

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	NO. <u>09-40045 -01</u>
Plaintiff,)	
)	
v.)	PETITION TO ENTER PLEA
)	OF GUILTY AND ORDER
)	ENTERING PLEA
<u>DAVID RAY FREEMAN</u> ,)	[Federal Rules of Criminal
Defendant.)	Procedure, Rules 10 and 11]

The defendant represents to the Court:

(1) My full true name is: David Ray Freeman
I am 45 years of age. I have completed 12 grade. I request that all proceedings against me be in my true name.

(2) I am represented by a lawyer, his name is:

Carl E. Cornwell

(3) I received a copy of the Indictment¹ before being called upon to plead. I read the Indictment and have discussed it with my lawyer. I fully understand every charge made against me.

(4) I told my lawyer all the facts and circumstances known to me about the charges made against me in the Indictment. I believe that my lawyer is fully informed on all such matters.

(5) I know that the Court must be satisfied that there is a factual basis for a plea of "GUILTY" before my plea can be accepted. I represent to the Court that I did the following acts in connection with the charges made against me in Count(s) I. That I defendant above named combined conspired confederated and agreed with unindicted co-conspirators to commit offenses against the United States of America in the District of Kansas to wit 18 U.S.C. 1951 31 U.S.C. Section 5324 and 18 USC Section 1344 that these acts started in 2004 and continued **

(6) My lawyer has counseled and advised me on the nature of each charge, on all lesser included charges, and on all possible defenses that I might have in this case.

(7) I know that I have the right to plead "NOT GUILTY" to any offense charged against me. If I plead "NOT GUILTY" I know the Constitution guarantees me: (a) the right to a speedy and public trial by a jury; (b) at that trial, and at all stages of the proceedings, the right to the assistance of a lawyer; (c) the right to see and hear all witnesses called to testify against me, and the right to cross-examine those witnesses; (d) the right to use the power and process of the Court to compel the

¹ "Indictment" also includes "Information."

#5 continued

through the return of this Information all in violation of Title
18 U.S.C. Section 371.

production of any evidence, including the attendance of any witnesses in my favor; and (e) the right not to be compelled to incriminate myself by taking the witness stand, and if I do not take the witness stand, no inference of guilt may be drawn from such decision.

(8) I know that if I plead "GUILTY," I am thereby waiving my right to a trial, and that there will be no further trial of any kind, either before a Court or jury; and further, I realize the Court may impose the same punishment as if I had pleaded "NOT GUILTY," stood trial, and been convicted by a jury.

(9) I know that if I plead "GUILTY," the Court will ask me questions about the offense(s) to which I have pleaded, and since I will be answering these questions under oath, on the record, and in the presence of my lawyer, that my answers may later be used against me in a prosecution for perjury or false statement.

(10) My lawyer informed me that the plea of "GUILTY" could subject me to a mandatory minimum sentence of not less than ____ years (if applicable) and to a maximum punishment which, as provided by law, is 30 years to be followed by a term of supervised release of at least ____ years on (Title 21 Drug Offense) and not to exceed 5 years (greater of 18 U.S.C. § 3583(b) or Title 21 Drug Offense), and a fine of not less than \$ _____ nor more than \$1,000,000 which may accrue interest if not paid at time of sentencing) for the offense(s) charged in Count(s) I of the Indictment or Information. I have also been informed that should the Court find me in violation of the supervised release term, the term could be revoked and an additional term of imprisonment not to exceed 3 years may be imposed. I have also been informed that the Court may order me to make restitution in compliance with 18 U.S.C. § 3663 and § 3664 or as a condition of supervision, if such is ordered under 18 U.S.C. § 3563, in addition to any other penalty provided by law. I further understand that if I am pleading "GUILTY" to an offense which is subject to the Sentencing Reform Act, I cannot be released on parole and, if imprisonment is ordered in my case, the sentence imposed by the Court will be the sentence I serve less any good time credit if I earn it.

