

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 5:17-cr-30(S1)-Oc-37PRL

DONALD EDWARD SMITH

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by  
Maria Chapa Lopez, United States Attorney for the Middle District of  
Florida, and the defendant, DONALD EDWARD SMITH, and the attorney  
for the defendant, David A. Wilson, mutually agree as follows:

**A. Particularized Terms**

1. Count(s) Pleading To

The defendant shall enter a plea of guilty to Counts One and  
Two of the Superseding Information. Count One charges the defendant with  
Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 371. Count  
Two charges the defendant with Subscribing to False Income Tax Return, in  
violation of 26 U.S.C. § 7206(1).

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AF Approval PF (FSA/P3)

2. Maximum Penalties

Count One carries a maximum sentence of 5 years imprisonment, a fine of \$250,000 or twice the gross gain or twice the gross loss resulting from the loss, whichever is greater, or both, a term of supervised release of not more than 3 years, and a special assessment of \$100 per felony count. A violation of the terms and conditions of supervised release could result in another term of imprisonment of up to 2 years followed by another term of supervised release. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

Count Two carries a maximum sentence of 3 years imprisonment, a fine of \$100,000, or both, a term of supervised release of not more than 1 year, and a special assessment of \$100 per felony count. A violation of the terms and conditions of supervised release could result in another term of imprisonment of up to 1 year followed by another term of supervised release. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect

to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

The maximum cumulative penalty is 8 years imprisonment, a fine of \$350,000 or twice the gross gain or twice the gross loss resulting from the loss, whichever is greater, or both, a term of supervised release of not more than 3 years, and a special assessment of \$200. A violation of the terms and conditions of supervised release could result in another term of imprisonment of up to 3 years followed by another term of supervised release.

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty.

Count One:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the Superseding Information;

Second: That the Defendant, knowing the unlawful purpose of the plan, willfully joined in it;

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods (or "overt acts") described in the Superseding Information; and

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Fourth: The Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

Count Two:

First: The Defendant made or caused to be made a 2012 Form 1040 income tax return;

Second: the 2012 Form 1040 income tax return contained a written declaration that it was made under the penalty of perjury;

Third: when the Defendant made or helped to make the 2012 Form 1040 income tax return, he knew it contained false material information;

Fourth: when the Defendant did so, he intended to do something he knew violated the law;

Fifth: the false matter in the 2012 Form 1040 income tax return related to a material statement

4. Indictment Dismissed

At the time of sentencing, the original Indictment against the defendant will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the

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United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Restitution

Pursuant to 18 U.S.C. §§ 3663(a)(3) and 3663A(a)(3), the defendant agrees to make full restitution in the approximate amount of \$1,450,000.00 to all victims of the wire fraud scheme charged in Count One of the Superseding Information and to all victims of the separate Styrofoam recycling scheme in the approximate amount of \$1,937,127.95 (even though that conduct is not charged in the Superseding Information), for a total restitution in the approximate amount of \$3,387,127.95. The parties agree that the exact amount of the restitution, including restitution to the Internal Revenue Service, for the tax count, is to be determined at sentencing.

7. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

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Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

8. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following: an order of forfeiture of proceeds in the amount

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of \$1,450,000.00, representing the amount of proceeds obtained as a result of the wire fraud schemes, as well as:

- a. 15145 SW 16<sup>th</sup> Avenue, Ocala, Marion County, Florida 32615, including all improvements thereon and appurtenances thereto, more particularly described as:

All that certain land situate in Marion County, Florida, VIZ:

Commencing at the Southeast corner of the W 1/2 of the SE 1/4 of the NE 1/4 of Section 19, Township 17 South, Range 22 East; Thence N. 00 degrees 03 minutes 54 seconds E, along the East boundary thereof a distance of 1324.21 feet to a point; thence S. 89 degrees 45 minutes 36 seconds W. 662.72 feet to a point; thence N. 00 degrees 04 minutes 12 seconds E. 157.56 feet for the point of beginning; thence continue N. 00 degrees 04 minutes 12 seconds E. 386.38 feet; thence S. 89 degrees 44 minutes 31 seconds W. 2365.64 feet to the intersection with the Northeasterly right of way line of Interstate Highway 75 (300 feet wide) said point of being on a curve concave Northeasterly having a radius of 22,800.30 feet and a central angle of 00 degrees 08 minutes 30 seconds and a chord bearing of S. 27 degrees 47 minutes 49 seconds E; thence Southeasterly along said curved an arc distance of 56.39 feet; thence departing said right of way line N. 89 degrees 44 minutes 31 seconds E. 1393.97 feet; thence S. 00 degrees 04 minutes 12 seconds W. 336.38 feet; thence N. 89 degrees 44 minutes 31 seconds E. 945.31 feet to the point of beginning. All being in Marion County, Florida

