

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

<b>UNITED STATES OF AMERICA</b>	)	Criminal No. 5:16-cr-00264 (DNH)
	)	
<b>v.</b>	)	<b>Plea Agreement</b>
	)	
<b>CHRISTOPHER M. SWARTZ,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

The United States of America, by and through its counsel of record, and defendant **CHRISTOPHER M. SWARTZ** (hereinafter “the defendant”), by and through the defendant’s counsel of record, hereby enter into the following plea agreement pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure:

1) **The Defendant’s Obligations:**

- a) **Guilty Plea:** The defendant will plead guilty to Counts 1 and 2 of the Information in Case No. 5:16-cr-00264 (DNH) charging wire fraud in violation of 18 U.S.C. § 1343, and tax evasion in violation of 26 U.S.C. § 7201.
- b) **Special Assessment:** The defendant will pay an assessment of \$100 per count of conviction pursuant to 18 U.S.C. § 3013. The defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$200, payable to the United States District Court, at the time of sentencing.
- c) **Compliance with Other Terms of Agreement:** The defendant will comply in a timely manner with all of the terms of this plea agreement.
- d) **Restitution:** The defendant, pursuant to 18 U.S.C. §§ 3663, 3663A, will consent to entry of an order directing the defendant’s payment of restitution to:

(1) Any individuals or entities determined, at the time of sentencing, to be victims of any of defendant's criminal conduct, in amounts to be further determined at sentencing, whether or not the losses suffered by those victims resulted from the offenses of conviction. The individuals and entities that may be determined to be victims, at the time of sentencing, include, but are not limited, the individuals and entities identified in Attachment A to this agreement which is incorporated herein; and

(2) The United States Department of Treasury, in amounts based on defendant's additional taxes due and owing for the tax years 2004 through 2015, as well as the additional taxes due and owing of Grace Ventures, to be determined at sentencing.

e) **Forfeiture:** Pursuant to Title 18, United States Code, Section 981(a)(1)(C) by Title 28, United States Code, Section 2461(c), and Title 21, United States Code, Section 853(p), the defendant will consent to entry of an order directing forfeiture to the United States of the property described in the Forfeiture Allegation in the Information described above, or to any substitute assets, or to a money judgment. The order of forfeiture to which defendant will consent will include:

(1) A money judgment in an amount to be determined at or before sentencing; and

(2) Any and all interests the defendant may have in the franchisor corporate business doing business as Jreck Subs based in Watertown, New York. Defendant agrees not to contest ownership issues.

2) **The Government's Obligations:**

a) **Non-Prosecution for Other Offenses:** For so long as the defendant's guilty plea and the sentence remain in effect, the government will not seek other federal criminal charges against the defendant based on conduct described in the Information in Case No. 5:16-cr-

00264 (DNH) and/or in the paragraph of this agreement entitled "Factual Basis for Guilty Plea," occurring before the date on which the defendant signs this agreement. This agreement does not prevent the government from seeking charges based on other conduct.

b) **Compliance with Other Terms of Agreement:** The government will comply in a timely manner with all of the terms of this plea agreement.

3) **Potential Maximum Penalties:** The defendant understands that the Court can impose the following maximum penalties for the offenses to which the defendant agrees to plead guilty and may be required to impose mandatory minimum terms of imprisonment, all as set out below:

a) **Count 1 (Wire Fraud)**

(1) **Maximum term of imprisonment:** 20 years, pursuant to 18 U.S.C. § 1343.

(2) **Maximum fine:** \$250,000, pursuant to 18 U.S.C. § 3571.

b) **Count 2 (Tax Evasion)**

(1) **Maximum term of imprisonment:** 5 years, pursuant to 26 U.S.C. § 7201.

(2) **Maximum fine:** \$250,000, pursuant to 18 U.S.C. § 3571.

c) **Supervised Release Term:** In addition to imposing any other penalty, the sentencing court may require the defendant to serve a term of supervised release of up to 3 years, to begin after imprisonment. See 18 U.S.C. § 3583. A violation of the conditions of supervised release during that time period may result in the defendant being sentenced to an additional term of imprisonment of up to 2 years.

d) **Other Adverse Consequences:** Other adverse consequences may result from the defendant's guilty plea as further described in paragraph F below.

4) **Elements of Offense:** The defendant understands that the following are the elements of the offenses to which the defendant agrees to plead guilty. The defendant admits that the defendant's conduct satisfies each and every one of these elements.

**Wire Fraud (18 U.S.C. § 1343)**

- a) The defendant knowingly and intentionally devised and intended to devise a scheme and artifice to defraud lenders and investors;
- b) To obtain money or property by means of materially false or fraudulent pretenses, representations or promises; and
- c) The defendant used the interstate wires in furtherance of the scheme to defraud.

**Tax Evasion (26 U.S.C. § 7201)**

- a) The defendant had a substantial additional tax due and owing beyond that which he reported;
- b) The defendant attempted to evade that tax by engaging in an affirmative act of evasion; and
- c) The defendant's conduct was willful.

5) **Factual Basis for Guilty Plea:** The defendant admits the following facts, that those facts demonstrate the defendant's guilt for the offenses to which the defendant is pleading guilty, and that there are no facts establishing a viable defense to those offenses:

- a) The defendant was in control of, and exercised dominion over, the Jreck Subs franchise between 2002 and 2015 under various entity names. Jreck Subs was a franchise operating a chain of over forty (40) stores in upstate New York selling submarine sandwiches, chili, soups, salads, beverages and other food products.

