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June 14, 2010

W. Warren Hamel, Esq.
Venable LLP
Suite 900
750 E. Pratt Street
Baltimore, MD 21202

Re: United States v. James Dan
Criminal No. JFM-09-0639

Dear Warren:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by June 17, 2010, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to plead guilty to Count 1 of the Indictment now pending against him, which charges him with conspiracy to commit wire fraud, in violation of 18 U.S.C. 1349. The Defendant admits that he is, in fact, guilty of that offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

- (1) That two or more persons entered the unlawful agreement charged in the Indictment;
- (2) That the defendant knowingly and willfully became a member of the conspiracy;

- (3) That one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the indictment; and
- (4) That the overt act was committed to further some objective of the conspiracy.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: twenty (20) years imprisonment, a fine of \$250,000, and a term of supervised release of not more than three (3) years. In addition, the Defendant must pay \$100 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

The base offense level is 7. U.S.S.G. 2X1.1(a) & 2B1.1(b)(1). Two (2) levels are added because the victims were unusually vulnerable as they were all in foreclosure or facing foreclosure. 3A1.1(b)(1).

This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

Guidelines Factors Not Stipulated

8. This Office and the Defendant agree that the following facts and/or sentencing guidelines factors are in dispute: the amount of the loss suffered by the lenders and the owners/victims. The government contends that the amount of the loss is over \$400,000 and less than \$1 million. The Defendant reserves the right to argue for a lower number.

9. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

Obligations of the United States Attorney's Office

9. At the time of sentencing, this Office will recommend a guideline sentence, no criminal fine, and restitution to both lenders and owner/victims. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Waiver of Appeal

11. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

- a) The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction;
- b) The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of restitution, and term or condition of supervised release), except as follows: (i) the Defendant reserves the right to appeal any term of imprisonment to the extent that exceeds **41 months'** imprisonment; (ii) and this Office reserves the right to appeal any term of imprisonment to the extent that it is below **33 months'** imprisonment.
- c) Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.
- d) The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

12. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

13. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

14. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____
Joyce K. McDonald
Assistant United States Attorney

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

Date

James Hooper Dan

I am Mr. Dan's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

Date

W. Warren Hamel, Esq.

STATEMENT OF FACTS

James Fox and James Dan met in Annapolis when both were loan officers for a mortgage lender. Dan had excellent credit. Although Dan left the mortgage company in 2005, Fox and Dan stayed in contact with each other. Beginning in 2006, James Fox began to identify prospective borrowers who owned their homes and had equity in their homes, but who could not afford their mortgage payments and were at risk of losing their homes because they were either in foreclosure, bankruptcy, or financial distress. Fox, sometimes in Dan's presence at closings, told potential victims that they could "rescue" them and save their houses. The promises as expressed to the owner involved transferring the home to James Dan, who through his excellent credit could obtain a new mortgage loan. Dan promised to make the payments on the new mortgage loan for six months in some instances and in one other, for a year. The individual would "repair" their credit and then re-finance the property and re-acquire it. During this six month or one-year period, the individual was to continue living in the house. Fox and Dan as mortgage loan officers were aware of the implications of the sale: that the seller who deeded away his or her home lost control of their home, that the person who was facing foreclosure today would not likely be able to afford a mortgage loan at a higher amount a year from now, that the individual who could not qualify for a re-finance today would not qualify for a mortgage loan in a year and could not re-purchase their home, that Fox and Dan could not likely be able to afford to make the mortgage payments for more than six months or a year and might default on the new mortgage, and that the house had equity which Fox and Dan were taking out at settlement for their own uses. Fox persuaded desperate individuals to sell their homes without explaining material terms of the sale to them.

In order to obtain the mortgage loan, Dan signed and submitted materially false and fraudulent loan applications including falsification of his intent to occupy the property, annual income, savings, other properties owned, and source of the borrower's funds for closing. Fox was typically the loan officer for these loans, and Fox typically entered the false and fraudulent information on the loan application forms.

