UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	**Criminal No. H-09-335**
	§	
JAMES M. DAVIS	§	
	§	

PLEA AGREEMENT

The United States of America, by and through its United States Attorney for the Southern District of Texas and the Fraud Section of the Criminal Division of the Department of Justice, the defendant, James M. Davis, and the defendant's counsel, David Finn, have entered into the following plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Agreement

1. (a) The defendant agrees to plead guilty to Counts One, Two and Three of the Information. Count One charges the defendant with conspiracy to commit wire, mail and securities fraud, in violation of 18 United States Code, Section 371. Count Two charges the defendant with mail fraud, in violation of 18 United States Code, Section 1341. Count Three charges the defendant with conspiracy to obstruct an SEC proceeding, in violation of 18 U.S.C. § 371. By entering this

Agreement, the defendant waives any right to have the facts that the law makes essential to the punishment of Counts One, Two or Three either charged in the Information, proved to a jury or proven beyond a reasonable doubt.

(b) The defendant agrees that the facts of this case support the following Sentencing Guidelines calculation:

Section 2B1.1(a) – Base offense level for wire fraud:	7
Section 2B1.1(b)(1)(K) – Loss of more than $400 million	30
Section 2B1.1(b(2)(B)– More than 250 victims	6
Section 2B1.1(b)(9)(C, D) – Substantial part of scheme committed outside United States and otherwise used sophisticated means	2
Section 2B1.1(b)(14)(B) – Affecting safety and soundness of financial institution and endangering solvency or financial security of 100 or more victims	4
Section 3B1.3 – Abuse of position of trust	2
Section 2B1.1(b)(14)(C) – Combination of enhancement for more than 250 victims and enhancement for safety and soundness of financial institution and endangering the solvency or security of 100 or more victims, equals 10, therefore reduced to 8	-2
Section 3E1.1(a, b) – Acceptance of responsibility	-3
Total Offense Level – Adjusted	46

(c) The defendant further agrees to recommend at the time of sentencing that the Sentencing Guidelines provide a fair and just resolution based on the facts of this case, and that no downward departure or variances are appropriate other than the reduction for acceptance of responsibility discussed in Paragraph

Thirteen and the potential for a downward departure based on substantial assistance pursuant to U.S.S.G. § 5K1.1 as discussed in Paragraph Seven.

Punishment Range

2. The statutory penalty for the violation of Title 18, United States Code, Section 371, in Counts One and Three, is not more than five years imprisonment and/or a fine of up to $250,000.00. The statutory penalty for the violation of Title 18, United States Code, Section 1341, in Count Two, is not more than twenty years imprisonment and/or a fine of up to $250,000.00. Additionally, on all three counts, the defendant may receive a term of supervised release after imprisonment of up to three (3) years. Title 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentences, then defendant may be imprisoned for the entire term of supervised release, not to exceed two years, without credit for time already served on the term of supervised release prior to such violation. Title 18 U.S.C. §§ 3559(a)(4) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to 18 U.S.C. § 3013(a)(2)(A), immediately after sentencing the defendant will pay to the Clerk of the United States District Court a special assessment in the amount of $100.00 per count of conviction. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Fine and Reimbursement

4. The defendant understands that under the *United States Sentencing Commission Guidelines Manual* (hereafter referred to as "*Sentencing Guidelines*" or "U.S.S.G."), the Court is permitted to order the defendant to pay a fine that is sufficient to reimburse the United States for the costs of any imprisonment or term of supervised release, if any is ordered.

5. The defendant agrees that becaue the offenses of conviction occurred after April 24, 1996, restitution is mandatory without regard to Davis's ability to pay and that the Court must order Davis to pay restitution for the full loss caused by his criminal conduct pursuant to Title 18, United States Code, Section 3663A, provided, however, that the United States agrees that the value of any property returned to victims through the forfeiture and remission process shall be credited against any

order of restitution.

6. The defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing if he is requested to do so. In the event that the Court imposes a fine or orders the payment of restitution as part of the defendant's sentence, the defendant shall make complete financial disclosure by truthfully executing a sworn financial statement immediately following his sentencing.

Cooperation

7. The parties understand that the Agreement carries the potential for a motion for departure pursuant to U.S.S.G. § 5K1.1. The defendant understands and agrees that whether such a motion is filed will be determined solely by the United States. Should the defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to U.S.S.G. § 5K1.1. The defendant agrees to persist in his guilty plea through sentencing and to cooperate fully with the United States. The defendant understands and agrees that the United States will request that sentencing be deferred until his cooperation is complete.

8. The defendant understands and agrees that the term "fully cooperate" as used in this Agreement includes providing all information relating to any criminal activity known to the defendant. The defendant understands that such information

includes both state and federal offenses arising therefrom. In that regard:

(a) The defendant agrees that this Agreement binds only the United States Attorney for the Southern District of Texas, the Fraud Section of the Criminal Division of the Department of Justice and the defendant; it does not bind any other United States Attorney or any other component of the Department of Justice.

(b) The defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States.

(c) The defendant agrees to voluntarily attend any interviews and conferences as the United States may request.

(d) The defendant agrees to provide truthful, complete, and accurate information and testimony; and he understands that any false statements he makes to the Grand Jury, at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes.

(e) The defendant agrees to provide to the United States all documents in his possession or under his control relating to all areas of inquiry and investigation.

(f) Should the recommended departure, if any, not meet the defendant's expectations, the defendant understands that he remains bound by the terms of this Agreement and cannot, for that reason alone, withdraw his plea.

Waiver of Appellate Rights

9. The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The defendant agrees to waive the right to appeal the sentence imposed or the manner in which it was determined on all other

grounds set forth in 18 U.S.C. § 3742 except he reserves the right to appeal a sentence above the statutory maximum. Additionally, the defendant is aware that 28 U.S.C. § 2255 affords the right to contest or "collaterally attack" a conviction or sentence after the conviction or sentence has become final. The defendant waives the right to contest his conviction or sentence by means of any post-conviction proceeding, including but not limited to proceedings authorized by 28 U.S.C. § 2255. If at any time the defendant instructs his attorney to file a notice of appeal on grounds other than those specified above, the United States will seek specific performance of this provision.

