FILED
at Santa Fe, NM
DEC 21 2011
MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cr. No. 11-404 BB
	)	
DOUGLAS F. VAUGHAN,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, DOUGLAS F. VAUGHAN, and the Defendant's counsel, Amy Sirignano and Trace Rabern:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorneys and is fully satisfied with those attorneys' legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:

a. to plead not guilty, or having already so pleaded, to persist in that plea;

b. to have a trial by jury; and

c. at a trial:

1) to confront and cross-examine adverse witnesses,

2) to be protected from compelled self-incrimination,

3) to testify and present evidence on the Defendant's own behalf, and

4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Counts 1 and 4 of the indictment. Count 1 charges a violation of 18 U.S.C. §§ 1343 and 2, that being Wire Fraud. Count 4 charges a violation of 18 U.S.C. §§ 1341 and 2, that being Mail Fraud.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose for each of Counts 1 and 4 is:

a. imprisonment for a period of not ~~less~~ more than twenty (20) years;

b. a fine not to exceed the greater of $250,000.00 or twice the pecuniary gain to the defendant or pecuniary loss to the victim;

c. a mandatory term of supervised release of not more than ~~three~~ five (5) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could be returned to another period of incarceration and a new term of supervised release.);

d. a mandatory special penalty assessment of $100.00; and

e. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is not limited to ordering restitution only for the amounts involved in the particular offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case. The parties further agree that the amount of restitution and the identities of the victims to whom restitution is owed will be determined by the Court after the submission of evidence and argument by the parties.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offenses to which I am pleading guilty beyond a reasonable doubt. I specifically admit the facts set forth in the Addendum to this agreement, and declare under penalty of perjury that all of these facts are true and correct.

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crimes to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. The United States and the Defendant stipulate pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) as follows:

a. The Defendant shall be sentenced to concurrent terms of imprisonment of between one hundred twenty (120) months and one hundred forty-four (144) months. The Court will determine the sentence within that range after the submission of evidence and arguments by the parties. The Defendant retains his right to request a sentence at the lowest end of that range and the United States retains its right to request a sentence at the highest end of that range.

b. The remaining components of the Defendant's sentence, including the term and conditions of supervised release, and any fine and/or restitution, will be determined by the Court after preparation of the Presentence Report and the submission of any evidence and argument by the parties.

c. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted in the Addendum to this plea agreement, as well as any facts

to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

d. The Defendant understands that, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), should the Court elect to accept the plea agreement, the above stipulations will be binding on the Court. Should the Court reject the plea agreement, Defendant will be afforded an opportunity to withdraw his plea of guilty.

DEFENDANT'S ADDITIONAL OBLIGATIONS

11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

12. The Defendant is also a defendant in a civil case styled *Securities and Exchange Comm'n v. Douglas F. Vaughan, et al.*, 10-CV-263 MCA-WPL (D.N.M.). The Defendant agrees to resolve the civil case against him as follows:

a. The Defendant agrees to consent to entry of a judgment by the United States District Court for the District of New Mexico in *Securities and Exchange Commission v.*

Douglas F. Vaughan, et al., CV 10-263 MCA, that (1) admits the factual basis of his guilty plea in *United States v. Douglas F. Vaughan*, 11-CR-404 BB (D.N.M.); (2) permanently restrains and enjoins the Defendant from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78o(a)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; (3) orders the Defendant to pay disgorgement of $74,745,723.93 which, subject to Commission approval, will be deemed satisfied by the order of restitution and forfeiture in the Judgment entered in the above-cited criminal case; and (4) subject to Commission approval, does not order the Defendant to pay a civil penalty under Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)] in light of the criminal sanctions ordered by the Court in the criminal case.

b. Subject to Commission approval, the Defendant also agrees to consent to the entry of an order by the Securities and Exchange Commission in an administrative proceeding that bars him from (1) association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and (2) participation in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

13. Upon entry and acceptance of this plea agreement, the Defendant agrees he will enter into a stipulated judgment in United States Bankruptcy Court for the District of New Mexico, No. 7-10-10763 S and Adv. No. 10-01138, that (a) admits for purposes of the

bankruptcy matter the factual basis of his plea of guilty in this related criminal case (*United States v. Douglas F. Vaughan*, 11-CR-404 BB (D.N.M.)); (b) stipulates that the factual basis in this criminal case constitutes good and sufficient grounds on which to deny the Defendant a discharge pursuant to the United States Trustee's complaint of August 30, 2010, requesting that discharge be denied; and (c) stipulates to denial of discharge.

