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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

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STATE OF UTAH, :  
 :  
Plaintiff, : **AFFIDAVIT OF**  
 : **PROBABLE CAUSE**  
vs. :  
 :  
**SHAWN H. MOORE,** : Case No. 081908861  
DOB: [REDACTED] :  
 : Judge \_\_\_\_\_  
Defendant, :

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STATE OF UTAH )  
 : ss  
COUNTY OF SALT LAKE )

I, JENNIFER R. KORB, being first duly sworn upon oath, state  
as follows:

I am a Securities Analyst with the Utah Division of  
Securities of the Department of Commerce. I hold a Juris  
Doctorate degree from the University of Oregon, and a Bachelor of

Arts degree in English from the University of Utah. I have been employed by the Division of Securities since March 15, 2004.

This case was opened by the Utah Division of Securities on November 2003. In connection with this case, I interviewed and/or received information from victims Allan Christmas, Gerry D'Elia, John and LaRae Huber, Michael LeDuc, Elizabeth and Brant Seamons, and Kay and Linda Shumway. I also examined the records from the Utah Division of Securities, Utah Division of Corporations and Commercial Code, Utah's Federal and District Courts, and the US Bankruptcy Courts.

#### **PARTIES**

Defendant, **SHAWN H. MOORE** is an individual with a last known address of [REDACTED] Utah. MOORE is/was the manager of numerous entities that were part of a larger group of approximately 150 entities (collectively referred to as "VesCor") which were used by Val E. Southwick to raise money from investors and develop and manage real estate projects. After pleading guilty, Mr. Southwick was sentenced in June 2008, to 1-15 years in prison on each of nine counts (consecutive) of securities fraud, for defrauding investors from Utah and several

other states out of approximately \$180 million. MOORE was generally in charge of investor relations for VesCor. Those entities that are/were managed by MOORE include, but are not limited to, the following: Advanced Business Development, LLC; Development Advisory Services, LLC; 7101 Silver Lake, LLC; Bay View Community Center LLC; Berkshire Assets, LLC; Cromwell Property Management, LLC; Consulting Alternative, LLC; Edgewood Assets, LLC; Five Star Lending, LLC; Glenbrook Capital, LLC; Growth Vision, LLC; HB Equities, LLC; Kenton Investments, LLC; North Silver Lake Lodge, LLC; Oxford First Capital, LLC; Silver State Lending, LLC; SV Assets, LLC; Trillium Assets, LLC; and VesCor Development, LLC.

Victims Allan Christmas, Gerry D'Elia, John and LaRae Huber (the Hubers), Michael LeDuc, Elizabeth and Brant Seamons (the Seamonses), and Kay and Linda Shumway (the Shumways), resided in one of five different Utah counties (Utah, Summit, Box Elder, Weber, and Washington) at all times relevant to the matter asserted herein.

#### **OFFERS & SALES**

From approximately April 2003 through January 2006,

MOORE, in his capacity as the manager of many VesCor entities listed above, offered and sold investments in VesCor promissory notes (new investments and roll-overs), to at least six Utah investors, who invested at least \$768,097. Those investors experienced losses of at least \$753,902.

The promissory notes offered and sold by MOORE were signed by Val E. Southwick on behalf of VesCor Capital, Inc., with the exception of at least one note that was signed by MOORE on behalf of VesCorp Capital IV-A, LLC. The notes promised interest of anywhere from 10.5 to 16% on accruing interest, and 12 to 13% on monthly interest. The notes matured in anywhere from two to five years.

The accruing and monthly promissory notes offered and then sold by MOORE to investors are securities under the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-13.

### **MISREPRESENTATIONS & OMISSIONS**

#### **Misrepresentations**

In connection with the offer and sale of securities, MOORE made misleading statements to Christmas, D'Elia, Huber, LeDuc, the Seamonses, and the Shumways, and failed to disclose certain

material information necessary for an investor to make an informed decision.