10. In exchange for this Agreement with the United States, the defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed, in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates any provision of this Agreement, or (c) the defendant's plea is later withdrawn.

11. In agreeing to these waivers, the defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the possible sentencing range under the *Sentencing Guidelines* that he may have received from his counsel, the United States, or the Probation Office is a prediction,

not a promise, did not induce his guilty plea, and is not binding on the United States, the Probation Office, or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. The defendant further understands and agrees that the *Sentencing Guidelines* are "effectively advisory" to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, the defendant understands that, although the Court must consult the *Sentencing Guidelines* and must take them into account when sentencing him, the Court is bound neither to follow the *Sentencing Guidelines* nor to sentence the defendant within the guideline range calculated by use of the *Sentencing Guidelines*.

12. The defendant understands and agrees that each and all of his waivers contained in this Agreement are made in exchange for the corresponding concessions and undertakings to which this Agreement binds the United States.

The United States' Agreements

13. The United States agrees to each of the following:

(a) At the time of sentencing, the United States agrees not to oppose the defendant's anticipated request to the Court and the United States Probation Office that he receive a two level downward adjustment pursuant to U.S.S.G. § 3E1.1(a) should the defendant accept responsibility as contemplated by the *Sentencing Guidelines*. The United States is not required to make this recommendation if Davis (1) fails or refuses to timely entire his plea and make a full, accurate and complete disclosure to the United States and the Probation Department of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) is found to have misrepresented facts to

the United States prior to entering this Agreement; or (3) commits any misconduct after entering into this Agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

(b) If the defendant qualifies for an adjustment under U.S.S.G. Section 3E1.1(a), the United States agrees to file a motion for an additional one level departure based on the timeliness of the plea or the expeditious manner in which the defendant provided complete information regarding his/her role in the offense if the defendant's offense level is 16 or greater.

(c) The United States agrees that the appropriate Guidelines calculation in this case is the calculation described in Paragraph 1(b) above.

United States' Non-Waiver of Appeal

14. The United States reserves the right to carry out its responsibilities under the *Sentencing Guidelines*. Specifically, the United States reserves the right:

(a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;

(b) to set forth or dispute sentencing factors or facts material to sentencing;

(c) to seek resolution of such factors or facts in conference with the defendant's counsel and the Probation Office;

(d) to file a pleading relating to these issues, in accordance with U.S.S.G. § 6A1.2 and 18 U.S.C.§ 3553(a); and

(e) to appeal the sentence imposed or the manner in which it was determined. If the United States appeals Davis's sentence, then Davis shall be released from his waiver of appellate rights.

Sentence Determination

15. The defendant is aware that the sentence will be imposed by the Court after consideration of the *Sentencing Guidelines*, which are only advisory, as well as the provisions of 18 U.S.C. § 3553(a). The defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which the defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable *Sentencing Guidelines*. The defendant understands and agrees that the parties' positions regarding the application of the *Sentencing Guidelines* do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw a guilty plea, and he will remain bound to fulfill all of his obligations under this Agreement.

Rights at Trial

16. The defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. The defendant understands that by entering into this Agreement, he surrenders certain rights as provided herein. The defendant understands that the rights of a defendant include the following:

(a) If the defendant persisted in a plea of not guilty to the charges, the defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the Court all agree.

(b) At a trial, the United States would be required to present witnesses and other evidence against the defendant. The defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, the defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(c) At a trial, the defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

17. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others, would be offered to establish the defendant's guilt:

(a) Beginning in at least 1988, **JAMES M. DAVIS (DAVIS)** began serving as Controller of Guardian International Bank, Ltd (Guardian), a bank chartered in Montserrat and owned by Robert Allen Stanford (Stanford). Soon after **DAVIS** became Controller, Stanford requested that, in order to show fictitious quarterly and annual profits, DAVIS make false entries into the general ledger for the purpose of reporting false revenues and false investment portfolio balances to the banking regulators. In late 1989, Stanford closed Guardian in Montserrat due, in part, because of his concern with the heightened scrutiny being imposed upon Guardian by bank regulators in Montserrat.

(b) In early 1990, Stanford moved Guardian's banking operations to Antigua under the name Stanford International Bank, Ltd. (SIBL), of which he was the sole shareholder and for which **DAVIS** continued to serve as Controller through approximately 1992, when **DAVIS** became Chief Financial Officer of Stanford Financial Group (SFG). SFG was the parent company of SIBL and a web of other affiliated financial services entities, including Stanford Group Company (SGC) and Stanford Capital Management (SCM).

(c) SIBL's primary investment product was referred to as a Certificate of Deposit (CD) which SIBL would solicit to potential investors in the United States and elsewhere through SFG broker-dealers, sometimes referred to as "Financial Advisors" (FAs). By 2008, SIBL had sold CDs resulting in liabilities totaling over $7 billion to investors in the United States and elsewhere. Stanford, **DAVIS**, and their conspirators promoted SIBL's investments as being well-managed, safe and secure, claimed that SIBL's investment strategy was to minimize risk and achieve liquidity, and falsely touted in SIBL's Annual Reports beginning in at least 1999 an almost year-by-year percentage and dollar increase in the purported value of SIBL's earnings, revenue and assets.

(d) Prior to purchasing SIBL CDs, potential investors were required to provide their basic biographical and financial information in the form of a Subscription Agreement. Subscription Agreements regarding the investors were routinely sent from Stanford Group Company in Houston, Texas to SIBL in Antigua. CDs and account statements regarding the CDs were also routinely sent by mail to investors, including an account statement driven by the false investment and revenue values for an investor (identified as "Investor TA" in Count 2 of the Information) which on November 30, 2008 was sent and delivered via United States Postal Service to Investor TA's address in Spring, Texas.

