

probation office, which investigation will commence after the guilty plea has been 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 offense(s) identified in paragraph one (1) and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 5 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 may impose a fine of up to \$100,000.00 and may order restitution.

4. 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.

5. The Office 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, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The undersigned parties agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court neither adjust upward nor downward under the Sentencing Guidelines when determining the advisory sentencing guideline range in this case, except as otherwise expressly contemplated in this agreement. The undersigned parties further agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court neither vary upward nor downward under the Sentencing Guidelines after determining the advisory sentencing guideline range in this case, except as otherwise expressly contemplated in this agreement.

7. This Office agrees that, although not binding on the probation office or the Court, that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be sixteen (16) or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The United States, however, will not be required to make this motion and these recommendations if the defendant: (a) fails or refuses to make a full, accurate and

complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (b) is found to have misrepresented facts to the government prior to entering into this plea agreement; or, (c) 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.

8. This Office 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. Loss: That the tax loss under Sections 2T1.4(a)(1) and 2T4.1 of the Sentencing Guidelines relating to the count of conviction (tax year 1997) and related conduct (tax years 2001, 2002, 2003 and 2004) is more than \$400,000, but no more than \$1,000,000. The parties also agree that, even though the defendant has agreed to plead guilty to willfully evading his 1997 individual income taxes, the defendant is to be held responsible for the tax loss for the tax year 1997, as well as for tax years 2001, 2002, 2003 and 2004 which are related conduct to the charged offense.
- b. Criminal Activity: That the defendant failed to report or to correctly identify the source of income exceeding \$10,000 in a year from criminal activity under U.S.S.G. § 2T1.1(b)(1).
- c. Sophisticated Means: That sophisticated means were used to impede the discovery of the existence or the extent of the offense under U.S.S.G. § 2T1.1(b)(2).

9. This agreement resolves the defendant's federal criminal liability in the Southern District of Florida, known to the United States Attorney's Office for the Southern District of Florida as of

the date of this plea agreement, growing out of criminal conduct by the defendant while he was employed at Mutual Benefits Corp. (“MBC”) during the years 1995 through 2004. This agreement excludes crimes of violence and any other proceeding which may be pending at the time this agreement is signed. **This agreement is limited to the United States Attorney’s Office for the Southern District of Florida and, as such, does not and cannot bind any other federal, state, or local regulatory or prosecuting authorities.**

10. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant’s attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office 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 two (2) 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, this Office, or a recommendation made jointly by both the defendant and this Office.

11. 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 this Office 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, or to collaterally attack the conviction

pursuant to Title 28, United States Code, Sections 2255, 2254, 2241 or any other applicable provision, 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 this Office appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate/collateral attack rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal/collateral attack waiver set forth in this agreement with his attorney. The defendant further agrees, together with this Office, to request that the Court enter a specific finding that the defendant's waiver of his right to appeal or to collaterally attack the conviction or sentence to be imposed in this case was knowing and voluntary.

12. This Office agrees that it will not seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement, except that this Office shall have the right in its discretion to seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement where any such additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level would be based on conduct occurring after the defendant enters into this agreement. The defendant agrees that he will not seek additional downward specific offense characteristics, reductions, or downward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement. However, in the event the probation office recommends any departures to or from the defendant's offense level

other than those, if any, specifically referred to in this agreement, either party shall have the right but not the obligation to oppose any such recommendation.

13. The defendant agrees that he shall cooperate fully with this Office by:

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

b. appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office;

c. if requested by this Office, 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, law enforcement officers and agents; and

d. in providing information and testimony, he will not seek to protect any person or entity through false information or omission, and will not falsely implicate any person or entity.

14. The defendant agrees to pay restitution to the United States Internal Revenue Service under 18 U.S.C. § 3663(a)(3) in an amount equal to the approximate tax loss for the tax years 1997, 2001, 2002, 2003 and 2004. The approximate total amount of restitution consists of the following, as of **January 7, 2008**:

Tax Year	Tax Loss by Tax Year	Interest and Penalties Under Title 26 due through January 7, 2008	Total
1997	\$99,139.00	\$175,703.91	\$274,842.91
2001	\$16,049.00	none	\$16,049.00
2002	\$48,534.00	none	\$48,534.00
2003	\$45,901.00	none	\$45,901.00
2004	\$17,580.00	none	\$17,580.00
Total	\$227,203	\$175,703.91	\$402,906.91

The interest figure for tax year 1997 in the preceding table has been calculated by the IRS, under 26 U.S.C. §§ 6601 and/or 6621, as of January 7, 2008. This interest figure does not include any interest that may have accrued thereafter, or may accrue under 18 U.S.C. § 3612. The penalties for tax year 1997 in the table above are based on 26 U.S.C. §§ 6651 and 6654(a).

15. This Office 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 this Office, 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, this Office may at or before sentencing make a 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 subsequent to sentencing reflecting that the defendant has provided substantial assistance to the investigation or prosecution of other criminal matters, the extent of any assistance provided, and a recommendation for sentence reduction. The defendant acknowledges and agrees, however, that nothing in this agreement may be construed to require this Office to file such a motion and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

16. 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), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in this agreement, should the government exercise its discretion to file such a motion.

