

- (B) the Defendant used, or caused the use of, the mails or any private or commercial interstate carrier for the purpose of executing, or attempting to execute, the scheme.

The maximum sentence for a violation of Count 7 of the Indictment is a fine of \$250,000 or double the gain or loss from the crime (whichever is greater) (18 U.S.C. § 3571) and/or imprisonment for 5 years, a term of supervised release of 3 years (18 U.S.C. § 3583), and a special assessment of \$100 (18 U.S.C. § 3013).

2. The Defendant agrees to provide detailed financial information to the United States Probation Office prior to sentencing. The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands and agrees that any monetary penalty imposed is not dischargeable in bankruptcy.

- (A) Fines: The Defendant understands and agrees that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572, which fine may be due and payable immediately after sentencing regardless of whether the Defendant has the money to pay the fine. In the event the Defendant does not have the money, the Defendant understands and agrees that the Court may establish a payment schedule, taking into account the Defendant's present and future means of earning money, or of obtaining money to pay the fine.

(B) Special Assessment: Pursuant to 18 U.S.C. § 3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which she is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.

3. Provided the Defendant complies with all the terms of this Agreement, the United States agrees to move to dismiss the remaining counts of the Indictment at sentencing. The Defendant understands that the Court may consider these dismissed counts as relevant conduct pursuant to § 1B1.3 of the United States Sentencing Guidelines.
4. The Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Commission Guidelines, Application Notes and Policy Statements, as well as the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant also understands that Defendant's sentence has not yet been determined by the Court, and that any estimate of a probable sentencing range Defendant may have received from Defendant's attorney, the United States or the United States Probation Office is only a prediction, not a promise, and is not binding on the United States, the Probation Office or the Court. The Defendant further understands that the United States retains the right to inform the Court of any relevant facts, to

address the Court with respect to the nature of the offense, to respond to questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report, to respond to any statements made to the Court by or on behalf of the Defendant and to summarize all evidence which would have been presented at trial to establish a factual basis for the plea.

5. The Defendant agrees that all facts that determine her offense level under the Guidelines and pursuant to any mandatory minimum (including facts that support any specific offense characteristic or other enhancement or adjustment) can be found by the Court at sentencing by a preponderance of the evidence standard and the Court may consider any reliable evidence, including hearsay. By executing this Agreement, the Defendant understands that she waives any argument that facts that determine her offense level under the Guidelines and pursuant to any mandatory minimum should be alleged in an Indictment and found by a jury beyond a reasonable doubt.
6. The Defendant understands that the obligations of the United States within the Plea Agreement are expressly contingent upon the Defendant abiding by federal and state laws and complying with the terms and conditions of any bond executed in this case.
7. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either expressed or implied, it is understood that the United States will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw

her plea of guilty to the offense(s) enumerated herein.

8. The United States and the Defendant understand that the Court retains the complete discretion to accept or reject the recommended sentence provided for in Paragraphs 9, 10, and 11 of this Plea Agreement. The Defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendations contained in this Agreement, she nevertheless has no right to withdraw her plea of guilty.

Guidelines Recommendation

9. The United States and the Defendant agree that the 2002 Federal Sentencing Guidelines are applicable to this case and recommend that the following sentencing calculation be adopted by the Court:

<u>Base Offense Level</u>	6	§2B1.1(a)
<u>Specific Offense Characteristics</u> (Loss >\$400,000, but < \$1 million)	+14	§2B1.1(b)(1)(H)
<u>Adjustments</u>		
Acceptance of Responsibility	-3	§3E1.1
<u>Adjusted Offense Level</u>	17	
<u>Sentencing</u>		
<u>Imprisonment:</u> Zone D (24-30 months) Minimum term satisfied by sentence of imprisonment		§5C1.1(f)

Restitution, Fines, Forfeitures

Restitution: \$468,496.00 §5E1.1
 Payable to Universal Service
 Administrative Company (“USAC”)

Fine: \$5,000 - \$50,000 §5E1.2

10. The United States and the Defendant recommend that the Court impose an appropriate sentence of incarceration at the LOW END of the advisory Guidelines range, and, based on the Defendant’s present mental health condition, request the Court to recommend that the place of confinement be FMC Carswell, FMC Lexington, or a similar facility, and that the Defendant be released following the imposition of sentence to allow her to self-surrender to the assigned correctional facility on a date specified by the Court.
11. The United States and the Defendant recommend that the Court impose a fine only to the extent that it will not impair the ability of the Defendant to make restitution. 18 U.S.C. § 3572(b).
12. The United States and the Defendant agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0.
13. The United States and the Defendant also agree not to seek or support any sentence outside of the recommended Guidelines range detailed above in

Paragraph 9 nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

14. The United States and the Defendant further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

Forfeiture

15. The Defendant agrees to immediately forfeit to the United States any and all interests in any and all assets and property, real and personal, that constitute or are derived from proceeds traceable to the commission of all counts charged in the Indictment, not only the single count to which the Defendant is pleading guilty. These proceeds include, but are not limited to, the sum of \$468,496.00 in United States currency, and constitute the proceeds the Defendant obtained, directly or indirectly, as the result of her violations of 18 U.S.C. §§ 1341 and 1343 as charged in Counts 1 through 12.