- b) The defendant, as President and Director, operated and controlled North Country Hospitality, Inc. (“North Country”) and its subsidiaries between 2005 and 2008. North Country acquired, held and controlled as subsidiaries the operations of other food and restaurant concepts primarily located in Sackets Harbor and Watertown, New York, including a brew pub, a beer distribution company, an Italian restaurant, a bakery, a Mexican cuisine restaurant, and five individual Jreck Subs stores.
- c) The defendant also exercised dominion and control over Jreck Holdings, LLC, a Delaware limited liability company which he used to restructure, hold and operate the Jreck Subs franchising business between January 2009 and in or about May 2015.
- d) Defendant SWARTZ exercised dominion and control over other entities with interests in the food and restaurant franchise industry, including, but not limited to: Ultimate Franchise Systems, Inc.; Grace Ventures Group, LLC; Madeline Ventures, LLC; Caffino Live Roast; Obees Franchise Systems, Inc. (“Obees”); Quantified Purchasing Resources (“QPR”); Heathrow Equity Partners; and New York Sub Company (“NSUB”).

**The Promissory Note Scheme to Defraud Lenders and Investors**

- e) From in or about 2005 through in or about September 2015, defendant SWARTZ, using promissory notes to obtain money and property from lenders and investors, executed a scheme and plan to defraud lenders and investors in his food and restaurant franchises and concepts by means of false and fraudulent pretenses, representations, and promises, including:
  - (1) Inducing lenders/investors into giving him funds by: (i) False and fraudulent promises to repay them, and at high interest rates; (ii) Fraudulent promises of collateral and security, including personal guarantees; (iii) False and fraudulent representations

concerning how the funds would be spent; and (iv) Giving lenders and investors “stock kickers” and equity interests in the businesses, and, thus, a purported share of the assets and funds held therein;

(2) Misappropriating and diverting lender/investor funds, as well as funds of the businesses;

(3) Lulling the lenders/investors in order to keep them at bay, to convey a false sense of security, and to discourage them from taking action against him and his entities, by:

(i) Making limited payments to the lenders/investors, including many checks that he knew would “bounce” due to insufficient funds, hoping to convince lenders that he intended to repay in full; (ii) Providing false and fraudulent excuses for non-payment; and (iii) Providing false and fraudulent assurances and representations regarding repayment; and

(4) Concealing and disguising his assets and income from lenders and investors to prevent their recovery of their funds.

f) The food and restaurant franchises and concepts that the defendant used to issue promissory notes pursuant to the scheme to defraud lenders and investors included: North Country, Jreck Holdings, Caffino, Obees, Ultimate Franchise, Heathrow Equity Partners, QPR, Grace Ventures, and Madeline Ventures.

#### **The North Country-Related Notes**

g) Between in or about 2005 and 2008, the defendant raised funds from lenders and investors for the North Country entities by issuing promissory notes to the lenders and investors, falsely and fraudulently promising to repay the notes, and at high interest rates.

- h) The defendant provided, as an additional fraudulent inducement to the lenders, stock and membership certificates, or “stock kickers,” representing equity positions in the businesses.
- i) The defendant purported to provide security for lenders and investors by collateralizing the notes with, among other things, personal guarantees in the event of non-payment by North Country.
- j) Defendant SWARTZ failed to repay the loans as he had promised.
- k) To discourage North Country lenders and investors from taking legal action to obtain recovery of their funds, defendant SWARTZ fraudulently attempted to lull them by: (i) Making limited payments to the North Country lenders/investors, including many checks that he knew would “bounce” due to insufficient funds, hoping to convince the lenders that he intended to repay the notes while failing to deliver the funds and make repayment; and (ii) Providing false and fraudulent excuses and assurances to the lenders/investors by mail, interstate email, and telephone communications.
- l) By August 2008, defendant SWARTZ and his companies owed lenders and investors in North Country and other entities substantial funds. By January 2009, several lawsuits by lenders/investors seeking substantial monetary awards against defendant were threatened or pending. By the end 2012, civil judgments against defendant SWARTZ exceeded \$3 million. By 2013, total judgments by lenders and investors against defendant SWARTZ exceeded \$6 million.

#### **The Jreck Holdings-Related Notes**

- m) In August 2008, the defendant solicited HCG (the “HCG Investors”), a private equity firm in New York City, to invest \$1.5 million in the Jreck Subs franchise chain. To

induce the infusion of capital, defendant SWARTZ represented among other things: (i) that \$1 million would be used to pay for the construction of new corporate-owned Jreck Subs stores; and (ii) that \$500,000 would be used to pay off a pre-existing promissory note.

