

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

RICHARD BELL

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§

CRIMINAL NO. H-07-271-S

**PLEA AGREEMENT**

The United States of America, by and through Donald J. DeGabrielle, Jr., United States Attorney for the Southern District of Texas, and Belinda Beek and James R. Buchanan, Assistant United States Attorneys, and the defendant, Richard Bell, and the defendant's counsel, Richard Kuniansky, pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

**The Parties Agreement**

1. The government and the defendant ("Parties") agree that the defendant will plead guilty to Count Seven and Nine of the Superseding Indictment. Count Seven charges the defendant with bank fraud in violation of Title 18 United States Code § 1344. Count Nine charges the defendant with engaging in monetary transactions in property derived from specified unlawful activity in violation of

Title 18, United States code, Section 1957. The defendant further agrees to persist in his plea of guilty through sentencing. The defendant, by entering this plea agrees that he is waiving any right to have the facts that the law makes essential to the punishment either charged in the indictment, or proved to a jury or proven beyond a reasonable doubt.

### **Punishment Range**

2. The statutory maximum penalty for a violation of Title 18 United States Code § 1344 , is imprisonment of not more than thirty (30) years and a fine of not more than \$1,000,000 [See 18 U.S.C. § 1344(2)]. Additionally, the defendant may receive a term of supervised release after imprisonment of not more than five (5) years [Title 18 U.S.C. §§ 3559(a)(2) and 3583(b)(1)].

3. The statutory maximum penalty for a violation of Title 18 United States Code § 1957, is imprisonment of not more than ten (10) years and/or a fine of not more than \$\$250,000 or an alternate fine of not more than twice the amount of the criminally derived property involved in the transaction [Title 18 §1957(b)(1) and (2)] . Additionally, the defendant may receive a term of supervised release after imprisonment of not more than three (3) years [Title 18 U.S.C. §§ 3559(a)(3) and 3583(b)(2)].

4. Defendant acknowledges and understands that if he should violate the

conditions of any period of supervised release which may be imposed as part of his sentence, then defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation [Title 18 U.S.C. § 3559(a)(3) and 3583(e)(3)]. Defendant understands that the imposition or execution of the sentence will not be suspended, and that he is not eligible for parole.

#### **Mandatory Special Assessment**

5. Pursuant to Title 18 U.S.C. § 3013(a)(2)(A), immediately after sentencing, defendant will owe to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction for a total of \$200.00. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

#### **Fine and Reimbursement**

6. Defendant understands that under the Sentencing Guidelines, the Court is permitted to order the defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release; if any is ordered.

7. Defendant agrees that any fine or restitution imposed by the Court

will be due and payable immediately, and defendant will not attempt to avoid or delay payment.

8. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing, if requested to do so. In the event that the Court imposes a fine or orders the payment of restitution as part of the Defendant's sentence, the Defendant shall make complete financial disclosure by truthfully executing a sworn financial statement immediately following his sentencing. Further, the Defendant agrees to pay full restitution to all victims for all relevant conduct attributable to him in this case, notwithstanding the fact that the defendant is pleading guilty to only two of the twenty-one counts charged against him in the Superseding Indictment.

#### **Non-Waiver of Appeal**

9. Defendant reserves the right to contest the sentence or the manner in which it was imposed in this case, either by direct appeal or by collateral attack after the conviction or sentence has become final. The defendant waives the right to contest his conviction by means of any post-conviction proceeding.

10. Defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he may have received from his counsel,

from the United States, or from the U.S. Probation Office is a prediction, not a promise, **did not induce his guilty plea**, and is not binding on the United States, the U.S. Probation Office, or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing defendant, the Court is not bound to follow the Sentencing Guidelines nor to sentence defendant within the calculated guideline range. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

### **The United States’s Agreements**

11. The United States agrees to each of the following:
  - (a) At the time of sentencing, the United States agrees not to oppose defendant’s anticipated request to the Court and the United States Probation Office that he receive a two (2) level downward adjustment pursuant to Section 3E1.1(a) of the U.S.S.G. should the defendant

accept responsibility as contemplated by the U.S.S.G.;

- (b) If the defendant qualifies for an adjustment under U.S.S.G. Section 3E1.1(a), the offense level determined prior to the operation of 3E1.1(a) is level 16 or greater, and the defendant 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 resources efficiently, the United States agrees to request an additional one level downward adjustment;
- (c) If the Court accepts this plea agreement and the defendant persists in his plea of guilty to Counts Seven and Nine through sentencing, the United States will dismiss the original Indictment and the remaining Counts pending against the Defendant in the Superseding Indictment after sentencing; and
- (d) At the defendant's request, the United States agrees to a full evidentiary hearing prior to sentencing during which the both the United States and the defendant will have the opportunity to establish the extent of the defendant's relevant conduct and any other sentencing factors by a preponderance of the evidence

#### **Duties of the United States**

12. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a pre-sentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with

defendant's counsel and the Probation Office;

- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2; and
- (e) to appeal the sentence imposed or the manner in which it was determined.

