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RECEIVER

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

11

12 SECURITIES AND EXCHANGE
COMMISSION,

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Plaintiff,

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v.

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16 LAMBERT VANDER TUIG (a/k/a/
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,

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Defendants.

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Case No. SACV06-172AHS(MLGx)

**RECEIVER'S TENTH INTERIM
FEE APPLICATION**

*[Notice of Tenth Interim Fee
Application of the Receiver 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 Thomas A. Seaman, duly-appointed receiver herein ("Receiver")
2 respectfully submits this tenth interim fee application seeking approval to pay fees
3 and expenses of the Receiver in the performance of his duties under the Order
4 Appointing a Receiver entered by this Court on February 16, 2006. The time period
5 covered by this fee application is from November 1, 2008 through April 30, 2009
6 ("Period"). The amount that the Receiver seeks approval to pay is \$82,219.50. The
7 Receiver was previously awarded and has been paid \$1,068,191.96 in accordance
8 with this Court's orders approving the Receiver's previous nine fee applications.
9 Together with the amount requested herein, the total fees of the Receiver through
10 April 30, 2009 are \$1,150,411.46 for the 39 month period. In the last six months,
11 the Receiver has devoted significant time and energy to this matter and has made
12 considerable progress towards concluding this matter as set forth below.

13
14 **PROCEDURAL BACKGROUND**

15 The Receiver was appointed on February 16, 2006 pursuant to an
16 *ex parte* motion brought by the Securities and Exchange Commission ("SEC")
17 seeking a Temporary Restraining Order and other relief to enjoin the fraudulent sale
18 of unregistered securities by The Carolina Development Company, Inc. (the
19 "Company") and its principals and agents, (collectively, the "Defendants"). On
20 February 27, 2006, the Court issued a Preliminary Injunction enjoining the
21 Defendants from future violations of securities laws. On April 5, 2006, the Court
22 issued Findings of Fact and Conclusions of Law in support of the Preliminary
23 Injunction ("Findings"). Defendants filed no objection to the Court's Findings
24 which include findings that the Defendants made misrepresentations to investors
25 about the sales and revenues of the Company, made false statements about going
26 public, made false statements about restricted stock and failed to disclose that the
27 stock was already publicly traded, made misrepresentations about real property
28 owned by the Company, misrepresented the amount of authorized shares,

1 misrepresented the book value of the Company, in the case of Vander Tuig,
2 concealed his real name and failed to disclose previous action against him by the
3 SEC, operated a Ponzi-like scheme, misappropriated investor funds, took funds
4 from un-accredited investors, and continued to make misrepresentations to investors
5 after this Court issued the Temporary Restraining Order and Preliminary Injunction.
6 On April 7, 2006, this Court expanded the scope of the receivership by
7 implementing a stay on legal actions against the Defendants, and putting additional
8 entities under the control of the Receiver. On or around February 26, 2007, this
9 Court granted the SEC's motion for summary judgment and entered a judgment
10 against Vander Tuig in the amount of \$29,532,000. On July 30, 2007, the Court
11 ruled that both Vander Tuig and Carman were in contempt for failing to return funds
12 they took from the Company. On August 7, 2007, this Court granted the SEC's
13 motion for summary judgment and entered an order granting judgment against
14 Jonathan Carman. On August 9, 2007 this Court approved the Plaintiff's Plan of
15 Partial Distribution (the "Plan"). On or around January 21, 2009 the California
16 Department of Justice indicted Lambert Vander Tag, Jonathan Carman, defendants
17 herein, Robert Waldman, an attorney, and Scott Yard, Mark Sostak and Soren
18 Svendsen, who sold securities for the Company. Collectively there were 89 counts
19 of grand theft and securities fraud alleged against these six Carolina Company
20 participants. On April 20, 2009 this Court approved the Receiver's request for
21 approval to distribute \$7,750,000 to investors and the Receiver began sending
22 checks immediately thereafter. Most of the distribution checks were completed by
23 April 30, 2009.

