

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

UNITED STATES OF AMERICA	:	Case No.: 1:08-cr-020
	:	
vs.	:	PLEA AGREEMENT
	:	
ERIC PHILPOT	:	C.J. Beckwith
	:	
	:	
	:	

It is hereby agreed between **ERIC PHILPOT** (hereafter, “defendant”), individually and through his attorney, Cornelius Carl Lewis, and the United States Attorney’s Office for the Southern District of Ohio (hereafter, “USAO”) (collectively, “the parties”), as follows:

1. Defendant agrees to plead guilty to Counts 4 and 17 of the Indictment filed in this action, charging him with mail fraud in violation of 18 U.S.C. § 1341 and conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). The statutory maximum penalties for a violation of 18 U.S.C. § 1341 are: up to twenty years in prison, up to five years of supervised release, a fine of up to \$250,000.00, restitution, and a mandatory special assessment of \$100.00. The statutory maximum for a violation of 18 U.S.C. § 1956(h) are: up to twenty years in prison, up to five years of supervised release, a fine of up to \$500,000.00, and a mandatory special assessment of \$100.00. Defendant admits that he is, in fact, guilty of the offenses as charged in Counts 4 and 17 of the Indictment, and that the attached Statement of Facts, which is incorporated herein by this reference, is true and correct. By admitting these facts, the defendant stipulates and admits that had this case proceeded to trial the United States would have been able to prove each element of the

offenses beyond a reasonable doubt.

2. (a) Defendant understands that the U.S. Probation Office (“Probation Office”) will conduct a pre-sentence investigation and will recommend to the Court an advisory Sentencing Guidelines range, including, among other matters, a Base Offense Level, specific offense characteristics, adjustments, and any departures. For the purpose of calculating an advisory Sentencing Guidelines range, the parties have made only the agreements discussed in paragraphs 2(b) and (c) below which they will mutually recommend to the Probation Office and the Court. However, defendant understands that the Court will make the determination of all the various aspects of the Sentencing Guidelines and whether or not it will accept all or some of the recommendations of the parties. The parties reserve the right to argue that other specific offense characteristics, adjustments and departures are appropriate, so long as these arguments do not conflict with the agreements in paragraphs 2(b) and (c) below. Defendant understands that the Probation Office’s recommendations are not binding on the Court, and that any agreements or recommendations made by the parties are not binding on the Court or the Probation Office. Defendant further understands that the Sentencing Guidelines range is an advisory range to be considered by the Court along with other appropriate sentencing factors as noted in 18 U.S.C. § 3553(a). Defendant understands that the Court alone will determine an appropriate sentence, which may or may not be consistent with any agreements or recommendations of the parties. Defendant understands that if the Court does not follow any agreements or recommendations made by the parties, he does not have the right to withdraw his pleas of guilty. Defendant understands and acknowledges that he could receive up to the maximum penalties provided by law if the Court so determines.

(b) The parties make the following non-binding Guideline recommendations pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

A.	<u>For Count 4 - Guideline 2B1.1</u>	<u>Offense Level</u>
	Base	(a)(1) 7
	Amount of	(b)(1)(G) + 12
	Loss (more than \$200K less than \$400K)	

B.	<u>For Count 17 - Guideline 2S1.1</u>	
	Base (from Count 4)	(a)(1) 19
	1956 offense	(b)(2)(B) + 2

C. Grouping - Multiple Counts 3D1.2

The parties believe and recommend that the offenses should be grouped.

D. Acceptance of Responsibility 3E1.1(a) & (b)

(Assuming defendant continues to accept responsibility)	- 2
(Assuming defendant signs and returns Plea Agreement by June 11, 2008)	- 1

(c) The parties believe and recommend that the “sophisticated means” enhancement of Guideline § 2B1.1(b)(9)(B) is not applicable.

(d) The parties make no agreements or recommendations concerning the defendant’s role in the offense or his criminal history.

DEFENDANT’S OBLIGATIONS

3. In addition to entering the guilty pleas as discussed in Paragraph 1 and making the recommendations in paragraphs 2(b) and (c) above, defendant agrees that he will pay to the United States Clerk of Court, prior to or at the time of sentencing, the mandatory special assessments in the total amount of \$200.00, which is \$100.00 for each count.

