

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|----------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | Criminal No. |
| |) | |
| Plaintiff |) | <u>FILED UNDER SEAL</u> |
| |) | |
| v. |) | Filed: |
| |) | |
| THE HOME CITY ICE COMPANY, |) | Violation: 15 U.S.C. § 1 |
| |) | |
| Defendant. |) | |

PLEA AGREEMENT

The United States of America and The Home City Ice Company ("defendant"), a corporation organized and existing under the laws of Ohio, 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 its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) as a corporation organized and existing under the laws of Ohio, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United

States to prosecute this case against it in the United States District Court for the Southern District of Ohio;

- (d) to plead not guilty to any criminal charge brought against it;
- (e) to have a trial by jury, at which it 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 it to be found guilty;
- (f) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
- (g) to appeal its conviction if it is found guilty; and
- (h) to appeal the imposition of sentence against it.

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

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the applicable guidelines range in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the

Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742. Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Southern District of Ohio. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing with other packaged ice manufacturers to allocate customers and territories in southeastern Michigan and the Detroit, Michigan metropolitan area, beginning at least as early as January 1, 2001 until July 17, 2007, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

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

FACTUAL BASIS FOR OFFENSE CHARGED

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

- (a) For purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as

January 1, 2001 until July 17, 2007. During the relevant period, the defendant was a corporation organized and existing under the laws of Ohio and was doing business in multiple states with its principal place of business in Cincinnati, Ohio. During the relevant period, the defendant was a producer of packaged ice in multiple states and was engaged in the sale of packaged ice. Packaged ice is marketed as a high-grade ice for human consumption and is sold in varying sizes, blocks, big bags and small bags. The high volume sizes are big bags, which range from 20 pounds to 25 pounds and small bags, which typically contain 7 pounds of packaged ice.

- (b) The parties agree that the defendant employed more than 200, but less than 1000 individuals.
- (c) During the relevant period, the defendant, through its officers and employees, but primarily through its deceased vice-president of sales and marketing, participated in a conspiracy among packaged ice producers, the primary purpose of which was to allocate customers and territories of packaged ice sold in southeastern Michigan and the Detroit, Michigan

metropolitan area. In furtherance of the conspiratorial activity, the defendant, through its officers and employees, primarily through its deceased vice president of sales and marketing, engaged in discussions and attended meetings with representatives of other packaged ice producers. During these discussions and meetings, agreements were reached to allocate customers and territories of packaged ice to be sold in southeastern Michigan and the Detroit, Michigan metropolitan area.

- (d) Pursuant to U.S.S.G. §2R1.1 and U.S.S.G. §1B1.3, the parties agree that the defendant's volume of commerce affected by its conspiratorial conduct was at least \$100 million.
- (e) During the relevant period, packaged ice sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of packaged ice, as well as payments for packaged ice, traveled in interstate commerce. The business activities of the defendant and its co-conspirators in connection with the production and sale of packaged ice affected by

this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

- (f) Acts in furtherance of this conspiracy were carried out within the Southern District of Ohio, Western Division. At least one of the conspiratorial meetings or discussions described above took place in Cincinnati, Ohio, which is located within the Southern District of Ohio.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$100 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that:

- (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;

- (b) pursuant to §8B1.1 of the United States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") or 18 U.S.C. §§ 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and
- (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in

determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees to recommend to the sentencing judge that the applicable Guidelines fine range is between \$24 million and \$48 million, apart from any motion that the United States in its sole discretion may file as described in Paragraph 10. The defendant understands that the sentence to be imposed on it is within the sole discretion of the Court and that it will have no right to withdraw its plea of guilty, once it has been entered. The United States cannot and does not make any promises or representations as to what sentence the defendant will receive, and is free to recommend any specific sentence to the Court. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect to this case and all other activities of the defendant which the United States deems relevant to sentencing; and (c) the nature and extent of the defendant's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by the defendant both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the criminal violation charged in

the attached Information, the participation of the defendant therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the defendant, and to supply any other information that the Court may require.

- (a) The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed;
- (b) the United States will not oppose the defendant's request that the sentence be paid in installments as directed by the Court and with interest accruing under 18 U.S.C. § 3612(f)(1)-(2); and
- (c) both parties will recommend that no term of probation be imposed, but the defendant understands that the Court's denial of this request will not void this Plea Agreement.

9. The parties agree that they are not aware at this time of any 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. The parties agree not to seek or support any sentence

outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

10. If the United States determines that the defendant has provided substantial assistance in any investigation or prosecution, and has otherwise fully complied with all of the terms of this Plea Agreement, it will file a motion, pursuant to U.S.S.G. §8C4.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to impose a fine departing from the lower end of the Guideline range of \$24 million to \$48 million in light of the factors set forth in U.S.S.G. §8C4.1(b)(1)-(3). The defendant acknowledges that the decision whether it has provided substantial assistance in any investigation or prosecution is within the sole discretion of the United States. It is understood that, should the United States determine that the defendant has not provided substantial assistance in any investigation or prosecution, or should the United States determine that the defendant has violated any provision of this Plea Agreement, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. §8C4.1, but will not entitle the defendant to withdraw its guilty plea once it has been entered. The defendant further understands that, whether or not the United States files a motion pursuant to U.S.S.G. §8C4.1, the sentence to be imposed on it remains within the sole discretion of the sentencing judge.