17. 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; and

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.

18. The defendant agrees that:

a. the total amount of restitution reflected in this agreement results from defendant's fraudulent conduct;

b. the total approximate tax loss reflected above includes taxes, interest and penalties for tax year 1997 that involves the evasion of the payment of income taxes, which violation properly includes, as part of the tax loss, interest and penalty amounts which continue to accrue until the tax liability is satisfied; and

c. the total approximate tax loss reflected above also includes tax years 2001, 2002, 2003 and 2004 that includes the evasion of assessment of income taxes, which amounts do not include interest and penalty amounts for purposes of restitution.

19. Nothing in this agreement shall limit the IRS in its civil determination, assessment, and collection of any taxes, interest, and/or penalties that the defendant may owe. The parties agree that the restitution provision is not intended to effectuate a compromise of the defendant's civil tax liability and that the Internal Revenue Service may proceed in accordance with established procedures and to the extent allowed by law against the defendant civilly for any additional income tax, interest and penalties that it determines may be due concerning tax years 2001, 2002, 2003 and 2004 and to take whatever collection action it deems necessary with respect to tax year 1997.

20. The defendant agrees to cooperate with the Internal Revenue Service ("IRS") in its civil examination, determination, assessment, and collection of income taxes related to his 1997, 2001, 2002, 2003 and 2004 income tax returns and any related corporate tax returns, and further agrees not to conceal, transfer, or dissipate funds or property that could be used to satisfy such taxes, penalties, and interest. The defendant further agrees to provide the IRS any documentation in the defendant's possession and/or control requested by the IRS in connection with its civil examination, determination, assessment, and collection of income or other taxes prior to sentencing. The defendant further agrees to knowingly and voluntarily waive any statute of limitations with respect to assessment and/or collection of the defendant's individual and corporate/entity tax liabilities concerning tax years 1997, 2001, 2002, 2003 and 2004. The defendant further agrees that he will sign any IRS forms deemed necessary by the IRS to enable the IRS to make an immediate assessment of that portion of the tax and interest that he agrees to pay as restitution. Defendant also agrees to sign IRS Form 8821, "Tax Information Authorization."

21. Defendant agrees not to file any claim for refund of taxes or interest represented by any amount of restitution paid pursuant to this agreement.

22. The parties understand that defendant will receive proper credit for the payments made pursuant to this agreement. Except as set forth in the previous sentence, nothing in this agreement shall limit the IRS in its lawful examination, determination, assessment, or collection of any taxes, penalties or interest due from the defendant for the time periods covered by this agreement or any other time period.

23. Defendant agrees that, unless the Director of the Administrative Office of the United States Courts directs him otherwise, all payments made pursuant to the Court's restitution order are to be sent only to the Clerk of the Court at the following address:

United States District Court Office
299 E. Broward Blvd., Suite 108
Fort Lauderdale, FL 33301

With each payment to the Clerk of the Court made pursuant to the District Court's restitution order, defendant will provide the following information:

- a. The defendant's name and Social Security number;
- b. The District Court docket number assigned to this case;
- c. Tax year(s) or period(s) for which restitution has been ordered; and
- d. A statement that the payment is being submitted pursuant to the District Court's restitution order.

Defendant agrees to include a request that the Clerk of the Court send the information, along with defendant's payments, to the appropriate office of the Internal Revenue Service. Defendant also

agrees to send a notice of any payments made pursuant to this agreement, including the information listed in sub-items (a) through (d) of this paragraph, to the IRS at the following address:

Internal Revenue Service, Attn: MPU
STOP 151 (Restitution)
P.O.Box 47-421
Doraville, GA 30362

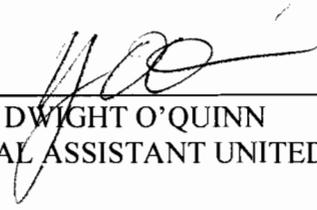
24. The defendant also understands and agrees that he will not commit any further crimes. The defendant further understands that he may be prosecuted for, without limitation, any materially false statement made at any time during his cooperation with the United States, including under the federal perjury,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

25. This is the entire agreement and understanding between this Office and the defendant.

There are no other agreements, promises, representations, or understandings.

ERIC I. BUSTILLO
ACTING UNITED STATES ATTORNEY

Date: 9/23/08

By: 
RYAN DWIGHT O'QUINN
SPECIAL ASSISTANT UNITED STATES ATTORNEY

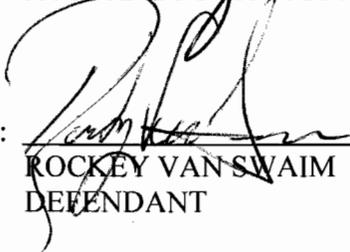
Date: 9/23/08

By: 
ANDREW K. LEVI
ASSISTANT UNITED STATES ATTORNEY

Date: 9/23/08

By: 
TIMOTHY DAY
ATTORNEY FOR DEFENDANT

Date: 9/23/08

By: 
ROCKEY VAN SWAIM
DEFENDANT