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23 **UNITED STATES DISTRICT COURT**  
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25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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27 **SOUTHERN DIVISION**  
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32 SECURITIES AND EXCHANGE  
33 COMMISSION,  
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35 Plaintiff,  
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38 vs.  
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40 LAMBERT VANDER TUIG, et al.  
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45 Defendants.  
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Case No.  
SACV 06-172AHS (ANx)

**MEMORANDUM IN  
SUPPORT OF RECEIVER'S  
SECOND FEE  
APPLICATION**

Hearing  
Date: 10/02/2006  
Time: 2:30 p.m.

1 Plaintiff, Securities and Exchange Commission (the  
2 "Commission"), hereby submits the following Memorandum  
3 in Support of Receiver's Second Fee Application ("Fee  
4 Application").

#### 5 BACKGROUND

6 The Commission filed a Complaint, a Motion for  
7 Temporary Restraining Order and various other pleadings  
8 on February 16, 2006. Among those pleadings was a  
9 Motion of Appointment of a Receiver. Based upon the  
10 preliminary evidence and testimony provided, the Court  
11 entered a Temporary Restraining Order, an Order  
12 Freezing Assets and an Order Appointing Receiver on  
13 February 16, 2006 (the "Receiver Order").

14 In the Receiver Order, the Court empowered Thomas  
15 A. Seaman (the "Receiver") to take over the assets of  
16 "The Carolina Company and all subsidiaries, and  
17 affiliated entities (the "Companies"). The Receiver  
18 was ordered to "take control of the Companies funds,  
19 assets and property, wherever situated. . . ." The  
20 Receiver Order ordered and empowered the Receiver:

21  
22 "to liquidate and convert into money all of the  
23 assets, property, estate, effects and interests of  
24 every nature held in his possession and control  
25 pursuant to this order, by selling, conveying, and  
26 disposing of the property, either at public or  
27 private sale, on terms and in the manner the  
28 Receiver deems most beneficial to the persons or  
parties entitled to the proceeds, and with **due  
regard to the realization of their true and proper  
value . . . ."** (Receiver Order, p. 5). The  
Receiver is also authorized to be "paid out of the

1 proceeds or other assets of the Companies. . . ."  
2 (Receiver Order, p. 5).

3 In appointing a Receiver for the Companies, the  
4 Court recognized that, "the assets that have been  
5 frozen are in danger of having their value reduced by  
6 the passage of time, and it is appropriate that the  
7 assets be marshaled and an accounting provided to the  
8 Court." (Receiver Order, p. 2). Additional findings  
9 of fact, set forth in the Finding of Fact and  
10 Conclusions of Law in Support of Preliminary  
11 Injunction, (the "Findings") also provide a foundation  
12 for the Receiver's authorized actions. For example,  
13 the Court preliminarily determined that, "[m]any of  
14 defendants' representations regarding real estate were  
15 false or grossly exaggerated." (Findings, ¶ 33). The  
16 Court also preliminarily found, "[t]hroughout the  
17 relevant time period, Carolina Company has represented  
18 that it holds millions of dollars in equity in various  
19 development properties." (Findings, ¶ 43). The Court  
20 later found that these representations related to the  
21 equity held by Carolina company were false. (Findings,  
22 ¶ 51).

24 Acting in accordance with the Receivership Order,  
25 the Receiver has filed the Fee Application. The Fee  
26 Application contains a request for payment for the  
27 Receiver's fees and costs, and the fees and costs of  
28 other professionals employed by the Receiver (as

1 authorized by the Receiver Order, p. 4). Attached as  
2 exhibits to the Fee Application are detailed, specific  
3 and exhaustive time records representing the scope and  
4 nature of the Receiver's work since his appointment.

#### 5 **ARGUMENT**

#### 6 **THE RECEIVER AND HIS AGENTS SHOULD BE COMPENSATED**

7 The Receiver has acted in accordance with this  
8 Court's Order in carrying out his duties and  
9 responsibilities. The Receiver was appointed to  
10 marshal the assets of a company that had misrepresented  
11 its real estate assets. Even in instances where  
12 Carolina held an interest in the property, it  
13 misrepresented the nature of the interest and the value  
14 of its real estate holdings. Carolina and its  
15 principals consistently deceived investors regarding  
16 the use of funds solicited by the Private Placement  
17 Memoranda and failed to disclose the encumbrances  
18 against its properties and other assets. Carolina  
19 Company had no accounting system in place and lacked  
20 even basic internal controls.

