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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>PLAINTIFF,</p> <p>v.</p> <p>VESCOR CAPITAL CORP., a Nevada corporation, VESCOR CAPITAL, INC., a Nevada corporation, VESCORP CAPITAL, LLC, a Nevada limited liability company, VESCORP CAPITAL IV-A, LLC, a Nevada limited liability company, VESCORP CAPITAL IV-M, LLC, a Nevada limited liability company, a Nevada limited liability company, and VAL E SOUTHWICK,</p> <p>DEFENDANTS.</p>	<p><b>DECLARATION OF JERRY SMITH</b></p> <p><b>(IN SUPPORT OF MOTION TO CLARIFY THE SCOPE OF THE STAY, AND, IF NECESSARY, TO LIFT THE STAY)</b></p> <p>Civil No. 1:08cv00012</p> <p>Hon. Dee Benson</p>
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I, Jerry Smith, declare as follows:

1. I am a manager of Covenant Management Group, LLC, and hold the same or substantially similar position in its related affiliate entities (the "Covenant Group"). I have personal knowledge of the facts set forth herein.

2. During 2000-2005, the Covenant Group loaned over \$66 million to entities related to Val E. Southwick, named as a defendant in the above-captioned action. Some of these monies were loaned to certain of those entities, each of which offered its respective titled interest in specific real properties, all located in or around Las Vegas, Nevada, as collateral for the loans (the "Covenant Loans").

3. An assignment of a fractional share in a recorded deed of trust was made with regard to each loan. Each assignment of a fractional interest was recorded in the official records of the Clark County Recorder. Copies of the recorded instruments are attached as Exhibits 1-9.

4. Seven of the Covenant Loans were made in connection with the "Apex Property," which is contiguous parcels of real property held by related entities. Title to the Apex Property is in seven entities: APEX HOLDINGS 1, LLC; APEX HOLDINGS 2, LLC; APEX HOLDINGS 3, LLC; APEX HOLDINGS 4, LLC; APEX HOLDINGS 5, LLC; APEX HOLDINGS 6, LLC; and APEX HOLDINGS 23, LLC. Because of the contiguous parcels of real property, the highest value for the Apex Property is obtained by treating the various parcels as a single parcel. Copies of the recorded instruments relating to the Apex Property are attached as Exhibits 1-7, with Exhibit 1 relating to Apex Holdings 1, LLC, and so on (and Exhibit 7 relating to Apex Holdings 23, LLC).

5. One of the Covenant Loans was made in connection with the “Sienna Vista Property,” which is real property titled in Sienna Vista Office Park, LLC. Copies of the recorded instruments relating to the Sienna Vista Property are attached as Exhibit 8.

6. One of the Covenant Loans was made in connection with the “Odyssey Property,” which is a set of contiguous parcels titled, at the time of the loan, in Sienna Office Park, LLC and later transferred to Odyssey Equity, LLC. Copies of the recorded instruments relating to the Odyssey Property are attached as Exhibit 9.

7. The Covenant Group is not the only secured lender. Based on similar loans, many other secured lenders recorded assignments of interests in the underlying trust deeds. Concurrently with the making of the loans and recording of the associated liens, each secured lender entered into loan management agreements. One facet of the loan management agreement was naming a “loan manager” to manage the loan for the benefit of the numerous fractional interest holders (a “Loan Manager”). The various loan management agreements originally appointed a Southwick controlled-entity as the original Loan Manager of the respective properties.

8. Subsequent to defaults in loan payments and emerging information about Defendant Southwick, the Southwick entities were removed, and the Covenant Group was elected, by the respective groups of secured creditors, as the Loan Manager for each of the nine loans

9. As Loan Manager, the Covenant Group has initiated non-judicial foreclosures and recorded “Notices of Default” with regard to each of the Apex Property, the Sienna Vista Property, and the Odyssey Property. The entities holding title to the Apex Property, the Sienna

Vista Property, and the Odyssey Property None are not named defendants in the above-captioned proceeding.

10. After receiving notice of the potential application of the Receivership Order issued in the above-captioned case, the Covenant Group has voluntarily delayed the Nevada sales until clarification of the order's impact can be obtained.

11. Each of the Apex Property, the Sienna Vista Property, and the Odyssey Property is significantly over-encumbered, and the amounts of secured claims subject to recorded liens are significantly greater than the current estimated value of each respective property. In each case, the estimated value of the property is under 50% of the loan amounts secured by Recorded Liens.

