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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:08-CR-337-T-30MSS

VICTOR THOMAS CLAVIZZAO

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the Defendant, Victor Thomas Clavizzao, and the attorney for the defendant, R. Scott Andringa, Esquire, mutually agree as follows:

A. **Particularized Terms**

1. Counts Pleading To:

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the Defendant with conspiracy, in violation of 18 U.S.C. § 371.

2. Maximum Penalties

Count One carries a maximum sentence of five (5) years imprisonment, a fine of \$11,892,600 (twice the gain) or \$250,000, a term of supervised release of not more than three (3) years, and a special assessment of \$50 per felony count for offenses committed prior to April 24, 1996, \$100 per felony count thereafter; for organizations the amounts are "\$200" and "\$400" respectively, said special assessment to be due on the date of sentencing. With respect to certain offenses, the Court shall order the Defendant to make restitution to any victim of the offense(s), and with respect

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to other offenses, the Court may order the Defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense

The Defendant acknowledges understanding the nature and elements of the offense with which the Defendant has been charged and to which the Defendant is pleading guilty. The elements of the offense are set forth as follows:

- First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment;
- Second: That the Defendant, knowing the unlawful purpose of the plan, willfully joined in it;
- Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods (or "overt acts") described in the indictment; and
- Fourth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

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6. Mandatory Restitution to Victims of Offense of Conviction

Pursuant to 18 U.S.C. §§ 3663A(a) and (b), defendant agrees to make full restitution to the victims, including but not limited to the following victim lenders and the amount being at least the mortgage less any money paid toward the mortgage and any money recovered by the lenders through any foreclosure or other sale proceedings (i.e., the losses to the lenders from the fraud):

1. BNC Bank for the property located at:
4320 Huntington Street SE
Saint Petersburg, Florida 33703
Mortgage: \$384,000

Address: BNC Bank
1901 Main Street
Irvine, California 92614

Lehman Brothers Bank for the same property:
2d Mortgage: \$96,000

Address: Lehman Brothers Bank
P.O. Box 19656
Irvine, California 92623

2. Countrywide for the property located at:
4825 Huntington Street SE
Saint Petersburg, Florida 33703
Mortgage: \$560,000 - current restitution ~\$260,770

Address: Countrywide Financial
30930 Russell Ranch Road
Westlake Village, California 91362

America's Wholesale Lender for the same property:
2d Mortgage: \$140,000

Address: America's Wholesale Lender
6430 Southpoint Parkway, #300
Jacksonville, Florida 32216

3. Alliance Bancorp for the property located at:
2001 Carolina Avenue NE
Saint Petersburg, Florida 33703
Mortgage: \$883,500

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Address: Alliance Bancorp
P.O. Box 82370
Phoenix, Arizona 85071

4. BNC Bank for the property located at:
3521 62nd Street, N.
Saint Petersburg, Florida 33710
Mortgage: \$189,600

Address: BNC Bank
1901 Main Street
Irvine, California 92614

5. Freemont Mortgage for the property located at:
5396 Gulf Blvd., #907
Saint Peterburg, Florida 33706
Mortgage: \$560,000 - current restitution ~\$140,282

Address: Freemont Mortgage
1411 Opus Place, Suite 600
Downer Grove, Illinois 60515

Freemont Mortgage for the same property:
2d Mortgage: \$140,000

Address: Freemont Mortgage
1411 Opus Place, Suite 600
Downer Grove, Illinois 60515

- 6-7. Homebanc for the property located at:
1860 N. Fort Harrison Ave., #405
Clearwater, Florida 33755
AND
1860 N. Fort Harrison Ave., #406
Clearwater, Florida 33755
Mortgage: \$1,604,000 - current restitution ~\$565,000

Address: Homebanc
2002 Summit Blvd., Suite 100
Atlanta, Georgia 30319

8. Freemont Investment for the property located at:
4946 3rd Street, N.
Saint Petersburg, Florida 33703
Mortgage: \$188,000

Address: Freemont Mortgage
1411 Opus Place, Suite 600

Downer Grove, Illinois 60515

9. BNC Bank for the property located at:
233 36th Ave., N.
Saint Petersburg, FL 33703
Mortgage: \$304,200

Address: BNC Bank
1901 Main Street
Irvine, California 92614

10. Freemont Investment for the property located at:
4095 Locust Street
Saint Petersburg, FL 33703
Mortgage: \$294,000

Address: Freemont Mortgage
1411 Opus Place, Suite 600
Downer Grove, Illinois 60515

11. Freemont Investment for the property located at:
4570 Great Lakes Dr. S.
Clearwater, FL 33762
Mortgage: \$209,000

Address: Freemont Mortgage
1411 Opus Place, Suite 600
Downer Grove, Illinois 60515

12. America's Wholesale Lender for the property located at:
1910 Seminole Blvd. S.
Saint Petersburg, FL 33705
Mortgage: \$300,000

Address: America's Wholesale Lender
6430 Southpoint Parkway, Suite #300
Jacksonville, Florida 32216

13. Delta Funding Corporation for the property located at:
10451 117th Dr. N.
Largo, FL 33773
Mortgage: \$94,000

Address: Delta Funding Corporation
1000 Woodbury Road
Woodbury, New York 11797

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b), the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees

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that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

10. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed

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subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

11. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

11. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 982(a)(2)(A), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following: a forfeiture money judgment in the amount of \$5,946,300. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture

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described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(3), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The

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defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or §

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3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or 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 to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's

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Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

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5. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

Defendant's Initials VC (SA)

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of

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certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below as to the defendant are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

From in and around July 2006, and continuing through in and around April 2007, in the Middle District of Florida, and elsewhere, defendant Victor Clavizzao ("CLAVIZZAO") with others known and unknown to the United States Attorney committed the crime of conspiracy in violation of Title 18, United States Code, Section 371, the object of said conspiracy being the commission of wire fraud (as defined by Title 18, United States Code, Section 1343), mail fraud (as defined by Title 18, United States Code, Section 1341) and bank fraud (as defined by Title 18, United States Code, Section 1344).