(e) Stanford, **DAVIS** and their conspirators further promoted the sale of SIBL's CDs by representing to investors that SIBL's operations and financial condition were being scrutinized by Antigua's bank regulator, the Financial Services Regulatory Commission (FSRC), and that SIBL's financial statements were subject to annual examination and inspections by the FSRC and audits by an independent outside auditor.

(f) Stanford, **DAVIS**, Chief Investment Officer Laura Pendergest-Holt (Holt) and other conspirators created and perpetuated the false impression to investors, potential investors, and the majority of SFG employees that Holt was responsible for overseeing and monitoring SIBL's entire portfolio of non-cash assets and that she managed all of those assets through a global network of money managers. In order to continue to effectuate the scheme, on December 7, 2005, Stanford and others, appointed Holt to the SIBL "Investment Committee." The purpose of this appointment was to continue to dupe the CD investors into falsely believing that Holt understood and "managed" SIBL's entire investment portfolio.

(g) Unknown to investors, Stanford, **DAVIS**, Holt and other conspirators internally segregated SIBL's investment portfolio into three investment tiers: (a) cash and cash equivalents ("Tier I"); (b) investments with "outside money managers," sometimes also referred to as "outside portfolio managers" ("Tier II"); and (c) other assets ("Tier III"). In actuality, Holt's management of SIBL's assets was confined to those assets contained in Tier II which, by 2008 made up only 10% of SIBL's entire portfolio. In fact, by 2008, approximately 80% of SIBL's investment portfolio was made up of illiquid investments, including grossly overvalued real and personal property that SIBL had acquired from Stanford-controlled entities at falsely inflated prices. At least $2 billion dollars of undisclosed, unsecured personal loans from SIBL to Stanford were concealed and disguised in SIBL's financial statements as "investments."

(h) At Stanford's direction and assisted by SFG's Chief Accounting Officer, Gilberto Lopez (Lopez), and the Global Controller for an affiliate of SFG, Mark Kuhrt (Kuhrt), **DAVIS** regularly created false books and records in which the value of the investment portfolio was further fraudulently adjusted by percentage increases to produce false investment and revenue values. As a result, SIBL's values for revenue and investments were falsified on a routine basis.

(i) From at least 2002, **DAVIS**, at the request of Stanford, would prepare with the assistance of Lopez and Kuhrt, fictitious SIBL investment reports, which were provided to the Antiguan FSRC on a quarterly basis, again falsely inflating the value of SIBL's investments. These false forms continued to be provided to the FSRC on a quarterly basis until at least September 2008. Kuhrt would send the false documents to SIBL in Antigua. SIBL Executive A would then execute the documents and provide them to the FSRC.

(j) Stanford was insistent that SIBL appear to show a profit each year. Stanford and **DAVIS** would collaborate to select a false revenue number. **DAVIS** would then send the collaborative false revenue numbers to Lopez and Kuhrt.

(k) To create the falsely inflated values for SIBL's assets, **DAVIS** would extrapolate from the values attributed to a portion of SIBL's investment portfolio which was monitored by Holt and managed by money managers. **DAVIS**, at Stanford's urging, would multiply those actual values by artificial percentage factors necessary to equal the value for depositor liabilities. By email or personal delivery, **DAVIS** would send the false investment valuation report to Kuhrt, who then sent it to SIBL.

(l) Initially, **DAVIS** did the calculations manually, but later a computer spreadsheet was created which was useful in generating the bogus revenue numbers. Every year, SIBL would prepare a budget projecting growth. Stanford, **DAVIS**, Lopez, Kuhrt and other conspirators would then use the "budgeted" numbers to develop falsely inflated revenue numbers which would be claimed as the "actual" revenue numbers to generate the desired Return on Investment (ROI). At Kuhrt's direction, subordinate employees in SFG's accounting group would be given a secret instruction sheet informing them as to how to make the changes to generate the false adjusted revenue figures, including the steps necessary to obtain approval by Lopez and **DAVIS**. After "backing into" or "reverse engineering" the numbers to match the "budgeted" numbers, Kuhrt would then transmit the inflated revenue numbers from Houston initially, and later from St. Croix when Kuhrt's accounting group moved to St. Croix, to Lopez in Houston, Texas and to **DAVIS** in Mississippi for **DAVIS'** approval. **DAVIS** often would further adjust the already bogus numbers to reach a desired ROI and would transmit to Kuhrt and Lopez the changes to be made.

(m) Kuhrt and Kuhrt's employees in the accounting group would prepare the false financial statements published in SIBL's annual reports, which Stanford, Lopez and **DAVIS** would review prior to publishing and sending out to investors.

(n) This continued routine false reporting by Stanford, **DAVIS**, Lopez, Kuhrt and their conspirators, upon which CD investors routinely relied in making their investment decisions, in effect, created an ever-widening hole between reported assets and actual liabilities, causing the creation of a massive Ponzi scheme whereby CD redemptions ultimately could only be accomplished with new infusions of investor funds. Stanford, **DAVIS**, Lopez, Kuhrt and their conspirators fraudulently claimed in SIBL's Annual Reports an increase in assets from approximately $1.2

billion in 2001 to approximately $8.5 billion reported in SIBL's Monthly Report for December 2008. By the end of 2008, Stanford, **DAVIS** and their conspirators falsely represented in SIBL's December monthly report that it held over $7 billion in assets, when in truth and in fact, SIBL actually held less than $2 billion in assets.

(o) By at least 2002, Stanford had introduced **DAVIS** to Leroy King, a bank auditor for the FSRC, a former Ambassador to the United States from Antigua and a former executive at Bank of America in New York. King became Administrator and the Chief Executive Officer (CEO) of the FSRC in approximately 2003.

