

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 04-00245-01-CR-W-FJG
)	No. 05-00048-01-CR-W-FJG
BRENT MICHAEL BARBER,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney’s Office for the Western District of Missouri (otherwise referred to as “the Government” or “the United States”), represented by Todd P. Graves, United States Attorney, and Linda Parker Marshall, Assistant United States Attorney, and the defendant, Brent Michael Barber (“the defendant”), represented by Patrick A. McInerney and Maxwell Carr-Howard.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty as follows:

a. To the Indictment in Case No. 04-00245-01-CR-W-FJG, hereafter referred to as Indictment 1, the defendant pleads guilty to Count One charging him with violations of 18 U.S.C. § 371 (conspiracy), Counts Two through 53 charging him with violations of 18 U.S.C. §§ 2314 and 2 (interstate transportation of funds obtained by fraud), and Counts 57 and 59, charging him with violations of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (money laundering).

b. To the Indictment in Case No. 05-00048-01-CR-W-FJG, hereafter referred to as Indictment 2, the defendant pleads guilty to Count One charging him with violations of 18 U.S.C. § 371 (conspiracy), Counts Two through 47 charging him with violations of 18 U.S.C. §§ 2314 and 2 (interstate transportation of funds obtained by fraud), and Counts 50 and 66, charging him with violations of 18 U.S.C. §§ 1957 and 2 (money laundering).

[A copy of the Indictments setting forth the charges are incorporated herein by reference.] By entering into this plea agreement, the defendant admits that he knowingly committed these offenses, and is in fact guilty of these offenses.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offenses to which he is pleading guilty are summarized below.

The factual basis for the defendant's plea of guilty is set forth in more detail in Counts One through 53, 57, and 59 of Indictment 1 and Counts One through 47, 50, and 66 of Indictment 2, which the defendant agrees accurately describe the facts.

Count One (Conspiracy) of Indictment 1 (No. 04-00245-01-CR-W-FJG)

The defendant Brent Michael Barber was the owner of Somerset Homes & Investment Company, and of the Beef Pit, a barbeque restaurant in Grandview, Missouri; he also had numerous bank accounts in his own and other names.

From about May through October 1999, Barber was a client of Ameriquest Mortgage, Gladstone, Missouri, branch, hereafter referred to as Ameriquest-Gladstone branch. During that period, he conspired with Roderick Criss (branch manager), Chauncey Calvert and Avonda Nicodemus (account executives), and others to obtain money by fraud from Ameriquest Mortgage and others and in the execution of the scheme to knowingly and willfully cause the interstate transfer of funds obtained by fraud.

It was part of the scheme that the coconspirators:

a. Fraudulently induced victim-investors to purchase real estate and obtain loans in connection therewith by promising that Barber would obtain renters for and sell the properties within a short period of time, that the victim-investors

would pay no money for the properties and have no expenses or obligations in connection with the properties, that the victim-investors would be paid fees or a percentage of the profits, and by other material false and fraudulent representations and omissions of fact;

b. Prepared or caused to be prepared false and fraudulent loan applications and supporting documentation for submission to Ameriquest Mortgage in the names of the victim-investors, making material false and fraudulent representations and omissions of fact therein, and causing the victim-investors to sign such loan applications without questioning the veracity of the representations contained therein;

c. Caused inflated appraisals to be prepared in relation to the properties;

d. Submitted false and fraudulent loan applications, appraisals, documentation, and other representations to Ameriquest Mortgage, making material false and fraudulent representations and omissions of fact therein, including false sales contracts, false settlement statements, false verifications of mortgage forms, false payoff letters regarding mortgages on the properties, false income verifications for the borrowers, false W-2 Wage and Tax Statements and false wage statements for the borrowers, and false verification of rent forms;

e. Caused Ameriquest Mortgage to approve the loan applications in reliance on the material false and fraudulent representations and omissions of fact;

f. Caused Ameriquest Mortgage to send in interstate commerce loan proceeds in the form of wire transfers and checks to Ameriquest-Gladstone branch and to Pinnacle Title;

g. Caused loan proceeds to be disbursed to Barber by representing that he and companies under his control held the first mortgage liens on the properties; and

h. Obtained personal benefit from the proceeds of the mortgage loans and from fees and commissions resulting therefrom.