4. Defendant further agrees that in the event he does not plead guilty or seeks to withdraw his guilty pleas, or the guilty pleas are set aside for any other reason, defendant waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, and § 1B1.8(a) of the United States Sentencing Guidelines Manual. Any statements made by defendant in the course of plea discussions, in any proceeding under Rule 11 of the Federal Rules of Criminal Procedure, and during any cooperation with law enforcement authorities, will be admissible against defendant without limitation in any civil or criminal proceeding.

5. The defendant is aware that Title 18, United States Code § 3742 affords a right to appeal the sentence in certain circumstances. Acknowledging this, the defendant waives his right to directly appeal his sentence and all other issues that he can legally waive. If the United States would exercise its right to appeal, the defendant is released from this waiver of appeal.

THE USAO'S OBLIGATIONS

6. If defendant complies fully with all of his obligations under this Plea Agreement, the USAO agrees:

a) To dismiss the remaining counts of the Indictment at the time of sentencing and not file additional criminal charges against defendant for violations occurring in the Southern District of Ohio during the time period charged in the Indictment and arising out of the facts set forth in the Indictment and the attached Statement of Facts.

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility up to and including the time of sentencing and otherwise fulfills his obligations as stated in this Plea Agreement, to make the Guideline recommendations as noted above in paragraphs 2(b) and (c).

OBLIGATIONS OF THE PARTIES REGARDING COOPERATION

7. The defendant will give complete cooperation to law enforcement authorities and others regarding his activities and those of others in relation to the offenses charged in the Indictment and all other criminal activity of which he is aware. Pursuant to his cooperation agreement the following terms and conditions apply:

(a) **ERIC PHILPOT** shall cooperate fully, truthfully, completely and forthrightly with the United States Attorney's Office for the Southern District of Ohio and other Federal, state and local law enforcement authorities identified by this Office in any and all matters as to which the Government deems the cooperation relevant. **ERIC PHILPOT** acknowledges that his cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written

statements; taking government administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by **ERIC PHILPOT** to cooperate fully, truthfully, completely and forthrightly as directed by this Office and other Federal, state and local law enforcement authorities identified by this Office in any and all matters in which the Government deems his assistance relevant will constitute a breach of this agreement by **ERIC PHILPOT** and will relieve the Government of its obligations under this agreement. **ERIC PHILPOT** agrees, however, that such breach by him will not constitute a basis for withdrawal of his plea of guilty or otherwise relieve him of his obligations under this agreement.

(b) **ERIC PHILPOT** shall promptly turn over to the Government or other law enforcement authorities or direct such law enforcement authorities to any and all evidence of crime; all contraband and proceeds of crime; and all assets traceable to such proceeds of crime.

(c) **ERIC PHILPOT** shall testify fully, completely and truthfully before any and all Grand Jury(ies) in the Southern District of Ohio, and elsewhere, and at any and all trials of cases or other court proceedings in the Southern District of Ohio and elsewhere, at which his testimony may be deemed relevant by the Government.

(d) **ERIC PHILPOT** understands and acknowledges that nothing in this agreement allows him to commit any criminal violation of local, state or federal law during the period of his cooperation with law enforcement authorities or at any time prior to the sentencing in this case. The commission of a criminal offense during the period of **ERIC PHILPOT'S** cooperation or at any time prior to sentencing will constitute a breach of this Plea Agreement and will relieve the Government of all of its obligations under this agreement. **ERIC PHILPOT** acknowledges, however, and agrees that such a breach of this agreement will not entitle him to

withdraw his plea of guilty or relieve him of his obligations under this agreement. **ERIC PHILPOT** further understands that, to establish a breach of this agreement, the Government need only prove his commission of a criminal offense by a preponderance of the evidence.

(e) Upon request, **ERIC PHILPOT** will provide a complete and truthful financial accounting to the United States of his assets and liabilities.

8. While no substantial assistance motion has been promised by the United States, the parties have discussed that the defendant could qualify for such a motion if he provides the United States with substantial assistance. The defendant agrees to and understands the following: That only the United States Attorney, in his sole discretion, may apply for a downward departure from the Guideline sentence pursuant to Sentencing Guideline § 5K.1 and that only the United States Attorney may, within one year of sentencing and at the sole discretion of the United States Attorney, file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, to reflect substantial assistance to the United States subsequent to sentencing. The defendant understands that the determination of whether he has provided substantial assistance for purposes of § 5K1.1 is not reviewable by this Court. The defendant agrees and acknowledges that if this Office chooses not to file a substantial assistance departure motion it shall not be grounds for the defendant to move to withdraw his pleas of guilty in this case or otherwise relieve him of his obligations under this agreement.