(p) Sometime in 2003, Stanford performed a "blood oath" brotherhood ceremony with King and another employee of the FSRC, each of whom participated in the FSRC's regulatory oversight of SIBL. This brotherhood oath was undertaken in order to extract an agreement from both King and the other FSRC employee that they, in exchange for regular cash bribe payments by Stanford to King and the other FSRC employee, would ensure that the Antiguan bank regulators would not "kill the business" of SIBL. During the course of the fraud scheme King routinely referred to Stanford as "Brother" or "Big Brother." In the regular preparation of the false SIBL investment reports for submission to the FSRC, Stanford, **DAVIS**, and other conspirators relied upon the assurances that King and the other FSRC employee, because of the bribes, would ensure that the FSRC would not actually examine the validity of the investments of SIBL as set forth in those investment reports.

(q) When Stanford needed cash to make these bribe payments, he generally would instruct **DAVIS** to debit funds from a secret numbered Swiss bank account at Society General Bank (SocGen account #108731) and to wire those funds to an SFG account at Bank of Antigua, from which the cash in United States dollars would be withdrawn. This secret SocGen account #108731was funded by CD investor funds and was also used to make regular bribe payments, via wire transfer, to SIBL's outside auditor in Antigua, C.A.S. Hewlett & Co. Ltd. The cash bribe payments by Stanford to King ultimately exceeded $200,000.

(r) Sometime in approximately 2003, Stanford and SIBL Executive A complained to King that two FSRC examiners were becoming aggressive and suspicious in their examination of SIBL's financial statements. Stanford reassured **DAVIS** and SIBL Executive A that, because of their brotherhood oath and the bribe payments, King would assist in removing the two FSRC employees from the regulatory oversight function of SIBL. Both FSRC employees soon thereafter were reassigned or replaced.

(s) In January 2004, Stanford also continued his bribery scheme with Leroy King by paying $8000 for tickets to the Super Bowl game in Houston and by corruptly giving those tickets to King and his girlfriend to attend the game.

(t) In June of 2005, King provided to Stanford a confidential letter that King had received from the United States Securities and Exchange Commission (SEC) in his capacity as Administrator and CEO of the FSRC wherein the SEC sought information and records regarding SIBL's CD investment portfolio. In the confidential letter, the SEC maintained that it was investigating SIBL's sales practices with respect to its CD program and sought from the FSRC details and records of SIBL's investments because the SEC stated that it had evidence to suggest that SIBL was engaged in a "possible Ponzi scheme." Stanford and SIBL Executive A then assisted King in drafting a false and misleading response by the FSRC to this confidential SEC letter.

(u) By August of 2005, Stanford had retained an outside counsel to represent the interests of SIBL in the SEC inquiry of SIBL's sales practices (hereafter Outside Attorney A). During that month, Outside Attorney A traveled to the SIBL facility in Antigua where he met with Stanford, **DAVIS**, SIBL Executive A, Leroy King and others to familiarize himself with the operations and finances of SIBL. Outside Attorney A further reviewed SIBL's disclosures to investors in its CD program.

(v) On July 30, 2006, Leroy King transmitted to SFG Attorney A in Houston, Texas, a letter dated July 11, 2006 from the Director of the Bank Supervision Department at the Eastern Caribbean Central Bank ("ECCB") to the FSRC in Antigua concerning, inter alia, the affiliate relationship of SIBL to the Bank of Antigua. Similarly, on August 1, 2006, King again faxed to SFG Attorney A in Houston, Texas, a proposed response to the ECCB letter which sought the input of SFG Attorney A in crafting a response by the FSRC calculated to mislead the ECCB as to the financial bona fides of SIBL to prevent legitimate scrutiny of SIBL by the Eastern Carribean bank regulator. Recognizing that he had already been paid through cash bribe payments from Stanford, King concluded the August 1, 2006 facsimile transmission with the following handwritten words: "Please do not bill me (laugh), Thanks a million, Lee."

(w) On September 25, 2006, King provided to Stanford, SFG Attorney A, and SIBL Executive A another confidential letter he had received from the SEC wherein the SEC again sought records and information regarding SIBL's CD investment

portfolio. Stanford, **DAVIS**, SIBL Executive A, and SFG Attorney A would then propose various responses designed to mislead the SEC that King would be requested to insert into the FSRC's response to the SEC's confidential letter.

(x) In late September of 2006, Outside Attorney A contacted the SEC and represented that he had "heard through the grapevine" that the FSRC had not been provided with an appropriate request from the SEC for documents; that the SEC should "go to Antigua" to review the SIBL examination reports; that the SEC had "no basis" to request documents regarding SIBL's investment portfolio from SIBL; that he (Outside Attorney A) had spent 15 years investigating fraud for the SEC and was "well-equipped" to recognize the "hallmarks of fraud"; that he (Outside Attorney A) found SIBL to be credible in all their business dealings; and that, based upon his review of the situation and personal visit to SIBL, Outside Attorney A found SIBL to be an "incredible institution."

(y) In late 2008, Outside Attorney A was informed that SIBL's CD investment portfolio included a previously undisclosed third tier of investments (Tier III) that was not "managed" by Holt. Subsequently, in early January 2009, Outside Attorney A was informed that this third tier included real estate investments and private equity. Outside Attorney A, through his prior review of SIBL's disclosures knew and understood that this third tier of investments, including the real estate investments, had not been disclosed to investors. In early January of 2009 Outside Attorney A further learned that this undisclosed third tier of investments constituted approximately 80% of SIBL's investment portfolio or approximately $6 billion.