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OVERVIEW OF THE RECEIVER'S ACTIVITIES
DURING THE REPORTING PERIOD

1 The Receiver made significant progress in all aspects of the case during
2 the six month period covered by this fee application. These efforts can broadly be
3 categorized as follows: 1) filed tax returns for the Company for years 2000 – 2008;
4 2) based on these returns, facilitated the filing of claims with the IRS and California
5 Franchise Tax Board which led to a ruling by this Court approving of the Plan;
6 3) completed reconciliation of investor claims and made distributions to investors in
7 accordance with the Plan; 4) managed investor communications including providing
8 notice of hearings, administration of the investor website and investor emails, and
9 administration of the investor-victim voice mail box; 5) supported enforcement of
10 previously-obtained judgments against former sales agents; 6) supported litigation
11 against professionals that represented the Company prior to the appointment of the
12 Receiver; 7) supported SEC administrative proceeding against Maria Giesige who
13 facilitated investments by 46 unaccredited investor/victims most of which were
14 retired auto workers; and 8) continued to market the Company's remaining real
15 estate assets.
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19 For the 39 month duration of the case (February 16, 2006 through
20 April 30, 2009), the Receiver has collected funds in the amount of \$19,561,879.85.
21 The amount collected can be broken down as follows:
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23	Seized or turned over	\$ 7,241,079.36
24	Real estate escrows terminated by the Receiver	\$ 2,192,349.51
25	Other asset recovery	\$ 64,199.59
26	Interest paid to the Receiver	\$ 660,192.84
27	Net sales of real property	\$ 8,429,466.67
28		

1	Return of dividends paid to investors	\$ 173,911.88
2	Disgorgement proceeds	\$ 304,930.00
3	Litigation proceeds	\$ 435,750.00
4	<u>Recovery of Professional Retainers</u>	<u>\$ 60,000.00</u>
5	TOTAL	\$19,561,879.85

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7 For the six month period covered by this fee application, the Receiver
8 collected funds in the amount of \$5,647.67 which is comprised of litigation proceeds
9 of \$750 (discovery sanction proceeds), interest income of \$4,897.67 and return of
10 dividends paid in the amount of \$9,086.37. The Receiver is currently holding funds
11 in the amount of \$1,084,573.58 as of July 3, 2009.

12
13 During prior periods, a significant amount of the Receiver's fees were
14 attributable to preparation of a forensic accounting reconstructed from bank records
15 either seized or produced in response to subpoenas. This accounting has been of
16 significant benefit to the Receiver as the case has moved forward, not only for
17 helping the Receiver identify and reconcile the Company's real property interests
18 and identifying recipients of ill-gotten gains, but also in resolving the 11th hour
19 investor issue, determining the amount of the judgment entered against Lambert
20 Vander Tuig, and reconciling amounts paid to certain investor-victims for the
21 equitable administration of the Plan of Partial Distribution and its election process
22 for deed of trust holders. The accounting has also been helpful to completing
23 discovery requests in support of litigation initiated by the Receiver. More recently
24 the accounting has formed the basis for determining the Company's and the
25 receivership estate's tax liabilities which allowed the Receiver to finalize the
26 Receiver's Investment Analysis and thereby allowed the Receiver to make
27 distributions to investors in accordance with the Plan. The only remaining task
28 with regard to the distributions is the issuance of 1099s.

1 During the course of the case, the Receiver prosecuted litigation against
2 four attorneys who represented the Company. The Receiver believes these attorneys
3 committed malpractice and/or breached their fiduciary duty to the Company. The
4 Receiver settled his claim against William Cannon for \$300,000 and settled his
5 claim against Pendleton Hayes for \$135,000. The Receiver completed an arbitration
6 hearing with respect to his claim against Gary Wykidal. The arbitrator ruled in
7 favor of Mr. Wykidal. However, the Receiver has filed a motion to vacate the
8 arbitrator's ruling. Much of the Receiver's time during the period covered by this fee
9 application was spent working on the litigation against Mr. Wykidal. The Receiver
10 has dismissed his action against Waldman, who was recently indicted as indicated
11 above.

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13 In addition to the foregoing, during the Period the Receiver also
14 communicated with numerous investors, resolved investor claims, and dealt with
15 myriad other issues affecting the Company and the receivership estate. The
16 Receiver continues to periodically update the website to communicate with
17 investors. Through April 30, 2009, the website has been updated 53 times and was
18 last updated on April 25, 2009. All significant pleadings filed by the Receiver have
19 been posted on the website. The Receiver is pleased to report that with the
20 conclusion of initial distribution, investor inquiries have diminished significantly.
21 However, the Receiver has been administering returned mail, and continues to
22 receive investor inquiries about taxes and the timing of another distribution.

23
24 The Receiver also spent time during the period maintaining his *Access*
25 database to properly log and track investor information. The database was used to
26 reconcile and determine the amount of investor's allowed claims for the purpose of
27 distributing funds to the investors and provide notice to investors.

