

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

vs.

JOHN CHRISTOPHER,
also known as
"John DiVito"

No. 95 CR 756
Honorable Elaine E. Bucklo

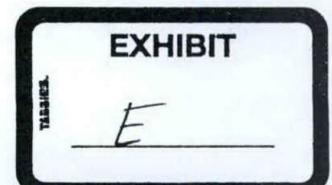
FILED UNDER SEAL

PLEA AGREEMENT

This Plea Agreement ("Agreement") between the United States Attorney for the Northern District of Illinois, JAMES B. BURNS, and the defendant JOHN CHRISTOPHER, also known as "John DiVito" ("defendant"), and his attorney, JEFFREY SCHULMAN ("his attorney"), is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 95 CR 756.

This Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities except as expressly set forth in this Agreement.



By this Agreement, JAMES B. BURNS, United States Attorney for the Northern District of Illinois, and defendant and his attorney have agreed upon the following:

Introduction and Summary

1. Defendant acknowledges that he has been charged in the information in this case with (a) knowingly making a false oath in a bankruptcy proceeding under Title 11 of the United States Code, in violation of 18 U.S.C. § 152; (b) failing to pay over to the Internal Revenue Service ("IRS") taxes withheld by defendant's companies from employees' wages, in violation of 26 U.S.C. §§ 7512 and 7215; and (3) failing to file a personal income-tax return, supply information, and pay federal income-tax, in violation of 26 U.S.C. § 7203.

2. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to Counts One, Two, and Three of the information in this case.

Factual Basis for Guilty Plea

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One, Two, and Three of the information. In pleading guilty, defendant admits the following facts:

(a) With respect to Count One of the information, defendant acknowledges the following.

On or about November 17, 1994, at Chicago, in the Northern District of Illinois, Eastern Division, defendant knowingly and fraudulently made a materially false oath in and in relation to a case under Title 11, namely, In re Marlboro, Incorporated, No. 94 B 16507, by stating to the bankruptcy trustee that "John DiVito" was a friend of defendant and a consultant to Marlboro, Incorporated ("Marlboro"), when, in fact, defendant knew that "John DiVito" referred to defendant, because the name "John DiVito" was an alias name defendant used; in violation of Title 18, United States Code, Section 152.

Specifically, in or about early 1992, defendant created Marlboro and made his secretary, a female, the nominal president of the company so that the company would be given preferential treatment by municipalities and contractors for subcontract work and, in particular, excavation jobs. Defendant made his secretary the nominal president of Marlboro even though he in fact controlled and operated the company in all significant respects, and she in fact acted only in an administrative and subordinate capacity.

When Marlboro encountered significant financial difficulties in or about 1994, defendant made the decision that Marlboro should file for bankruptcy pursuant to Chapter 7 of the United States Bankruptcy Code. Consequently, defendant caused an attorney to prepare and file on August 17, 1994, a voluntary petition for Marlboro's bankruptcy, and instructed defendant's secretary to sign

that petition. Subsequently, at the request and direction of defendant, his secretary appeared in court proceedings as the nominal president of Marlboro and, for the purpose of disguising defendant's involvement with the company, misrepresented that she alone owned and operated Marlboro. On or about November 17, 1994, defendant, his secretary, and the attorney met with the bankruptcy trustee assigned to the Marlboro case. After the bankruptcy trustee placed defendant under oath, the trustee asked defendant about checks written against a Marlboro bank account and made payable to "John DiVito." Defendant falsely stated that "John DiVito" was a friend of his and a consultant to Marlboro. Defendant, however, knew that in fact "John DiVito" was an alias name he frequently used, and that the checks made out to "John DiVito" had been cashed by defendant.

(b) With respect to Count Two of the information, defendant acknowledges the following.

During the years 1992 and 1993, in the Northern District of Illinois, Eastern Division, defendant was the de facto chief controlling officer of Marlboro, a corporation and an employer of labor, and was therefore required under the provisions of the Internal Revenue Code to collect, account for, and pay over to the United States federal income taxes and Federal Insurance Contribution Act ("FICA") taxes withheld from wages. Defendant failed at the time and in the manner prescribed by the Internal Revenue Code, and regulations promulgated pursuant thereto, to collect, to pay over, and to make deposits and payments of said

withheld taxes totalling approximately \$551,215 to the United States which were due and owing for the quarters ending June 30, 1992, through December 31, 1993. As a result of this failure to collect and pay over, on or about September 7, 1992, the IRS sent to Marlboro for the first time, as required by Title 26, United States Code, Section 7512, notice that Marlboro was required to collect the aforesaid taxes that became collectible after delivery of such notice, and, no later than the end of the second banking day after such collection, to deposit said taxes in a separate bank account established in trust for the United States to be kept until paid over to the United States. After personally receiving the notice sent by the IRS, defendant unlawfully failed to comply with the provisions of Title 26, United States Code, Section 7512, in that, after receiving delivery of such notice, he paid wages and was required to collect and deposit the said taxes, but failed to deposit said taxes in a separate bank account in trust for the United States; all in violation of Title 26, United States Code, Section 7215. In addition, with respect to Marlboro, defendant failed to pay to the IRS \$15,271 in federal unemployment taxes.