(z) During the course of the fraud conspiracy, Holt supervised a group of research analysts at SFG's offices in Memphis, Tennessee, who were primarily responsible for researching and trading investments in the Tier II segment of SIBL's portfolio. These research analysts were aware that Tier II represented a small segment of SIBL's entire portfolio and that the vast majority of SIBL's purported assets were in Tier III of SIBL's portfolio. Occasionally, Holt's research analysts would question her regarding Holt's knowledge of SIBL's Tier III assets. Holt would often dismiss such inquiries and would explain that she knew the details of the assets in Tier III and the research analysts "did not need to concern themselves" with Tier III.

(aa) From 2005 through at least February of 2009, Stanford, **DAVIS**, Holt, SIBL Executive A and others would attend investor conferences and other meetings with FAs called "Top Producer Club" or "TPC" meetings where they would falsely tout the assets and earnings of SIBL's investments, falsely tout SIBL's investment

strategy and deceive both the investors and FAs as to the role Holt played in the "management" of SIBL's investment portfolio.

(bb) In December 2008, Holt's research analysts began to make further inquiry of Holt regarding the quantity and the quality of the assets that made up SIBL's Tier III. During that same month, Holt led several meetings with her research analysts wherein she would purport to inform the analysts as to some of the content of SIBL's Tier III. Specifically, Holt explained the evolution of Tier III from a segment of SIBL's portfolio in the 1990s that contained mostly futures, options and currencies, to its current content which was purportedly geared toward larger holdings of real estate and private equity. Holt explained that Tier III was composed of 30-40% private equity and real estate and 10-12% cash. She further explained that SIBL had conducted private equity and real estate deals that had been "very profitable." In fact, she cited one transaction involving "two islands and one club" that Stanford had acquired and "got a very good deal." Because of this, Holt explained, Tier III was "up 7% mid-year." Holt told her research analysts that "we are restructuring Tier III and that will happen as early as January 2009."

(c) In mid-2008, Stanford, **DAVIS** and other conspirators were desperately seeking a fraudulent mechanism whereby they could artificially inflate SIBL's assets and thereby further conceal the fact that, undisclosed to investors, Stanford had made approximately $2 billion in loans to himself; that many if not all of private equity investments in Tier III were either insolvent or losing money badly, and that the touted returns on investment had been fictitious. As such, Stanford, **DAVIS**, Lopez, Kuhrt and other conspirators designed a real estate transaction wherein they would falsely inflate and convert an approximate $65 million dollar real estate transaction in Antigua into a purported $3.2 billion dollar asset of SIBL merely through a series of related party property flips through business entities controlled by Stanford. From approximately May 2008 through November 2008, Stanford, **DAVIS**, Lopez, Kuhrt,SIBL Executive A, SFG Attorney A and other conspirators participated in documenting elements of this bogus real estate in the books and records of SIBL designed to fraudulently add billions of dollars in value to SIBL's financial statements.

(dd) On January 14, 2009, the SEC served, through Outside Attorney A, investigatory subpoenas to **DAVIS** and Holt seeking testimony and documents related to SIBL's investment portfolio. Stanford also was served an SEC subpoena through Outside Attorney A. Outside Attorney A understood that the SEC inquiry would require the subpoenaed individuals to make a complete and transparent presentation to the SEC regarding all of the assets related to SIBL's CD program.

(ee) On January 21, 2009, Outside Attorney A met at the SIBL airplane hangar in Miami, Florida, to discuss the SEC investigation with Stanford, **DAVIS**, Holt, SIBL Executive A, SFG Attorney A and others to discuss who could make the presentation to the SEC. At that meeting, despite the knowledge that Stanford and **DAVIS** were in the best position to disclose the assets in the Tier III portfolio, Stanford, **DAVIS**, Holt, Outside Attorney A, SIBL Executive A and SFG Attorney A all agreed that Outside Attorney A would seek to convince the SEC that Holt and SIBL Executive A were the best individuals to present testimony and evidence to the SEC as to SIBL's entire investment portfolio. The participants also agreed to participate in a series of meetings in Miami, Florida during the week of February 2, 2009, to bring Holt and SIBL Executive A "up to speed on Tier 3" before the SEC presentation.

(ff) On January 22, 2008, Outside Attorney A met in Houston, Texas with several SEC attorneys in Houston, Texas to discuss issues related to the SEC investigation. The SEC attorneys reiterated that their investigation was seeking to determine where and how the entire portfolio of SIBL assets were invested and managed. Outside Attorney A falsely maintained that Stanford and **DAVIS** did not "micro-manage" the portfolio but that Holt and SIBL Executive A were the "better people to explain the details" about SIBL's entire portfolio. As a result of Outside Attorney A's misleading statements, the SEC attorneys agreed to postpone the testimony of Stanford and **DAVIS** and to take the testimony of SIBL Executive A and Holt on February 9-10, 2009, respectively. Outside Attorney A also falsely informed the SEC attorneys at this meeting that SIBL was "not a criminal enterprise."

(gg) In the last week of January 2009, **DAVIS** met with King in Antigua. By that time, SIBL was facing increasing regulatory scrutiny from the SEC, and Stanford, Holt and **DAVIS**, had received subpoenas from the SEC. King appeared very stressed. King related that he had again been contacted by the SEC. King asked **DAVIS** if "we were going to make it?" which meant whether the fraud they had been engaged in was going to be exposed. **DAVIS** informed King that he thought they were going to be ok.

(hh) On January 27, 2009, Outside Attorney A contacted **DAVIS**, Holt and SIBL Executive A and informed them when Holt and SIBL Executive A responded to the SEC inquiry they would be required to present "positive proof" regarding all of the assets of SIBL including the three tiers, that they needed to "rise to the occasion," and that "our livelihood depends on it."