FORFEITURE

14. The Defendant agrees to forfeit, and hereby forfeits, whatever interest the Defendant may have in any asset derived from or used in the commission of the offense(s) in this case. The Defendant agrees to cooperate fully in helping the United States (a) to locate and identify any such assets and (b) to the extent possible, to obtain possession and/or ownership of all or part of any such assets. The Defendant further agrees to cooperate fully in helping the United States locate, identify, and obtain possession and/or ownership of any other assets about which the Defendant may have knowledge that were derived from or used in the commission of offenses committed by other persons.

15. The Defendant agrees to the imposition of a money judgment against the Defendant in the amount of $74,745,723.93, representing a portion of the gross proceeds the Defendant derived from the offense charged in the indictment.

16. The Defendant voluntarily and immediately agrees to forfeit to the United States all of the Defendant's right, title, and interest in the following assets and properties:

a. Funds in the amount of $38,298.24 seized on or about August 1, 2011, from the Bankruptcy Trustee.

b. Real property located at 6644 Baby's Tear Place, Spring Valley, Nevada,

which is more particularly described as Unit 6 Parcel 24 at Rhodes Ranch, Plat Book 124, page 84, lot 132, block 2.

17. The Defendant agrees to fully assist the United States in the forfeiture of the above-described property and to take whatever steps are necessary to pass clear title to the United States, including but not limited to execution of any documents necessary to transfer the Defendant's interest in the above-described property to the United States.

18. The Defendant agrees to waive the right to notice of any forfeiture proceeding involving the above-described property.

19. The Defendant knowingly and voluntarily waives the right to a jury trial on the forfeiture of the above-described property. The Defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses to the forfeiture of the Defendant's interest in said property in any proceeding. The Defendant agrees to waive any jeopardy defense or claim of double jeopardy, whether constitutional or statutory, and agrees to waive any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of excessive fine, to the forfeiture of said property by the United States.

WAIVER OF APPEAL RIGHTS

20. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, at or under the maximum statutory penalty authorized by law, as well as any order of restitution entered by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the

issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

GOVERNMENT'S AGREEMENT

21. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

a. Following sentencing, the United States will move to dismiss Counts 2-3 and 5-30 of the Indictment.

b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

22. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

23. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

24. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any

crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

25. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of $200.00 in payment of the special penalty assessments described above.

ENTIRETY OF AGREEMENT

26. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding. This agreement is effective upon signature by defendant, his counsel, and an Assistant United States Attorney.

AGREED TO AND SIGNED this 21st day of DECEMBER, 2011.

KENNETH J. GONZALES
United States Attorney

GREGORY J. FOURATT
Assistant United States Attorney
Post Office Box 607
Albuquerque, New Mexico 87102
(505) 346-7274

We are DOUGLAS F. VAUGHAN's attorneys. We have carefully discussed every part of this Agreement with him. Further, we have fully advised him of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. To our knowledge, our client's decision to enter into this Agreement is an informed and voluntary one.

AMY SIRIGNANO
Attorney for the Defendant

TRACE L. RABERN
Attorney for the Defendant

I have carefully discussed every part of this Agreement with my attorneys. I understand the terms of this Agreement, and I voluntarily agree to those terms. My attorneys have advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this Agreement. Finally, I am satisfied with the representation of my attorneys in this matter.

DOUGLAS F. VAUGHAN
Defendant

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ADDENDUM (Admission of Facts)

The Vaughan Company, Realtors

At all times relevant to the Indictment, I was the the chairman, chief executive officer, president, and majority owner of The Vaughan Company, Realtors (hereafter "VCR"). In or about 1993, I began an investment program in which I accepted money on behalf of VCR from investors in exchange for interest-bearing promissory notes.

The term of the notes varied but was typically three years and the interest rate ranged from as low as approximately 8% to as high as 40% per year. The notes typically provided that interest was to be paid in monthly installments. At the end of the term of a note, I either caused the principal of the note to be paid off or offered the investors the opportunity to "roll over" the principal into a new note typically at the same or higher interest rate. I signed each promissory note on behalf of VCR.

