitration hearing. Numerous documents  
25 were also produced in litigation against the other former professionals.  
26 Duplication charges were also incurred in connection with numerous  
27 pleadings filed by the Receiver during the Period. Sheppard Mullin  
28 incurred duplication charges of \$2,243.90 for in-house copying and

1 \$1,458.15 using an outside copy service in connection with its  
2 representation of the Receiver during the applicable Period.

3  
4 **c. Facsimile and Telephone Charges:** Sheppard Mullin  
5 incurred no facsimile and telephone charges during the applicable  
6 Period.

7  
8 **d. Attorney Service (including Filing, Recording and**  
9 **Witness Fees and Messenger Costs):** Sheppard Mullin incurred  
10 attorney service charges of \$3,057.64 in connection with its  
11 representation of the Receiver during the applicable Period. These  
12 charges were incurred primarily in connection with the Wykidal  
13 litigation, which necessitated the service of several subpoenas and other  
14 documents. The attorney service was used to get the necessary exhibits  
15 to and from the Wykidal arbitration hearing. Also, expenses were  
16 incurred in connection with the service and filing of numerous pleadings  
17 in the Receiver's litigation against other professionals.

18  
19 **e. Federal Express/Overnight Mail Charges:** Sheppard  
20 Mullin has incurred certain Federal Express/overnight mail charges in  
21 connection with its representations. Given that the SEC and various  
22 Carolina professionals are located substantial distances away from each  
23 other and Sheppard Mullin, next day mail was the most efficient and  
24 appropriate way of distributing certain time sensitive information.  
25 Sheppard Mullin incurred Federal Express and overnight delivery  
26 charges of \$155.56 in connection with its representation of the Receiver  
27 during the applicable Period.

28



1                   **f. Miscellaneous Charges:** Sheppard Mullin has incurred  
2 and personally reimbursed expenses of \$3,515.60 in online research;  
3 \$489.00 to CLAS for Nevada research; advanced \$4,403.81 to JAMS on  
4 behalf of the Receiver for the Wykidal arbitration; \$3,073.96 in court  
5 reporter fees in connection with the Wykidal arbitration; and \$500.00 to  
6 the U.S. Marshal for service of subpoenas.

7  
8                   **g. Secretarial Overtime or Word Processing Expenses:**  
9 Sheppard Mullin has not requested reimbursement for word processing  
10 or secretarial overtime, notwithstanding the fact that Sheppard Mullin  
11 has incurred such expenses that are normally charged to clients of  
12 Sheppard Mullin.

13  
14 **VII. STATEMENT OF QUALIFICATIONS OF SHEPPARD MULLIN**  
15 **PROFESSIONALS CHARGING MATERIAL TIME IN CONNECTION**  
16 **WITH THIS CASE.**

17                   The professional qualifications of those attorneys who have performed  
18 most work on this matter to date — Finley Taylor, Alan H. Martin, Robert S. Beall,  
19 Norma V. Garcia-Guillén, and Michael A. Wallin — are attached as Exhibit D.

20  
21 **VIII. SUMMARY.**

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

1 **IX. CONCLUSION.**

2                   Based on the foregoing, Sheppard Mullin requests that its fees and  
3 costs be approved and awarded as set forth in this Application.

4

5 Dated: November 13, 2009

6

SHEPPARD, MULLIN, RICHTER &  
HAMPTON LLP

7

8

*/s/ Michael A. Wallin*

9

By \_\_\_\_\_

MICHAEL A. WALLIN  
Attorneys for  
THOMAS A. SEAMAN, RECEIVER

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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 ("Sheppard Mullin"), 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 November 13, 2009.

*/s/ Alan H. Martin*

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ALAN H. MARTIN

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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 ("Sheppard Mullin") 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 Sheppard Mullin 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 Sheppard Mullin 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 November 13, 2009.

*/s/ Thomas A. Seaman*

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THOMAS A. SEAMAN

**List of Exhibits**

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- 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