- n) To further induce the investment, defendant SWARTZ restructured Jreck Subs in January 2009 as follows: (i) the defendant caused the transfer of Jreck Subs from Grace Ventures, an entity that defendant SWARTZ owned and controlled, to a new entity called Jreck Holdings, a limited liability company; (ii) the defendant caused Jreck Holdings to issue a \$500,000 promissory note to the HCG Investors, collateralizing the note with a security interest in the Jreck Subs franchise; (iii) to enhance the promissory note inducement, the defendant offered a 30 percent equity membership stake in Jreck Holdings in exchange for an additional \$1 million, thus promising HCG a 30 percent share in the income and profits of the franchise.
- o) On January 7, 2009, the HCG Investors wired the first \$1 million in funds to a bank account in the name of Jreck Holdings which defendant SWARTZ controlled. The remaining \$500,000 in funds was wired to Jreck Holdings in July 2009.
- p) Between in or about January 2009 and in or about May 2012, defendant SWARTZ misappropriated and diverted a substantial portion of the HCG Investor funds, as well as operating revenues of Jreck Holdings, for purposes other than investing in new stores or Jreck Subs, including, but not limited to, paying previous lenders and creditors, including North Country lenders.
- q) In April 2010, defendant SWARTZ fraudulently induced further loans by the HCG Investors. Defendant caused to be issued five additional promissory notes (the "Rebate



Notes”) in the names of Obees, Ultimate Franchise, and QPR, in exchange for approximately \$227,500, securing the notes with a promised stream of rebate income from third-party vendors allegedly payable to these entities. To convince the HCG Investors that the Rebate Notes were secure, defendant SWARTZ produced fictitious and forged rebate agreements. Defendant SWARTZ did not repay the loans.

- r) In or about July 2010, the defendant requested yet additional funds from the HCG Investors, purportedly to finish construction of uncompleted stores. The HCG Investors infused an additional \$139,000 in return for two additional promissory notes issued by Jreck Holdings. The defendant misappropriated and diverted a portion of the funds for purposes other than construction of new corporate stores, and he did not repay these notes.
- s) In October 2011, after defendant SWARTZ defaulted on promissory notes held by the HCG Investors, and after defendant SWARTZ’s repeated efforts to lull them with fraudulent assurances and excuses, the HCG Investors filed a lawsuit seeking judgment for unpaid debt related to certain promissory notes, threatening the seizure of the Jreck Subs franchise.
- t) To resolve the lawsuit, defendant SWARTZ, with the aid and assistance of Individual W.R., solicited Individual E.S.O. to take over the HCG Investors’ position in Jreck Holdings.
- u) To induce the transaction with Individual E.S.O., defendant SWARTZ fraudulently caused to be represented to Individual E.S.O., among other things, that his purchase of the HCG Investors’ promissory note and equity position, for approximately \$1 million, would be a “bridge loan” that defendant SWARTZ would pay back within six to ten

months. In or about May 2012, Individual E.S.O., through an entity called Orienta Investors (“Orienta”), bought out the HCG Investor’s position in Jreck Holdings, both as a promissory note holder and as a 30 percent equity owner, for approximately \$1 million.

- v) Defendant SWARTZ failed to repay Orienta and Individual E.S.O. as promised. In February 2014, defendant SWARTZ made a lulling payment to Individual E.S.O. of \$150,000 in order to discourage further legal action and foreclosure. Defendant SWARTZ made a few additional minimal payments, but otherwise failed to repay the loan.
- w) Between 2012 and May 2015, while failing to repay Individual E.S.O., defendant SWARTZ misappropriated and diverted funds from the Jreck Subs franchise business.
- x) In addition to the HCG Investors and Individual E.S.O., defendant SWARTZ solicited other lenders and investors in the Jreck Subs franchise. For example, between April and June 2009, defendant SWARTZ, in exchange for approximately \$140,000 in funds, issued promissory notes to Individual T.M. and promised him, among other things: (i) That he would repay his loans with interest; (ii) That he would use the funds for new stores and the state fair; and (iii) That Individual T.M. would own equity in the new stores. Defendant SWARTZ misappropriated and diverted a portion of the funds invested for purposes other than new stores and the state fair, and, but for a few payments, did not repay Individual T.M.’s loans as promised.

**The Lulling Conduct in Furtherance of the Scheme**

- y) As part of his promissory note scheme, defendant SWARTZ, in order to discourage legal action, attempted to lull promissory note lenders and investors into a false sense of security and hope that their funds would be returned. Using the interstate wires and

mails, defendant SWARTZ provided false and fraudulent excuses for non-payment, provided false and fraudulent assurances, made partial payments, and delivered checks that “bounced” due to insufficient funds.

- z) The lenders and investors defendant SWARTZ sought to fraudulently lull with excuses, assurances, partial payments, and “bounced” checks included, but were not limited to: (i) The HCG Investors, who invested in Jreck Holdings, concerning both the Rebate Notes, as well as the notes issued by Jreck Holdings designated for store growth; (ii) Individual D.O. who loaned money to the North Country entities; (iii) Individual R.B. who loaned money to the North Country entities; (iv) Individual T.M. who loaned money to Jreck Subs; and (v) Individual E.S.O. who loaned money to, and invested in, Jreck Holdings.

#### **Concealment of Assets and Income in Furtherance of the Scheme**

- aa) In executing his promissory note scheme, the defendant attempted to conceal his assets and income to put them beyond the reach of lenders, investors, and judgment creditors in order to prevent their recovery of funds.
- bb) To conceal assets and income, the defendant, among other things: (i) commingled funds in bank accounts; (ii) made extensive use of cash transactions; (iii) caused multiple name changes to businesses he controlled, including Jreck Subs, to make the traceability of ownership more difficult.
- cc) To add more layers of concealment and to make seizure and collection even more difficult, defendant SWARTZ continued to disguise his true dominion over and control of businesses using layers of nominee entities, including, but not limited to, the SF Trust.
- dd) Between in or about 2014 and in or about 2015, defendant SWARTZ provided false, fraudulent, and misleading information concerning his assets and income, including false

tax returns, to attorneys representing the HCG Investors who filed a second lawsuit relating to the Rebate Notes seeking judgment and collection of funds.

