CASE NO. _____

UNITED STATES OF AMERICA

vs.

OSVALDO MENENDEZ,

Defendant.

_____/

PLEA AGREEMENT

The United States of America and OSWALDO MENDEZ (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to waive indictment and plead guilty to Count 1 of the Information, which charges the defendant with conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349.

2. The defendant agrees to sign a statement of offense to be filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of offense, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

3. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the 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

entered. The defendant 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. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; 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, the defendant 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 the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 20 years, followed by a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the Court also may impose a fine of up to $250,000, or twice the gross gain to the defendant or twice the gross loss to victims, whichever is greater, pursuant to 18 U.S.C. §3571(d), resulting from the offense set forth in paragraph 1 above.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of $100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

Section 3663A is mandatory and he agrees that the restitution required in accordance

set forth in paragraph 1 above shall be equal to the amount of any actual victim loss attributable to the defendant's knowing participation in this offense, as determined at sentencing. The Office of the United States Attorney for the Southern District of Florida and the Criminal Division of the United States Department of Justice (hereinafter "the Government") are not limited to the loss figure below when arguing the amount of restitution. The defendant agrees that offenses against property listed under Title 18, United States Code, Section 3663A, were committed by him as part of the fraud scheme set forth in paragraph 1 above, and that those offenses gave rise to this plea agreement. The defendant further agrees, as permitted by Title 18, United States Code, Section 3663A(a)(3), that restitution payable by him shall be payable for the full amount of the actual loss arising from the relevant conduct related to this matter, not just from the offense of conviction.

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

8. The defendant shall provide the Probation Office and the Government with a full, complete, and accurate personal financial statement. If the defendant provides incomplete or untruthful statements in his personal financial statement, his action shall be deemed a material breach of this agreement and the Government shall be free to pursue all appropriate charges

9. The Government agrees to recommend at sentencing that the Court reduce by 3 levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the Government will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make full, accurate and complete disclosure to the Probation Office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the Government prior to entering this plea agreement; or, (3) commits any misconduct after entering into this plea 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.

10. The Government and the defendant agree that, although not binding on the Probation Office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

(a). That the base offense level is 7 under U.S.S.G. § 2B1.1(a);

(b). Loss: The loss associated with the properties involved in this fraud scheme is not fully discernible at this time since some of the foreclosed properties are still in default and have not been foreclosed. The parties agree that the loss for the purposes of this plea shall be $2,107,480 which is a fair assessment of both present and future losses caused by the defendant's conduct as of the date of the plea agreement. Therefore, the relevant amount of actual, probable or intended loss under Section 2B1.1(b)(1)(I) of the Sentencing Guidelines

$2,500,000, resulting in a 18-level enhancement;

(c). Aggravating Role: That the defendant was a manager of the fraud scheme under Section 3B1.1(b) of the Sentencing Guidelines, resulting in a 3-level enhancement; and,

(d). Total Offense Level: That the applicable offense level under all of the circumstances of the offense committed by the defendant, and assuming a 3-level departure for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines, is Level 23.

11. The defendant knowingly and voluntarily agrees and consents to the entry of a preliminary order of forfeiture setting forth the amount of a personal money judgment against him as set forth in the Information pursuant to Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure.

(a). The defendant agrees that the sum of the forfeiture money judgment represents the property, real or personal, which constitutes or is derived from proceeds traceable to the violation alleged in Count 1 of the Information, to which he will plead guilty.

(b). The defendant knowingly and voluntarily agrees to waive his right to a hearing to determine the amount of money that he will be ordered to pay as a personal money judgment.

(c). The defendant knowingly and voluntarily agrees to waive the following rights regarding the entry of the forfeiture money judgment: (1) all constitutional, legal, and equitable defenses to the entry of the forfeiture money judgment; (2) any constitutional or statutory double jeopardy defense or claim concerning the entry of the forfeiture money judgment; and (3) any claim or defense under the Eighth Amendment to the United States

proceedings concerning the entry of the forfeiture money judgment.