MOORE, directly or indirectly, made the following misrepresentations of material fact to some or all investors:

1. The investment was safe;
2. There was no risk;
3. The investment was secured by real property and the investor's name would appear on a first position trust deed;
4. VesCor had an impeccable track record, no prior lawsuits;
5. VesCor had made payments to investors for over 20 years;
6. VesCor was in good condition and was reliable;
7. VesCor was very successful at developing real estate;
8. Investors would receive a great return on their money;
9. "You can't lose here . . . property is booming"; and
10. Investor funds were collateralized by assets of the company equal to twice the outstanding principal balance of the investors' notes.

### Omissions

In connection with the offer and sale of securities, MOORE, directly or indirectly, omitted the following material information to some or all investors:

1. In 1992, VesCor Capital Corporation entered into a Stipulation and Consent Order with the Utah Division of Securities (the Division), whereby VesCor, without admitting to the Division's findings, agreed to (1) pay a fine of \$5,000, (2) rescind its offer and sale of securities to its investors, and (3) not engage in any future violations of the Utah Uniform Securities Act.
2. In 2002 VesCor Capital Corporation and Val Southwick entered into a Stipulation and Consent Order with the Utah Division of Securities, whereby VesCor and Mr. Southwick, without admitting to the Division's findings, agreed to (1) pay a fine of \$75,000, (2) disclose the existence of the 2002 Stipulation in connection with any future offer or sale of any security for a period of ten years, (3) rescind VesCor's offer and sale of securities to its investors,

and (4)not engage in any future violations of the Act.

3. In October 2004, Val Southwick, on behalf of VesCor Capital Corp., plus Christopher Layton and MOORE, on behalf of VesCorp Capital IV-M, LLC; VesCorp Capital IV-A, LLC; and VesCorp Capital, LLC, each signed a letter / agreement, addressed to the Division's Director of Corporate Finance (Benjamin Johnson), affirming that neither they nor any employee, director, officer, agent, affiliate, member or successor of the relevant issuing entity or its affiliate, agent, or successor, would sell, offer to sell, or solicit offers to purchase any security (including roll-overs of existing notes / securities) in or from Utah.
4. That MOORE did not know the financial condition of VesCor because audited financial statements were not prepared until July 2005.
5. A preliminary draft of the combined financial statements for VesCor and its affiliates for the year ended December 31, 2003, prepared by Tanner LC, in July 2005, showed a deficit of \$67,095,011.

6. A preliminary draft of the combined financial statements for VesCor and its affiliates for the year ended December 31, 2004, prepared by Tanner LC, in July 2005, showed a deficit of \$77,064,876.
7. Val Southwick had an extensive history of civil litigation, which included, between March 1987 and April 2007, a total of \$4,813,295 in judgments, five settlements for unknown amounts, two currently pending claims, and two satisfied claims totaling \$70,962.
8. MOORE would receive a commission in return for bringing in investor money, or for keeping investors invested (roll-overs).
9. New investor funds were being used to pay interest to prior investors, i.e., a Ponzi scheme.

**COUNT 1**  
**SECURITIES FRAUD, a second degree felony**

On or about March 6, 2004, Christmas contacted MOORE, via telephone, at the VesCor office in Davis County, Utah, to inquire about an investment in VesCor. MOORE told Christmas the investment was reasonably safe and that there was no risk. MOORE also told Christmas his investment would be FDIC insured through

the Trust Company of America. MOORE then mailed binders of information to Christmas, regarding the investment in VesCor. After receiving the binders, Christmas called MOORE again in March 2004. MOORE instructed Christmas on how to make the investment through the Trust Company of America, an IRA custodian utilized by VesCor.