28

1 The Receiver also spent considerable time during the period supporting
2 the SEC's prosecution of the Defendants and has performed many other duties
3 ancillary to serving as a receiver in a securities fraud case. Pursuant to subpoenas,
4 the Receiver is now being called upon in connection with the criminal matters
5 currently pending against Vander Tuig, Carman, and certain other individuals
6 affiliated with the Company.

7
8 The Receiver continues to invest the receivership estate's excess cash in
9 short term Treasury securities. The estate has thus far collected \$660,192.84 in
10 interest income by diligently investing and re-investing excess cash in United States
11 Treasury securities and bank accounts. Unfortunately, due to current conditions in
12 the credit markets, the return on short-term treasury securities is essentially zero,
13 however the principal is secure.

14
15 The foregoing overview of the Receiver's work is by no means
16 exhaustive and there are many issues requiring the attention of the Receiver.
17 Exhibit A to this fee application provides a complete and detailed description of the
18 Receiver's work and is set forth in one tenth of an hour increments.

19
20 The Securities and Exchange Commission ("SEC") has reviewed the
21 Receiver's bills and this fee application. The SEC is supportive of payment in full
22 of the fees sought in this application.

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28**FEE APPLICATION**

Exhibit A provides a Summary of Fees, By Timekeeper and Summary of Fees, By Task. The information is provided by month and backed-up by detailed descriptions, in one tenth of the hour increments, by task and date, following the summaries. The total fees requested by the Receiver for this period are \$82,219.50 which was incurred as follows:

November 2008	\$ 12,916.50
December 2008	\$ 9,483.50
January 2009	\$ 10,340.50
February 2009	\$ 16,116.50
March 2009	\$ 13,204.50
<u>April 2009</u>	<u>\$ 20,158.00</u>
TOTAL	\$ 82,219.50

Fees were billed at hourly rates ranging from \$85 to \$350 per hour. The blended hourly rate during the six month period is \$164 per hour. The Receiver did not bill for the cost of preparation of the fee application, the cost of which was approximately \$2,100. The cumulative amount of the Receiver's fees requested in this and the previous nine fee applications as a percent of the money recovered to date is approximately 5.8%. The Receiver believes that his fees are fair and reasonable and were properly incurred in view of the circumstances encountered by the Receiver.

FEES BY TASK

The Summary of Fees, By Task provides a breakdown of the fees by task and month. A summary level breakdown follows:

1	Investor relations	\$ 41,883.00
2	Litigation and support	\$ 546.00
3	Receivership administration	\$ 7,958.00
4	Receiver	\$ 24,782.50
5	Sell/liquidate assets	\$ 1,670.50
6	<u>Bookkeeping and accounting</u>	<u>\$ 5,379.50</u>
7	TOTAL	\$ 82,219.50

PROFESSIONALS

10 The Receiver retained the law firm of Sheppard, Mullin, Richter and
 11 Hampton to represent him in this matter. Sheppard, Mullin, Richter and Hampton
 12 has extensive experience representing receivers and trustees in bankruptcy matters,
 13 in real estate transactional matters, and other legal issues affecting the Receiver and
 14 the receivership estate.

16 A summary of all fees and expenses of the Receiver and agents retained
 17 by the Receiver during the Period is as follows¹:

18 <u>Professional</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
19 Receiver	\$ 82,219.50	\$ 0.00	\$ 82,219.50
20 SMR&H	\$277,016.27	\$53,887.98	\$330,904.25
21 TOTAL	\$359,235.77	\$53,887.98	\$413,123.75

23 The Receiver believes he is well represented and advised that the fees
 24 and costs of Sheppard Mullin are fair and reasonable given the complexity of the

26 ¹ The Receiver understands that Crowe Horwath, the Receiver's tax advisor and accountant,
 27 will be filing a fee application shortly, to be heard on the same date as the Receiver's and
 28 Sheppard Mullin's fee applications. The Receiver believes he is well advised by Crowe
 Horwath and that Crowe Horwath's fees and expenses are reasonable and should be paid in
 full.

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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. Attached hereto as Exhibit A is a Summary of Fees, By Timekeeper and a Summary of Fees, By Task. These summaries describe the work performed by the Receiver and his office during the time period and detail the exact amount of time spent on each task performed.

4. Thomas Melton of the Securities and Exchange Commission has reviewed my bills and agrees that this fee application should be approved in full.

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

THOMAS A. SEAMAN

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EXHIBIT "A"

Summary of Fees, By Timekeeper and Summary of Fees, By Task

[See attached]