The promissory notes contained the following language purporting to limit the size of the promissory note program: "This Note is one of an issue of Promissory Notes in the aggregate principal amount not to exceed [a sum certain of money] and issued in various denominations, interest rates, and maturities." The sum certain identified in the promissory notes increased gradually but never exceeded $2,500,000.00. Another provision of the promissory note reiterated that "[t]his Note is part of an issue the aggregate amount of which shall not exceed [the sum certain identified in the earlier paragraph]."

The promissory notes also provided that "[t]his Note and all Notes of this issue are secured by a Deed of Trust to [Name of Trustee]." I pledged to this trust certain bank accounts, stock holdings, and pieces of real property that I owned in my personal capacity.

In addition to VCR's corporate promise to repay investors and the properties pledged to the Deed of Trust, the promissory notes also purportedly were collateralized by a "Personal Guarantee" that I signed and gave to each investor. This guarantee signified that I was promising, in my personal capacity, to pay the promissory notes.

I caused to be distributed to proposed investors an "Executive Summary" explaining the promissory note program and how the invested funds would be used. The language in the Executive Summary varied little over the years and I continued to distribute them until near the date on which I and VCR filed for bankruptcy protection. As an example, the 2005 version of the Executive Summary included this excerpt:

> What are we using the funds for today? There are two main reasons:
>
> 1) We are the only real estate company in Albuquerque that I know of that has a successful, written guaranteed sale plan. This is a program where we take our client's home in trade when they buy another home from us. A typical transaction would be someone who owns a $150,000 house who wants to buy a $300,000 house, but doesn't know how to overcome the age old dilemma -- Do I sell my current home first and then buy, or do I buy the bigger house first and then try to sell my home? If they do the former, they will have an intermediate expensive move, as the buyer of their old home will not wait while they look for the new home. And, if they choose the latter course of action, they're stuck with double house payments, even if they can qualify for the bigger house, until they sell their older house. This is a great marketing tool that has enabled our firm to make a lot of transactions and, also, attract a lot of listings. The average loan that we advance on a trade-in is approximately $40,000. We are, however, very well protected, as we only advance to a maximum of 75% of an appraisal less the current existing mortgage. Whenever a homeowner participates in this program, we charge them an extra 1% commission which we do not split with our agent. In addition to that, we charge the homeowner 10-12% on the money we advance them for the period of time that it is outstanding. Our average length of time has been between 90-120 days. Our return (20-25%) is significant when you

> take into consideration the relatively short period of time we have the funds advanced.
>
> 2) The second program we are using the money for is to acquire smaller real estate companies. In Albuquerque, there are 500 real estate companies, two of which make up 50% of the market. We are one of the two. We have purchased, in our history, about ten real estate companies. It's a faster way for us to capture more market share, and, quite frankly, is a cheaper way to grow than via the internal hiring of new people and training them.

In October 2009, I caused the Executive Summary to be amended to add a third use of the promissory note investors' money: "About once a year I will find a real 'steal' that I can invest in and make a significant profit if I am able to move quickly enough. I've been able to do this on the average of once per year and have realized significant profits."

In contrast to the representations in the Executive Summary, I used the proceeds from the promissory note program primarily for three undisclosed purposes: (a) to pay the interest and principal on promissory notes taken out by earlier investors; (b) to pay myself, either as salary, bonuses, or other personal transfers; and (c) to subsidize the corporate operations of VCR, which was generating insufficient "legitimate" real estate-related revenue to sustain itself.

In addition to distributing the Executive Summaries, I also caused promissory noteholders to receive newsletters along with their monthly interest checks. These newsletters, which I prepared personally, often were accompanied by positive news articles regarding the real estate market in Albuquerque. For example, the July 2009 newsletter included this excerpt in a "six month report card" for the companies I controlled:

> From a micro analysis, the report card for the Vaughan Companies is quite good. . . .
>
> The Vaughan Company Realtors (our residential real estate

> company founded in 1973) saw its May pending sales jump 17% over May 2008. June pending sales were up 18% over June of 2008. Also, June 2009 was The Vaughan Company Realtors best month in pending sales since October 2006!

The letter closed with "Best wishes. Looking forward to a healthy and prosperous of [sic] 2009."