(11) I know that in addition to any other penalty imposed, including any fine or restitution order, the Court is required to impose a special monetary assessment in the amount of \$ _____.

\$ 100.00 for each count in which the offense occurred after April 24, 1996. (Not less than \$100.00 for a felony, \$25.00 for a Class A misdemeanor; if the defendant is other than an individual the assessment is not less than \$400.00 for a felony and \$100.00 for a Class A misdemeanor). I UNDERSTAND THIS SPECIAL ASSESSMENT MUST BE PAID AT THE TIME OF THE SENTENCING HEARING UNLESS THE COURT DIRECTS OTHERWISE.

(12) I understand that if my case involves drug trafficking or drug possession, the Court may deny or suspend my eligibility to receive federal benefits pursuant to 21 U.S.C. § 862, except for those specifically exempted. I understand that if this is my second or subsequent conviction for possession of a controlled substance, the Court may order me to complete drug treatment or community service as specified in the sentence as a condition for reinstatement of benefits.

(13) I know that the Court may also order, in addition to the penalty imposed, that I give reasonable notice and explanation of the conviction, in such form as the Court may approve, to the victims of the offense.

(14) I have been advised and understand that if I am not a U.S. citizen, a conviction of a criminal offense may result in deportation from the United States, exclusion from admission to the United States, and/or denial of naturalization.

(15) If I am on probation or parole in this or any other Court, I know that by pleading guilty here, my probation or parole may be revoked and I may be required to serve time in that case, which will be consecutive, that is, in addition to any sentence imposed upon me in this case.

(16) I declare that no officer or agent of any branch of government (federal, state, or local) has promised, suggested, or predicted that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "GUILTY," except as follows:

My attorney did discuss how the Sentencing Guidelines may apply in my case.

If anyone else, including my attorney, made such a promise, suggestion, or prediction, except as noted in the previous sentence, I know that he had no authority to do so.

I know that the sentence I will receive is solely a matter within the control of the Judge. I do understand that there is no limitation on the information the Judge can consider at the time of sentencing concerning my background, character, and conduct, provided the information is reliable, 18 U.S.C. § 3661. I do understand that if I am subject to sentencing under the Sentencing Reform Act and the Sentencing Guidelines issued by the United States Sentencing Commission, a sentencing guideline range is established. The Judge will consider a sentence from within the guideline range and, if my case presents features which persuade the Judge to vary from the guideline range the Judge could impose a sentence either above or below the recommended guideline range. In determining the guideline range, any variance, and the sentence to impose, the Court may take into account all relevant criminal conduct, which may include counts to which I have not pled guilty or been convicted, and take into account background characteristics, unless otherwise prohibited by law. I further understand that my background characteristics including, but not limited to, the recency and frequency of my prior criminal record, whether or not a substantial portion of my income resulted from criminal conduct, my role in the offense, victim-related circumstances, and my acceptance of responsibility for the offense, may have a specific effect on the sentence.

I hope to receive leniency, but I am prepared to accept any punishment permitted by law which the Court sees fit to impose. However, I respectfully request the Court to consider, in mitigation of punishment, that I have voluntarily entered a plea of guilty.

(17) I understand that a U.S. Probation Officer will be assigned to conduct a thorough presentence investigation to develop all relevant facts concerning my case, unless the Court finds that there is in the record sufficient information to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. § 3553. The report of the presentence investigation shall contain the factors set forth in Rule 32. These include the classification of the offense and of the defendant under the categories established by the Sentencing Commission, the kinds of sentence available to the Court, and the sentencing range the officer believes applicable. The report shall include the history and characteristics of the defendant, and such other information required by the Court recognizing the factors set forth in paragraph (16) above.

(18) My plea of guilty is/is not the result of my plea agreement entered into between the Government attorney, my attorney, and me.

If my plea of guilty is the result of a plea agreement, I hereby state that the terms of said agreement are as follows:

See attached plea agreement.