### **Defendant's Waiver of Rights at Trial**

13. Defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. Defendant understands that by entering into this agreement, he surrenders certain rights as provided in this plea agreement.

Defendant understands that the rights of a defendant include the following:

- (a) If defendant persisted in a plea of not guilty to the charges, defendant would have the right to a jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against the defendant. Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, the defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.
- (c) At a trial, defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired, he could testify on his own behalf.

### **Factual Basis for Guilty Plea**

14. **Defendant is pleading guilty because he is guilty of the charges contained in Counts Seven and Nine of the Superseding Indictment.** If this case were to proceed to trial, the United States could prove all of the following facts beyond a reasonable doubt:

The Federal Deposit Insurance Corporation (“FDIC”) was an agency of the United States established to protect depositors by insuring the deposits of member banks against loss up to \$100,000 with the purpose of preventing their collapse and instilling public confidence in the nation’s banking institutions. The FDIC insurance fund was backed by the United States government.

First National Bank (“FNB”) was a financial institution located in Houston, Texas, the deposits of which were insured by the FDIC.

Defendant **RICHARD BELL** was a mortgage broker and self-styled real estate developer.

Harborside Mortgage Corporation (“Harborside Mortgage”) was a Texas corporation of which defendant **RICHARD BELL** was President and CEO.

Fidelity Capital Real Estate Investments, LLC (“FCRE”) was a Texas limited liability corporation **BELL** used to conduct real estate transactions.

Prior to May, 2006, defendant **RICHARD BELL** had partners in FCRE but by on or about May 5, 2006, defendant **RICHARD BELL** was 100% owner of

FCRE.

Riverwalk Terrace Villas, LLC (“Riverwalk”) was a Texas limited liability corporation whose only registered member was Bell.

Johann Sitter (Sitter) is the President of a company called Sure Invest and Consulting (Sure Invest).

Sure Invest owned approximately 97 acres of land that is legally described as being part of lot 6 of the Tolar subdivision of the J.M. Allen 1/4 League, Abstract 1 (“Tolar”), in Rosharon, Texas. Prior to March 10, 2005, Sitter was making lien payments on Tolar to a lien holder.

On or about March 10, 2005, Sitter deeded his interest in Tolar to Bell. Although Bell received Sitter’s interest in Tolar, Sitter was still obligated to make lien payments to the Tolar lien holder.

Sitter did not make the lien payments and the lien holder foreclosed.

Bell and Philip Newton (“Newton”) agreed that Newton would buy Tolar at foreclosure for approximately \$264,747, which Newton did.

On or about July 19, 2005, the lien holder deeded Tolar to Newton, and Newton deeded Tolar to Newton’s company—IMPAC Partners (IMPAC).

Newton is the general partner of IMPAC.

Bell and Newton then entered into a real estate contract that showed Bell

was buying Tolar for \$1,105,000. The contract specified that Bell would pay approximately \$385,000 cash as earnest money/down payment (“down payment”) to IMPAC (Newton), and obtain a loan for the remainder of the purchase price.

On or about December 9, 2005, Bell obtained a loan from FNB in the amount of \$720,000 (FNB loan) to buy Tolar.

As part of the loan application to obtain the FNB loan, Bell submitted or caused to be submitted false and fraudulent documents to FNB that included false and fraudulent financial statements, false and fraudulent income tax returns, and copies of false and fraudulent cashier’s checks as proof of payment to IMPAC of the \$385,000 cash down payment.

FNB approved and funded the loan based on information defendant **RICHARD BELL** provided.

The cashier’s checks totaling \$385,000 for the purported down payment to IMPAC were in reality two Wells Fargo money orders with a true value of \$35: Wells Fargo bank records show that Bell purchased Wells Fargo money order number 0670610995 on November 8, 2005, in the amount of \$25 and Wells Fargo money order number 0670611096 in the amount of \$10 on December 9, 2005. Bell altered the money orders using an optical scanner and computer software program to make them appear to be cashier’s checks in the amounts of \$135,000

and \$250,000 respectively. Bell made copies of the money orders and presented, or caused them to be presented, to FNB and the title company closing the Tolar transaction as proof he paid IMPAC the \$385,000 down payment.