The August 2009 newsletter stated there was a "housing market recovery." The September 2009 and October 2009 newsletters claimed, respectively, "great news!" and "even more great news!" All three newsletters were accompanied by news articles providing positive information regarding the real estate business. In none of these newsletters, nor in any of their predecessors, did I ever mention the recurring and growing financial losses that VCR had been sustaining every year for several years. Similarly, my newsletters never mentioned that the noteholders would cease to be repaid unless I continued to find new promissory note investors.

I administered the promissory note program by myself, with assistance from my accounting manager and other clerical personnel. Under my supervision, amortization schedules for the promissory note program were made, access to which was restricted primarily to me and my accounting manager. In the last three or four months of 2009 and in the first two months of 2010, I personally decided which investors got paid and when they were paid.

I used the VCR operating account to manage the flow of money into and out of the promissory note program. All investments were deposited into the operating account, where they were commingled with real estate commissions and other sources of VCR revenue. Similarly, I caused all interest and principal payments on the promissory notes to be made from that account.

By at least as early as 2005, the promissory note program had become an important source of funding for VCR. Indeed, without the infusion of capital provided by new promissory

note investors, VCR was insolvent because VCR was not earning enough revenue from its legitimate real estate-related entities to pay its operating expenses and its debts. Nonetheless, I continued to distribute substantially the same marketing materials, sign the same promissory notes, and make the same corporate and personal guarantees.

I caused the Deed of Trust to be modified to raise the total investment limit under the promissory note program to $2,500,000.00. Although I represented to investors that VCR would not exceed a total of $2,500,000.00 in promissory notes, I knew that the aggregate principal balance owed to the noteholders in the promissory note program (as reflected either in VCR's internal accounting records or VCR's corporate tax returns) substantially exceeded that amount. Indeed, at the end of each year between 2004-2009, the approximate aggregate principal balance owed to the noteholders was $24,351,605.00 (2004), $32,229,363.37 (2005), $39,969,110.68 (2006), $49,984,845.80 (2007), $62,844,445.57 (2008), and $74,386,623.38 (2009).

From at least as early as 2005 through in or about February 2010, I used proceeds from new investors to make principal and interest payments to existing noteholders. In so doing, I lulled the existing investors into believing that they were being paid returns from VCR's legitimate business revenue rather than simply from the infusion of funds from new promissory note investors.

By misrepresenting the safety of the promissory notes and the security of the purported collateral, I continued to attract new investment capital. I did so even though I knew that VCR was steadily losing money. Indeed, VCR's corporate tax returns, which I signed, reflected annual net losses between 2004-2008 of $4,041,048 (2004), $5,595,285 (2005); $7,461,409 (2006), $9,913,893 (2007), and $13,313,323 (2008). I further understand that the corporate tax return

filed by the bankruptcy trustee on behalf of VCR for tax year 2009 reflected a loss for that year of $13,907,738. Consequently, just for tax years 2004-2009, VCR showed a cumulative net operating loss of more than $54,000,000.00.

Between in or about 2005 through in or about February 2010, I did not inform, either directly or indirectly, any investors making initial investments or rolling over earlier investments that:

a. Their investments would be used to pay the interest and principal to existing noteholders.

b. Without the infusion of capital provided by new investor deposits, VCR was insolvent and was not able to pay its obligations, including investor interest expense and principal repayment;

c. VCR had been losing money and carrying over losses every year since at least 1994, with a cumulative net operating loss at the end of 2009 of more than $70,000,000.00. Moreover, the cumulative net operating loss just for tax years 2004 through 2009 was more than $54,000,000.00.

d. In contrast to the Deed of Trust's explicit limitation that the aggregate principal owed to investors in the promissory note program would not exceed $2,500,000.00, the aggregate principal owed at the end of each year between 2004-2009 was $24,351,605.00 (2004), $32,229,363.37 (2005), $39,969,110.68 (2006), $49,984,845.80 (2007), $62,844,445.57 (2008), and $74,386,623.38 (2009).

e. I was using some investor proceeds for personal expenses, including housing, vehicles, travel, and entertainment.

f. I had been transferring myself funds from the VCR operating account which were coded in VCR's accounting records as "loans to shareholder." These transfers were referred to on VCR's corporate tax returns as "loans to shareholder." According to the corporate tax returns, the cumulative balance of these transfers at the end of each of the years 2003-2009 was $391,658 (2003); $1,621,795 (2004); $3,207,137 (2005); $4,279,503 (2006); $5,027,668 (2007); $5,175,966 (2008), and $4,692,951 (2009).

