

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 05-00170-03-CR-W-ODS
)
CARL EDWARD LONG,)
)
 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, Carl Edward Long ("the defendant"), represented by Tom Dawson.

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 to Counts One, Two, and Three of the

Information charging him with violations of 18 U.S.C. §§ 1343 (wire fraud) (Counts One and Three) and 1957 (engaging in monetary transactions in criminally-derived funds, hereafter referred to as money laundering) (Count Two). A copy of the Information setting forth the charges is 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 the defendant is pleading guilty are as follows:

Count One

The defendant Carl Long and his son Anthony Long were engaged in the mortgage lending business, doing business first as Community HomeBanc, then as Community HomeBanc of America; Anthony Long then began doing business with others as First Equity Banc. The businesses obtained funds for loans through banks, including Flagstar Bank and ABN AMRO Bank, both of which banks were located outside the State of Missouri. Mitchell Medlin was engaged in residential and light commercial construction, doing business as M&R Construction, LLC, Lee's Summit, Missouri.

From about December 4, 2000, through October 12, 2001, at Independence, Lee's Summit, Raytown, and Kansas City, in the

Western District of Missouri, and elsewhere, the defendant Carl Long, together with coconspirators Tony Long and Mitchell Medlin and others, knowingly executed a scheme to defraud and to obtain money, funds, credits, and other property by means of material false and fraudulent pretenses and representations.

The scheme to defraud involved the following:

a. The defendant Carl Long and the coconspirators solicited and induced individuals to purchase duplexes in developments known as Westwind Properties and Westvale Properties, located in Lee's Summit, Missouri, and to obtain loans in connection therewith, by promising that the purchasers would pay no down payments for the properties and have no expenses or obligations in connection with the properties, would be paid monies at closing, and by other material false and fraudulent representations and omissions of fact;

b. The defendant Carl Long and the coconspirators caused inflated appraisals to be prepared in relation to the properties, and in connection therewith created and provided false lease agreements and rental fee information, and caused false comparable listings and sales to be entered in the Multiple Listing Service database;

c. The defendant Carl Long and the coconspirators prepared and caused to be prepared false and fraudulent loan applications and supporting documentation for submission to

lending institutions in the names of the purchasers, making material false and fraudulent representations and omissions of fact therein;

d. The defendant Carl Long and the coconspirators submitted false and fraudulent loan applications, appraisals, documentation, and other representations to lending institutions, making material false and fraudulent representations and omissions of fact therein, including that the borrowers made down payments and, in some instances, that the purchases were refinances;

e. The defendant Carl Long and the coconspirators caused lending institutions to approve said loan applications in reliance on the material false and fraudulent representations and omissions of fact;

f. The defendant Carl Long and the coconspirators caused lending institutions to wire loan proceeds in interstate commerce from other locations into the State of Missouri; and

g. The defendant Carl Long and the coconspirators obtained personal benefit from the proceeds of the loans and from fees and commissions resulting therefrom.

While the scheme continued after the defendant Carl Long's involvement ceased, Carl Long's involvement is limited to the properties in which false down payments were utilized in the scheme. He taught the coconspirators Anthony Long and Medlin the

down payment scheme. He was directly involved in the scheme for the first eight loans and the scheme as he conceived it continued from about February 22, 2001 to October 12, 2001. Thereafter, Anthony Long and Medlin changed the scheme, as a result of which Carl Long is not responsible for acts done thereafter.

Between about February 22, 2001, and May 17, 2001, in relation to sales of Westwind duplexes, the defendant Carl Long submitted and caused to be submitted to lending institutions 19 false and fraudulent loan applications for total loan amounts of \$2,653,700, in reliance on which the lending institutions approved the loans and transferred funds in interstate commerce, and defendants paid on behalf of the borrowers a total of \$424,796.56 in down payments.