### **The Tax Evasion Scheme**

ee) From in or about 2005 through in or about May 2015, while simultaneously engaging in a scheme to defraud the promissory note lenders and investors, defendant SWARTZ executed a scheme to obstruct the IRS and evade taxes with respect to his personal income taxes and business employment taxes by the following acts, among others:

- (1) Using his corporate, partnership, and business bank accounts to divert monies for his benefit without reporting such diversions as income;
- (2) Disguising personal diversions from the business and entity accounts by causing such diversions to be fraudulently characterized in the books and records of these businesses as loans, fixed-asset expenditures, various business expenses, and other false entries;
- (3) Using multiple bank accounts to commingle, transfer and disperse monies he took out of the businesses;
- (4) Making extensive use of cash transactions to diminish the traceability of funds;
- (5) Concealing his true dominion over and control of various business and personal assets and income using multiple entities and nominees;
- (6) Filing false and fraudulent individual income tax returns ("Forms 1040");
- (7) Filing false partnership returns ("Forms 1065") for Jreck Holdings; and
- (8) Impeding the IRS's ability to collect employment taxes owed by North Country, as well as a trust fund recovery penalty assessed against him for unpaid employment taxes by, among other things, concealing assets and income.

ff) For the tax year 2009, the defendant knowingly and willfully falsified his individual tax return, on Form 1040, by failing to declare substantial additional wages and salaries he had earned, substantial additional income he received in the form of personal diversions from Jreck Holdings, and substantial additional flow-through income from Jreck Holdings. The defendant had a substantial additional tax due and owing beyond that which he reported and disclosed in his 2009 individual tax return.

6) **Sentencing Stipulations:**

**Wire Fraud**

- a) The base offense level is 7 pursuant to U.S.S.G. § 2B1.1(a)(1);
- b) The government reserves the right to advocate at sentencing that the loss amount exceeded \$9.5 million but was less than \$25 million, resulting in an increase to the base offense level of an additional 20 levels pursuant to U.S.S.G. § 2B1.1(b)(1)(K). The defendant reserves the right to dispute the government's loss calculations at sentencing;
- c) The government reserves the right to advocate at sentencing that the number of victims exceeds ten (10) and that the offense resulted in substantial financial hardship to five (5) or more victims, resulting in an increase to the base offense level of an additional 4 levels pursuant to U.S.S.G. § 2B1.1(2)(B). The defendant reserves the right to oppose the government's calculation of the number of victims at sentencing.
- d) The government reserves the right to advocate at sentencing that a 2-level increase applies because the offense involved the use of sophisticated means pursuant to U.S.S.G. § 2B1.1(10). The defendant reserves the right to oppose the application of this enhancement.

- e) The government reserves the right to advocate at sentencing that a 2-level increase applies due to the defendant's aggravating role in the offense in that he was an organizer, leader, manager, or supervisor in criminal activity involving one or more participants pursuant to U.S.S.G. § 3B1.1. The defendant reserves the right to oppose the application of this enhancement.
- f) The government reserves the right to advocate at sentencing that a 2-level increase applies because the offense involved a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding pursuant to U.S.S.G. § 2B1.1(9). The defendant reserves the right to oppose the application of this enhancement.
- g) The government reserves the right to advocate at sentencing that a 4-level increase applies because the offense involved a violation of securities law pursuant to U.S.S.G. § 2B1.1(19)(A). The defendant reserves the right to oppose the application of this enhancement.

#### **Tax Evasion**

- h) The government reserves the right to advocate at sentencing that the tax loss amount exceeded \$3.5 million but was less than \$9.5 million, resulting in a base offense level of 24 pursuant to U.S.S.G. §§ 2T1.1, 2T4.1. The defendant reserves the right to dispute the government's tax loss calculations at sentencing.
- i) The government reserves the right to advocate at sentencing that a 2-level increase applies because the offense involved the use of sophisticated means pursuant to U.S.S.G. § 2T1.1(B)(2). The defendant reserves the right to oppose the application of this enhancement.

- j) The government reserves the right to advocate at sentencing that a 2-level increase applies because the defendant failed to report income exceeding \$10,000 from criminal activity pursuant U.S.S.G. § 2T1.1(B)(1). The defendant reserves the right to oppose the application of this enhancement.
- k) The government reserves the right to advocate at sentencing that a 2-level increase applies due to the defendant's aggravating role in the offense in that he was an organizer, leader, manager, or supervisor in criminal activity involving one or more participants pursuant to U.S.S.G. § 3B1.1. The defendant reserves the right to oppose the application of this enhancement.