I believe that, had I provided any of the information in the preceding paragraph to promissory note investors who either invested new money or rolled over previous investments between in or about 2005 through in or about February 2010, the investors would not have invested in new notes and/or would not have rolled-over their existing notes.

Beginning in or about September 2009, I became unable to make all of the monthly payments that were owed to the promissory note investors. Consequently, I personally decided which investors would get paid and when the payments were mailed to them. I am aware that numerous VCR investors attempted to contact me, either directly or through my accounting manager or other employees, to determine why their monthly interest checks had begun arriving late or not at all. At no time did I relate to these investors, either directly or indirectly, that their interest checks were late or not sent at all because VCR had insufficient revenue to pay them.

On or about February 22, 2010, I filed for personal and corporate bankruptcy protection. At that time, the aggregate principal balance that VCR and I owed to approximately 600 noteholders was approximately $74,745,723.93. In November and December of 2009, as well as January and February of 2010, the interest expense owed to the investors exceeded $1 million per month. Despite the personal guarantee that I had signed and attached to each of the promissory

notes, I asserted a negative net worth when I filed for bankruptcy.

Throughout the life of the promissory note program, I caused the mails and interstate communications facilities to be used to administer the program. Certain investors sent money by interstate wire, whereas others did so via mail. I caused interest and principal payments to be sent primarily by mail, although occasionally via interstate wire. I also caused promissory notes, Executive Summaries, and monthly newsletters to be sent to investors either by mail, interstate electronic mail, or interstate facsimile.

Vaughan Capital, LLC

On or about June 20, 2008, I formed another investment company called Vaughan Capital, LLC (hereinafter "VC"). The sole "Initial Member of the Company" was Phoenician Financial Services, LLC, of which I was the sole owner. I caused to be prepared a Confidential Private Placement Memorandum ("Memorandum") for prospective VC investors. The Memorandum described me as the "Manager" of the Company and further stated that VC would be limited to a maximum of 24 investors and that its aggregate offering price was $10,000,000.00.

The Memorandum set forth a "business concept" for VC that began "[i]n the context of today's financial markets, a business opportunity has been identified for equity capital. The Company is being formed for the purpose of raising capital and investing in these opportunities." The business concept then went on to identify five investment "opportunities" that are described in pertinent part as follows:

> 1. *Investment in Distressed Properties.* Current financial markets, economic considerations, and real estate markets, have resulted in many properties that can be acquired at favorable prices. . . . The

> Company will identify these properties primarily in New Mexico, Arizona, and Nevada. Properties acquired would be rented, renovated if necessary, held for investment or resold at the earliest time that required rates of return are achieved.
>
> 2. *Loan Portfolios*. Existing lenders are selling loan portfolios of residential properties at significant discounts. The Company will attempt to locate loan portfolios which can be purchased at a discount, evaluate the collateral and the risks, and acquire those loan portfolios at prices which will achieve the sought after return.
>
> 3. *Loans*. The Company will identify and make loans to qualified borrowers with adequate collateral. These loans will generally be high interest rate loans which are classified as bridge loans or mezzanine financing.
>
> 4. *Bridge Loans*. The Company will offer loans to bridge the funding gaps before closing of permanent financing. These transitional loans are short-term in duration (generally less than one [1] year), and are generally associated with high fees for going past the due date to provide an incentive to the borrower to pay off the loan on or before the maturity date.
>
> 5. *Mezzanine Financing*. Mezzanine financing is generally put in place when a developer or property owner determines that short or medium term lending is less costly than raising additional capital or providing equity. These loans are typically high-yielding loans, subordinate to senior mortgage loans and collateralized by real estate properties. Mezzanine loans will typically have a longer duration than transitional or bridge loans.

In addition to the Memorandum, I also caused to be prepared an "Operating Agreement" that included a "Business Plan," which provided that the:

> Company will engage in three (3) avenues of business or acquisition. (1) The Company will make hard money loans which will include bridge loans and/or provide mezzanine financing to commercial customers that are qualified for the loans, and in most cases collateralized by second mortgages on real property; (2) the Company will acquire real properties, primarily residential, but including some commercial real estate, through discounted purchases, acquisition through foreclosure, or otherwise, so as to

> acquire properties at prices significantly lower than projected values; and (3) the Company will attempt to buy portfolios of residential loans at deeply discounted prices based on current market conditions.