I fully understand that the Court is not bound by the terms of the plea agreement, and may accept or reject said agreement. If the Court rejects the agreement, I also understand the Court will not give me the opportunity to withdraw my plea of guilty, unless the plea agreement, signed by all parties, is executed in accordance with Federal Rules of Criminal Procedure, Rule 11(c)(1)(A) or Rule 11(c)(1)(C).

(19) I believe that my lawyer has done all that anyone could do to counsel and assist me, AND I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME.

(20) I know that the Court will not permit anyone to plead "GUILTY" who maintains he/she is innocent and, with that in mind, and because I am "GUILTY" and do not believe I am innocent, I wish to plead "GUILTY", and respectfully request the Court to accept my plea of "GUILTY" and to have the Clerk enter my plea of "GUILTY" as follows.²

Guilty as charged in Count I,

(21) My mind is clear, I am not under the influence of alcohol. I currently am not under a doctor's care. The only drugs, medicines or pills that I took within the past seven (7) days are:

Xanax

(22) I have never been confined in an institution for the treatment of mental illness. I have never been adjudicated mentally incompetent. No psychiatrist, physician, or psychologist has ever found me to be mentally ill. I know of no reason why my mental competence at the time of the commission of the alleged offense(s), or at the present time, should be questioned. (If there are any exceptions to the above statement, explain below.)

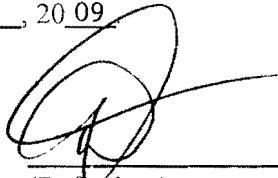
(23) I offer my plea of "GUILTY" freely and voluntarily, and further state that my plea of guilty is not the result of any force or threats against me, or of any promises made to me other than those noted in this petition. I further offer my plea of "GUILTY" with full understanding of all the matters set forth in the Indictment, in this petition, and in the certificate of my attorney which is attached to this petition.

² The defendant's plea of "GUILTY" or "NOT GUILTY" to each offense should be entered in the blank spaces provided in paragraph (20). If the Indictment charges a single offense, a defendant who wishes to plead "GUILTY" should write in paragraph (20) "GUILTY as charged in the Indictment." If more than one offense is charged, the defendant may write in paragraph (20) "GUILTY as charged in Count(s) _____," "NOT GUILTY as charged in Count(s) _____."

(24) I waive the reading of the Indictment in open court, and I request the Court to enter my plea of "GUILTY" as set forth in paragraph (20) of this petition.

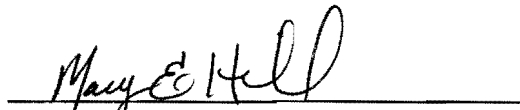
(25) I swear that I have read, understood, and discussed with my attorney, each and every part of this Petition to Plead Guilty, and that the answers which appear in every part of this petition are true and correct.

Signed and Sworn to by me in open court, in the presence of my attorney,
this 30 day of June, 20 09



(Defendant)

Subscribed and Sworn to before me this 30th day of June, 20 09.



(Deputy Clerk)

CERTIFICATE OF COUNSEL

The undersigned, as lawyer and counselor for the defendant David Ray Freeman hereby certifies:

(1) I have read and fully explained to the defendant the allegations contained in the Indictment in this case.

(2) To the best of my knowledge and belief, the statements, representations and declarations made by the defendant in the foregoing petition are in all respects accurate and true.

(3) I explained the maximum penalty for each count to the defendant.

(4) The plea of "GUILTY" offered by the defendant in paragraph (20) accords with my understanding of the facts he/she related to me and is consistent with my advice to the defendant.

(5) In my opinion, the defendant's waiver of reading of the Indictment in open court as provided by Rule 10 is voluntarily and understandingly made, and I recommend to the Court that the waiver be accepted.

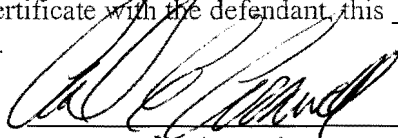
(6) In my opinion, the plea of "GUILTY" offered by the defendant in paragraph (20) of the petition is voluntarily and understandingly made. I recommend that the Court accept the plea of "GUILTY."