A further description of the scheme and the overt acts committed in furtherance of the scheme are set forth in Indictment 1, Count One, paragraph 15, among others.

As a result of the conspiracy, between about June 9, 1999, and about September 27, 1999, in reliance on the material false and fraudulent representations and omissions, Ameriquest Mortgage approved 66 fraudulent loans in the approximate total amount of four million dollars (\$4,000,000.00).

From those proceeds and as a result of the scheme, between about June 1999, and mid-October 1999, defendant Brent Barber obtained by fraud funds in

an approximate total amount exceeding two million five hundred thousand dollars (\$2,500,000); Criss, Nicodemus, and Calvert obtained fees and commissions.

Counts 2 through 53 (Overt Act 9 through 60, Count One) (Interstate Transportation of Funds Obtained by Fraud) of Indictment 1

The defendant admits that, in furtherance of the conspiracy and as part of the scheme to defraud, on or about the dates listed in Counts Two through 53 (Overt Acts 9 through 60, Count One), he caused to be transferred in interstate commerce the amounts and forms of funds listed, which were received for the purposes listed and deposited as listed.

Counts 57 and 59 (Money Laundering) of Indictment 1

The defendant admits that, as a result of the scheme to defraud described in Count One, he received checks payable to Express Mortgage and Associated Mortgage, fictitious companies he created, which checks he deposited into bank accounts he controlled in the names of those companies; he thereafter wrote checks payable to other entities, as described below.

The defendant admits he conducted and caused to be conducted financial transactions affecting interstate commerce, that is, he wrote checks in the amounts and on the accounts listed below, when the funds represented by the transactions were the proceeds of the specified unlawful activity of interstate transportation of

money converted and taken by fraud, and the defendant knew that the funds were in fact the proceeds of some form of unlawful activity, and he further knew that the transaction was designed in whole or in part to conceal and disguise the source, ownership, and control of the proceeds of the unlawful activity. The transactions are described as follows:

	DESCRIPTION OF DEPOSIT	DESCRIPTION OF CHECK WRITTEN
Count 57	Deposit on 09/30/99 of Ameriquest checks drawn on the Chase Bank of Texas, payable to Express Mortgage in the amounts of \$38,404.12, \$45,740.26, \$35,508.88, \$40,464.29, \$38,918.29, and \$41,193.76, into the account of Brent Barber, d/b/a Express Mortgage, at American Sterling Bank	Check dated 10/01/99 on the account of Brent Barber, d/b/a Express Mortgage, signed by Brent Barber and payable to Brent Barber in the amount of \$240,229.56
Count 59	Deposit on 10/04/99 of Ameriquest checks drawn on the Chase Bank of Texas, payable to Express Mortgage in the amounts of \$36,225.30, \$42,372.41, \$35,503.29, \$36,866.39, \$52,127.93, \$42,946.15, and \$49,073.40 into the account of Brent Barber, d/b/a Express Mortgage, at American Sterling Bank	Check dated 10/04/99 on the account of Brent Barber, d/b/a Express Mortgage, signed by Brent Barber and payable to Brent Barber in the amount of \$295,117.87

Count One (Conspiracy) of Indictment 2 (No. 05-00048-03-CR-W-FJG)

In about October 1999, defendant Brent Barber approached co-defendant Roderick Criss and Chauncey Calvert and suggested they set up a mortgage broker business to broker mortgage loans, giving Barber's loans precedence. Criss and

Calvert agreed and thereafter set up Express Mortgage, Inc. Barber was a client. Barber conspired with Criss, Beckley, and others during that period to obtain money by fraud from lending institutions and in the execution of the scheme to knowingly and willfully cause the interstate transfer of funds obtained by fraud.