#### **Acceptance of Responsibility**

- l) The government will recommend a 2-level downward adjustment to the applicable federal sentencing guidelines offense level pursuant to U.S.S.G. §3E1.1(a) if, (i) through the time of sentencing, the government is convinced that the defendant has demonstrated "acceptance of responsibility" for the offense(s) to which the defendant is pleading guilty and all relevant conduct, as defined in U.S.S.G. § 1B1.3; and (ii) the government does not determine that the defendant, after signing this agreement, committed any other federal, state, or local crimes, or engaged in conduct that constitutes "obstruction of justice," as defined in U.S.S.G. § 3C1.1.
- m) The government will move for a 1-level downward adjustment to the applicable federal sentencing guidelines offense level pursuant to U.S.S.G. § 3E1.1(b) if the government is convinced that the defendant has accepted responsibility within the meaning of U.S.S.G. § 3E1.1(a) and further assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's 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, and the defendant otherwise qualifies for such adjustment by having a combined offense level of 16 or more before receipt of any acceptance of responsibility adjustment under U.S.S.G. § 3E1.1(a).

7) **Waiver of Rights to Appeal and Collateral Attack:** The defendant waives (gives up) any and all rights, including those conferred by 18 U.S.C. § 3742 and/or 28 U.S.C. §§ 2241 and 2255, to appeal and/or to collaterally attack the following (except that the defendant does not waive the right to raise a claim based on alleged ineffective assistance of counsel):

- a) The conviction resulting from the defendant's guilty plea;
- b) Any sentence to a fine within the maximum permitted by law;
- c) Any sentence to a term of supervised release within the maximum permitted by law;
- d) Any order of forfeiture or restitution imposed by the Court that is consistent with governing law and is not contrary to the terms of this agreement.

Nothing in this appeal waiver is meant to be or should be construed as a representation of or agreement concerning the appropriate sentence in this case.

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A. **Right to Counsel:** The defendant has a right to assistance of counsel in connection with settlement of this case and understands that right. Defense counsel has advised the defendant of the nature of the charges to which the defendant is agreeing to plead guilty and the range of possible sentences.

B. **Waiver of Trial-Related Rights:** The defendant has the following additional constitutional rights in connection with the charges in this case: (i) to be presumed innocent until proven



guilty beyond a reasonable doubt; (ii) to plead not guilty; (iii) to trial by jury; (iv) to confront, cross-examine, and compel the attendance of witnesses at trial; (v) to present defense evidence; and (vi) to remain silent and be protected against compelled self-incrimination. The defendant understands that by pleading guilty, the defendant waives (gives up) these rights.

**C. Court Not Bound by Plea Agreement:** This plea agreement is made pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure. The Court is neither a party to, nor bound by this Plea Agreement. The Court may accept or reject this Plea Agreement or defer a decision until it has considered the Presentence Investigation Report prepared by the United States Probation Office. If the Court rejects the provisions of this agreement permitting the defendant to plead guilty to certain charges in satisfaction of other charges, the Court will permit the defendant to withdraw the plea of guilty before sentencing, pursuant to Fed. R. Crim. P. 11(c)(5) & (d).

**D. Court Not Bound by Agreed-Upon Recommendations, Stipulations, and Requests:** If this agreement contains any provisions under Fed. R. Crim. P. 11(c)(1)(B) by which the government agrees to recommend, stipulates, or agrees not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the federal sentencing guidelines, or a policy statement, or sentencing factor does or does not apply, such a recommendation, stipulation, or request does not bind the Court, which may make independent factual findings by a preponderance of the evidence and may reject such recommendations, requests, and stipulations between the parties. If the Court rejects one or more recommendations, stipulations, or requests, the defendant is not entitled to withdraw the defendant's plea of guilty and is not released from the obligations described in this

agreement. Under such circumstances, the government reserves the right to support and defend, in connection with any post-sentencing proceedings, any decision the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations, stipulations, or requests set out in this agreement.

**E. Sentencing:**

- a. **Maximum Terms of Imprisonment:** The defendant understands that the Court has discretion to impose a sentence within the statutory maximum sentence(s) set out in this agreement. If the defendant is pleading guilty to multiple charges, the Court may be required by law to have the sentences of imprisonment on the convictions resulting from those charges run consecutively to each other. Otherwise, the Court has discretion to have sentences of imprisonment run concurrently or consecutively. *See* 18 U.S.C. § 3584.
- b. **Mandatory Minimum Terms of Imprisonment:** If specified in this agreement, the conviction on one or more charges to which the defendant has agreed to plead guilty may require imposition of a mandatory minimum term of imprisonment. In such cases, the court must impose a term of imprisonment no less than the required mandatory minimum term unless an exception to that requirement applies. Such exception may be dependent on a motion by the government.
- c. **Section 851 Enhancements:** The defendant understands that if the government has filed an information against the defendant as provided 21 U.S.C. § 851, alleging that the defendant has one or more final convictions for a felony drug offense, and, as part of this agreement, the defendant has admitted and/or affirmed that the defendant was so

convicted, then, by pleading guilty, the defendant will lose the right to attack any sentence the court imposes by challenging any such prior conviction.

**d. Sentencing Guidelines:**

- i. The actual sentence to be imposed upon the defendant is within the discretion of the sentencing Court, subject to the statutory maximum and mandatory minimum penalties, as described above, and the provisions of the Sentencing Reform Act and the United States Sentencing Guidelines promulgated thereunder. While the Court is not bound to impose a sentence within the applicable sentencing guidelines range, it must take into account the sentencing guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a).
- ii. Any estimate of the defendant's offense level, criminal history category, and sentencing guidelines range provided before sentencing is preliminary and is not binding on the parties to this agreement, the Probation Office, or the Court. Until the Probation Office has fully investigated the defendant's criminal history, it is not possible to predict with certainty the defendant's criminal history category and, in some cases, the defendant's offense level.
- iii. Under certain circumstances, the defendant's criminal history may affect the defendant's offense level under the federal sentencing guidelines. If the presentence investigation reveals that the defendant's criminal history may support an offense level different than an offense level stipulated in this agreement, the parties are not bound by any such stipulation as to the defendant's offense level and may advocate with respect to how the defendant's criminal history affects the offense level.