11. In light of the availability of civil causes of actions available pursuant to 15 U.S.C. § 15, the United States agrees that it will not seek a restitution order for the offense charged in the Information.

DEFENDANT'S COOPERATION

12. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the sale of packaged ice in the United States, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) producing to the United States all non-privileged documents, information, and other materials wherever located, in the possession, custody, or control of the defendant, requested by the United States in connection with any Federal Proceeding;
- (b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 13 of this Plea Agreement, of the current directors, officers, and employees of the defendant as may be requested by the

United States, including making these persons available at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

13. The ongoing, full, and truthful cooperation of each person described in Paragraph 12(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

- (a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, requested by attorneys and agents of the United States;
- (b) making himself or herself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;
- (c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

- (d) otherwise voluntarily providing the United States with any non-privileged material or information not requested in (a) - (c) of this paragraph that he or she may have that is related to any Federal Proceeding;
- (e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and
- (f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 15(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 15(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

14. Upon acceptance of the guilty plea called for by this Plea Agreement, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the sale of packaged ice in the United States or undertaken in connection with any investigation of such a conspiracy. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

15. The United States agrees to the following:

- (a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of its sentence and subject to the exceptions noted in Paragraph 15(c), the United States will not bring criminal charges against any current director, officer, or employee of the defendant for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant that was undertaken in furtherance of an antitrust conspiracy involving the sale

of packaged ice in the United States or undertaken in connection with any investigation of such a conspiracy ("Relevant Offense");

- (b) Should the United States determine that any current or former director, officer, or employee of the defendant may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;
- (c) If any person requested to provide cooperation under Paragraph 15(b) fails to comply with his or her obligations under Paragraph 13, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;
- (d) Except as provided in Paragraph 15(e), information provided by a person described in Paragraph 15(b) to the United States under the terms of this Plea Agreement

pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503, *et seq.*);

- (e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 13 of this Plea Agreement, the agreement in Paragraph 15(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;
- (f) If the Court does not accept the defendant's plea of guilty for any reason, any statement provided by an individual identified by the United States in Paragraphs 12 (b) or 15(b) made between the signing of this agreement and any determination by the Court to reject it will be treated as statements provided by that individual pursuant to Fed. R. Crim. P. 11, Fed. R. Evid. 408 and Fed. R. Evid. 410;

- (g) The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and
- (h) Documents provided under Paragraphs 12(a) and 13(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

16. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

17. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any

possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

18. 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.

VIOLATION OF PLEA AGREEMENT

19. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation

resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense referred to in Paragraph 14 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

20. The defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's violation of the Plea Agreement, any document, statement, information, testimony, or evidence provided by it or any individual identified by the United States pursuant to paragraphs 12(b) or 15(b) to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 408 and Fed. R. Evid. 410.

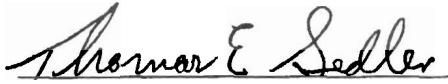
ENTIRETY OF AGREEMENT

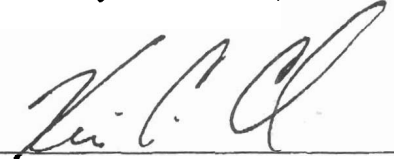
21. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

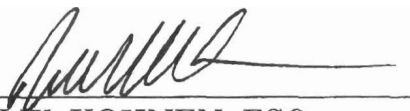
22. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

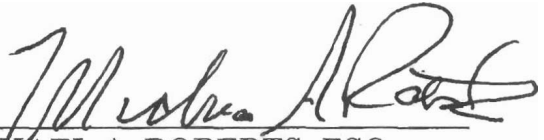
23. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Respectfully submitted,

BY: 
THOMAS E. SEDLER
President, Chief Executive Officer
The Home City Ice Company

BY: 
KEVIN C. CULUM
[3460- MT]
Trial Attorney
U.S. Department of Justice
Antitrust Division
Carl B. Stokes U.S. Court House
801 W. Superior Ave., 14th Floor
Cleveland, OH 44113-1857
Telephone: 216-687-8415
Fax: 216-687-8423
E-mail: kevin.culum@usdoj.gov

BY: 
RALPH W. KOHNEN, ESQ.
[OH 0034418]
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957
E-mail: kohnen@taftlaw.com
Counsel for The Home City Ice Co.

BY: 
MICHAEL A. ROBERTS, ESQ.
[OH 0047129]
Graydon, Head & Ritchey LLP
511 Walnut Street, Suite 1900
Cincinnati, OH 45202-3157
E-mail: mroberts@graydon.com
Counsel for The Home City Ice Co.

Dated: 10/18/2007

Dated: October 18, 2007