WAIVER OF RIGHTS

9. By pleading guilty, defendant has been advised of and understands that he gives up the following rights:

- a) The right to persist in pleas of not guilty.

- b) The right to a speedy and public trial by jury.
- c) The right to the assistance of counsel at trial, including, if defendant could not afford an attorney, the right to have the Court appoint one for him.
- d) The right to be presumed innocent and to have the burden of proof placed on the government to prove him guilty beyond a reasonable doubt.
- e) The right to confront and cross-examine witnesses against him.
- f) The right, if he chooses to testify on his own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.
- g) The right not to be compelled to testify, and, if he chooses not to testify or present evidence, to have that choice not be used against him.

By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

DISCUSSION, UNDERSTANDING, COMPLETE AGREEMENT

10. By signing this Plea Agreement, defendant acknowledges that he has read and discussed its terms with his attorney and understands and accepts those terms. Further, defendant acknowledges that this document contains the entire Plea Agreement between the defendant and the USAO through its undersigned attorney. No other agreements, promises, deals, bargains or understandings exist which modify or alter these terms. This Plea Agreement binds only the United

States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authority.

GREGORY G. LOCKHART
United States Attorney



J. RICHARD CHEMA
Assistant United States Attorney

6/12/08

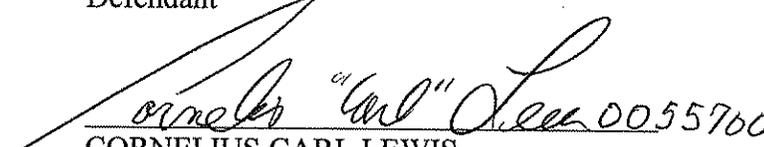
Date



ERIC PHILPOT
Defendant

6/11/08

Date



CORNELIUS CARL LEWIS
Attorney for defendant ERIC PHILPOT

JUNE 11, 2008

Date

STATEMENT OF FACTS
Facts Relevant to Count 4

Between May 2004 and February 2006, Defendant **ERIC PHILPOT** planned and performed a scheme and artifice to defraud, as well as to obtain money from various mortgage lending companies. The scheme and artifice to defraud included the following behavior which defendant **ERIC PHILPOT** knowingly and willfully performed.

ERIC PHILPOT identified various pieces of residential real estate in the Cincinnati, Ohio area. **ERIC PHILPOT** then solicited individuals to work with him, and acting upon the advice and guidance of defendant **ERIC PHILPOT**, these individuals made offers to purchase the identified properties and submitted applications for loans to fund the purchases. **ERIC PHILPOT** assisted the buyers in taking the necessary steps to obtain the financing for the properties and do all the steps required to achieve a closing for the sale of the properties.

In conducting these transactions defendant **ERIC PHILPOT** often supplied the purchasers with information to facilitate the lenders granting credit to the buyers and the transactions thereafter closing. However, knowing the type of information necessary to induce the lenders to grant loans and for other participants in the real estate business to effectuate the transactions, defendant **ERIC PHILPOT** supplied and assisted the purchasers in providing false information to the lenders. In assisting with the loan application and closing processes, defendant **ERIC PHILPOT** also knowingly failed to supply material information that he knew would be necessary for the participants in the transactions to make their business decisions.

In the course of the scheme and artifice to defraud, defendant **ERIC PHILPOT** made or caused to be made false material misrepresentations and omissions in official lending documents

such as the Uniform Loan Applications (forms 1003) and Settlement Statements (HUD-1 forms). Among the types of false statements and omissions that defendant **ERIC PHILPOT** caused to be made in various sales of residential real estate were statements related to the income of the buyers, the intended use of the property, the source and amount of down payments, the true involvement of the defendant in the transactions and his access and control of the loan proceeds, and various other misrepresentations. Defendant **ERIC PHILPOT**, at times, also provided fraudulent documentation to support the false representations being made by the purchasers of the property. In the course of the artifice and scheme to defraud, defendant **ERIC PHILPOT** wrongfully obtained control of various pieces of real property and loan proceeds that were made by lenders under fraudulent circumstances.