- e. **Factual Findings:** The defendant understands that the sentencing Court may make factual findings with respect to any and all sentencing factors and issues, including those referenced in the United States Sentencing Guidelines, whether or not such factors or issues have been admitted by the defendant or stipulated by the parties. In making those findings by a preponderance of the evidence, the Court may consider any reliable evidence, including hearsay. The Defendant understands that the sentence imposed may be determined based upon such judicial fact-finding.
- f. **Use of the Defendant's Statements:** The defendant understands that the sentencing court may consider any statement that the defendant has made or makes in this Plea Agreement, during the guilty plea, to the Probation Office, and at sentencing when imposing sentence. In addition the government may be able to use the defendant's statements in this agreement and at the guilty plea and at sentencing in any criminal, civil, or administrative proceeding. For example, if the defendant fails to enter a guilty plea (as required by this agreement) or the defendant's guilty plea is later withdrawn or vacated for any reason other than the Court's rejection of this Plea Agreement under Fed. R. Crim. P. 11(c)(5), the government may introduce the defendant's statements into evidence in any prosecution. If, however, the Court rejects this Plea Agreement under Fed. R. Crim. P. 11(c)(5), and the defendant withdraws the guilty plea pursuant to Fed. R. Crim. P. 11(d)(2)(A), the government will not be permitted to use any of the defendant's statements in this Plea Agreement. To the extent that Rule 11(f) of the Federal Rules of Criminal Procedure and/or Rule 410 of the Federal Rules of Evidence are inconsistent with this paragraph, the defendant waives (gives up) any protections under those rules.

- g. **Government's Discretion to Recommend a Sentence:** Unless a stipulation in this agreement explicitly limits the government's discretion with respect to its recommendations at sentencing, this agreement does not prevent the government from urging the sentencing Court to find that a particular offense level, criminal history category, ground for departure, or guidelines range applies; from recommending a specific sentence within the applicable guidelines range as determined by the Court or as urged by the government; or, if the government deems appropriate, recommending that the Court impose a sentence above the applicable guidelines range.
- h. **Sentencing-Related Information:** The government has the right to advise the sentencing Court and the Probation Office of any information, in aggravation or mitigation of sentencing, whether or not encompassed within the count(s) to which the defendant has agreed to plead guilty, subject only to the limitation described in U.S.S.G. § 1B1.8. No stipulation in this plea agreement limits the obligations of both parties to ensure that the sentencing Court has all information pertinent to its determination of an appropriate sentence. The parties may provide any factual information relevant to sentencing to the Probation Office and/or to the Court, without limitation, before or after the completion of the Presentence Investigation Report. The parties agree that the submission of such information shall not be deemed "advocacy" in violation of any stipulation in this plea agreement.
- i. **Supervised Release Term and Conditions:** If the defendant is placed on supervised release, under some circumstances, including the defendant's violation of one or more supervised release conditions, the Court may extend the term of supervised release, and may modify, reduce, or enlarge the conditions of such release.

**F. Other Adverse Consequences:** The following are some examples of the adverse consequences of pleading guilty other than the sentence imposed by the Court, along with any judicial order of forfeiture and/or restitution:

- a. Conviction of a felony may result in the loss of civil rights, including, but not limited to, the right to vote and the right to possess firearms.
- b. If the defendant is not a United States citizen, such conviction may result in deportation or removal from the United States, may bar readmission to the United States if the defendant leaves the country, and may result in a denial of a pending or future application for citizenship. Under federal law, removal or deportation may be an almost certain consequence of a conviction for a broad range of federal offenses, including, but not limited to, aggravated felonies, as defined in 8 U.S.C. § 1101(a)(43), and crimes of moral turpitude, which includes crimes involving fraud. Removal and other immigration consequences are the subject of a separate proceeding. No one, including the defendant's attorney and the Court, can predict with certainty the effect of the conviction resulting from this agreement on the defendant's immigration status. The defendant understands this uncertainty and nonetheless wishes to plead guilty regardless of any immigration consequences that the guilty plea may entail, even if the consequence is the defendant's automatic removal from the United States.
- c. A felony conviction may adversely affect the defendant's ability to hold certain professional licenses and may impair the defendant's ability to do business with federal, state, and local governments or to receive benefits from such governments.

There may be other adverse consequences as well, some of them unforeseeable. It may be difficult or impossible to predict all of the adverse consequences of the defendant's guilty plea. The defendant agrees that any resulting adverse consequences, whether or not foreseen or foreseeable, will not provide a basis for withdrawing from the guilty plea described in this agreement or otherwise challenging the resulting conviction and sentence.