Moreover, during the years 1994 and 1995, in the Northern District of Illinois, Eastern Division, defendant was the de facto chief controlling officer of Crush-All, Incorporated ("Crush-All"), a corporation and an employer of labor, and was therefore required under the provisions of the Internal Revenue Code to collect, account for, and pay over to the United States federal income taxes and FICA taxes withheld from wages. Defendant failed at the time

and in the manner prescribed by the Internal Revenue Code, and regulations promulgated pursuant thereto, to collect, to pay over, and to make deposits and payments of said withheld taxes totalling no less than approximately \$279,369 to the United States which were due and owing for the quarters ending from March 31, 1994, to September 30, 1995. As a result of this failure to collect and pay over, on June 13, 1994, the IRS sent to Crush-All for the first time notice that the company was required to collect the aforesaid taxes that became collectible after delivery of such notice, and, no later than the end of the second banking day after such collection, to deposit said taxes in a separate bank account in trust for the United States to be kept until paid over to the United States. After personally receiving the notice sent by the IRS, defendant unlawfully failed to comply with the provisions of Title 26, United States Code, Section 7512, in that, after receiving delivery of such notice, he paid wages and was required to collect and deposit the said taxes, but failed to deposit said taxes in a separate bank account established in trust for the United States. In addition, with respect to Crush-All, defendant failed to pay to the IRS \$1876 in federal unemployment taxes.

(c) With respect to Count Three of the information, during the calendar year 1994, in the Northern District of Illinois, Eastern Division, defendant, who was a resident of Illinois, had and received gross income in excess of the statutory minimum, namely \$2450, the statutory minimum for individuals who are married but file separately; by reason of such income he was

required by law, following the close of the calendar year 1994 and on or before April 17, 1995, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Chicago, at Chicago, in the Northern District of Illinois, Eastern Division, or to the Director, Internal Revenue Service Center, Midwest Region, Kansas City, Missouri, stating specifically that items of his gross income and any deductions and credits to which he is entitled; well knowing all the foregoing facts, he willfully did fail to make the required income tax return to that District Director of Internal Revenue, to that Director of the Internal Revenue Service Center, or to any other proper officer of the United States; in violation of Title 26, United States Code, Section 7203.

In addition, defendant acknowledges that he failed to file his federal income-tax returns and return information for the tax years 1992 and 1993.

Application of the Sentencing Guidelines

6. For purposes of applying the United States Sentencing Guidelines ("Guidelines") promulgated by the United States Sentencing Commission pursuant to 28 U.S.C. § 994, defendant acknowledges that at the time of sentencing, the government's position regarding the calculation of defendant's adjusted offense level and criminal history category, based upon information presently known to the government, will be as follows:

(a) The base offense level for making a false oath in a bankruptcy proceeding (Count One) is level 12, pursuant to Guideline § 2J1.3.

(b) Because the offenses charged in Counts Two (failing to deposit and forward collected taxes) and Three (failure to file personal income-tax return) involve substantially the same harm and, specifically, because the offense level for both those counts is determined largely on the basis of total amount of harm or loss, those two counts are grouped together into a single group for purposes of calculating their offense level. See Guideline § 3D1.2(d). The base offense level for those offenses is level 14, pursuant to Guideline §§ 2T1.1(a)(1), 2T1.7(a)(2) and 2T4.1(N), because the tax loss resulting from the offenses was more than \$950,000 but less than \$1.5 million.

(c) With regard to the combined offense level for all three counts, the group of tax counts described in subparagraph 5(b) is the highest offense level; hence, that group is assigned one unit pursuant to Guideline § 3D1.4. Because the bankruptcy group is two levels less serious than the tax group, the bankruptcy group is assigned one unit, pursuant to Guideline § 3D1.4(a). Combined, both groups total two units, resulting in a two-level increase to the highest group (the tax counts), for a combined offense level of 16. See Guideline § 3D1.4.

(d) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in

conflict with this provision, and if defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1, a two-level reduction in the offense level at the time of sentencing will be appropriate.

(e) Defendant has notified the government timely of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, within the meaning of Guideline § 3E1.1(b); if defendant continues to accept responsibility for his actions as described in paragraph 6(d), an additional one-point reduction in the offense level at the time of sentencing will be appropriate, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline § 3E1.1(a).