The assets include, but are not limited to, the following:

- (1) New York Life Insurance Company Policy #58 223 380, Policyholder: Doris Ayer, mother of Cynthia K. Ayer; First Contingent beneficiary: Cynthia K. Ayer, \$220,384.00 in proceeds directly traceable to policy; Cash value: \$567,025.67 as of March 27, 2006.

16. The Defendant acknowledges that each asset covered by this Plea Agreement is subject to forfeiture pursuant to 21 U.S.C. § 853, as incorporated by 18 U.S.C. § 981(a)(1)(c), 18 U.S.C. § 982(b)(1), and 29 U.S.C. § 2461(c) as property constituting, or derived from, proceeds obtained directly or

indirectly, as a result of the violation(s) to which the Defendant is pleading guilty.

17. By entering into this Plea Agreement, the Defendant authorizes the Court to immediately enter a preliminary order of forfeiture against the property described by this Plea Agreement, consents to that order becoming final as to her at the time of entry, and agrees that the order shall become part of her sentence and be incorporated into the judgement against her automatically at the time of its entry without further action from the Court.
18. With regard to all forfeitable assets, the Defendant agrees to take all steps necessary to ensure that all required signatures are obtained, including, but not limited to the signature of her mother, Doris Ayer, to get the sum of \$468,496.00 released from New York Life Insurance Company and made available for forfeiture. The United States agrees that the \$468,496.00 forfeited by the Defendant can be used to pay full restitution to USAC as may be ordered by the Court. After Defendant pays full restitution to USAC, the United States agrees to dismiss any and all criminal forfeiture proceedings against the Defendant.

Merger and Other Provisions

19. The Defendant understands and agrees that by pleading guilty to an offense involving dishonesty or a breach of trust, or money-laundering, as set forth in 12 U.S.C. §§ 1785 and 1829, the Defendant is prohibited from controlling or participating, directly or indirectly, in the conduct of affairs of any federally-insured bank or credit union, and is prohibited from serving as any director, officer, employee, agent, controlling stockholder, or other institution-affiliated party of any federally-insured bank or credit union without prior written consent pursuant to federal law.
20. The Defendant represents to the Court that she has met with her attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with her attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and her attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witness, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings, the right to confront and cross-examine the United States' witnesses, the Defendant's right to testify in her own behalf, or to remain silent and have no adverse inferences drawn from her silence; and that the Defendant, with the advice of counsel, has weighed the relative benefits of a trial by jury or by the Court versus a plea of

guilty pursuant to her Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

21. The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every Defendant certain rights to contest a conviction and/or sentence.

Acknowledging those rights, the Defendant, in exchange for the concessions made by the United States in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255.

This waiver does not apply to claims of ineffective assistance of counsel or prosecutorial misconduct. This Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nor does it limit the United States in its comments in or responses to any post-sentencing matters.

22. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the Court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other

promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

DATE

CYNTHIA K. AYER, Defendant

DATE

J. Edward Holler
Attorney for the Defendant

Kevin F. McDonald
REGINALD LLOYD
UNITED STATES ATTORNEY

April 22, 2008
DATE

BY:

Dean A. Eichelberger
Dean A. Eichelberger
Assistant U. S. Attorney

THOMAS O. BARNETT
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION
U.S. DEPARTMENT OF JUSTICE

April 18, 2008
DATE

BY:

Karen Sampson Jones
Karen Sampson Jones
Trial Attorney

April 18, 2008
DATE

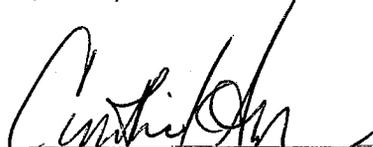
BY:

John F. Fitzpatrick
John F. Fitzpatrick
Trial Attorney

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contemporaneous with or after this Agreement, are null and void.

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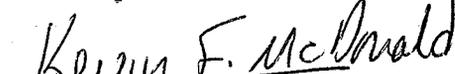
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CYNTHIA K. AYER, Defendant

March 31, 08

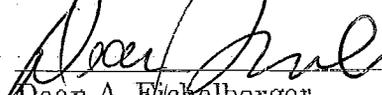
DATE


J. Edward Holler
Attorney for the Defendant


REGINALD T. LLOYD
UNITED STATES ATTORNEY

April 22, 2008

DATE

BY: 
Dean A. Eichelberger
Assistant U. S. Attorney

THOMAS O. BARNETT
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION
U.S. DEPARTMENT OF JUSTICE

DATE

BY: _____
Karen Sampson Jones
Trial Attorney

DATE

BY: _____
John F. Fitzpatrick
Trial Attorney

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