(ii) On February 3, 4, 5 and 6, 2009, **DAVIS** met with Holt, SFG Attorney A, SIBL Executive A, Outside Attorney A, and ultimately, Stanford on February 5,

and others, at SFG' s office in Miami, Florida to discuss the testimony that Holt and SIBL Executive A would provide to the SEC during the week of February 9, 2009. During these meetings Holt disclosed that the value of the assets she actually managed in Tier II totaled approximately $350 million, down from $850 million in June of 2008. At these meetings **DAVIS** further revealed that the purported value of Tier III of SIBL's investment portfolio was made up of: real estate valued at in excess of $3 billion which allegedly had been acquired earlier that year by SIBL for less than $90 million; $1.6 billion in "loans" to Stanford; and various other private equity investments. Several of the Miami meeting participants acknowledged that if this disclosure was accurate, then the bank was insolvent. During the February 5, 2009 session, Stanford falsely informed the participants that despite what they had just been told, SIBL had "at least $850 million more in assets than liabilities."

(jj) Later in the day of February 5, 2009, Stanford, **DAVIS** and Outside Attorney A attended a separate meeting where Stanford acknowledged that SIBL's assets and financial health had been misrepresented to investors, and were overstated in SIBL's financials.

(kk) On the morning of February 10, 2009, prior to Holt's testimony before the SEC in Fort Worth, Texas, in an effort to continue to obstruct the SEC investigation, **DAVIS** spoke with Holt by telephone and told her to only disclose to SEC investigators her knowledge of Tier II investments.

(ll) During her testimony to the SEC on February 10, 2009, in addition to failing to disclose the Miami meetings and participants which had occurred the prior week, Holt falsely stated in her SEC testimony that she was unaware of the assets and allocations of assets in Tier III of SIBL's portfolio.

Breach of Plea Agreement

18. If the defendant fails in any way to fulfill completely all of his obligations under this Agreement, the United States will be released from its obligations hereunder, and the defendant's plea and sentence will stand. If at any time the defendant retains, conceals, or disposes of assets in violation of this Agreement, or if the defendant knowingly withholds evidence or is otherwise not completely truthful

with the United States, then the United States may ask the Court to set aside his guilty plea and reinstate prosecution. Any information and documents that have been disclosed by the defendant, whether prior to or subsequent to execution of this Agreement, and all leads derived therefrom, will be used against the defendant in any prosecution.

Forfeiture

19. Defendant agrees to forfeit all property which constitutes or is derived from proceeds traceable to the violations charged in Counts One and Two of the information. Defendant stipulates and agrees that the factual basis for his guilty plea supports the forfeiture of at least $1,000,000,000 (one billion dollars). Defendant agrees to a personal money judgment for $1,000,000,000 (one billion dollars) against him and in favor of the United States of America. Defendant represents that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant stipulates and admits that one or more of the conditions set forth in 21 U.S.C. § 853(p) exists. Defendant agrees to forfeit any of Defendant's property, or Defendant's interest in any property, up to the value of any unpaid portion of the money judgment, until the money judgment is fully satisfied. Defendant agrees to take all steps necessary to pass clear title to forfeitable and substitute assets to the United States, including but not limited to surrendering title, signing a consent decree, stipulating facts regarding the

transfer of title and basis for the forfeiture, and signing any other documents necessary to effectuate such transfer.

20. Defendant agrees to the entry of a preliminary order of forfeiture and consents to the preliminary order of forfeiture becoming final as to the Defendant immediately following this guilty plea pursuant to Fed.R.Crim.P. 32.2(b)(3). Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

Complete Agreement

21. This Agreement, consisting of 23 pages, together with the attached letter agreement dated April 21, 2009, constitutes the complete plea agreement between the United States, the defendant, and his counsel. No promises or representations have been made by the United States except as set forth in writing in this Agreement. The defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

22. Any modification of this Agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on August 27, 2009.

James M. Davis
Defendant

Subscribed and sworn to before me on August 27, 2009.

By: _____
Deputy United States District Clerk

APPROVED:

Tim Johnson
United States Attorney

By: _____
Gregg Costa
Assistant U.S. Attorney

_____
David Finn
Attorney for Defendant

Steven A. Tyrrell
Chief
Fraud Section, Criminal Division
Department of Justice

BY: _____
Paul E. Pelletier
Principal Deputy Chief
Jack B. Patrick
Senior Litigation Counsel
Matthew Klecka
Trial Attorney

U.S. Department of Justice

1400 New York Avenue
Washington, D.C. 20530
(202) 353-7693

April 21, 2009

VIA FEDEX and EMAIL
David Finn, Esq.
Milner & Finn
2828 North Harwood Street
Suite 1950, Lock Box 9
Dallas, TX 75201

Re: Davis Plea Agreement

Dear Mr. Finn:

This letter sets forth the terms of the plea agreement between your client, James Davis, and the United States, by and through the Fraud Section of the Criminal Division of the Department of Justice and the United States Attorney's Office for the Southern District of Texas (hereinafter referred to as the "United States"), regarding your client's involvement with Stanford Group, Inc., Stanford International Bank, Ltd., and related entities including the predecessor bank, Guardian Trust, from at least 1989 through the present. The terms of this "Agreement" are as follows:

1. Davis agrees to waive prosecution by indictment and to plead guilty to three counts of a Criminal Information, charging Davis: in Count 1 with conspiracy to violate the following laws: Securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5; wire fraud, in violation of Title 18, United States Code, Section 1343; mail fraud, in violation of Title 18, United States Code, Section 1341; and obstruction of a proceeding before the Securities and Exchange Commission, in violation of Title 18, United States Code, Section 1505; all in violation of Title 18, United States Code, Section 371; in Count 2 with mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2; and in Count 3 with obstruction of a proceeding before the Securities and Exchange Commission, in violation of Title 18, United States Code, Sections 1505 and 2. The Criminal Information also includes a forfeiture allegation, as further discussed herein.