In particular, defendant **ERIC PHILPOT** recruited an individual referred to as MW to be the purchaser of several pieces of real property. In all of these transactions, following guidance from defendant **ERIC PHILPOT**, MW submitted fraudulent loan applications and otherwise facilitated fraud during the course of the closing of the real estate transactions. On or about November 22, 2004, a real estate closing was conducted in which, at the direction of defendant **ERIC PHILPOT**, MW purchased property located at 1805-1807 Lang Street, Cincinnati, Ohio. To purchase this property, MW obtained a loan from Aegis Funding Corporation (Aegis) in the amount of \$160,000.00. Among the false representations made by MW and defendant **ERIC PHILPOT** to induce Aegis to make this loan were that MW provided the down payment (when in reality this was done by defendant **ERIC PHILPOT** using part of the loan proceeds) and that she had a monthly income which was substantially in excess of her true income. The loan application and other closing documents also omitted material information including various liabilities that MW owed and that

MW received \$7,500.00 from the loan proceeds, a payment from **ERIC PHILPOT** that was not reflected on the HUD-1. These omissions were material information for Aegis.

On or about November 22, 2004, the closing agent shipped by a private commercial shipping company a complete package of the closing documents from Cincinnati, Ohio to Aegis in Houston, Texas. This interstate transmittal of the closing documents was a necessary step for the loan to be funded and defendant **ERIC PHILPOT** caused it to happen through his actions facilitating this real estate transaction.

Additional Facts Relevant to Count 17

In performing the artifice and scheme to defraud discussed, in part, above, defendant **ERIC PHILPOT** performed a number of fraudulent transactions involving a piece of real property located at 2616 Linden Street, Cincinnati, Ohio. First, defendant **ERIC PHILPOT** acquired control of the property in 2004 but caused the paperwork to reflect that an individual who was acting under his direction and control was the buyer. Various false representations were done in conducting this transaction. Later, on or about February 24, 2006, even though he was already a true owner of 2616 Linden Street, Cincinnati, Ohio, defendant **ERIC PHILPOT** arranged another transaction in which the paper owner of the property purportedly sold the property to defendant **ERIC PHILPOT**. **PHILPOT** applied for and obtained from a lender a new loan in the amount of \$56,000.00 purportedly needed to fund his purchase of the residence. Numerous false statements and material omissions were made in the loan application and closing documents for this transaction which occurred on or about February 24, 2006. There were various transfers of the necessary real estate documents using private interstate commercial mail carriers and interstate wire communications done to effectuate this part of the artifice and scheme to defraud.

At the closing of the above transaction, the purported seller was given a check in the amount of \$63,500.41 as the proceeds of the sale. The purported seller turned these proceeds over to defendant **ERIC PHILPOT**. Defendant **ERIC PHILPOT** and one of his associates then took these proceeds and converted \$56,700.00 into a check made payable to the other associate of defendant **ERIC PHILPOT**. This associate deposited this check into his own checking account and thereafter made numerous financial transactions with this money at the request and direction of **ERIC PHILPOT**. These transactions were all done for the benefit of defendant **ERIC PHILPOT**.

At the time **ERIC PHILPOT** caused the closing of the transaction where he purportedly purchased the 2616 Linden Street residence, he knew he was under federal investigation for mortgage fraud. When he obtained the closing funds and got his associate to agree to conduct financial transactions on his behalf in the associate's name, he did so with the intent of trying to conceal and disguise the nature, location, source, ownership and control of the loan proceeds. He knew that the loan proceeds were obtained by him through mail fraud. The associate and defendant **ERIC PHILPOT** thus both agreed to conduct various money laundering financial transactions several of which transactions were in excess of \$10,000.00. In performing the financial transactions described above, defendant **ERIC PHILPOT** and his associate utilized financial institutions that were engaged in and affecting interstate commerce.

In the course of the artifice and scheme to defraud performed by the defendant, the parties agree that the amount of loss was more than \$200,000.00 but less than \$400,000.00.

I have reviewed the above statement of facts with my attorney. I agree to the accuracy of the Statement of Facts thereby acknowledging their truth and my guilt.



ERIC PHILPOT
Defendant

6/11/08
Date

Cornelius "Carl" Lewis 0055900
CORNELIUS CARL LEWIS
Attorney for defendant ERIC PHILPOT

JUNE 11, 2008
Date