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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THOMAS JOSEPH O'MEARA, Defendant.	No. 10-00562 LHK PLEA AGREEMENT

I, Thomas Joseph O'Meara, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(A) and Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to Counts 15 and 30 of the captioned Indictment charging me with Wire Fraud and Money Laundering, in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 1957.

I agree that the elements of 18 U.S.C. § 1343 - Wire Fraud are as follows: (1) I knowingly devised a scheme or plan to obtain money by means of a false statement or statements; (2) I knew the statement was false when I made it; (3) the statement was "material," meaning that it would reasonably influence a person to part with money; (4) I made the false statement with the intent to defraud or deceive; and (5) I caused a wire transmission to be made in interstate commerce to carry out an essential part of my scheme or plan.

I agree that the maximum penalties for 18 U.S.C. § 1343 - Wire Fraud are as follows:

a.	Maximum prison sentence	20 years
b.	Maximum fine	$ 250,000
c.	Maximum supervised release term	3 years
d.	Restitution	No less than $7 million
e.	Mandatory special assessment	$ 100
f.	Forfeiture	

I agree that the elements of 18 U.S.C. § 1957 - Money Laundering are as follows: (1) I knowingly engaged in a monetary transaction; (2) I knew that the property involved in the monetary transaction was from criminally derived property; (3) the property involved is of a value greater than $10,000; and (4) the property involved in the monetary transaction is from specified unlawful activity.

I agree that the maximum penalties for 18 U.S.C. § 1957 - Money Laundering are as follows:

a.	Maximum prison sentence	10 years
b.	Maximum fine	$ 250,000
c.	Maximum supervised release term	3 years
d.	Restitution	No less than $7 million
e.	Mandatory special assessment	$ 100
f.	Forfeiture	

I understand that I am pleading guilty to multiple violations and that the Court may order that my sentence for each violation run consecutively.

2. I agree that I am guilty of the offenses to which I am pleading guilty, and I agree

that the following facts are true:

Beginning in approximately 2004 and continuing until at least 2007, I created and carried out a scheme or plan in the Northern District of California to obtain money from victim-investors by making statements and promises that I knew were false about a major golf course and housing development project I had started in 2003 entitled the Running Horse Golf and Country Club ("the Running Horse Development"). The Running Horse Development involved three large contiguous land parcels totaling over 450 acres that were located in the southwestern part of Fresno, California. My plan for the Running Horse Development included the construction of an 18-hole golf course and country club that was to have been adjoined by 780 residential units within a gated community. I controlled two California corporations–Running Horse LLC and Cypress Investment Corporation–that I used to facilitate the Running Horse Development. I directed the Running Horse Development from my business office in Carmel, California.

As part of my scheme or plan to obtain money, I knowingly made the following material omissions and material false statements and promises to induce victim-investors into putting and keeping their money in the Running Horse Golf Development. I knowingly made the following material omissions and false statements with an intent to defraud or deceive investors:

- I told the victim-investors that Jack Nicklaus Design and the PGA Tour were confident in late 2006 about the progress of the Running Horse Development, when in fact, I knew at the time I made those statements that Nicklaus Design had ceased work on the project in June 2006 due to non-payment of fees, and that the PGA Tour had in summer 2006 communicated to me serious concerns about the lack of progress on the Running Horse Development.
- I told victim-investors that the Running Horse Development was in good financial condition, when I knew it suffered from consistent cash flow problems, and at one point, was in default on over $10 million in loans it had previously received from two commercial lenders (LaJolla and Scripps). I failed to disclose that those two commercial lenders eventually separately filed notices of default against the Running Horse Development in July 2006.

- I told victim-investors that they should invest through Section 1031 exchanges, as the proceeds from the sales of their personal properties would be transferred into 100% ownership of equivalent value property within the Running Horse Development, when in fact I knew that investors who used Section 1031 exchanges to invest in the Running Horse Development were not receiving 100% ownership of equivalent value property within the Running Horse Development.

As part of my scheme or plan to obtain money, I also knowingly failed to secure individual investor funds and provide security as I had promised, and failed to properly advise individuals of the requirements needed before they could purchase a specific lot in the Running Horse Development.

As part of my scheme or plan to obtain money, I solicited a victim-investor named D.K. I knowingly made materially false statements and failed to disclose material information to D.K. to induce him to invest in the Running Horse Development, including: (1) I represented that the Running Horse Development was fully capitalized; (2) I promised D.K. that his investment would be safe and secure; and (3) I promised D.K. that he would receive his principal back within 90 days plus a $35,000 bonus. I made those false statements with the intent to defraud or deceive D.K. I also knowingly failed to disclose to D.K. at that time that commercial lender La Jolla had recently filed a notice of default against the Running Horse Development, and that Nicklaus Design had stopped work on the project in June 2006 due to non-payment. As a result of my false statements and material omissions, on September 6, 2006, D.K. made a wire transfer via FEDWIRE of $100,000 funds from West Lake Village, California, to Fresno, California, via registration wire to East Rutherford, New Jersey. D.K. lost his entire investment when the Running Horse Development failed. To date, I have never paid D.K. investment returns at a level that I promised him, nor have I returned any of his principal.

As part of my scheme or plan to obtain money, I also knowingly engaged in a monetary transaction through a financial institution, affecting interstate commerce, involving criminally derived property of a value greater than $10,000, knowing that this property had in fact been derived from a specified unlawful activity, namely, wire fraud. As part of my scheme or plan to obtain money from victim-investors, on March 2, 2006, I issued a check in the amount of $25,000 from Running Horse, LLC's Bank of America account ending in 555 that was payable to my company Cypress Investment Corporation. I knew that this $25,000 check represented proceeds from my wire fraud. I also agree that my issuance of that $25,000 check was in, or in some way or degree affected, interstate commerce.