(7) I have made no predictions or promises to the defendant concerning any sentence the Court may award, except as noted in the space below:

I have discussed with my client how the Sentencing Guidelines may apply in his case.

(8) I further represent to the Court that the defendant's plea of "GUILTY" is the result of a plea agreement. The terms of the agreement are set out in paragraph (18) of the petition, and I have informed the defendant that the Court is not bound by the terms of the agreement and that if the Court rejects the agreement, the Court will not give him/her the opportunity to withdraw his/her plea of "GUILTY," unless the plea agreement, signed by all parties, is executed in accordance with Federal Rules of Criminal Procedure, Rule 11(c)(1)(A) or Rule 11(c)(1)(C).

Signed by me in open court in the presence of the defendant above named and after full discussion of the contents of this certificate with the defendant, this 30 day of June, 2009.




(Attorney for the Defendant)

ORDER

I find that the plea of guilty was made by the defendant freely, voluntarily, and because he/she is guilty as charged, and not out of ignorance, fear, inadvertence or coercion, and with full understanding of its consequences. I further find that the defendant has admitted the essential elements of the crime charged and is mentally competent.

IT IS THEREFORE ORDERED that the defendant's plea of "GUILTY" be accepted and entered as prayed for in the petition and as recommended in the certificate of his/her lawyer.

Done in open court this 30th day of June, 20 .



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID RAY FREEMAN,

Defendant.

No. 09-40045-C1

PLEA AGREEMENT

The United States of America, by and through Richard L. Hathaway, Senior Litigation Counsel, United States Attorneys Office for the District of Kansas, and DAVID RAY FREEMAN, the defendant, personally and by and through defendant's counsel, Carl E. Cornwell, hereby enter into the following plea agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure:

1. **Defendant's Guilty Plea.** The defendant agrees to plead guilty to Count 1 of the Information filed herein charging a violation of Title 18, United States Code, § 371, conspiracy to commit bank fraud in violation of Title 18 United States Code, Sections 2 and 1344(2); Hobbs Act, in violation of Title 18 United States Code, Sections 2 & ~~1951~~¹⁹⁵¹; and structuring of financial transactions to avoid currency transactions reporting, in violation of Title 31 United States Code, Section 5324. By entering into this plea agreement, the defendant admits to knowingly committing this offense, and to being guilty of this offense. The defendant understands that the maximum sentence which may be imposed as to Count 1 is a term of imprisonment of not more than 30 years, a fine of not more than \$1,000,000, a term of supervised

release of not more than five years, such restitution and forfeiture as shall required by law, and a \$100 mandatory special assessment.

2. **Factual Basis for the Guilty Plea.** The parties agree the facts constituting the offense to which the defendant is pleading guilty are as follows:

a) Junction City, Kansas is a municipality of the State of Kansas. Nearby is Fort Riley, home of the 1st Army Infantry Division, the "Big Red One."

b) Junction City has a city commission form of government. It consists of five commissioners one of whom is mayor on a rotational basis.

c) DAVID RAY FREEMAN, the defendant herein (hereinafter "defendant" or "FREEMAN"), is a building contractor residing in Lawrence, Kansas. FREEMAN is a signatory on the accounts of Tri-County Foundations, LLC, and L and K Trucking LLC, and Big D LLC, at The University National Bank in Lawrence, Kansas. FREEMAN also maintains accounts at Lawrence Bank, Lawrence, Kansas.

d) In approximately 2004, representatives of Junction City were expecting a large troop buildup at Fort Riley with the hope and expectation that the population of Junction City could double. As a result the City began annexation of 1400 acres and laid plans to enhance the local housing market and expand the local economy.