12. Property taxes continuously accrue. And because of current conditions in the Las Vegas commercial real estate market, the various properties are continuing to decline in value. The Covenant Group, and other secured lenders with recorded liens, is harmed by delay in the non-judicial foreclosures because of this continual decline in value.

13. The principal amount of the 7 Covenant Loans associated with the Apex Property is \$9,100,000.00, with accrued interest of \$1,895,833.00, for a total amount owing of \$10,995,833.00 in relation to the Apex Property. The 7 Covenant Loans associated with the Apex Property represents 26.53% percent of the total fractional shares assigned as interests in the underlying deeds of trust.

14. When the loan balances of other secured creditors are included, the total amount subject to various recorded liens on the Apex Property is in excess of \$34,300,000.

15. The estimated current market value of the Apex Property is \$8,000,000.00.

16. The principal amount of the Covenant Loans associated with the Sienna Vista Property is \$8,000,000.00, with accrued interest of \$1,775,036.00, for a total amount owing of \$9,775,036.00 in relation to the Sienna Vista Property. The Covenant Loan associated with the Sienna Vista Property represents 20% percent of the total fractional shares assigned as interests in the underlying deed of trust.

17. When the loan balances of other secured creditors are included, the total amount subject to various recorded liens on the Sienna Vista Property is in excess of \$40,000,000.

18. The estimated current market value of the Sienna Vista Property is \$16,000,000.00.

19. The principal amount of the Covenant Loans associated with the Odyssey Property is \$3,296,670.00, with accrued interest of \$642,521.00, for a total amount owing of \$3,939,521.00 in relation to the Odyssey Property. The Covenant Loans associated with the Odyssey Property represents 18.78% percent of the total fractional shares assigned as interests in the underlying deed of trust.

20. When the loan balances of other secured creditors are included, the total amount subject to various recorded liens on the Odyssey Property is in excess of \$18,000,000.

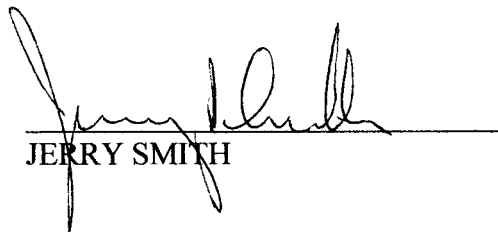
21. The estimated current market value of the Odyssey Property is \$9,000,000.00

22. The Covenant Group, on its own behalf, instituted a lawsuit in Nevada state court titled *Heritage Capital Management, LLC v. Val E. Southwick, et al.*, Nevada District Court, Clark County, Case No. A525992 (the "Nevada Litigation"). The Covenant Group has voluntarily dismissed Vescor Capital, Inc. and Val E. Southwick. None of the remaining entity defendants in the Nevada Litigation are named defendants in the above-captioned proceeding.

23. The Nevada Litigation includes claims against Christopher D. Layton, William W. Plise and Douglas R. Malen. Plise, Malen and Layton have harmed the Covenant Group, by, among other things, orchestrating a fraudulent transfer of property and release of lien. Without the knowledge or approval of the Covenant Group or other secured lenders, Plise, Malen and Layton, through their control of the Loan Manager, wrongfully removed and released the Covenant Group's recorded liens on certain property. Because the liens were fraudulently released, the Covenant Group, and the other secured lenders, cannot pursue a non-judicial foreclosure of that property.

24. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 31<sup>th</sup> day of July, 2008. .

  
JERRY SMITH

INDEX TO EXHIBITS TO  
DECLARATION OF JERRY SMITH  
(IN SUPPORT OF MOTION TO CLARIFY THE  
SCOPE OF THE STAY, AND, IF NECESSARY, TO LIFE THE STAY)

- Exhibit 1: Recorded Instruments Relating to: Apex Holdings 1, LLC
- Exhibit 2: Recorded Instruments Relating to: Apex Holdings 2, LLC
- Exhibit 3: Recorded Instruments Relating to: Apex Holdings 3, LLC
- Exhibit 4: Recorded Instruments Relating to: Apex Holdings 4, LLC
- Exhibit 5: Recorded Instruments Relating to: Apex Holdings 5, LLC
- Exhibit 6: Recorded Instruments Relating to: Apex Holdings 6, LLC
- Exhibit 7: Recorded Instruments Relating to: Apex Holdings 23, LLC
- Exhibit 8: Recorded Instruments Relating to: Sienna Vista Office Park, LLC
- Exhibit 9: Recorded Instruments Relating to: Sienna Vista Office Park, LLC/Odyssey Equity, LLC