**G. Restitution:** Independent of any agreement to pay restitution, and whether there is any such agreement, the sentencing Court may be required to order that the defendant pay restitution to any victim of the offense(s) of conviction under the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A. In addition, the sentencing Court may have the authority to order that the defendant pay restitution to any victim of the offense(s) of conviction pursuant to 18 U.S.C. §§ 3663 & 3664. In any case involving a conviction for a sexual exploitation offense in chapter 110 of title 18 of the United States Code, the Court must order restitution for the full amount of the victim's losses as determined by the court. The victim's losses include, but are not limited to medical services related to physical, psychiatric, or psychological care; physical or occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorney's fees and other costs; and any other losses suffered by the victim as a proximate result of the offense. The restitution payment will be in addition to any other civil or criminal penalty authorized by law.

**H. Forfeiture:** If the defendant has agreed to forfeiture of assets, the defendant agrees to the following terms and conditions:

- a. The defendant hereby forfeits, to the United States, all right, title, and interest of any nature in any and all assets that are subject to forfeiture, including substitute assets, as set

forth above, whether those assets are in the possession or control of the defendant, a nominee, or some other third party.

- b. The defendant consents to the entry of an order of forfeiture of the assets described above.
- c. The defendant is aware that pursuant to Rule 32.2(b)(4)(A) of the Federal Rules of Criminal Procedure, a preliminary order of forfeiture becomes final as to a given defendant at sentencing or at any time before sentencing if the defendant consents. The defendant consents that the preliminary order of forfeiture in this case shall become final as to the defendant before sentencing, as of the date the preliminary order of forfeiture is entered by the Court. The defendant understands that the government, upon entry of the preliminary order of forfeiture, will address any potential third-party claims pursuant to Rule 32.2(c), and seek to finalize forfeiture.
- d. Forfeiture of the defendant's assets will not satisfy all, or any portion of, a fine, restitution, or other monetary penalty that the Court may impose upon the defendant in addition to forfeiture. Satisfaction of all, or any portion of, any restitution, fine, or other penalty that the Court may impose upon the defendant in addition to forfeiture will not satisfy all, or any portion of, any forfeiture judgment ordered by the Court.
- e. In the event that any successful claim is made, by any third party, to the assets described above, the defendant agrees to forfeit substitute assets equal in value to the assets transferred to any such third party. The defendant agrees that forfeiture of substitute assets shall not be deemed an alteration of the Defendant's sentence.
- f. The defendant agrees to cooperate with the United States by taking whatever steps are necessary to pass clear title to the United States of any forfeitable assets, including, but



not limited to, surrendering title; completing any documents or legal proceedings required to transfer assets to the United States; and taking necessary steps to ensure that assets subject to forfeiture are not sold, disbursed, expended, destroyed, damaged, hidden or otherwise made unavailable for forfeiture or removed beyond the jurisdiction of the Court.

- g. The defendant waives the right to a jury trial on the forfeiture of assets. The defendant waives all constitutional, legal, and equitable defenses to the forfeiture of assets, as provided by this agreement, in any proceeding, including, but not limited to, any jeopardy defense or claim of double jeopardy or any claim or defense under the Eighth Amendment to the United States Constitution, including any claim of an excessive fine.
- h. The defendant acknowledges that the government may institute civil or administrative proceedings against any or all of the defendant's forfeitable assets, including, but not limited to, substitute assets and any forfeitable assets not identified by the defendant, and agrees not to contest any such forfeiture proceedings.
- i. The defendant represents and warrants that the defendant has no direct or indirect interest in any property, real or personal, or other asset subject to forfeiture by virtue of this plea agreement, other than those listed above.
- j. The defendant acknowledges joint and several liability for the amount of any money judgment set forth above.
- k. In the event the government determines that the defendant has breached any condition of this plea agreement, none of the forfeited property shall be returned to the defendant, nor shall the defendant assert any claim to the forfeited property. The defendant shall not

reacquire any forfeited property, directly or indirectly, through family members, nominees, friends, or associates.

**I. Determination of Financial Condition and Payment of Interest and Penalties:**

- a. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees fully to disclose all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party.
- b. The defendant will promptly submit a complete, accurate, and truthful financial statement to the United States Department of Justice, Tax Division, in a form it provides and as it directs.
- c. The defendant authorizes the United States Department of Justice, Tax Division, to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.
- d. Interest and penalties may accrue, as a matter of law, on any unpaid financial obligation imposed as part of the defendant's sentence, from as early as the date of sentencing.

**J. Remedies for Breach:**

- a. Should the government determine that the defendant, after the date the defendant has signed this plea agreement, (i) has committed any further crime or violated any condition of release or supervision imposed by the Court (whether or not charged); (ii) has given false, incomplete, or misleading testimony or information; or (iii) has moved to withdraw the defendant's guilty plea for reasons other than those described in this agreement or otherwise has breached any term or condition of this plea agreement or supplemental agreements with the government, the government will have the right, in its sole

discretion, to void this agreement, in whole or in part. In the event of such breach, the defendant will remain obligated to plead guilty and otherwise comply with the terms of this agreement and will not be permitted to withdraw the defendant's guilty plea under this agreement. The defendant will be subject to prosecution for any federal criminal violation of which the government has knowledge, including, but not limited to, charges that this Office has agreed to dismiss or not to prosecute under this agreement.