It was part of the scheme that the coconspirators:

a. Fraudulently induced victim-investors to purchase real estate and obtain loans in connection therewith by promising that Barber would obtain renters for and sell the properties within a short period of time, that the victim-investors would pay no money for the properties and have no expenses or obligations in connection with the properties, that the victim-investors would be paid fees or a percentage of the profits, and by other material false and fraudulent representations and omissions of fact;

b. Prepared and caused to be prepared false and fraudulent loan applications and supporting documentation for submission to the lenders in the names of the victim-investors, making material false and fraudulent representations and omissions of fact therein, and causing the victim-investors to sign such loan applications without questioning the veracity of the representations contained therein and forging the signatures of victim-investors;

- c. Caused false and inflated appraisals to be prepared in relation to the properties;
- d. Submitted false and fraudulent loan applications, appraisals, documentation, and other representations to the lenders, making material false and fraudulent representations and omissions of fact therein;
- e. Caused the lenders to approve the loan applications in reliance on the material false and fraudulent representations and omissions of fact;
- f. Caused the lenders to send in interstate commerce loan proceeds in the form of wire transfers and checks to Realty Title and others;
- g. Caused Realty Title to disburse loan proceeds to Barber; and
- h. Obtained personal benefit from the proceeds of the mortgage loans and from fees and commissions resulting therefrom.

A further description of the scheme and the overt acts committed in furtherance of the scheme are set forth in Indictment 2, Count One, paragraphs 5 through 16, among others.

As a result of the conspiracy, between about February 3, 2000, and December 26, 2001, in reliance on the material false and fraudulent representations and omissions, lenders approved approximately 223 fraudulent loans in the approximate total amount of \$15,608,733. From those proceeds and as a result of

the scheme, Brent Barber obtained by fraud funds in an approximate total amount exceeding \$4,000,000, which he deposited into accounts in his name and under his control at First Bank of Kansas City and Hillcrest Bank,. Co-defendants Criss and Beckley, and co-conspirators, obtained fees, commissions, and other payments.

Counts Two through 47 (Interstate Transportation of Funds Obtained by Fraud) of Indictment 2.

Defendant Barber admits that, in furtherance of the conspiracy and as part of the scheme to defraud, on or about the dates listed in Counts Two through 47, he caused to be transferred in interstate commerce the amounts and forms of funds listed, which were received for the purposes listed and deposited as listed.

Counts 50 and 66 (Money Laundering) of Indictment 2.

Defendant Barber further admits that, as a result of the scheme to defraud described in Count One, he knowingly engaged in monetary transactions affecting interstate commerce, in criminally derived property, drawing on funds obtained by fraud as described in Count One, in that he received checks payable to himself, which he deposited into the bank account described below, from which account he wrote checks, as described below:

	DESCRIPTION OF CRIMINALLY DERIVED FUNDS	DESCRIPTION OF CHECKS CONSTITUTING MONETARY TRANSACTIONS
Count 50	Deposit to defendant's account at First Bank of Kansas City of a check dated 02/29/00 in the amount of \$11,778.83, and checks dated 03/01/00 in the amounts of \$17,574.41, \$50,751.57, \$24,971.42, and \$27,375.63, drawn on the account of Hillcrest Bank, Overland Park, Kansas, payable to Brent Barber, for property purchased by Nick Minks, Steve Shore, and Dave Wittrock, which funds were commingled with funds already in the account	Checks dated 03/09/00, drawn on First Bank of Kansas City, payable to First Bank of Kansas City for \$43,600, and First National Bank of Missouri for \$200,000
Count 66	Deposit to defendant's account at Hillcrest Bank of a check dated 09/11/01, drawn on the account of Hillcrest Bank, Overland Park, Kansas, payable to Brent Barber in the amount of \$187,100.49, for property purchased by Elvin Barton	Money order dated 09/11/01 in the amount of \$135,770.74 and check dated 09/11/01, payable to Brent Barber in the amount of \$50,756.00, both drawn on Hillcrest Bank