Together with a 1995 Comm Doublewide Manufactured Home ID# GMHGA152945102A & GMHGA152945102B

Parcel No. 44642-001-01;

Defendant's Initials LLS

b. 15175 SW 16<sup>th</sup> Avenue, Ocala, Marion County, Florida 32615, including all improvements thereon and appurtenances thereto, more particularly described as:

All the following described land, situate, lying and being In Marion County, Florida, to wit:

Commencing at the Southeast Corner of the West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 19, Township 17 South, Range 22 East; thence N. 00°03'54" E. along the East Boundary thereof a distance of 1324.21 feet to a point; thence S 89°45'36" W. 662.72 feet to a point; thence N. 00°04'12" E. 157.56 feet to a point; thence continue N. 00°04'12" E. 386.38 feet; thence S. 89°44'31" W. 2365.64 feet to the intersection with the northeasterly right of way line of interstate Highway 75 (300 feet wide) said point being on a curve concave Northeasterly, having a radius of 22,800.30 feet and a central angle of 00°08'30" and a chord bearing of S. 27°47'49" E., thence Southeasterly along said curve an arc distance of 56.39 feet for the point of beginning; thence departing said right of way line N. 89°44'31" E. 1393.97 feet; thence S. 00°04'12" W 336.38 feet; thence S. 89°44'31" W. 1213.41 feet to the intersection with the Northeasterly right of way line of Interstate Highway 75 (300 feet wide); thence N. 28°21'03" W., 188.60 feet to a point of curvature of curve concave Northeasterly, having a radius of 22,800.30 feet and a central angle of 00°29'00" and a chord bearing of N. 28°06'33" W.; thence Northwesterly along said curve arc distance of 192.32 feet to the point of beginning, all being in Marion County, Florida

Parcel No. 44642-000-00;

c. The sum of \$297,898.74 as a substitute res in lieu of forfeiture of real property located at 36 Nashua Way, Ocala, Marion County, Florida 34482, including all improvements thereon and appurtenances thereto, more particularly described as:

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Lot 13, Block 5, Meadow Wood Farms, Unit No. 2,  
According to the Plat thereof recorded in Plat Book N,  
Pages 1 through 27, Public Records of Marion County,  
Florida

Parcel No. 2097-005-013;

- d. a 2014 Dodge Ram1500 Truck,  
Serial Number 3C6JR6DG5EG324463;
- e. a 2014 Dodge Durango AWD Utility 4D,  
Serial Number 1C4SDJET2EC557374;
- f. a 2012 Dodge Ram 3500 Truck,  
Serial Number 3C63DRGL2CG165674;
- g. a 2012 Dodge Challenger Coupe  
Serial Number 2C3CDYBT2CH280774;
- h. a 2011 Cadillac DTS Sedan,  
Serial Number 1G6KH5E6XBU116364; and
- i. a Bobcat T590 Track Loader w/ Implements,  
Serial Number ALJU11382,

which assets were purchased with proceeds the defendant obtained from the wire fraud scheme. The defendant further consents to the filing of a motion by the United States for immediate entry of an order of forfeiture of proceeds.

The defendant further agrees, on behalf of himself and his company, Legacy Investments of Brandon, to withdraw the claim he filed on behalf of Legacy Investments of Brandon, on September 16, 2016, in the administrative forfeiture proceedings for the five vehicles and Bobcat Tractor Loader, identified in sub-paragraphs 8. d. through 8. i. above, and agrees and

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consents to the administrative forfeiture of these vehicles and Bobcat Tractor Loader. The defendant agrees that he will not pursue any further claim, contest or appeal as to the administrative forfeiture for the five vehicles and Bobcat Tractor Loader and waives all deadlines under 18 U.S.C. § 983(a).