In a cover letter that accompanied the Memorandum and the Operating Agreement, I emphasized the opportunities in which VC would invest its capital:

> There will be three revenue streams for investors:
>
> 1. We will purchase distressed real estate at 50¢ on the dollar or less. . . .
>
> 2. We will buy discounted first mortgages for less than 50¢ on the dollar. . . .
>
> 3. We will be a hard money lender primarily to investors/developers earning 22% plus on our money for short term loans (3 months to 36 months). . . .

Between on or about December 5, 2008 and on or about January 8, 2010, the other Vaughan Capital investors (not including me) invested a total of approximately $6,187,501.57 into VC. The total capitalization for VC was approximately $6,968,540.48.

An analysis of the VC account showed the following expenditures between December 5, 2008, and February 26, 2010:

a. $314,884.55 was returned to investors as distributions;

b. $316,727.77 was used to buy two single-family dwellings in or near Las Vegas, NV;

c. $16,575.48 was used to pay miscellaneous expenses, including to Desert Realty Inc. for costs associated with the two Las Vegas area home purchases;

d. $82,611.33 was transferred to me as allowed by the Memorandum for manager compensation; and

e. $6,232,092.74 was transferred to VCR's operating account, a substantial portion of which was transferred to VCR promissory note investors. A total of $713,459.58 was transferred back to VC.

I directed the transfers from VC to VCR, which began almost immediately after the first person other than me invested in VC. In my role as chairman of VCR, I signed promissory notes in which VCR promised to repay VC. These notes typically had three-year terms and interest rates between 14-17.5%. In addition, the notes promised that VCR would pay VC an origination fee ranging from 6-7.5%. Then, in my role as the Manager of VC, I agreed to these terms on behalf of VC. In sum and substance, therefore, I was dealing only with myself in authorizing and accepting these transfers from VC to VCR.

The VCR promissory note program was not one of the listed investment opportunities in the VC marketing literature, nor did I mention it in any discussions I had with prospective or existing VC investors. At no time did I communicate to prospective or existing VC investors that I had loaned, was loaning, and intended to continue loaning VC's capital to the VCR operating account for use in paying VCR's operating expenses, including interest expense owed to promissory noteholders.

I directed that money be loaned from VC to VCR on approximately 65 occasions. With the exception of two transfers of less than $100, the amounts transferred ranged from $14,000.00 to $250,000.00.

At various times from in or about May 2009 through December 2009, I directed that a total of $314,884.55 be distributed to VC investors. I caused these payments to be made for the purpose of lulling the existing VC investors into believing that their investments had been invested as promised in distressed real estate, discounted mortgages, or hard money loans (bridge loans or mezzanine financing) and were earning the return on those investments.

By the time I filed for personal and corporate bankruptcy, the almost $7 million of initial

capital in VC had shrunk to two residential properties in or near Las Vegas, Nevada, with an approximate total value of less than $350,000.00, and the remaining balance in VC's bank account of $5,648.61.

I believe that, had I disclosed to VC's investors that I intended to use, and in fact did use, the vast majority of VC's capital to repay VCR's promissory noteholders and pay corporate overhead, thereby temporarily forestalling the collapse of the promissory note program, the investors would not have invested in VC.

Throughout the life of VC, I caused the mails and interstate communications facilities to be used to administer the company. Certain investors sent money by interstate wire, whereas others did so via mail. I caused dividend payments to be sent primarily by mail, although occasionally via interstate wire. I also caused Private Placement Memoranda and associated correspondence to be sent to investors either by mail, interstate electronic mail, or interstate facsimile.

Count 1: Wire Fraud

Beginning as early as 2005 and continuing until in or about February 2010, my administration of the VCR promissory note program and Vaughan Capital LLC constituted a scheme and artifice to (a) defraud individuals and entities and (b) to obtain money from individuals and entities by false and fraudulent pretenses, representations, and promises. In executing the scheme and artifice, I did transmit and caused to be transmitted by means of wire communications in interstate commerce writings, signs, signals, and sounds, in violation of 18 U.S.C. §§ 1343 and 2.