Relevant Conduct

In addition to the above, the defendant admits that he engaged in "relevant offense conduct," as follows:

a. On June 20, 2002, the defendant fraudulently obtained approximately \$100,000 from John Gamble by misrepresenting the purchase price of the property at 1102 Grand Avenue, Kansas City, Missouri, and the defendant's alleged contribution toward the proposed purchase. The loss is \$100,000.

b. In September and October 2001, the defendant, acting through his business National Foreclosure Properties LLC, fraudulently obtained a commercial line of credit from Commercial Federal Bank, Lee's Summit, Missouri, on which Barber drew approximately \$480,532. As collateral, he pledged properties for which he provided inflated values and submitted inflated appraisals in support thereof. National Foreclosure Properties LLC has since defaulted on the loan. Commercial Federal Bank has sustained a loss of \$418,837.

c. On June 27, 2001, the defendant fraudulently obtained a loan from First Community Bank, Lee's Summit, Missouri, by misrepresenting the purchase price of the property at 601 E. Armour, Kansas City, Missouri. The defendant defaulted on the loan. After a foreclosure sale in November 2003, the bank sustained a loss of \$216,274.23.

d. Between April and July 2001, the defendant, doing business as National Foreclosure Properties LLC, fraudulently obtained loans from Garden City Bank, Garden City, Missouri, in the approximate amount of \$341,846. The defendant pledged 10 properties as collateral, for which he provided inflated values and submitted in support thereof inflated appraisals. He partially repaid the loan and defaulted on the balance. Garden City Bank sustained a loss of principal of approximately \$106,750.

e. In February 2001, in order to obtain a \$500,000 second mortgage on property in Ft. Myers, Florida, the defendant fraudulently misrepresented and caused to be misrepresented to Wachovia Bank, formerly doing business as First Union National Bank, the value of the property. Wachovia Bank sustained a loss of principal of \$500,000, plus interest of \$118,771.21.

f. On September 19, 2000, the defendant fraudulently obtained a loan from Jay Schippers and Henry Weinstein in the approximate amount of \$311,000 by misrepresenting that he would use the funds to purchase and repair properties, then sell the properties and repay the loan within a short time. He misrepresented the purchase prices, did not use the funds as represented, and did not repay the note. Schippers and Weinstein sustained a loss of \$311,000 principal.

g. On September 15, 2000, the defendant obtained a loan of \$500,000 from The Owen Family LLC (David L. Owen) to purchase real estate; the real estate was to be collateral for the loan. Barber thereafter fraudulently transferred the properties to National Foreclosure Properties LLC, an entity through which Barber did business, for inadequate consideration. The loss sustained as a result by The Owen Family LLC is \$100,000 principal.

h. In 1998 and 1999, the defendant fraudulently obtained six loans from Flagstar Bank by inflating the value of the properties and submitting inflated appraisals. Flagstar sustained a loss of \$189,531 principal.

i. In February and March 2005, the defendant fraudulently obtained \$99,000 from Karl Thomas, d/b/a Karl Thomas LLC, by misrepresentations regarding the ownership and purchase prices of certain properties in Kansas City, Missouri. Barber used the money for his own personal benefit, without Thomas's knowledge or consent. Thomas sustained a loss of \$99,000.

j. The defendant failed to file tax returns from tax year 1997 through the present and has not paid taxes from 1997 through the present.

In addition to the above, the Government contends and the defendant denies that he engaged in the following "relevant offense conduct":

k. The defendant fraudulently obtained 50% ownership in the following properties, all in Kansas City, Missouri: 3835 Main, 323 W. 8th Street, 214 E. Armour Boulevard, 300 E. Armour Boulevard, 350 E. Armour Boulevard, 215 E. 34th Street, and 3234 Gillham Road. William Zappas or one of his entities owned the other 50% of each of the properties. As part of this conduct, the defendant misrepresented the purchase price of the properties and his alleged contribution toward the purchase. The loss on the property located at 3835 Main is

approximately \$200,000 (principal only). The loss on the other properties is currently unknown.

Between December 2001 and April 2002, the defendant also fraudulently obtained from Kansas City Title approximately \$504,205 in monies entrusted by William Zappas or one of his entities to Kansas City Title in connection with closings on other real estate transactions.