e) In 2004, FREEMAN traveled to Junction City to look into investments in land for building. There were reports that soldiers would be returning to the Junction City/Fort Riley area and the city needed houses built quickly. FREEMAN during this period came to know and become friends with a Junction City Commissioner.

f) On May 1, 2006 FREEMAN issued a \$5,000 check made payable to the wife of the Junction City Commissioner on the account of Tri-County Foundations, LLC at The University National Bank, Lawrence, Kansas.

g) On May 5, 2006, Big D Development LLC and Big D Construction LLC (hereinafter collectively referred to as "Big D") were formed by FREEMAN and other Lawrence Kansas residents. FREEMAN held a 50% interest in Big D. FREEMAN bragged to partners in BIG D, and others, that he had a Junction City Commissioner in his pocket and could get anything through the City Commission.

h) On July 6, 2006, FREEMAN issued a \$5,000 check made payable to the Junction City Commissioner on the account of L and K Trucking LLC at The University National Bank, Lawrence, Kansas.

i) On July 27, 2006, Big D was the beneficiary of a development contract for Sutter Woods Subdivision in Junction City. On August 30, 2006, Big D was the beneficiary of a development contract for Sutter Highlands Subdivision in Junction City. The two contracts were worth in excess of \$12,000,000 to Big D.

j) Sometime after the City Commission awarded/approved the Sutter Wood development agreement to Big D, Big D set aside a choice lot for a residential home for "firefighter" as a code name for the Junction City Commissioner.

k) In or about March of 2007, FREEMAN had an assistant draw and cash a check for \$9,000, and deliver the cash to the Junction City Commissioner at a rest stop between Topeka, and Junction City, Kansas.

l) In the United States, the Bank Secrecy Act requires the filing of a currency transaction report (CTR) for transactions of US \$10,000.01 or more. Federal law makes it a crime to knowingly "structure" financial transactions to cause a domestic financial institution to fail to file such report by structuring transactions in an amount under \$10,000.

m) At all times relevant to this Indictment, FREEMAN would instruct his assistant to draw and cash checks for amounts under US \$10,000, to avoid having the bank report these amounts to the government.

n) The University National Bank of Lawrence and Lawrence Bank are financial institutions, as defined by Title 18 United States Code, Section 20, and are insured depository institutions as defined by section 3(c)(2) of the Federal Deposit Insurance Act.

3. **Application of the Sentencing Guidelines.** The parties acknowledge that the United States Sentencing Guidelines (Guidelines) will be applied by the Court on an advisory basis to calculate the applicable sentence in this case.

4. **Relevant Conduct.** The parties acknowledge and understand that the uncharged conduct, as well as conduct charged in any dismissed counts of the indictment may be

considered by this Court in imposing sentence as relevant conduct for purposes of calculating the offense level for the conspiracy in this case in accordance with United States Sentencing Guidelines (U.S.S.G.) § 1B1.3.

5. Government's Agreements. In return for the defendant's plea of guilty as set forth herein, the United States Attorney for the District of Kansas agrees:

- a. To not file any additional charges against the defendant arising out of the facts forming the basis for the present indictment;
- b. To file a motion pursuant to 5K1.1 of the guidelines reflecting the defendant's substantial assistance in investigating and prosecuting co-conspirators in this case, should the defendant provide the anticipated assistance.

The government's obligation concerning its agreements listed in ¶ 5 are contingent upon the defendant's continuing manifestation of acceptance of responsibility as determined by the United States. If defendant denies or gives conflicting statements as to his involvement in the offenses, falsely denies or frivolously contests relevant conduct that the court determines to be true, willfully obstructs or impedes the administration of justice as defined in U.S.S.G. § 3C1.1 (or willfully attempts to do so), or engages in additional criminal conduct, the United States reserves the right to request a hearing to determine if that defendant has breached this agreement.