Clavizzao was a licensed mortgage broker in the State of Florida. He intentionally brokered loans for others, including family members, using false and fraudulent information (e.g., fraudulently inflated income) to obtain loans through false pretenses. Clavizzao made and conspired with others to make material misrepresentations (i.e., fraud) on mortgage applications to obtain more than \$5,946,300 in proceeds of mortgages, including on properties as follows:

1. BNC Bank for the property located at:
4320 Huntington Street SE
Saint Petersburg, Florida 33703
Mortgage: \$384,000

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Lehman Brothers Bank for the same property:
2d Mortgage: \$96,000

2. Countrywide for the property located at:
4825 Huntington Street SE
Saint Petersburg, Florida 33703
Mortgage: \$560,000 - current restitution ~\$260,770

America's Wholesale Lender for the same property:
2d Mortgage: \$140,000

3. Alliance for the property located at:
2001 Carolina Avenue NE
Saint Petersburg, Florida 33703
Mortgage: \$883,500
4. BNC Bank for the property located at:
3521 62nd Street, N.
Saint Petersburg, Florida 33710
Mortgage: \$189,600
5. Freemont Mortgage for the property located at:
5396 Gulf Blvd., #907
Saint Peterburg, Florida 33706
Mortgage: \$560,000 - current restitution ~\$140,282

Freemont Mortgage for the same property:
2d Mortgage: \$140,000


- 6-7. Homebanc for the property located at:
1860 N. Fort Harrison Ave., #405
Clearwater, Florida 33755
AND
1860 N. Fort Harrison Ave., #406
Clearwater, Florida 33755
Mortgage: \$1,604,000 - current restitution ~\$565,000

8. Freemont Investment for the property located at:
4946 3rd Street, N.
Saint Petersburg, Florida 33703
Mortgage: \$188,000

9. BNC Bank for the property located at:
233 36th Ave., N.
Saint Petersburg, FL 33703
Mortgage: \$304,200

10. Freemont Investment for the property located at:
4095 Locust Street
Saint Petersburg, FL 33703
Mortgage: \$294,000
11. Freemont Investment for the property located at:
4570 Great Lakes Dr. S.
Clearwater, FL 33762
Mortgage: \$209,000
12. America's Wholesale Lender for the property located at:
1910 Seminole Blvd. S.
Saint Petersburg, FL 33705
Mortgage: \$300,000
13. Delta Funding Corporation for the property located at:
10451 117th Dr. N.
Largo, FL 33773
Mortgage: \$94,000

With respect to item 4 set forth above, on December 28, 2006, a \$189,600 mortgage was closed on 3521 62nd Street North, Saint Petersburg, Florida funded by BNC Bank. The mortgage application, upon which the lender relied to fund the loan, contained fraudulent information regarding the income of the applicant, the false amount for that fraudulent income having been created by Victor Clavizzao, who was the mortgage broker on the transaction and who picked the amount specifically so that the income would be sufficient to induce the lender to part with the money. The mortgage application, containing the materially false information, was mailed to the lender and the proceeds of the fraudulently obtained loan were electronically transferred via a wire transmission across state lines from the lender (at the point of the wire's origination) to the title agent for disbursement.

Defendant's Initials VC 

Clavizzao also induced others involved with the transactions by paying them or paid them after inappropriately using their information in mortgages, examples of which include, (1) paying others as much as \$29,000 for their efforts regarding the acquisition of certain properties and (2) paying others \$15,000 following a closing involving no loss because his personal identification information was used without his permission in the purchase of the property in question.

Clavizzao and his co-conspirators engaged in a criminal conspiracy committing mortgage fraud (the objects being wire fraud, mail fraud, bank fraud). And, as a result of the conspiracy, Clavizzao and his co-conspirator(s) caused lenders to fund \$5,946,300 in fraudulently-obtained loans issued upon the false representations made by the conspirators in the various loan applications and attendant documents as well as in the providing of the false documents themselves.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

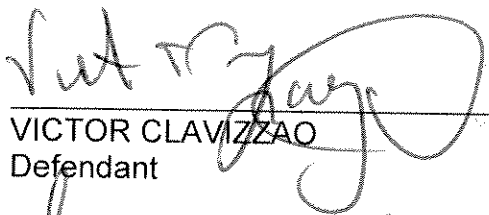
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11. Certification


The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

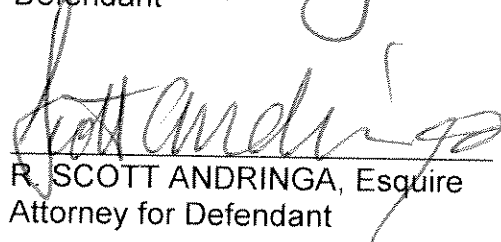
DATED this 11th day of August, 2008.


ROBERT E. O'NEILL
United States Attorney


VICTOR CLAVIZZAO
Defendant

By:


THOMAS N. PALERMO
Assistant United States Attorney


R. SCOTT ANDRINGA, Esquire
Attorney for Defendant


ROBERT T. MONK
Assistant United States Attorney
Deputy Chief, General Crimes Section

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