On or about March 23, 2004, Christmas invested \$113,500 in a VesCor Accrual Promissory Note, via cashier's check made payable to the Trust Company of America. Christmas invested money from a traditional IRA, and MOORE was aware that Christmas was investing using money from an IRA. Christmas' promissory note was signed by Val Southwick on behalf of VesCor Capital Inc., matured in five years, and promised annual interest of 15.5%. To date, Christmas has received no return of principal or interest on his investment.

MOORE did not explain the risks of the investment to Christmas. MOORE failed to tell Christmas about, among other things, VesCor's 1992 Stipulation and Consent Order with the Division; VesCor's 2002 Stipulation and Consent Order with the Division; Southwick's prior litigation history; that MOORE would

receive a commission; and that investor funds were being used to pay prior investors. MOORE failed to disclose to Christmas that MOORE did not know the financial condition of VesCor because audited financial statements had not been prepared.

**COUNT 2**  
**SECURITIES FRAUD, A second degree felony**

On or about July 1, 2003, Gerry D'Elia invested \$100,000 in an accruing VesCorp Capital, LLC, promissory note, which was signed by Chris Layton as the Manager of VesCorp Capital, LLC. The note promised accruing interest of 10% per year, and was to mature in five years.

On or about August 6, 2004, D'Elia invested another \$126,410.04 in an accruing VesCorp Capital IV-A, LLC, promissory note, which was signed by MOORE. MOORE is the manager of Advanced Business Development, LLC, the entity that manages VesCorp Capital IV-A, LLC. The note promised interest of 12% per year (accruing) and was to mature in 26 months. D'Elia used retirement funds to invest.

D'Elia was introduced to the investment opportunity in VesCor notes by his financial advisor, Mike Metters. Metters was employed by Investment Management Company at the time D'Elia

invested in VesCor. Metters told D'Elia that the VesCor investment was a safe and secured investment; the VesCor investment was as good as Metters had seen in his career; VesCor had an impeccable track record; VesCor had no prior lawsuits and no history of non-payment for over 20 years; Val Southwick would manage the investment; Metters had thoroughly researched the investment and discussed it with Southwick; D'Elia's name would be listed on a trust deed to secure his investment; VesCor only loaned 60% loan-to-value giving investors a 40% "buffer" of security; and VesCor performed better than a REIT.

Prior to D'Elia making his second investment in 2004, Metters told D'Elia that VesCorp Capital IV-A, LLC was the same company as VesCorp Capital, LLC, and all terms of the note were the same as the first (2003 note). Metters also told D'Elia the VesCorp Capital IV-A, LLC, prospectus was exactly the same as the VesCor Capital, LLC, prospectus. Metters told D'Elia to rely on the first prospectus in making his decision to invest.

The second prospectus given to D'Elia included vague disclosures of Southwick's litigation history and VesCor's 2002 Stipulation and Consent Order with the Division of Securities.

Later, D'Elia sent several letters (via facsimile and mail) to MOORE (one to Brock Hancock) requesting the return of his investment. D'Elia sent one letter to Brock Hancock on July 19, 2006, and two letters to MOORE (November 3, 2006 and January 15, 2007). In response to these letters MOORE told D'Elia that returning the money would not be a problem, but D'Elia needed to send VesCor some completed documents. To date, D'Elia has received no return of principal or interest on his investment with VesCor.

MOORE did not provide D'Elia with a complete picture of VesCor's 2002 Stipulation and Consent Order with the Division, or of Southwick's prior litigation history. MOORE did not tell D'Elia that MOORE would receive a commission from his investment. MOORE did not tell D'Elia that his money would be used to pay prior investors. MOORE failed to disclose to D'Elia that MOORE did not know the financial condition of VesCor because audited financial statements had not been prepared.

**COUNT 3**  
**SECURITIES FRAUD, A second degree felony**

The Hubers invested a total of \$100,000 in VesCor Accrual Promissory Notes between three investments: \$25,000 in March

2003, \$25,000 in April 2003, and \$50,000 on January 3, 2006. The Hubers invested using money from their savings and retirement funds. The Hubers' only contact person with VesCor was MOORE. The Hubers' promissory notes, including the one dated January 3, 2006, promised interest of 15% per year (accruing), and were to mature in five years. The notes were all signed by Val E. Southwick, as the president of VesCor Capital, Inc.