The conduct involving William Zappas and his entities began in December 2001 and continued to an unknown date.

4. Use of Factual Admissions. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines (“U.S.S.G.”), including the calculation of the defendant’s offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that all other uncharged related criminal activity may be considered as “relevant conduct” pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that upon his pleas of guilty, the maximum penalties the Court may impose on each count are:

a. As to Count One of both indictments, not more than five years imprisonment, a \$250,000 fine, and three years supervised release. These are Class D felonies.

b. As to Counts Two through 53 of Indictment 1, and Counts Two through 47 of Indictment 2 (all of which charge interstate transportation of funds obtained by fraud), not more than ten years imprisonment, a \$250,000 fine, and three years supervised release. These are Class C felonies.

c. As to Counts 57 and 59 of Indictment 1, and Counts 50 and 66 of Indictment 2 (all of which charge money laundering), not more than ten years imprisonment, a \$250,000 fine, and three years supervised release. These are Class C felonies.

The defendant understands that there is a \$100 mandatory special assessment on each count which must be paid at the time of sentencing, and that restitution must be ordered.

The parties believe that the amount of restitution will be approximately \$12 million (\$12,000,000) (with relevant conduct) or \$9 million (\$9,000,000) (not including relevant conduct). The parties agree that the Court will make the final determination regarding the amount of restitution.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

a. In determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable."

b. The Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing.

c. In addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to three years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed.

d. If the defendant violates a condition of his supervised release, the Court may revoke his supervised release and impose an additional period of imprisonment of up to three years without credit for time previously spent on supervised release. In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed three years, less the term of imprisonment imposed upon revocation of the defendant's first supervised release.

e. The Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range.

f. Any sentence of imprisonment imposed by the Court will not allow for parole.

g. The Court must order restitution to be paid to all victims of the offenses to which he is pleading guilty and all other uncharged related criminal activity. The defendant agrees that the amount of restitution will be approximately \$12 million (\$12,000,000) (with relevant conduct) or \$9 million (\$9,000,000) (not including relevant conduct). The parties agree that the Court will make the final determination regarding the amount of restitution.

h. The Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office.

i. The defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

j. The defendant understands and agrees that in the event the United States learns of a knowing misrepresentation by the defendant on, or in connection with, the financial information disclosed to the United States, and in the event that such nondisclosure or misrepresentation involves assets valued at more than \$1,000, the United States may, at its option: (1) be released from all of its obligations under this plea agreement, or (2) let the plea agreement stand and take other action as it deems appropriate.

k. The defendant further agrees to release any lis pendens he or anyone on his behalf has filed where there is in fact no litigation pending.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against the defendant for any federal criminal offenses related to the crimes charged for which it has venue and which arose out of the defendant's conduct described

above, including the failure to file income tax returns and failure to pay income taxes as referred to in Paragraph 3(k), above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Counts 54, 55, 56, 58, 60, 61 and 62 of Indictment 1, and Counts 48, 49, 51 through 65 and 67 of Indictment 2 at sentencing.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of

this agreement. The defendant further understands and agrees that if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. The parties further agree as follows:

a. Case No. 02 CV 216237, *Lisa and Brent Barber v. First National Bank of Missouri, et al.*, is now pending in Division 10 of the Circuit Court of Jackson County, Missouri, or has been referred to arbitration.

b. Defendant Brent Barber agrees to relinquish, abandon, and forfeit any interest he has in any recovery or award in connection with the case.

c. The parties further agree that any recovery or award from the case shall be apportioned first pursuant to the engagement contract between the Barbbers and their counsel, then twenty-five percent of the remainder to Lisa Barber, then the balance to the United States for restitution.

d. By this agreement the parties do not intend to and do not express any opinion as to the merits of the pending case. Further, the agreement is not intended to and does not affect the claims others may have to the proceeds, if any, of the case.

9. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a

government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the counts to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

10. Cooperation. The defendant agrees to cooperate fully and truthfully with the United States as follows:

- a. The defendant agrees to provide all information concerning his knowledge of, and participation in, the offenses charged in the Indictments, and any other crimes about which he has knowledge.
- b. The defendant agrees that he will not falsely implicate any person or entity and will not protect any person or entity through omission or false or misleading information and that all information provided will be truthful, complete and accurate.
- c. The defendant agrees to testify as a witness before any grand jury, hearing, or trial when requested to do so by the United States.

d. The defendant agrees to hold himself reasonably available for any interviews the United States may require. The defendant waives any right to the presence of counsel at such meetings, debriefings, or pretrial preparation sessions. The parties agree that no prior consultation with defense counsel shall be necessary to conduct these meetings, debriefings or interviews, unless his attorney specifically requests such notice.

e. The defendant agrees to provide the United States with all documents or other items under his control that may pertain to any criminal violations.

f. The defendant understands that his cooperation shall be provided to any local, state, and federal law enforcement agency deemed appropriate by the United States and that he may be called upon as a witness by any authority that has been provided his cooperation.

g. The defendant agrees and understands that this plea agreement requires that his cooperation continue even after the time he is sentenced. Failure to continue to cooperate after sentence is imposed constitutes a basis to void this agreement by the United States and will allow the Government to re-institute charges that were previously dismissed pursuant to this agreement.

h. The defendant agrees that if the United States determines that he has not provided full and truthful cooperation, or has committed any local, state, or federal crime between the date of this plea agreement and his sentencing, or has otherwise violated any other provision of this plea agreement, the plea agreement may be voided by the United States and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Such prosecution may be based upon any information provided by the defendant during the course of his cooperation, or upon leads derived therefrom, and

this information may be used as evidence against him. In addition, the defendant's previously entered plea of guilty will remain in effect and cannot be withdrawn. Further, any prosecution which is not barred by the applicable statute of limitations on the date of the signing of this plea agreement may be commenced against the defendant in accordance with this plea agreement, notwithstanding the expiration of the statute of limitations between the time of signing this agreement and the commencement of the prosecution. It is the specific intent of this plea agreement to waive any and all defenses based upon the statute of limitations with respect to any prosecution which is not barred by the statute of limitations on the date this plea agreement is signed by the defendant.

i. The defendant understands and agrees that if he commits a local, state or federal crime (whether a felony or misdemeanor) or violates any conditions of his bond while he is cooperating with the United States, a motion for downward departure will not be filed by the Government on his behalf.

11. Substantial Assistance. "Substantial assistance" within the meaning of 18 U.S.C. § 3553(e) has not yet been provided by the defendant. Upon the determination by the United States Attorney for the Western District of Missouri that the defendant has provided "substantial assistance," the United States will request a sentence reduction pursuant to § 5K.1 of the Sentencing Guidelines. The United States reserves the right to make the sole determination as to whether and when the defendant has provided such substantial assistance and further whether to request a reduction generally or a specific sentence or sentence reduction.

12. Cooperation Stipulations. In exchange for the defendant's agreement to cooperate with the United States, the United States agrees not to use new information that the defendant might provide about his own criminal conduct except as specifically authorized by § 1B1.8 of the United States Sentencing Guidelines. As such, this information may be revealed to the Court but may not be used against the defendant in determining the defendant's applicable Guidelines range or departing above his Guidelines range. The defendant understands and agrees, however, that under U.S.S.G. § 1B1.8, there shall be no such restrictions on the use of the information: (1) previously known to the United States; (2) revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; (4) in the event there is a breach of this agreement; or (5) in determining whether and to what extent a downward departure as a result of a government motion pursuant to 18 U.S.C. § 3553(e) and U.S.S.G. § 5K1.1 is warranted.]

13. Withdrawal of Plea. The defendant understands that if the Court accepts his plea of guilty and this plea agreement but imposes a sentence that is outside the defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, he will not be permitted to withdraw his plea of guilty.

14. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable."

b. The parties reserve the right to argue to the Court as to the applicable Sentencing Guidelines.

c. The applicable Guidelines section for the offenses of conviction is U.S.S.G. § 2B1.1, which provides for a base offense level of 6.

d. The parties agree that the loss, for purposes of guideline calculations, is more than \$7 million but not more than \$20 million, including relevant conduct relating to commercial property transactions. The loss amount has been reduced for the value of collateral. This results in a 20-level increase.

e. The offense involved more than 10, but less than 50 victims, resulting in a 2-level increase pursuant to § 2B1.1(b)(2)(A).

f. The offense involved sophisticated means, resulting in a 2-level increase pursuant to § 2B1.1(b)(8)(C).

g. The defendant derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense, resulting in a 2-level increase pursuant to § 2B1.1(b)(12)(A)(2001) or § 2B1.1(b)(13)(A)(2005).

h. The parties reserve the right to argue whether the defendant was an organizer or leader of a criminal activity that involved five or more participants and was otherwise extensive, which would result in a 4-level

increase pursuant to § 3B1.1. This increase would apply to both the fraud counts and the money laundering counts.

i. The parties reserve the right to argue whether the defendant used a special skill (specifically, his expertise in real estate transactions, foreclosures, and recording of deeds and other documents; and his real estate license) in a manner that significantly facilitated the commission or conceal of the offense, which would result in a 2-level increase pursuant to § 3B1.3.

j. The money laundering counts are grouped with the underlying offenses from which the laundered funds were derived, pursuant to § 2S1.1, Application Note 6. Thus, under the multiple count and grouping rules of § 3D1.4, there is no increase in levels for the money laundering convictions.

k. The defendant reserves the right to argue for a two-level reduction for acceptance of responsibility pursuant to § 3E1.1(a); the United States reserves the right to object to this reduction.

l. The parties agree that the Court will determine the defendant's criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office.

m. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in paragraph 13 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty.

n. The United States agrees not to seek an upward departure from the Guidelines and defendant agrees to not seek a downward departure from the Guidelines. The agreement by the parties not to seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not "unreasonable."

o. The defendant consents to judicial fact-finding by a preponderance of the evidence of any contested issues pertaining to the determination of the defendant's sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictments. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay.

p. The defendant understands and agrees that the factual admissions contained in paragraphs 3 and 4 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

15. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

16. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its

option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

17. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the Indictments;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentences imposed; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

18. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;

d. the right to confront and cross-examine the witnesses who testify against him;

e. the right to compel or subpoena witnesses to appear on his behalf; and

f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that if he pleads guilty, the Court may ask him questions about the offense or offenses to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands he has pleaded guilty to felony offenses and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

19. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.

b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except a sentence imposed in excess of the statutory maximum or an illegal sentence, *i.e.*, a sentence that is contrary to law. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

c. The defendant also waives his right to appeal his conviction and sentence in Case No. 04-00325-01-CR-W-FJG, under the same provisions as contained in subparagraphs a and b above.

20. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

21. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and

other litigation expenses arising out of the investigation or prosecution of this matter.

22. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Federal Rules of Criminal Procedure, Section 11(e)(6), Federal Rules of Evidence,

Section 410, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

23. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorneys or any other party to induce him to enter his plea of guilty.

24. No Undisclosed Terms. The United States and the defendant acknowledge and agree that the above-stated terms and conditions constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

25. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties

further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Todd P. Graves
United States Attorney

Dated 2/23/06 By /s/ Linda Parker Marshall
Linda Parker Marshall
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the Indictments. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

Dated 2/23/06 /s/ Brent Michael Barber
Brent Michael Barber
Defendant

We are the defendant Brent Michael Barber's attorneys. We have fully explained to him his rights with respect to the offenses charged in the Indictments. Further, we have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. We have carefully reviewed every part of this plea agreement with him. To our knowledge, Mr. Barber's decision to enter into this plea agreement is an informed and voluntary one.

Dated 2/23/06 /s/ Patrick A. McInerney
Patrick A. McInerney
Counsel for Defendant

Dated 2/23/06 /s/ Maxwell Carr-Howard
Maxwell Carr-Howard
Counsel for Defendant