2. Davis is aware that his sentence will be imposed by the Court. Davis understands and agrees that federal sentencing law requires the Court to impose a sentence that is reasonable and that the Court must consider the United States Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines") in effect at the time of the sentencing in determining that reasonable sentence. Davis acknowledges and understands that the Court will compute an advisory sentence under the United States Sentencing Guidelines and that the applicable

guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's Probation Department, which investigation will commence after the guilty plea has been entered. Davis is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. Davis is further aware and understands that while the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, it is not bound to impose a sentence within that range. Davis understands that the facts that determine the offense level will be found by the Court at the time of sentencing and that in making those determinations the Court may consider any reliable evidence, including hearsay, as well as the provisions or stipulations in this Agreement. The United States and Davis agree to recommend that the Sentencing Guidelines should apply and that pursuant to United States v. Booker, the Guidelines provide a fair and just resolution based on the facts of this case, and that no downward departures or variances are appropriate other than the reduction for acceptance of responsibility noted in paragraph 12 and the potential for a reduction under the terms set forth in paragraph 9. The Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, Davis understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that Davis may not withdraw the plea solely as a result of the sentence imposed.

3. Davis also understands and acknowledges that as to Count 1, the Court may impose a statutory maximum term of imprisonment of up to five (5) years. Davis understands and acknowledges that as to Count 2, the Court may impose a statutory maximum term of imprisonment of up to twenty (20) years. Davis understands and acknowledges that as to Count 3, the Court may impose a statutory maximum term of imprisonment of up to five (5) years. In addition to any period of imprisonment as reflected above, the Court may also impose a period of supervised release of up to three (3) years to commence at the conclusion of the period of imprisonment. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to the greater of $250,000, or twice the gross pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d).

4. Davis further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this Agreement, a special assessment in the total amount of $300 will be imposed on Davis. Davis agrees that any special assessment imposed shall be paid immediately after sentencing.

5. Davis further understands and acknowledges that he (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which the United States inquires of him, which information can be used for any purpose; (b) shall cooperate fully with the United States and any other law enforcement agency designated by the United States; (c) shall attend all meetings at which the United States requests his presence; (d) shall provide to the United States, upon request, any document, record, or other

tangible evidence relating to matters about which the United States or any designated law enforcement agency inquires of him; (e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which the United States may request his testimony; (f) shall bring to the attention of the United States all crimes which he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness; and, (g) shall commit no further crimes whatsoever. Moreover, any assistance Davis may provide to federal criminal investigators shall be pursuant to the specific instructions and control of the United States and designated investigators. In carrying out his obligations under this paragraph, Davis shall neither minimize his own involvement nor fabricate, minimize or exaggerate the involvement of others.

6. Davis shall provide, when requested, the Probation Department and counsel for the United States with a full, complete and accurate personal financial statement listing all assets under his direct or indirect control, including any assets he may have transferred or placed in the control of others within the 10 year period prior to execution of this Agreement. If Davis provides incomplete or untruthful statements in his personal financial statement, his action shall be deemed a material breach of this Agreement and the United States shall be free to pursue all appropriate charges against him notwithstanding any agreements to forbear from bringing additional charges otherwise set forth in this Agreement.

7. Provided that Davis commits no new criminal offenses and provided he continues to demonstrate an affirmative recognition and affirmative acceptance of personal responsibility for his criminal conduct, the United States agrees that it will recommend at sentencing that Davis receive a three-level reduction for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon Davis' recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make this sentencing recommendation if Davis: (1) fails or refuses to timely enter his guilty plea and to make a full, accurate and complete disclosure to the United States and the Probation Department of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) is found to have misrepresented facts to the United States prior to entering this Agreement; or (3) commits any misconduct after entering into this Agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The United States reserves the right to inform the Court and the Probation Department of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning Davis and Davis' background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this Agreement, the United States further reserves the right to make any recommendation as to the quality and quantity of punishment.

9. The United States reserves the right to evaluate the nature and extent of Davis' cooperation and to make Davis' cooperation, or lack thereof, known to the Court at the time of

sentencing. If, in the sole and unreviewable judgment of the United States, Davis' cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the sentence required by the Sentencing Guidelines, the United States may, at or before sentencing make, a motion pursuant to Title18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, or subsequent to sentencing by motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure, reflecting that Davis has provided substantial assistance and recommending a sentence reduction. Davis acknowledges and agrees, however, that nothing in this Agreement may be construed to require the United States to file such a motion and that the United States' assessment of the nature, value, truthfulness, completeness, and accuracy of Davis' cooperation shall be binding on Davis.

10. Davis understands and acknowledges that the Court is under no obligation to grant a motion by the United States pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 9 of this Agreement, should the United States exercise its discretion to file such a motion.

11. Davis admits and acknowledges that the following facts are true and that the United States could prove them at trial beyond a reasonable doubt:

a. That Davis' participation in the conspiracy and scheme and artifice resulted in a loss of more than $400,000,000;
b. That Davis' offense involved more than two-hundred fifty (250) victims;
c. That a substantial part of Davis' fraudulent scheme was committed from outside the United States and otherwise involved sophisticated means;
d. That Davis' offense affected the safety and soundness of a financial institution and endangered the solvency or financial security of 100 or more victims; and
e. That Davis abused a position of trust as Chief Financial Officer of Stanford Group, Inc., and Stanford International Bank, Ltd.