In the event the Court finds a defendant has breached this plea agreement or has otherwise failed to adhere to its terms, the United States shall not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges which may have occurred. The defendant respectively understand and agree that in the event a defendant violates this plea agreement, all statements made by that defendant subsequent to the execution of this plea

agreement, any testimony given by that defendant before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against the defendant in any and all criminal proceedings. The defendant waives any rights which might be asserted under the United States Constitution, any statute, Federal Rule of Criminal Procedure 11(f), Federal Rule of Evidence 410, or any other federal rule that pertains to the admissibility of any statements made by the defendant subsequent to this plea agreement.

6. **Defendant's Agreements.** The defendant agrees to cooperate fully and truthfully with the United States as follows:

- a. Defendant agrees to provide truthful, complete, and accurate information and testimony in any trial of co-conspirators, before any grand jury proceeding, or in any related hearing;
- b. Defendant agrees to provide all information concerning the defendant's knowledge of, and participation in, the offenses charged in the indictment and all related conduct;
- c. Defendant agrees to waive speedy sentencing and agrees to be sentenced following the conclusion of the trials of all co-defendants and co-conspirators in this case;
- d. Defendant agrees that if the United States determines the defendant has not provided full and truthful cooperation, or has committed any local, state, or federal crime between the date of this plea agreement and sentencing, or has otherwise violated any other provision of this plea agreement, or has violated the terms and conditions of his release while on bond as required by the Court, the plea agreement may be voided and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Such prosecution may be based upon any information provided by the defendant during the course of the defendant's cooperation, or upon leads derived therefrom, and this information may be used as evidence against the defendant. In addition, the defendant's previously entered plea of guilty will remain in effect and cannot be withdrawn;

- e. Defendant agrees to fully and completely assist the United States in the identification and recovery of forfeitable assets, either domestic or foreign, which have been acquired directly or indirectly through the unlawful activities of the defendant, co-defendants, and/or co-conspirators and further agrees to not contest any forfeiture proceedings.

7. **Substantial Assistance.** The defendant acknowledges that substantial assistance has not yet been provided by the defendant within the meaning of U.S.S.G. § 5K1.1 and Title 18, United States Code § 3553(e). The defendant also acknowledges and understands that the determination as to whether the defendant has provided substantial assistance and whether a motion pursuant to U.S.S.G. § 5K1.1 will be filed are left entirely and exclusively within the discretion of the United States. If a determination is made by the United States the defendant has provided substantial assistance, the United States shall request that the Court consider reducing the sentence the defendant would otherwise receive under the applicable statutes and/or sentencing guidelines pursuant to Title 18, U.S.C. § 3553(e), Title 28, U.S.C. § 994(n), and U.S.S.G. § 5K1.1.

8. **Sentence to be Determined by the Court.** The defendant understands that the sentence to be imposed will be determined solely by the United States District Judge. The United States cannot and has not made any promise or representation as to what sentence the defendant will receive.

9. **Information Provided by Defendant.** The United States agrees not to use new information the defendant provides about the defendant's own criminal conduct except as specifically authorized by U.S.S.G. § 1B1.8. As such, this information may be revealed to the Court but may not be used against the defendant in determining the defendant's applicable

guideline range or departing above her guideline range. Defendant understands and agrees, however, that under U.S.S.G. § 1B1.8, there shall be no such restrictions on the use of the information: (1) previously known to the United States; (2) revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; (4) in the event there is a breach of this agreement; or (5) in determining whether and to what extent a downward departure as a result of a government motion pursuant to Title 18, U.S.C. § 3553(e) and U.S.S.G. § 5K1.1 is warranted.

10. **Identification of Assets.** The defendant agrees to disclose to law enforcement officials the existence and status of all monies, property or assets, of any kind, derived from or acquired as a result of, or used to facilitate the commission of the crimes charged. The defendant agrees to deliver to the United States of America, prior to sentencing, a completed financial statement identifying all of the defendant's assets. The defendant further agrees to prevent the disbursement of any monies, property or assets derived from the crimes charged. If the defendant fails to comply with this provision the United States is relieved of its obligation to recommend a sentencing reduction for Acceptance of Responsibility pursuant to § 3E1.1 or any other sentencing recommendations contained in this agreement.