(f) With respect to his criminal history, defendant acknowledges the following. In or about 1980, in the United States District Court for the Northern District of Illinois, in case 80 CR 372, defendant was convicted of the crime of possession of an unregistered handgun and silencer and was sentenced to four years' imprisonment. On or about July 1, 1982, in the United States District Court for the Northern District of Illinois, in case 82 CR 378, defendant was convicted of the crime of conspiracy to embezzle bank funds, and was sentenced to five years' imprisonment, to run concurrent with the sentences imposed in cases 79 CR 610-2 and 80 CR 372. On or about July 2, 1982, in the United States District Court for the Northern District of Illinois, in case 79 CR 610-2, defendant was convicted of the crimes of conspiring to attempt to

obtain payment of a false claim against the United States, and of making a false statement, and was sentenced to eight years' imprisonment, to run concurrent with the sentences imposed in cases 80 CR 372 and 82 CR 378. Based on the facts known to the government and stipulated to in this subparagraph, defendant's criminal history points equal 9 and his criminal history category is IV.

(g) Defendant, his attorney, and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. Defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

Maximum Penalties

8. Defendant understands the counts to which he will plead guilty carry the following penalties:

(a) Count One carries a maximum penalty of five years' imprisonment, a maximum fine of \$250,000 or twice the gross gain or loss, and any restitution ordered by the Court.

(b) Count Two carries a maximum penalty of one year imprisonment, a maximum fine of \$100,000 or twice the gross gain or loss, and the costs of prosecution (estimated not to exceed \$500).

(c) Count Three carries a maximum penalty of one year imprisonment, a maximum fine of \$100,000 or twice the gross gain or loss, and the costs of prosecution (estimated not to exceed \$500).

(d) Defendant understands that these counts also carry a term of supervised release of two to three years.

Therefore, the total potential sentence carried under the counts to which defendant will plead guilty is seven years' imprisonment, a \$450,000 fine or a fine of twice the gross gain or loss caused by the offenses, a term of supervised release of three years, the costs of prosecution (estimated not to exceed \$1000), and any restitution ordered by the Court.

9. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100, in addition to any other penalty imposed. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money

order made payable to the Clerk of the United States District Court.

Defendant's Trial and Appellate Rights

10. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt and that it was to consider each count of the information separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

(f) Defendant understands that he has a right to have the charges in Count One prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment as to Count One, and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

11. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and only may appeal the validity of this plea of guilty or the sentence.

Defendant's Agreement to Cooperate Fully and Truthfully

12. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate. Defendant's truthful cooperation shall include, but not be limited to, the following:

(a) Defendant agrees to provide complete and truthful information in any matter in which the government may call upon him to do so.

(b) Defendant agrees to cooperate with the government in preparation for any testimony he may give before a federal grand jury or United States District Court proceeding. In so doing, defendant agrees to provide the government with complete and truthful information regarding any matter the government may raise. Such preparation shall also require defendant to listen to and assist in the preparation of transcripts for any tape recordings of conversations made during the course of the government's investigation.

(c) Defendant agrees to provide complete and truthful testimony, if called upon to testify by any party, before any

federal grand jury and United States District Court proceeding, and any related civil, administrative, or court proceeding..

(d) Defendant agrees to join the government's motion, to be made after defendant's guilty plea, to postpone his sentencing until after the conclusion of the prosecution of the cases in which he has cooperated. Specifically, those cases shall include cases in which defendant has provided truthful information to the government, or acted as a cooperating witness working for the government in an undercover capacity. Defendant, however, reserves the right to make, no earlier than one year after the date of his guilty plea, a motion requesting the Court to set a sentencing date no earlier than one year and ninety days after the date of that guilty plea. The government reserves the right to oppose such a motion.

13. The government and defendant acknowledge that in or about October 1991, the government provided defendant and his attorney a proffer letter (which letter is dated October 14, 1991). The parties further acknowledge that the terms of that letter have applied to all statements made by defendant to the government since defendant signed the acknowledgement copy of the letter, and will continue to apply to all statements made by defendant to the government up to and including the date defendant is sentenced in this case.

14. The government and defendant acknowledge that the terms of defendant's relocation and security are not governed by the terms of this Agreement. The government, however, acknowledges

that it has represented to defendant that it will, pursuant to a separately negotiated agreement, pay for reasonable expenses relating to the initial and continued relocation of defendant, and that it would make arrangements for defendant's security when defendant returns to this district to testify. The government further acknowledges that it has represented to defendant that it will, pursuant to another separately-negotiated agreement, address matters relating to the security and subsistence of defendant's immediate family.

The Internal Revenue Service

15. Nothing in this Agreement shall limit the IRS in its collection of any taxes, interest, or penalties from defendant or any other person, or from defendant's businesses, including but not limited to MCC Contractors; Marlboro; Kris-Jon, Inc. ("Kris-Jon"); or Crush-All. Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax loss as calculated for this criminal case and this Agreement. With respect to the collection of taxes by the IRS, defendant specifically agrees to the following:

(a) Defendant agrees to transmit his original records, or copies thereof, and any additional books and records which may be helpful, to the IRS.