- b. If the defendant breaches this agreement, the government will have the following remedies, among others, available to it:
  - i. To bring prosecution for any federal criminal offenses dismissed or not prosecuted under this agreement. The defendant waives (gives up) any defense or objection to the commencement of any such prosecution that is not time-barred by the applicable statute of limitations as of the date on which the defendant signed this plea agreement, notwithstanding the expiration of the statute of limitations between the signing of the agreement and the commencement of any such prosecution;
  - ii. In connection with any such prosecution, any information, statement, and testimony provided by the defendant, and all leads derived therefrom, may be used against the defendant, without limitation and without regard to any rights the defendant may have under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410;
  - iii. To utilize any information, statement, or testimony provided by the defendant in any proceeding, including at sentencing, notwithstanding U.S.S.G. §1B1.8;
  - iv. To advocate if, and how, any particular adjustment or specific offense characteristic affects the applicable Sentencing Guidelines range without regard to any contrary stipulations contained in this agreement;


- v. To refrain from making any sentencing-related motion favorable to the defendant without regard to any provision in this agreement obligating the government to consider making or make such motion upon fulfillment of certain conditions;
- vi. To urge the sentencing Court to take the defendant's breach into account when imposing sentence; and
- vii. To recommend any sentence the government deems appropriate, even if such recommendation is at odds with any stipulation in this agreement.

**K. Limitations:** This agreement is between the United States Department of Justice, Tax Division, and the defendant. References to "the government" in this agreement refer only to that Office. This agreement does not bind any other federal, state, or local prosecuting authorities. Furthermore, this agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability, proceedings relating to the forfeiture of assets, and proceedings by the Department of Homeland Security, Bureau of Citizenship and Immigration Services relating to the immigration status of the defendant.

**L. Agreement Must be Signed; Modifications Must be Written or on the Record:** This agreement, to become effective, must be signed by all of the parties listed below. No promises, agreements, terms, or conditions other than those set forth in this plea agreement will be effective unless memorialized in writing and signed by all parties or confirmed on the record before the Court.

**M. Agreement to Plead Guilty Voluntary:** The defendant acknowledges reading each of the provisions of this plea agreement with the assistance of counsel and understands its provisions. The defendant further acknowledges that the defendant's agreement to plead guilty is voluntary and did not result from any force, threat, or promises (other than the promises in this plea agreement and any written supplemental agreements or amendments).

CAROLINE D. CIRAULO  
Principal Deputy Assistant Attorney General  
United States Department of Justice  
Tax Division



John N. Kane, Jr.  
Assistant Chief  
United States Department of Justice  
Tax Division, Northern Criminal Enforcement  
Bar Roll No.: 515130

9/9/16  
Date



CHRISTOPHER SWARTZ  
Defendant

9/9/16  
Date



Gabriel M. Nugent, Esq.  
Attorney for Defendant  
Bar Roll No. 513947

9/9/16  
Date

**Attachment A**  
**(List of Potential Lenders/Investors for Purposes of Restitution)**

Individuals- CA&CA	Individual- GEL
Individual- AA	Individual- FAL
Individual- WB	Individual- JL
Individual- JAB	Individual- HLL
Individual- RLP	Individual- RLL
Individual- JB-H	Individual- HRL
Individual- MB	Individual- LM
Individual- RJB	Individual- BM & RM
Individual- EWB	Individual & Trust- JFM
Individuals- RB & PB	Individual- TJM
Individual- DB	Individual- MKN
Individual- JB & LB	Individual- ESN
Individual- JC & JC	Individual- DPO
Individual- DC	Entity- PCOG
Individual- AND	Individual- PP
Individual- TD	Individuals- CR & JLR
Individual- AD	Individual- SR
Individual- EAD	Individual- PR
Trust- DML	Individual- MJR
Individual- RE	Individual- ESO
Individual- MF & NF	Individual- FS
Individual- RCF	Individual- SRS
Individual- DG	Individual- PS
Individual- SG	Individual- JAS
Individual- TG	Individual- BJS
Individual- LTH	Individuals/Trust- LW & KW-NW
Individual- WH	Individual- DAT
Entity - HCG	Individual- BMT
Individual- RMK	Individual- PV Jr.
Individual- PK	Individual- LW
Individual- BK	Individual- CW
Individual- RK	Individual- LG
Individual- HK & JK	Individual- DG
Individual- ADB	Individual- JH
Individual- MB	Individual- IJ
Individual- IB	Individual- DO
Individual- SAB	Individual- TP
Individual- AC	Individual- GP
Individual- BC	Individual- AP
Individual- JKC	Individual- FR
Individual- NC	Individual- CT
Individual- DFD	Individual- JET

Individual- MD	Individual- TS
Individual- JED	Individual- JS
Individual- JLCD	Individual- AIS
Individual- DD	Individual- SS
Individual- ME	Individual- RJS
Individual- DJH	Individual- MW
Individual- VH	Individual- GW
Individual- ATH	Individual- EJW
Individual- SJ	Individual- WJIY
Individual- SFL	Individual- TY
Individual- MRL	Individual- FR
Individual- RH	Individual- CS
Individual- KH	Individual- GS
Individual- CK	Individual- ES
Individual- KM	Individual- DS
Individual- AM	Individual- MHS
Individual- HM	Individual- PDT
Individual- MN	Individual- ACT
Individual- RN	Individual- DRT
Individual- WMO	Individual- RAW
Individual- MSP	Individual- JEW
Individual- KR	Individual- JLW
Individual- GS	Individual- DI
Individual- JCL	Individual- GM
Entity- RL	