The settlement statement for the Tolar closing, signed by Bell and Newton, reflects the \$720,000 loan from FNB and the fictitious cash down payment of \$385,000 "held by seller."

On or about December 15, 2005, at the direction of the defendant, the title company wired \$676,000.84 from the proceeds of the FNB loan to a bank account *at Texas First* ~~at Hibernia Bank~~ held in the name of IMPAC and controlled by Newton. This wire transfer consisted entirely of proceeds from specified unlawful activity, namely bank fraud and false statements to a federally insured financial institution to obtain a loan or credit.

On or about January 13, 2006, Bell submitted false and fraudulent tax returns and financial statements to obtain an unsecured line of credit from FNB in the amount of \$100,000. On or about January 13, 2006, FNB deposited \$60,000 into an account at FNB held by FCRE and controlled by Bell. This \$60,000 was composed entirely of proceeds from the fraudulently obtained line of credit, which is a specified unlawful activity, namely bank fraud ("SUA proceeds"). Bell used these SUA proceeds to conduct and/or direct the following monetary transactions

to occur:

- \* on or about January 18, 2006, check #1004 in the amount of \$25,000 drawn on the FCRE account at FNB was made payable to Harborside Mortgage.
- \* on or about January 19, 2006, check #1003 in the amount of \$12,660 drawn on the FCRE account at FNB was made payable to Custom Design Pools.
- \* on or about January 19, 2006, check #1005 in the amount of \$15,000 drawn on the FCRE account at FNB was made payable to Richard Bell.

In or about October, 2005, the Federal Bureau of Investigation (“FBI”) executed a search warrant on Bell’s place of business. After the FBI executed the search warrant, Bell and Newton created and signed a “promissory note” for the \$385,000 Tolar cash down payment, and backdated the document to December, 2005.

#### **Breach of Plea Agreement**

15. If defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and the defendant’s plea and sentence will

stand. If at any time defendant retains, conceals or disposes of assets in violation of this plea agreement, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

16. Whether the defendant has breached any provision of this plea agreement shall be determined solely by the United States through the United States Attorney's Office, whose judgment in that regard is final.

17. This plea agreement is being entered into by the United States on the basis of defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest.

18. Defendant consents to any agreed order of forfeiture or judgment and further agrees to take all steps necessary to pass clear title to forfeitable assets to the United States, including, but not limited to, surrendering of title, signing a consent decree, stipulating facts regarding the transfer of title and basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of defendant's assets to deliver all funds and records of such assets to the United States.

*AS determined by the court*  
*RB*  
*RB*

## **Complete Agreement**

19. This written plea agreement, consisting of 17 pages, together with the attached addendum of defendant and his attorney, constitutes the complete plea agreement between the United States, defendant and his counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against his and that he is pleading guilty freely and voluntarily because he is guilty.

20. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on the 24 day of January 2008.

Richard Bell  
Richard Bell  
Defendant

Subscribed and sworn to before me on January 24, 2008.

MICHAEL N. MILBY, Clerk  
UNITED STATES DISTRICT CLERK

By: Phonda Kuniandy  
Deputy United States District Clerk

APPROVED:

Donald J. DeGabrielle, Jr.  
United States Attorney

By: Belinda Beek  
Belinda Beek  
Assistant United States Attorney  
James R. Buchanan  
Assistant United States Attorney

Richard Kuniandy  
Richard Kuniandy  
Attorney for Defendant

CLERK, U. S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED  
1-24-08  
MICHAEL N. MILBY, CLERK  
BY DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

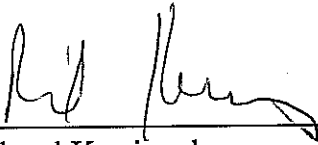
RICHARD BELL

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CRIMINAL NO. H-07-271 S

PLEA AGREEMENT - ADDENDUM

I have fully explained to defendant his rights with respect to the pending Superseding Indictment. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and I have fully and carefully explained to defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with defendant. To my knowledge, defendant's decision to enter into this agreement is an informed and voluntary one.

  
Richard Kuniansky  
Attorney for Defendant

1-24-08  
Date

I have consulted with my attorney and fully understand all my rights with

respect to the Superseding Indictment pending against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

Richard Bell  
Richard Bell  
Defendant

1-24-08  
Date