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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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06-CR-00011-PLAGR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

NO. CR06-11 JLR

Plaintiff,

PLEA AGREEMENT

v.

ALASKA BROKERAGE
INTERNATIONAL, INC.
and DAVID KARSCH,

Defendants.

The United States of America and David Karsch ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to plead not guilty to any criminal charge brought against him;
 - (c) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;

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2 (d) to confront and cross-examine witnesses against him and to
3 subpoena witnesses in his defense at trial;

4 (e) not to be compelled to incriminate himself;

5 (f) to appeal his conviction, if he is found guilty; and

6 (g) to appeal the imposition of sentence against him.

7 **AGREEMENT TO PLEAD GUILTY**
AND WAIVE CERTAIN RIGHTS

8 2. The defendant knowingly and voluntarily waives the rights set out in
9 Paragraph 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and
10 agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against
11 him in the United States District Court for the Western District of Washington. The defendant
12 knowingly and voluntarily waives any 5th Amendment rights with respect to the conduct charged
13 in the Indictment and agrees to testify under subpoena in the trial against Alaska Brokerage
14 International, Inc. The defendant also knowingly and voluntarily waives the right to file any
15 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
16 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence
17 imposed by the Court if that sentence is consistent with or below the recommended sentence in
18 Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court.
19 This agreement does not affect the rights or obligations of the United States as set forth in 18
20 U.S.C. § 3742(b). Nothing in this paragraph, however, shall act as a bar to the defendant
21 perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting
22 claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees
23 that there is currently no known evidence of ineffective assistance of counsel or prosecutorial
24 misconduct. The defendant will plead guilty to the one-count charge outlined in the Indictment,
25 which is attached hereto, filed against the defendant in the United States District Court for the
26 Western District of Washington on January 17, 2006. The Indictment charges that the defendant,
27 beginning sometime in mid-2003, and continuing through at least February 14, 2004, and Alaska
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2 Brokerage International, Inc. and other co-conspirators, entered into and engaged in a
3 combination and conspiracy to rig bids for otter pelts sold at an auction held by Fur Harvesters
4 Auction ("FHA") in King County, within the Western District of Washington, on February 14,
5 2004. The combination and conspiracy unreasonably restrained interstate and foreign trade and
6 commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The charged
7 combination and conspiracy consisted of an agreement, understanding, and concert of action
8 among the defendant and co-conspirators, the substantial term of which was to suppress
9 competition by refraining from bidding against one another for otter pelts sold at the FHA
10 auction.

11 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty
12 to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt
13 to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

14 **FACTUAL BASIS FOR OFFENSE CHARGED**

15 4. Had this case gone to trial, the United States would have presented evidence
16 sufficient to prove the following facts:

17 (a) For purposes of this Plea Agreement, the "relevant period" is
18 that period beginning on or before sometime in mid-2003 and continuing through at
19 least February 14, 2004, (the exact dates being unknown to the United States.

20 (b) During the relevant period, Alaska Brokerage International,
21 Inc. ("ABI"), a corporation, was a corporation organized and existing under the laws
22 of New York. During the relevant period, ABI's primary business included the
23 purchase and sale of fur pelts in the United States and elsewhere.

24 (c) During the relevant period, the defendant, DAVID KARSCH,
25 represented ABI as the vice president of ABI. The defendant represented ABI at the
26 February 14, 2004, FHA auction. At the auction, the defendant performed acts
27 within the scope of his employment or apparent authority.
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2 (d) The charged combination and conspiracy consisted of an
3 agreement, understanding, and concert of action among the defendant and co-
4 conspirators, the substantial term of which was to suppress competition by refraining
5 from bidding against one another for the otter pelts sold at the FHA auction.