In February or March 2003, MOORE told the Hubers that it was a high yield investment with low to moderate risk and that the investment was safe due to collateral equal to twice the amount invested. MOORE told the Hubers their money would be used to invest in property located in Las Vegas, and property located by Utah Lake. MOORE also told the Hubers they could withdraw their money early, but there would be an associated penalty fee. The security agreements MOORE provided to the Hubers also stated that the collateral would be maintained at a value of twice the amount of the principal investment.

The Hubers have received nothing from their investments in VesCor.

MOORE did not tell the Hubers about VesCor's 2002

Stipulation and Consent Order with the Division. The Hubers were not told about Southwick's prior litigation history. MOORE did not tell the Hubers that MOORE would receive a commission from their investment. MOORE did not tell the Hubers their money would be used to pay prior investors. Prior to the Hubers' last investment in 2006, MOORE did not tell them that VesCor and its principal employees, including MOORE, had agreed they would not solicit or accept any funds from Utah residents after October 2004. Prior to the Hubers' last investment in 2006, MOORE did not tell the Hubers that VesCor's draft combined financial statements showed a \$64 million equity deficit for 2003, and a \$77 million equity deficit for 2004.

**COUNT 4**  
**SECURITIES FRAUD, A second degree felony**

Michael LeDuc invested \$155,200 in a VesCor Capital Inc. Accrual Promissory Note on or about February 25, 2004. The note promised interest of 16% per year, and was to mature in five years. LeDuc invested using money from his 401K, and MOORE was aware that LeDuc was investing using money from his 401K.

Prior to investing, LeDuc met with MOORE to discuss the investment opportunity. This meeting took place at the VesCor

offices in Davis County, Utah, in December 2003. Southwick joined the meeting sporadically, but only for a moment. MOORE gave LeDuc two binders during the meeting and walked him through the contents of those binders. The binders included LeDuc's Accrual Promissory Note and Security Agreement and other information regarding the investment. MOORE told LeDuc his money would be used to purchase, develop or renovate, and sell real estate. MOORE said once the property sold, LeDuc's investment principal and interest would be returned. MOORE told LeDuc his investment was secure because the money was invested through the Trust Company of America, a custodian of funds. MOORE told LeDuc that MOORE had his own money invested in VesCor. The documents in the binder include some misrepresentations: i.e., that the investor holds a secured note; the loans made by VesCor are secured by first trust deeds; the investment is supported by 200% collateral throughout the duration of the investment; and the investor's principal balance is supported by collateral equal to twice its value (to name a few).

LeDuc has received nothing from his investment in VesCor.

MOORE did not tell LeDuc about VesCor's 2002 Stipulation and

Consent Order with the Division. LeDuc was not told about Southwick's prior litigation history. MOORE failed to disclose to LeDuc that MOORE did not know the financial condition of VesCor because audited financial statements had not been prepared.

**COUNT 5**  
**SECURITIES FRAUD, A second degree felony**

Elizabeth and Brant Seamons invested a total of \$85,737.65 on or about August 28, 2001, between two separate investments in VesCor Capital, Inc. Accrual Promissory Notes. The notes promised interest of 10.5% per year (accruing), and matured in four years. The Seamons used retirement funds to invest.

The Seamonses met with MOORE prior to investing, and he remained their primary contact regarding their investments. Prior to investing, MOORE offered to pay all expenses for the Seamonses to travel to Nevada and the Siena Office Park project. MOORE told the Seamonses that VesCor was very successful in real estate development; they would receive a great return on their money; the company purchases, develops, and sells real estate projects; VesCor had a 29 year history of success with real estate projects; and their investment would be secured by assets

of the company.