Further, the defendant, along with A. Diane Sanders by separate stipulation, consent, on behalf of themselves and the companies, Phoenix Capital Funding, Inc., the Phoenix Landing Ranch, and Legacy Investments of Brandon, Inc., to the civil forfeiture of the real properties and substitute res in lieu of real property, identified in subparagraphs 8. a. through c. above, in the civil forfeiture case, *United States v. Real Property, Including All Improvements Thereon and Appurtenances Thereto, Located at 15145 SW 16<sup>th</sup> Avenue, Ocala, Marion County, Florida 34473, et al.*, Case No. 5:16-cv-444-Oc-41Prl. The defendant and Sanders, by separate stipulation, agree, on behalf of themselves and Phoenix Capital Funding, Inc., the Phoenix Landing Ranch, and Legacy Investments of Brandon, Inc. to waive any right they may have to file a claim in, or otherwise contest, the civil forfeiture action. The net proceeds of the forfeiture of the real properties described above (a. and b.), the currency (c.), and the vehicles (d. – i.), will be credited to the Order of Forfeiture of Proceeds.

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Further, the defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees that the United States shall, at its option, be entitled to the forfeiture of any property (substitute assets) of the defendant up to the value of the Order of Forfeiture of Proceeds. The defendant further

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agrees that the United States is seeking an Order of Forfeiture of Proceeds because, as a result of the defendant's actions, the criminal proceeds cannot be located despite the exercise of due diligence. In addition, the defendant agrees that the United States is not limited to forfeiture of the property specifically identified for forfeiture in this Plea Agreement. If the United States determines that the specific property identified for forfeiture in this Plea Agreement cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. The Defendant expressly consents to the forfeiture of any substitute asset sought by the Government. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture (including substitute assets) and to transfer custody of such property to the United States before the defendant's sentencing. To that end, the defendant agrees to make a full and complete

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disclosure of all assets over which defendant exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant

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may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed Order of Forfeiture of Proceeds, is collected in full.

**B. Standard Terms and Conditions**

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant

to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$200.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release

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upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

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5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States

Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

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9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the

attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea

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and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

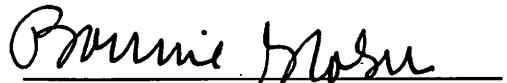
13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

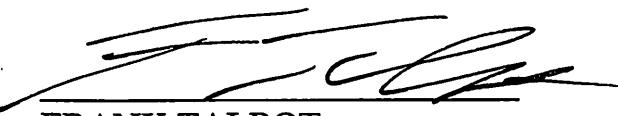
DATED this 21<sup>st</sup> day of March, 2018.

MARIA CHAPA LOPEZ  
United States Attorney

  
DONALD EDWARD SMITH  
Defendant

  
BONNIE GLOBER  
Assistant United States Attorney

  
DAVID A. WILSON  
Attorney for Defendant

  
FRANK TALBOT  
Assistant United States Attorney  
Chief, Jacksonville Division

  
GILBERT A. SCHAFFNIT  
ATTORNEY FOR DEFENDANT

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 5:17-cr-30(S1)-Oc-37PRL

DONALD EDWARD SMITH

**PERSONALIZATION OF ELEMENTS**

**Count One**

1. Do you admit that from approximately September, 2011 through at least September, 2015 in the Middle District of Florida and elsewhere, that two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit wire fraud, as charged in the Superseding Information.

2. Do you admit you knew the unlawful purpose of the plan and willfully joined in it?

3. Do you admit that during the conspiracy, one of the conspirators knowingly engaged in at least one overt act as described in the Superseding Indictment, that is, on or about June 13, 2012, you caused A.R. and R.R. to transmit \$568,000 to a Capital City Bank account held in the

Defendant's Initials DES

name of Legacy of Brandon, Inc. Escrow Account and that the funds were transmitted by wire in interstate commerce.

4. Do you admit that the overt act was committed at or about the time alleged and with the purpose of carrying out or accomplishing some object of the conspiracy?