6 (e) For the purpose of forming and carrying out the charged
7 combination and conspiracy, the defendant and co-conspirators did those things that
8 they combined and conspired to do, including, among other things: (i) engaging in
9 communications and discussions regarding not competing with one another in the
10 bidding for the otter pelts to be auctioned at the February 14, 2004, FHA auction; (ii)
11 agreeing during a meeting on February 13, 2004 to a collusive bidding strategy,
12 involving not bidding against one another at the auction, bidding at certain prices or
13 price ranges, and subsequently dividing the otter pelts acquired among themselves
14 through post-auction transfers; and (iii) executing the agreed-upon collusive bidding
15 strategy. The defendant, on behalf of himself and ABI, was an organizer and leader
16 of this conduct.

17 (f) During the relevant period, FHA collected and offered for sale
18 at auction, otter pelts supplied by trappers located in the United States and Canada.
19 The defendant and co-conspirators purchased otter pelts at the February 14, 2004,
20 FHA auction held in the Western District of Washington and subsequently sold those
21 pelts to out-of-state and international customers.

22 (g) During the relevant period, the business activities of the
23 defendant and co-conspirators in connection with otter pelts purchased at the
24 February 14, 2004, FHA auction, which are the subject of the charged conspiracy,
25 were within the flow of, and substantially affected, interstate and foreign trade and
26 commerce.

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2 (h) The charged combination and conspiracy was carried out, in
3 part, within the Western District of Washington and within the five years preceding
4 the filing of the Indictment accompanying this Plea Agreement.

5 **POSSIBLE MAXIMUM SENTENCE**

6 5. The defendant understands that the statutory maximum penalty which may
7 be imposed against him upon conviction for a violation of Section One of the Sherman
8 Antitrust Act is:

- 9 (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);
- 10 (b) a fine in an amount equal to the greatest of (1) \$350,000, (2)
- 11 twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice
- 12 the gross pecuniary loss caused to the victims of the crime by the conspirators (15
- 13 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- 14 (c) a term of supervised release of one (1) year following any term of
- 15 imprisonment. If the defendant violates any condition of supervised release,
- 16 the defendant could be imprisoned for the entire term of supervised release
- 17 (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and United States
- 18 Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines")
- 19 §5D1.2(a)(3)).

20 6. In addition, the defendant understands that:

- 21 (a) pursuant to U.S.S.G. §5E1.1, the Court may order him to pay
- 22 restitution to the victims of the offense; and
- 23 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to
- 24 order the defendant to pay a \$100.00 special assessment upon conviction for the
- 25 charged crime.

26 **SENTENCING GUIDELINES**

27 7. The defendant understands that the Sentencing Guidelines are advisory, not
28 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,

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2 along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing
3 sentence. The defendant understands that the Guidelines determinations will be made by the
4 Court by a preponderance of the evidence standard. The defendant understands that although
5 the Court is not ultimately bound to impose a sentence within the applicable Guidelines range,
6 its sentence must be reasonable based upon consideration of all relevant sentencing factors set
7 forth in 18 U.S.C. § 3553(a).

8 SENTENCING AGREEMENT

9 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it
10 will recommend, as the appropriate disposition of this case, that the Court impose a sentence
11 within the applicable Guidelines range (2003 edition). The parties agree that the Guidelines
12 range here is that applicable for a Guidelines base offense level 11, determined as follows:
13 11pts (§2R.1.1(a)-(b)(1)); plus 2pts (§3B1.1(c); and minus 2pts (§3E1.1(a)). The parties agree
14 that the defendant falls within criminal history category 1. The parties agree that there exists no
15 aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
16 consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines
17 justifying a departure pursuant to U.S.S.G. §5K2.0. The defendant understands that the Court
18 will also order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in
19 addition to any fine imposed.

20 9. The United States and the defendant understand that the Court retains
21 complete discretion to accept or reject the recommended sentence provided for in Paragraph 8
22 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P.
23 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendation
24 contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

25 REPRESENTATION BY COUNSEL

26 10. The defendant has reviewed all legal and factual aspects of this case with
27 his attorney and is fully satisfied with his attorney's legal representation. The defendant has
28 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory

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explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

11. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

ENTIRETY OF AGREEMENT

12. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

13. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

14. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

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DATED: May 16, 2006

Respectfully submitted,

BY: David Karsch
DAVID KARSCH
Defendant

BY: John Schmoll
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