It was an example of and a part of the scheme and artifice that:

a. On or about January 5, 2008, I told Investor A (a person whose true identity is known to me) in an interstate telephone conversation that VCR was a successful company in which he should invest. I did not disclose to him any of the material facts that are enumerated in sub-paragraphs a-f on pages 6-7 of this Attachment. I did not do so because I believed that Investor A would not have invested had he known any or all of those material facts.

b. On or about January 7, 2008, I caused to be mailed to Investor A a letter in which I described investing in a VCR promissory note as "a good place for our investors to park their cash, get an excellent return and yet be very well secured." I included with that letter an "Executive Summary" and represented that the Executive Summary described the manner in which VCR was currently using the investors' funds.

c. On or about February 7, 2008, I caused Investor A to invest $100,000.00 in the VCR promissory note program via interstate wire transfer from his Smith Barney Financial Management account to the VCR operating account.

d. On or about February 7, 2008, I caused to be electronically mailed in interstate commerce to Investor A a promissory note documenting the $100,000.00 investment in VCR at 13% interest for three years. The promissory note contained the following language: "This Note is one of an issue of Promissory Notes in the aggregate principal amount not to exceed $2,000,000.00 and issued in various denominations, interest rates, and maturities." This representation was materially false in that I knew that VCR had approximately $50 million in outstanding promissory notes.

Count 4: Mail Fraud

Beginning as early as 2005 and continuing until in or about February 2010, my

administration of the VCR promissory note program and Vaughan Capital LLC constituted a scheme and artifice to (a) defraud individuals and entities and (b) to obtain money from individuals and entities by false and fraudulent pretenses, representations, and promises. In executing the scheme and artifice, I caused documents, correspondence, and investment deposits and payments to be mailed, delivered and received either from the United States Postal Service or some other private or commercial interstate carrier, in violation of 18 U.S.C. §§ 1341 and 2.

It was an example of and a part of the scheme and artifice that:

a. In or about August, 2009, I caused a Vaughan Capital LLC Private Place Memorandum to be mailed to the New Mexico post office box of Investor C (a person whose true identity is known to me).

b. On or about August 20, 2009, I caused a Vaughan Capital income statement to be mailed to Investor C's post office box.

c. On or about January 6, 2010, on the basis of representations I made orally and in the Private Placement Memorandum, Investor C mailed a personal check for $125,000.00 and a signed Vaughan Capital LLC subscription agreement to me at my office in Albuquerque. The statements I made to him orally and in the Private Placement Memorandum, insofar as the statements related to the purposes for which the Vaughan Capital money would be invested, were materially false. I knew at that time that I already had been directing that the overwhelming majority of monies invested in Vaughan Capital be transferred to VCR to make interest and principal payments to VCR promissory note investors and to pay corporate overhead.

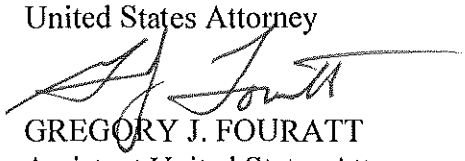
d. On or about January 6, 2010, I caused a signed copy of the Vaughan Capital LLC subscription agreement to be mailed to Investor C's post office box in New Mexico.

e. At no time did I inform Investor C that I was directing the overwhelming majority of money that had been invested in Vaughan Capital LLC to VCR in order to make interest and principal payments to VCR promissory note investors and to pay corporate overhead. I withheld that information because I believed that Investor C would not have invested in Vaughan Capital LLC if he knew how it actually was being used.

This document is an addendum to the plea agreement in this case. All of the terms of the plea agreement in this case, together with the terms of this addendum, constitute the complete plea agreement. The plea agreement may not be further altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of the Defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the Defendant, his counsel, and an Assistant United States Attorney.

AGREED TO AND SIGNED this 21ST day of DECEMBER, 2011.

KENNETH J. GONZALES
United States Attorney



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We are DOUGLAS F. VAUGHAN's attorneys. We have carefully discussed every part of this Addendum to the Plea Agreement with him. Further, we have fully advised him of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. To our knowledge, our client's decision to enter into this Agreement is an informed and voluntary one.

AMY SIRIGNANO
Attorney for the Defendant

TRACE L. RABERN
Attorney for the Defendant

I have carefully discussed every part of this Addendum to the Plea Agreement with my attorneys. I understand the terms of this Agreement, and I voluntarily agree to those terms. My attorneys have advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this Agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this Agreement. Finally, I am satisfied with the representation of my attorneys in this matter.

DOUGLAS F. VAUGHAN
Defendant