Count Two

1. Do you admit that you made or caused to be made a Form 1040 income tax return, which you filed for the year 2012.

2. Do you admit that the 2012 Form 1040 contained a written declaration that it was made under the penalty of perjury?

3. Do you admit that when you made or helped to make the 2012 Form 1040, you knew it contained false information, namely that your income exceeded the amount of income stated in the form.

4. Do you admit that when you made the 2012 Form 1040, you intended to do something you knew violated the law?

5. Do you admit that the false information in the 2012 Form 1040 related to a material statement.

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 5:17-cr-30(S1)-Oc-37PRL

DONALD EDWARD SMITH

**FACTUAL BASIS**

From at least September, 2011 through at least September, 2015, the defendant, Donald Edward Smith, and others conspired to engage in a scheme to defraud individuals. Operating under his company, Legacy Investments of Brandon, Inc., the defendant solicited funds from individuals interested in investing in areas such as green technology projects and other projects. He promised his victims lucrative returns, as well as access to hundreds of millions of dollars in financing. The defendant was assisted by individuals who, for their personal gain, purported to offer their services to the investor/victims to obtain funding and/or loans, but the funding and/or loans never materialized.

/ by  
another  
person  
D.E.S.

Two of these investor/victims, A.R. and R.R., were convinced to invest in waste disposal technology. These investor/victims were informed that the defendant had access to individuals who could provide capital funding for the

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company and that the defendant would assist with the funding of the waste disposal technology company through a private placement memorandum. On May 15, 2012 and June 13, 2012, respectively, the investor/victims wired \$50,000.00 and \$568,000.00 to a Capital City Bank account held in the name of Legacy Investments of Brandon, Inc., Escrow Account, which was controlled by the defendant.

The defendant represented that the initial \$50,000 was to serve as a retainer for the defendant to actively pursue financing for the waste technology company. The defendant represented that the \$568,000 was to be placed in escrow and would be disbursed to pay for expenses incurred to obtain and structure the funding. The expenses purportedly included the drafting a private placement memorandum, attorney's fees, due diligence and other ~~co-conspirator~~ to potential investors alleged costs. The defendant explained that the funding would require the issuance of private stock to the public and would require SEC registration.

The defendant later explained that he could no longer be involved with the deal. A.R. and R.R. were informed, through their son who was in direct communication with the defendant, that all of the due diligence work for the private placement was nearly complete, and, as a result, they would either lose their money or they could transfer the work that was done to another similar

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waste disposal technology. A.R. and R.R. did not get their money back from the defendant.

The funds provided by A.R. and R.R. were not used by the defendant to secure financing. Instead of obtaining capital and other work on this investment opportunity, which the defendant had promised, he used the funds to purchase personal property, including a Dodge Challenger, a Dodge Ram 3500 truck, cattle, a tractor, landscaping services, and land adjacent to his residence.

During approximately October 2011 through September 2015, the defendant defrauded other investors, in addition to A.R. and R.R., with representations similar to those that he had made to A.R. and R.R., that is, that he would provide access to capital for investor/victims as well as lucrative returns for them from investments in such projects as bottled water and ethanol production, oil wells, green lighting, and water purification. Between 2011 and 2013, the defendant collected \$1,500,000.00 from five different investors who were promised <sup>by co-conspirators that they would</sup> but did not receive any legitimate investment opportunities or access to financing from the defendant, but received <sup>nothing</sup>.

Additionally, the defendant knowingly failed to report as income the fraudulent proceeds he received from the investor/victims for the year 2012. For the tax year 2012, the defendant reported negative income of -\$15,122 on

Defendant's Initials 

Line 22, Form 1040. The defendant's 2012 tax return, prepared by a tax preparer, based on documentation provided by the defendant, did not report \$560,924.00, which should have been reported as income, resulting in a tax loss of approximately \$163,726.00 for that year. The defendant signed his tax returns for 2012 with a PIN before filing with the IRS. The defendant willfully withheld information from his return preparers regarding income he received from the investor/victims and used on personal expenses, and he did so to avoid paying taxes on the unreported income.

JM  
DW

Defendant's Initials 10/15