12. Based on the foregoing, the United States and Davis agree that although not binding on the Probation Department or the Court, the applicable Sentencing Guidelines adjusted offense level is as follows:

a.	Section 2B1.1(a) - Base offense level for wire fraud offense	7
b.	Section 2B1.1(b)(1)(K) - Loss of more than $400,000,000	30
c.	Section 2B1.1(b)(2)(B) - More than 250 victims	6
d.	Section 2B1.1(b)(9)(C) & (D)- Substantial part of scheme committed outside the United States and otherwise used sophisticated means	2
e.	Section 2B1.1(b)(14)(B) - Affecting safety and soundness	

	of a financial institution and endangering the solvency or financial security of 100 or more victims	4
f.	Section 3B1.3 - Abuse of position of trust	2
g.	Section 2B1.1(b)(14)(C) - Combination of enhancement for more than 250 victims (+6) and enhancement for safety and soundness of a financial institution and endangering the solvency or financial security of 100 or more victims (+4) equals 10, therefore reduced to 8	-2
h.	Sections 3E1.1(a) and 3E1.1(b) Acceptance of Responsibility (if applicable)	-3
	TOTAL OFFENSE LEVEL - ADJUSTED	46

13. Davis agrees to forfeiture of all property, real or personal, which constitutes or is derived from proceeds traceable to the violations of 18 U.S.C. § 371 (conspiracy to commit wire and mail fraud) and 18 U.S.C. § 1343 (wire fraud). Davis agrees that all such property is subject to criminal forfeiture pursuant to 28 U.S.C. § 2461(c) (incorporating 18 U.S.C. § 981(a)(1)(C)), as property constituting, or derived from, proceeds obtained, directly or indirectly, as the result of the conspiracy (Count 1) and mail fraud scheme (Count 2). In order to effectuate the forfeiture, Davis agrees to the entry of a Consent Order of Forfeiture, in the form of a money judgment, of $1,000,000,000.00 (one billion dollars). Davis acknowledges that the money judgment is subject to forfeiture as proceeds of illegal conduct or substitute assets for property otherwise subject to forfeiture.

14. Davis also agrees that he shall assist the United States in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in the assets which Davis has agreed to forfeit, and any other assets, including real and personal property, cash and other monetary instruments, wherever located, which Davis or others to his knowledge have accumulated as a result of illegal activities. Such assistance shall include Davis' consent to the entry of any order deemed by the United States as necessary to effectuate said forfeitures. In addition, Davis agrees to identify as being subject to forfeiture and/or restitution all such assets, and to assist in the transfer of such property to the United States by delivering to the United States upon the United States' request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property. To the extent the assets are no longer within the possession and control or name of Davis, Davis agrees that the United States may seek substitute assets within the meaning of 21 U.S.C. § 853. Davis further agrees to assist the United States in recovering all victim assets, wherever located, including but not limited to, executing requests for repatriation of said assets, wherever located, and facilitating the entry of court orders or treaty requests regarding said assets, wherever located. Davis further agrees not to alienate, transfer or encumber any asset over which he has direct or indirect control unless otherwise agreed to by the United

States or permitted by order of the Court. Failure to comply with the terms of this paragraph will constitute a material breach of this agreement.

15. Davis knowingly and voluntarily agrees to waive any claim or defenses he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited assets or victim restitution. Davis further knowingly and voluntarily waives his right to a jury trial on the forfeiture of said assets, waives any statute of limitations with respect to the forfeiture of said assets, and waives any notice of forfeiture proceedings, whether administrative or judicial, against the forfeited assets. Davis waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Davis acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

16. Davis acknowledges that because the offenses of conviction occurred after April 24, 1996, restitution is mandatory without regard to the Davis' ability to pay and that the Court must order Davis to pay restitution for the full loss caused by his criminal conduct pursuant to Title 18, United States Code, Section 3663A, provided, however, that the United States agrees that the value of any property returned to victims through the forfeiture and remission process shall be credited against any order of restitution due to victims.

17. Davis is aware that the sentence has not yet been determined by the Court. Davis is also aware that any estimate of the probable sentencing range or sentence that Davis may receive, whether that estimate comes from Davis' attorney, the United States, or the Probation Department, is a prediction, not a promise, and is not binding on the United States, the Probation Department or the Court. Davis further understands that any recommendation that the United States makes to the Court as to sentencing, whether pursuant to this Agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. Davis understands and acknowledges, as previously acknowledged in paragraph 2 above, that Davis may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by Davis, the United States, or a recommendation made jointly by both Davis and the United States.

18. Davis is aware that Title 18, United States Code, Section 3742 affords Davis the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this Agreement, Davis hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any forfeiture or restitution ordered, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute. Davis further understands that nothing in this Agreement shall affect the right of the United States and/or its duty to appeal as set forth in Title 18, United States Code, Section 3742(b). If the United States appeals Davis' sentence pursuant to Section

3742(b), however, Davis shall be released from this waiver of appellate rights. By executing this Agreement, Davis acknowledges that he has discussed the appeal waiver set forth in this Agreement with his attorney. Davis further agrees, together with the United States, to request that the district Court enter a specific finding that the Davis' waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

19. Davis acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

20. For purposes of criminal prosecution, this Agreement shall be binding and enforceable upon the Fraud Section of the Criminal Division of the United States Department of Justice and the United States Attorney's Office for the Southern District of Texas. The United States does not release Davis from any claims under Title 26, United States Code. Further, this Agreement in no way limits, binds, or otherwise affects the rights, powers or duties of any state or local law enforcement agency or any administrative or regulatory authority.

21. In the event that Davis does not plead guilty or if Davis breaches this Agreement by failing to comply with any terms hereto, Davis agrees and understands that he thereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines and Rule 11(f) of the Federal Rules of Criminal Procedure, and that any statements made by him as part of his cooperation with the United States, or otherwise, both prior or subsequent to signing this Agreement, will be admissible against him without any limitation in any civil or criminal proceeding and Davis shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. By entering into this Agreement, Davis intends to waive all rights in the foregoing respects.

22. This Agreement is the entire agreement and understanding between the United States and Davis. There are no other agreements, promises, representations or understandings.

Respectfully submitted,

STEVEN A. TYRRELL, CHIEF
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

By:_____
PAUL E. PELLETIER, Principal Deputy Chief
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

TIMOTHY JOHNSON
ACTING UNITED STATES ATTORNEY

By:_____
GREGG COSTA
ASSISTANT UNITED STATES ATTORNEY

_____
JAMES DAVIS
DEFENDANT
Date:_____

_____
DAVID FINN
COUNSEL FOR JAMES DAVIS
Date:_____