21  
22 The Fee Application details that the Receiver has  
23 undertaken to unravel Carolina Company's books and  
24 records. That work is continuing, the Receiver has  
25 received completed claim forms from hundreds of  
26 investors, and is undertaking a major review and  
27 accounting of all Carolina and associated bank  
28 accounts. That review has already resulted in the

1 identification of additional funds that defendants  
2 misappropriated, in some cases, after the entry of the  
3 Order Freezing Assets

4 The Receiver's Fee Application and the accompanying  
5 time records, together with the time records of  
6 professionals paid by the Receiver, reflect the  
7 extensive amount of time required to marshal the assets  
8 of the Carolina Company and determine its liabilities,  
9 both to creditors and to investors. These services  
10 will make it possible to distribute the assets to  
11 investors, consistent with further orders of this  
12 Court.

13 The Receiver's Fee Application provides a summary  
14 of the real property assets held by defendants. The  
15 description of the properties in the Fee Application  
16 highlights the dramatic overstatement of assets by the  
17 defendants. For example, the defendants claimed that  
18 Carolina Company owned real property known as Celina  
19 Bridges, which it valued at \$49 million. Carolina  
20 failed to disclose an outstanding mortgage of \$22.5  
21 million. The Receiver is seeking to maximize the value  
22 of this significant asset through a due diligence  
23 package and a bidding procedure aimed at serious real  
24 estate developers.

25 Another instance of the Receiver's due diligence is  
26 property held in Sutter County, California. Carolina  
27 Company claimed that this real property was worth \$470  
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1 million. (Duvall Dec., Exhibit G, p. DUV 057). The  
2 Receiver has determined that Carolina Company's true  
3 ownership interest is, "[a]n option for approximately  
4 1921 acres in Sutter County. The option allows the  
5 holder to buy the property for [the] next 15 years at  
6 certain prices. (Fee Application, p. 9). After  
7 substantial due diligence, the Receiver has  
8 preliminarily determined that the option has little, if  
9 any, value. Apparently, the highest and best use of  
10 the optioned real estate is as a rice farm, not  
11 developable real estate,

12         These two examples underscore the major tasks  
13 undertaken by the Receiver with respect to the real  
14 property. On behalf of the investors, the Receiver has  
15 assessed the interest held by the Carolina Company (as  
16 opposed to the interest claimed in its offering and  
17 promotional materials). After determining ownership,  
18 the Receiver must ascertain the true value of the  
19 properties, particularly given that Carolina Company  
20 did virtually no internal assessments. The Receiver is  
21 prepared to liquidate many of these properties. For  
22 example, the Receiver has sold a number of the  
23 residential lots located in North Carolina.

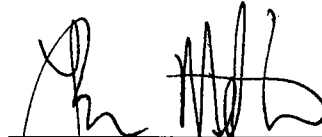
24         The Receiver has also communicated extensively  
25 with the investors in this matter. Within a week of  
26 his appointment, the Receiver had established a  
27 website, an efficient way to communicate the status of  
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1 the litigation and the receivership activities to the  
2 investors. In fact, the Receiver's fee application  
3 reflects that approximately one third of his time has  
4 been devoted to investor relations. As before, the  
5 Receiver has given notice of his fee application,  
6 together with all supporting documentation, by posting  
7 it on the website. Although not required to give  
8 notice to non-parties to pending litigation in which he  
9 was appointed, the Receiver has demonstrated his  
10 commitment to the investors by allowing them to review  
11 his activities in detail.

12 The Commission's counsel has been involved in a  
13 number of litigated cases in which a receiver was  
14 appointed. Based on the Commission's counsels'  
15 experience, the fees and costs of the Receiver are  
16 customary and reasonable given the expertise and  
17 experience of the Receiver, the complexity of the case,  
18 the geographic area including Orange County,  
19 California, and Carolina's financial condition at the  
20 time the Commission filed its Complaint. The  
21 Commission supports the payment of all fees and costs  
22 incurred by the Receiver, including the payment of all  
23 professional fees. The Commission's counsel have also  
24 closely reviewed the fee applications of the other  
25 professionals employed by the Receiver and believes  
26 that the amounts requested are amply supported by the  
27 documentation supplied in their fee applications with  
28

1 the Court. In addition, the Receiver and his counsel  
2 have apprised Commission counsel of major developments  
3 and sought assistance from the Commission in  
4 appropriate situations.

5 Respectfully submitted this 27<sup>th</sup> September 2006.  
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10 Thomas M. Melton  
11 Karen L. Martinez  
12 Cheryl M. Mori  
13 Attorneys for Plaintiff  
14 Securities and Exchange  
15 Commission  
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CERTIFICATE OF SERVICE

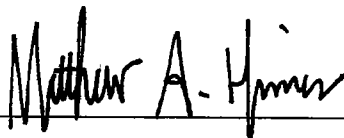
I hereby certify that on this 27<sup>th</sup> day of September 2006, I caused the foregoing MEMORANDUM IN SUPPORT OF RECEIVER'S SECOND FEE APPLICATION to be served on all parties receiving service by sending said document by United States first class mail, postage prepaid to,

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