Between about May 31, 2001, and October 12, 2001, as a result of and in reliance on the false and fraudulent loan applications and misrepresentations in connection with the Westvale Properties, the defendant Carl Long caused to be submitted to lending institutions loan applications for seven loans in the total loan amount of \$978,950, in reliance on which the lending institutions approved the loans and transferred funds in interstate commerce by wire transfer and otherwise, and the defendant caused to be made down payments of \$122,563.96 in connection with those loans.

Between about February 22, 2001, and October 12, 2001, the defendant Carl Long caused to be submitted to lending institutions a total of 26 false and fraudulent loan applications in the names of the investor-purchasers, which contained material false and fraudulent representations and omissions of fact regarding the payment of down payments, in reliance on which lending institutions made loans in the total amount of \$3,632,650, transferring the funds in interstate commerce, and in connection therewith the defendant Carl Long caused to be paid on behalf of the borrowers down payments of \$547,360.52.

As a result of the scheme to defraud, between about February 22, 2001, and October 12, 2001, the defendant Carl Long and coconspirators obtained, and caused to be obtained, funds, credits and other property in the approximate total amount of \$1,592,584.57.

In furtherance of and for the purpose of executing the aforesaid scheme, on or about May 18, 2001, at Lee's Summit, in the Western District of Missouri, and elsewhere, the defendant Carl Long knowingly and willfully caused to be transmitted by means of wire communication in interstate commerce, between Troy Michigan, and Lee's Summit, Missouri, funds, writings, signs, and signals, that is, the transfer by wire from Flagstar Bank, Troy, Michigan, to Bank of America, Lee's Summit, Missouri, for credit to the account of Metro One Title, of \$111,754.94, which funds

were in connection with the sale of 410 Westwind Drive, Lee's Summit, Missouri, which M&R Construction purchased that day for \$85,000 from JTL Properties and sold on the same day for \$125,700, a 68% mark-up, to family members of defendant Medlin.

Count Two

On May 18, 2001, at Kansas City, in the Western District of Missouri, and elsewhere, the defendant Carl Long, together with Anthony Long and Mitchell Medlin, knowingly engaged and caused to be engaged in a monetary transaction affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is,

a. On May 18, 2001, Medlin received \$80,008 from Metro One Title and deposited the funds to the account of M&R Construction LLC, which funds were the proceeds of the \$111,754.94 wire transferred on May 18, 2001, as described in paragraph 22 of Count One;

b. Thereafter, on May 18, 2001, Medlin purchased, and the defendant Carl Long caused to be purchased, a cashier's check in the amount of \$27,211.70 from Blue Ridge Bank and Trust Co., a federally-insured bank, payable to cash, using funds from the account of M&R Construction LLC at the said bank to make the purchase;

c. Thereafter, on May 18, 2001, the defendant Carl Long caused to be delivered the cashier's check for \$27,211.70 to

Metro One Title for the down payment on two properties being purchased by family members of Medlin; and

d. The funds used to purchase the said cashier's check had been derived from a specified unlawful activity, that is, wire fraud as alleged in Count One of the Information.

Count Three

From about March 2000 to about July 15, 2004, at Independence and Kansas City, in the Western District of Missouri, and elsewhere, the defendant Carl Long knowingly executed a scheme and artifice to defraud and to obtain money, funds, credits, and other property by means of material false and fraudulent pretenses and representations.

The scheme involved the following:

1. The defendant Carl Long solicited individuals to invest in Community HomeBanc and Live Interactive Network Connection, a company owned and operated by defendant for the purpose of providing Internet banking services for Community HomeBanc, by means of material false and fraudulent pretenses and representations, including but not limited to funds invested that would be used to purchase computer equipment and assist Community HomeBanc in becoming a publicly-traded entity.

2. In June 2000 the defendant Carl Long obtained approximately \$79,500.86 from investors, who invested in reliance

on the material false and fraudulent pretenses and representations.

3. The defendant misapplied the said funds, using the majority of the funds for his personal benefit and not for the purposes represented when defendant solicited the investments.