Fox and Dan attended settlements on these properties which were required to be conducted according to the financial terms and conditions specified by the mortgage lenders and set forth on the settlement statements (sometimes called HUD-1s). These HUD-1s were false. For example, Dan was supposed to produce the "buyer's funds to close" for each settlement out of his own resources. These funds actually came from the seller's proceeds so that Dan invested no funds of his own in any transaction. Although James Dan was the buyer of properties, Fox and Dan obtained proceeds from the equity in the equity in the properties by making material false representations to financial institutions making the loans; in addition, the sellers paid over to Fox, Dan or one of their companies monies that were identified on the HUD-1 as the sellers' proceeds of the property sales. In some instances, the sellers did not understand how much money they were paying over. Fox and Dan shared some of these proceeds with the sellers either directly or by paying off sellers' debts, but put the remainder in their own bank accounts. Fox spent his proceeds on personal expenses; Dan also spent some of the proceeds on personal expenses. Although Dan made some mortgage payments on each of the properties, he did not "escrow" funds to make mortgage payments, and eventually he ran out of money. He defaulted on the mortgage loans, and the loans all went into foreclosure.

On or about August 4, 2006, James Fox and James Dan attended a settlement for Dan to purchase a Capitol Heights, MD property from C.W. for \$225,000. Dan signed and submitted a

materially false loan application to obtain the mortgage loan. The loan application falsely stated that Dan was employed by Investors First Mortgage and making \$9,500 each month. The application falsely stated that Dan had \$100,000 on deposit at the NASA Federal Credit Union. According to the HUD-1, C.W. as the seller was to receive over \$63,000, and a check at settlement was issued to C.W. In fact, Fox led C.W. to believe that in order to be "rescued," she had to turn over all the funds from settlement to him and Dan. The three went to Dan's bank and deposited the check. Later Fox gave C.W. part of the funds and gave her money to purchase cashier's checks to pay the mortgage. Part of the C.W.'s seller's proceeds were used to fund the buyer's (Dan's) funds for closing despite the fact that the settlement statement represented that Dan had supplied the buyer's funds to close from his own money. The remainder of the seller's proceeds was deposited into Dan's account, which he shared with Fox. Fox and Dan signed an agreement to escrow the mortgage payment funds. They did not do so. Neither Fox nor Dan set up an escrow account for the mortgage payment funds. C.W. has remained in the house since settlement, and the house has not yet been through foreclosure.

On or about August 21, 2006, James Fox, with a power of attorney from James Dan, attended a closing for Dan to purchase a Hagerstown, MD property from D.N. for \$255,000, from which DN was to receive over \$65,000 in sales proceeds according to the HUD-1. Dan's mortgage loan application was materially false; the application again contained the false representation that Dan had \$100,000 on deposit at the NASA Federal Credit Union, and the application failed to disclose Dan's ownership of C.W.'s property. Part of the seller's proceeds were used to fund the borrower's (Dan's) closing funds, and Dan received the remainder which he deposited into his M&T bank account. On August 24, 2006, Dan wrote a check to James Fox in the amount of

\$12,361.88. On September 5, 2006, Dan paid \$11,000 on his American Express bill. Dan made mortgage payments on the house for six months. In approximately April 2007, Dan asked D.N. to begin paying "rent", and D.N. paid him over \$11,000 which Dan used to make Dan's mortgage payments. The house ultimately went into foreclosure due to failure of Dan to pay the mortgage. D.N. moved out of his home and has lost it.

On or about April 5, 2007, James Fox and James Dan attended a settlement for Dan to purchase a Pasadena, MD property from R.G., a city firefighter. Dan's loan application was materially false; the application falsely stated that he was making \$12,500 monthly from Investors First, LLC, and that he had \$163,757 in various bank accounts. According to the settlement statement, R.G. should have received \$149,901.56 in sales proceeds. Instead, RG received \$31,000. Approximately \$118,901 was deposited into Fox's Charm City bank account at Bank of America. Fox used approximately \$37,000 to re-pay loans for funds James Fox had borrowed to use the borrower's (Dan's) funds for the closing. (The HUD-1 stated that the borrower had produced the funds for closing, but Fox actually produced the funds for Dan.) Fox wired \$43,000 from the Charm City bank account to M&T Bank for credit to the Five Star Financial account, an account on which Fox and Dan were signatories. On April 13, 2007, \$42,000 was moved from the Five Star Financial account into Dan's personal account as his "share" of the seller's proceeds. Six months after the settlement date, R.G. arrived home and found an eviction notice on his door. R.G. moved out of the house and the house ultimately went into foreclosure.

It was the custom and practice of lenders to wire transfer settlement funds from outside Maryland into Maryland to a title company who handled the settlements.

Had this matter gone to trial, the government would have offered evidence to prove that, in all, sellers lost \$262,059.42 from these three settlements and lenders lost at least \$308,612. The final lender loss is dependent upon the results of foreclosure proceedings.