11. **Withdrawal of Plea Not Permitted.** The defendant understands that if the court accepts this plea agreement but imposes a sentence with which the defendant does not agree, the defendant will not be permitted to withdraw this plea of guilty.

12. **Payment of Special Assessment.** The defendant understands that a mandatory special assessment of \$100 per count of conviction will be entered against the defendant at the time of sentencing. The defendant agrees to deliver to the clerk of the court payment in the

appropriate amount no later than the day of plea. If the defendant fails to make full payment of the special assessment the United States will no longer be bound by the provisions contained in Section 5(b) of this agreement. The burden of establishing an inability to pay the required special assessment lies with the defendant.

13. **Waiver of Appeal and Collateral Attack.** Defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, conviction and sentence. The defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal the conviction and sentence imposed. By entering into this agreement, the defendant knowingly waives any right to appeal a sentence imposed which is within the guideline range determined appropriate by the court. The defendant also waives any right to challenge a sentence or otherwise attempt to modify or change his sentence or manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, U.S.C. § 2255 [except as limited by *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001)], a motion brought under Title 18, U.S.C. § 3582(c)(2) and a motion brought under Fed. Rule of Civ. Pro 60(b). In other words, the defendant waives the right to appeal the sentence imposed in this case except to the extent, if any, the court departs upwards from the applicable sentencing guideline range determined by the court. However, if the United States exercises its right to appeal the sentence imposed as authorized by Title 18, U.S.C. § 3742(b), the defendant is released from this waiver and may appeal the sentence received as authorized by Title 18, U.S.C. § 3742(a).

14. **Waiver of FOIA Request.** The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United

States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, U.S.C. § 552, or the Privacy Act of 1974, Title 5, U.S.C. § 552a.

15. **Waiver of Claim for Attorney's Fees.** The defendant waives all claims under the Hyde Amendment, Title 18, U.S.C. § 3006A, for attorneys fees and other litigation expenses arising out of the investigation or prosecution of this matter.

16. **Full Disclosure by United States.** The defendant understands the United States will provide to the court and the United States Probation Office all information it deems relevant to determining the appropriate sentence in this case. This may include information concerning the background, character, and conduct of the defendant including the entirety of the defendant's criminal activities. The defendant understands these disclosures are not limited to the count to which the defendant has pled guilty. The United States may respond to comments made or positions taken 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 only to any limitations set forth in this plea agreement. The defendant also has the right to provide information concerning the offense and to make recommendations to the court and the United States Probation Office.

17. **Parties to the Agreement.** The defendant understands this plea agreement binds only the defendant and the United States Attorney for the District of Kansas, and that it does not bind any other federal, state, or local prosecution authority.

18. **No Other Agreements.** The defendant has had sufficient time to discuss this case, the evidence, and this agreement with the defendant's attorney and defendant is fully

satisfied with the advice and representation provided by defendant's counsel. Further, the defendant acknowledges that she has read the plea agreement, understands it and agrees it is true and accurate and not the result of any threats, duress or coercion. The defendant further understands that this plea agreement supersedes any and all other agreements or negotiations between the parties, and that this agreement embodies each and every term of the agreement between the parties. The defendant acknowledges that the defendant is entering into this agreement and is pleading guilty because the defendant is guilty and is doing so freely and voluntarily.



RICHARD L. HATHAWAY
Senior Litigation Counsel
Room 290 United States Courthouse
444 S.E. Quincy
Topeka, Kansas 66683
rich.hathaway@usdoj.gov

Date: 6/30/2009

Telephone number: 785-295-2850
Ks.S.Ct. #07767



David Ray Freeman
Defendant

Date: 8/30/09



Carl E. Cornwell KS Bar # 9049
Attorney for Defendant Brumble
201 E. Loula, Suite 101
Olathe, Kansas 66061
913-254-7600

Date: 6/30/09