4. The defendant thereafter concealed his fraud by oral and written misrepresentations and promises.

On October 30, 2002, in the Western District of Missouri, and elsewhere, the defendant Carl Long, in furtherance of and for the purpose of executing and concealing the aforesaid scheme, knowingly and willfully transmitted and caused to be transmitted by means of wire communication in interstate commerce, between the Western District of Missouri and Bonita Springs, Florida, writings, signs, and signals, for the purpose of executing such scheme, in that on or about October 30, 2002, the defendant Carl Long sent a letter by facsimile transmission from Bonita Springs, Florida, to Terry Merrill at 816-230-4420 in the Western District of Missouri, dated October 26, 2002, in which the defendant represented that the investors' funds had not been repaid due to financial problems experienced by Community HomeBanc but that defendant would repay the funds from monies he earned.

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 the conduct charged in any dismissed counts of the indictment as well as 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 plea of guilty, the Court may impose the following maximum penalties:

Count One: a term of imprisonment of not more than five years, a fine of not more than \$250,000.00, and a period of supervised release of not more than three years.

Count Two: a term of imprisonment of not more than ten years, a fine of not more than \$250,000.00, and a period of supervised release of not more than three years.

Count Three: a term of imprisonment of not more than twenty years, a fine of not more than \$250,000.00, and a period of supervised release of not more than three years.

As to all counts, there is a \$100 mandatory special assessment must be paid in full at the time this plea agreement is presented to the Court; and restitution may be ordered.

The defendant further understands that Count One is a Class D felony and Counts Two and Three are Class C felonies.

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 merely 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 may be imposed, without credit for time previously spent on supervised release, and that in addition to a new term of imprisonment, the Court 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 victims of the offense to which he is pleading guilty, and all other uncharged related criminal activity.
- 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.

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 defendant for any federal criminal offenses related to the mortgage fraud scheme charged in Count One, the money laundering charged in Count Two, or the wire fraud charged in Count Three for which it has venue and which arose out of the defendant's conduct described above.

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 additional charges against him if he breaches this agreement. The defendant expressly waives his right to assert a statute of limitations defense if the 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. 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.

9. 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.

10. 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 merely 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 applicable Guidelines Manual is the one that took effect on November 1, 2003.

- c. The applicable Guidelines section for the offense of conviction is U.S.S.G. § 2B1.1, which provides for a base offense level of 6.
- d. The amount of loss, including relevant conduct, is greater than \$400,000 but not greater than \$1,000,000, resulting in an increase of 14 offense levels.
- e. There is a one-level increase for the money laundering conduct charged in Count Two, pursuant to U.S.S.G. § 2S1.1(b) (2) (A).
- f. The defendant has admitted his guilt and clearly accepted responsibility for his actions, and has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, he is entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines. The Government, at the time of sentencing, will file a written motion with the Court to that effect.
- g. While there is no agreement between the parties regarding the defendant's criminal history category, the parties believe the defendant may be in criminal history category II. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office.
- h. Offense level 18, Criminal History Category II, provides a sentencing range of 27 to 33 months imprisonment and falls in Zone D. A sentence in Zone D must be satisfied by a custodial sentence.
- i. 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 12 of this plea agreement, provide the defendant with a basis to withdraw his plea of guilty.

- j. The United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. The agreement by the parties to not 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."
- k. 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 indictment. 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.
- l. 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.

11. 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 13, and its subsections. As to any other Guidelines

issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. 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.

13. 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 Information;
- 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.

14. 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 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 rights to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights.

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.

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.

16. 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.

17. 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.

18. 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.

19. 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 attorney or any other party to induce him to enter his plea of guilty.

20. No Undisclosed Terms. The United States and 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.

21. 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: 4/21/05 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 Information. 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 4/21/05 */s/ Carl Edward Long*

Carl Edward Long
Defendant

I am defendant Carl Edward Long's attorney. I have fully explained to him his rights with respect to the offenses charged in the Information. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Carl Edward Long's decision to enter into this plea agreement is an informed and voluntary one.

Dated 4/21/05 */s/ Tom Dawson*

Tom Dawson
Attorney for Defendant