I agree that my criminal conduct involved 50 or more victims, and that the total amount of actual loss arising from my criminal conduct was more than $7,000,000.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence. I also agree to waive venue, if necessary, for the charges filed in this case.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court. I also agree to waive any right I have to appeal any aspect of my sentence, including any orders relating to forfeiture and or restitution.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any time in the future after I am sentenced, except that I reserve my right to claim that my counsel was ineffective in connection with the negotiation of this Agreement or the entry of my guilty plea. I understand that the government will not preserve any physical evidence obtained in this case.

6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered unless the Court declines to accept the sentence agreed to by the parties set out below in Paragraph 8. I agree that the government may withdraw from this Agreement if the Court does not accept the agreed upon sentence set out below in Paragraph 8. I further agree that the statute of limitations shall be tolled from the date I signed the Agreement until the date the Court rejects the Agreement. I understand that by entering into this Agreement: (a) I agree that the facts set

forth in Paragraph 2 of this Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A) in any subsequent proceeding, including at trial, in the event I move to withdraw my guilty plea, and (b) I expressly waive any and all rights under Fed. R. Crim. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in Paragraph 2 of this Agreement in any such subsequent proceeding.

7. I agree that the Court will use the Sentencing Guidelines to calculate my sentence. I understand that the Court must consult the Guidelines and take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I agree that the Sentencing Guidelines offense level will be calculated as follows and that I will not ask for any other adjustment to or reduction in the offense level or for a downward departure or variance from the offense level and Guidelines range as determined by the Court, except that I may argue for a downward variance based on 18 U.S.C. § 3553(a) factors to a sentence of not less than 36 months imprisonment, and I understand that the government reserves its right to oppose any such motion. The parties have reached no agreement regarding my Criminal History Category:

a. Base Offense Level, U.S.S.G. § 2B1.1(a)(2): 7

b. Specific Offense Characteristic: +20

<u>Loss Amount</u>: I understand and agree that the loss caused by my offense conduct described above is more than $7,000,000 but less than $20,000,000, resulting in a 20 level increase to the base offense level, pursuant to U.S.S.G. § 2B1.1(b)(1)(K).

c. Specific Offense Characteristic: +4

<u>Number of Victims</u>: I understand and agree that my offense involved 50 or more victims, resulting in a four level increase to the adjusted offense level, pursuant to U.S.S.G. § 2B1.1(b)(2)(B).

d. Acceptance of Responsibility: -3

If I meet the requirements of U.S.S.G. § 3E1.1 through sentencing, I may be entitled to a three level reduction.

e. Adjusted Offense Level: 28

8. I agree that a reasonable and appropriate disposition of this case under the Sentencing Guidelines and 18 U.S.C. § 3553(a) and the sentence to which the parties have agreed is as follows: a sentence of imprisonment of at least 36 months but no more than 84 months,

three years of supervised release (with conditions to be fixed by the Court), no less than $7,000,000 restitution, and a $100 special assessment. I understand that the government reserves the right to argue for a sentence as high as 84 months imprisonment. The parties have reached no agreement regarding a potential fine.

9. I agree that regardless of any other provision of this Agreement, the government may and will provide the Court and the Probation Office with all information relevant to the charged offenses and the sentencing decision.

10. I agree to pay restitution for all the losses caused by all the schemes or offenses with which I was charged in this case, and I agree that the amount of restitution will not be limited to the loss attributable to the counts to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree to pay restitution in an amount to be set by the Court, but in no event less than $7,000,000. I agree that any fine, forfeiture, or restitution imposed by the Court against me will be immediately due and payable and subject to immediate collection by the government and I understand that the government may seek immediate collection of the entire fine, forfeiture, or restitution from any assets without regard to any schedule of payments imposed by the Court or established by the Probation Office. I agree that I will make a good faith effort to pay any fine, forfeiture, or restitution I am ordered to pay. Before or after sentencing, I will upon request of the Court, the government, or the Probation Office, provide accurate and complete financial information, submit sworn statements and give depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

11. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; and to comply with any of the other promises I have made in this Agreement. I agree that if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises in this Agreement, including those

set forth in the Government's Promises Section below, but I will not be released from my guilty plea.

12. I agree that this Agreement contains all of the promises and agreements between the government and me, and supersedes any other agreements, written or oral. No modification of this Agreement shall be effective unless it is in writing and signed by all parties.

13. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of California only, and does not bind any other federal, state, or local agency.

The Government's Promises

14. The government agrees to move to dismiss any open charges pending against the defendant in the captioned Indictment at the time of sentencing.

15. The government agrees not to file any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned Indictment

16. The government agrees that the reasonable and appropriate sentence in this case is as set forth above in Paragraph 8 above, unless the defendant violates the terms of the Agreement above or fails to accept responsibility.

The Defendant's Affirmations

17. I confirm that I have had adequate time to discuss this case, the evidence, and the Agreement with my attorney and that my attorney has provided me with all the legal advice that I requested.

18. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand the Agreement.

19. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of

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proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this Agreement.

Dated: 7/25/2012

THOMAS JOSEPH O'MEARA
Defendant

MELINDA HAAG
United States Attorney

Dated: 7/25/12

JOSEPH FAZIOLI
Assistant United States Attorney

20. I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights my client is giving up by pleading guilty, and, based on the information now known to me, my client's decision to plead guilty is knowing and voluntary.

Dated: 7/25/12

JEANE DEKELVER
Attorney for Defendant