In May 2004, the Seamonses received two letters from Val Southwick and MOORE regarding the status of each of their investments. In the letters (which are almost identical), Southwick and MOORE state, "your investment is going strong" and "In view of these uncertain investment times, it is reassuring to enjoy dependable accrued interest." Toward the end of the letters, Southwick and MOORE state, "We suggest continuing with your investment."

Around the time their notes matured (September 2005), Elizabeth Seamons made a written request of VesCor to return of their investment funds. MOORE contacted Mrs. Seamons (she believes via telephone) and told her that notice of 90 days was necessary to withdraw the funds. The Seamonses therefore let the investments roll over, with the intent to give adequate notice prior to the next maturity date.

The Seamonses have received nothing from their investment in VesCor.

At the time of the note roll-over, MOORE did not tell the Seamonses about VesCor's 2002 Stipulation and Consent Order with

the Division. The Seamonses were not told about Southwick's prior litigation history. MOORE did not tell the Seamonses that MOORE would receive a commission from their investment. MOORE did not tell the Seamonses their money would be used to pay debts owed to other investors. MOORE did not tell the Seamonses that VesCor and its principal employees, including MOORE, had agreed they would not solicit or accept any funds from Utah residents after October 2004, including roll-overs. MOORE did not provide the Seamonses with VesCor's combined financial statements which would have revealed a \$64 million equity deficit for 2003, and a \$77 million equity deficit for 2004.

**COUNT 6**  
**SECURITIES FRAUD, A second degree felony**

The Shumways invested a total of \$87,250 in two VesCor Capital Inc. Promissory Notes on November 26, 2003. The Shumways invested in VesCor by rolling over their IRA accounts with New York Life Securities Inc., into an IRA account with the Trust Company of America. One of the Shumways' promissory notes promised interest of 12% per year (paid monthly), and matured in five years. The other note promised interest of 14% per year (accruing), and matured in five years. Both notes were signed by

Val Southwick.

In November 2003, Mr. Shumway spoke to MOORE over the telephone about an investment in VesCor. MOORE told Mr. Shumway he could make 12% annual interest on an investment in VesCor; VesCor was in the business of buying and selling properties; VesCor made money through renting buildings to tenants; Shumway's investment would be used to buy, develop, and sell different real estate projects; the investment was secured and safe.

Still in November 2003, MOORE visited the Shumways at their home in Pleasant Grove, Utah. The meeting lasted approximately one and a half hours. MOORE provided "closing documents" to the Shumways, which included an income stream document, promissory note, security agreement, private placement agreement, and a document relating to Trust Company of America. MOORE gave a thorough explanation of each document included in the "closing documents." The Shumways told MOORE they had lost some money with New York Life. MOORE responded "you can't lose here . . . property is booming." MOORE said there were no risks involved. MOORE said properties were selling like crazy and investors could make a lot of money in real estate. MOORE said if VesCor

defaulted, the Shumways would recoup five times the amount of their principal investment. MOORE said investor funds were collateralized by assets of the company equal to twice the outstanding principal balance of the investors' notes.

The Shumways received a total of approximately \$14,000 in interest payments from VesCor. The interest payments stopped in June 2006.

MOORE did not tell the Shumways about VesCor's 2002 Stipulation and Consent Order with the Division. The Shumways were not told about Southwick's prior litigation history. MOORE did not tell the Shumways that MOORE would receive a commission from their investment. MOORE did not tell the Shumways their money would be used to pay prior investors. MOORE failed to disclose to the Shumways that MOORE did not know the financial condition of VesCor because audited financial statements had not been prepared.

**COUNT 7**

**SALE BY AN UNLICENSED AGENT, A third degree felony**

On or about March 6, 2004, in Davis County, Utah, MOORE offered an investment in VesCor securities to Allan Christmas. On or about March 23, 2004, Christmas invested \$113,500 in a

VesCor Accrual Promissory Note, via cashier's check made payable to the Trust Company of America. When offering and selling these securities (for commission) on behalf of VesCor, MOORE was acting as an agent of an issuer. MOORE has never been licensed to sell securities in Utah as an agent of this issuer, or any other issuer.