(d). The defendant knowingly and voluntarily agrees and consents to the entry of an order pursuant to Title 21, United States Code, Section 853(e) to repatriate and deposit any property belonging to the defendant, or any business entity which the defendant owns or controls in part or in whole, that may be seized and forfeited in partial or full satisfaction of the forfeiture money judgment.

12. The Government will request that the appropriate government officials credit the amount that the defendant pays in forfeiture against any order of restitution in this case. The defendant understands that the appropriate Department of Justice official(s) must approve the request and the forfeiture amount must be provided to the victim fund before any credit may be given.

13. The defendant also agrees that the defendant shall assist the Government 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 all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant or others have accumulated as a result of illegal activities. Such assistance will involve an agreement on defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture. Additionally, defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to the United States Department of Justice upon the request of the Fraud Section and/or the United States Attorney's Office, all necessary and appropriate

14. The defendant also understands and agrees that he will not commit any further crimes. The defendant further understands that he may be prosecuted for, without limitation, any materially false statement made at any time during his cooperation with the United States, including under the federal perjury, obstruction of justice, and false statements statutes.

15. In addition, should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and reasonably disclose all information and provide full and complete cooperation, which determinations are within the sole discretion of the United States, this Agreement is voidable at the option of the United States, and the following conditions shall then also apply:

(a). The defendant may be prosecuted for perjury or false statements, if any, committed while testifying pursuant to this Agreement or for obstruction of justice should he commit these offenses during the time in which he is cooperating with law enforcement pursuant to this Agreement;

(b). The United States may use against the defendant his own admissions and statements and the information, books, papers, documents and objects that he himself has furnished in the course of his cooperation with the United States.

16. The defendant agrees that he shall cooperate fully with the Government by:

(a). providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by the Government, whether in interviews, before a grand jury, or at any trial or other court proceeding;

judicial proceedings, and at meetings, as may be required by the Government, and;

(c). if requested by the Government, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct under the supervision of, and in compliance with, the directives of law enforcement officers and agents.

17. The Government reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the Court at the time of sentencing. If in the sole and unreviewable judgment of the Government, the defendant's 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 Government may at or before sentencing make a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, 18 U.S.C. §3553(e), or a Rule 35 motion subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require the Government to file such a motion and that the Government's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

18. The defendant understands and acknowledges that the Court is under no obligation to grant a Government motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 11 of this agreement, should the Government exercise its discretion to file such a motion.

sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the Government, or the Probation Office, is a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The defendant understands further that any recommendation that the Government 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. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the Government, or a recommendation made jointly by both the defendant and the Government.

20. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph 1 above, or should the Government, in its sole discretion, determine that the defendant has failed to fully comply with any of the terms of this plea agreement, the Government will be released from its obligations under this agreement, and the defendant agrees and understands that: (a) he thereby waives any protection afforded by the proffer letter agreement between the parties, signed by the defendant on April 9, 2013, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, (b) any statements made by him as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against him without any limitation in any civil or criminal proceeding brought by the Government; (c) the defendant's waiver of any

herein, shall remain in full force and effect; (d) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or his representatives to any state or federal agency and/or the Government; and (e) the defendant further stipulates to the admissibility, in any case brought by the United States in any way related to the facts referred to in this agreement, of the entire factual basis related to the defendant's guilty plea, as the defendant's own statement.

21. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or criminal information against the defendant with respect to any criminal offenses in connection with the defendant's criminal conduct described in paragraph 1 above.

22. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the Government in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the Government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the Government appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above

discussed the appeal waiver set forth in this agreement with his attorney. The defendant agrees, together with the Government, to request that the Court enter a specific finding that the defendant's waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

23. This is the entire agreement and understanding between the Government and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

JEFFREY H. KNOX
Chief, Fraud Section
Criminal Division
U.S. Department of Justice

Date: 5.31.13

By: _____
DAVID A. BYBEE
Senior Litigation Counsel

Date: 5/28/13

By: _____
OSVALDO MENENDEZ
Defendant

Date: 5/28/13

By: _____
STEPHEN MILLAN
Attorney for Defendant