**COUNT 8**

**SALE BY AN UNLICENSED AGENT, A third degree felony**

On or about January 3, 2006, in Davis County, Utah, MOORE offered and/or sold VesCor securities to John and LaRae Huber. When offering and selling these securities (for commission) on behalf of VesCor, MOORE was acting as an agent of an issuer. MOORE has never been licensed to sell securities in Utah as an agent of this issuer, or any other issuer.

**COUNT 9**

**SALE BY AN UNLICENSED AGENT, A third degree felony**

In December 2003, in Davis County, Utah, MOORE offered and/or sold VesCor securities Michael LeDuc. LeDuc invested \$155,200 in a VesCor Capital Inc. Accrual Promissory Note on or about February 25, 2004. When offering and selling the securities (for commission) on behalf of VesCor, MOORE was acting as an agent of an issuer. MOORE has never been licensed to sell securities in Utah as an agent of this issuer, or any other

issuer.

**COUNT 10**

**SALE BY AN UNLICENSED AGENT, A third degree felony**

In May 2004, in Washington County, Utah, MOORE offered and/or sold VesCor securities to Brant and Elizabeth Seamons. The Seamonses rolled over their existing VesCor investment of \$85,737.65 in September 2005. When offering and selling these securities (for commissions) on behalf of VesCor, MOORE was acting as an agent of an issuer. MOORE has never been licensed to sell securities in Utah as an agent of this issuer, or any other issuer.

**COUNT 11**

**SALE BY AN UNLICENSED AGENT, A third degree felony**

In November 2003, in Davis County, Utah, MOORE offered and/or sold VesCor securities to Kay and Linda Shumway. The Shumway invested \$87,250 in two VesCor Capital Inc. Promissory Notes on November 26, 2003. When offering and selling these securities (for commission) on behalf of VesCor, MOORE was acting as an agent of an issuer. MOORE has never been licensed to sell securities in Utah as an agent of this issuer, or any other issuer.

**COUNT 12**  
**PATTERN OF UNLAWFUL ACTIVITY, A second degree felony**

Commencing on or about May 24, 2002, MOORE engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. § 76-10-1603. The defendant: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 11 above, in which he participated as a principal, or he used or invested, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three or more violations of securities fraud. This is a violation of Utah Code Ann. § 76-10-1603(5), a second degree felony.

**COUNT 13**  
**ABUSE OF A VULNERABLE ADULT, A third degree felony**

John and LaRae Huber was 65 years of age or older when they invested \$50,000 with VesCor in 2006. MOORE had a business relationship with the Hubers, and deceptively obtained and used their funds with the intent to temporarily or permanently deprive them of the use, benefit, or possession of their property.

**SUMMARY**

There is probable cause to believe defendant **Shawn H. Moore** committed the following offenses:

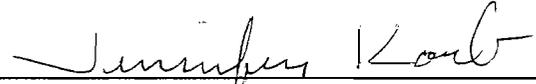
**SECURITIES FRAUD,**  
**A second degree felony, 6 counts**

**SALE BY AN UNLICENSED AGENT,**  
**A third degree felony, 5 counts**

**PATTERN OF UNLAWFUL ACTIVITY,**  
**A second degree felony, 1 count**

**ABUSE OF A VULNERABLE ADULT**  
**A third degree felony, 1 count**

DATED this 18<sup>th</sup> day of November 2008.

  
\_\_\_\_\_  
JENNIFER R. KORB, Affiant

SUBSCRIBED AND SWORN to before me this  
18 day of Nov, 2008.

  
\_\_\_\_\_  
JUDGE of the THIRD DISTRICT COURT