(b) Preliminary to or in connection with any judicial proceeding, as that term is used in Federal Rule of Criminal Procedure ("Rule") 6(e), defendant will interpose no objection to the entry of an order under Rule 6(e) authorizing disclosure of

those documents, testimony and related investigative materials which may constitute grand jury material. Defendant will not object to the government soliciting consent from third parties, who provided information to the grand jury pursuant to grand jury subpoena, to turn those materials over to the Civil Division, appropriate federal or state administrative agency, or the IRS for use in civil or administrative proceedings or investigations, rather than returning them to such third party for later summons or subpoena in connection with the civil case or collection of taxes from defendant.

16. The United States Attorney's Office ("USAO") will make known to the IRS the nature and extent of defendant's cooperation. In addition, defendant understands and agrees that the USAO will make known to the IRS the fact that defendant was the controlling person responsible for the business and financial obligations of Kris-Jon, Marlboro, and Crush-All.

Crimes Committed Prior to Start of Cooperation in July 1992

17. The United States agrees not to seek additional criminal charges in the Northern District of Illinois against defendant for events which he has described in his proffer statements provided to the government prior to the entry of defendant's guilty plea pursuant to this Agreement, and which events occurred in the Northern District of Illinois prior to the beginning of defendant's cooperation on July 16, 1992. Specifically, the government agrees not to seek additional criminal charges against defendant for conduct he has described in his proffers relating to the following:

(a) events that occurred at Cosmopolitan Bank before July 16, 1992; and

(b) defendant's payment in the late 1980's of monthly cash bribes of approximately \$5000 in cash to now-deceased Chicago Alderman William Henry (24th Ward) in return for Alderman Henry's agreement to assist defendant in using and operating the site at Roosevelt and Kostner in Chicago, Illinois, without interference from the City of Chicago.

Crimes Committed After Start of Cooperation in July 1992

18. Nothing in this Agreement, however, limits the United States in any prosecution of defendant:

(a) in other districts;

(b) for crimes not disclosed in his proffer and not known to the government at the time of defendant's guilty plea; or

(c) for crimes committed by defendant after the beginning of his cooperation on July 16, 1992.

Sentencing

19. Defendant understands that the USAO will fully apprise the District Court and the United States Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing. The USAO at the time of sentencing will make known to the Court the nature and extent of defendant's cooperation.

(a) **Mitigation.** In mitigation, the government at the time of sentencing will advise the Court, in summary, that beginning in July 1992, defendant consented to act as a cooperating witness for the Federal Bureau of Investigation ("FBI"), and specifically agreed to participate in recorded conversations with targets of federal investigations. From July 1992 to the date of this Agreement, defendant has participated in numerous recorded meetings/conversations with various targets of federal investigations; assisted the government by introducing an undercover agent ("UCA") into various investigative situations; and provided information used by the government to further various investigations. Directly as a result of defendant's cooperation and his introduction of the UCA, the FBI has made over 1100 audio or video tape-recordings of meetings or telephone conversations in a series of investigations.

Specifically, at the time of sentencing, the government will advise the Court of various matters relating to defendant's cooperation, including but not limited to the following:

- Undercover Payment of Bribes to Public Officials. From July 1992 to December 1995, defendant and/or the UCA, who played the role of defendant's business partner/financier, paid numerous bribe payments to public officials (some elected, others non-elected) in furtherance of investigations into corruption in local and state government. In particular, during that time period, defendant and/or the UCA paid over \$150,000 in undercover bribe or bribe-related payments to subjects of federal investigation.

- Undercover Payment of Bribes in Relation to Union Activities. During the period of his undercover cooperation, defendant also assisted the government in connection with its investigation of corruption in union-related activities. In that regard, defendant paid bribes to a union official in return for preferential treatment for his business from the union leadership.

- Undercover Purchases of Narcotics. Even though defendant had never personally engaged in narcotics trafficking, defendant, at the request of the government on two different occasions during the period of his undercover cooperation, assumed the role of a person involved in the distribution of cocaine. In that undercover role, defendant met with two different individuals involved in narcotics trafficking; negotiated the purchase of a kilogram of cocaine from each of those individuals; then (using government funds) purchased the cocaine in consensually-recorded transactions. In both circumstances, defendant knowingly agreed to place himself in danger of harm to accomplish the undercover purchase of cocaine. Specifically, in the first instance, defendant learned during those undercover meetings that the target had carried a firearm during a portion of the transaction. In the second instance, defendant met with a target who had previously been convicted of murder.

- Undercover Money-Laundering of Proceeds of Organized Crime. In the spring of 1995, defendant, again operating in an undercover capacity, met with a known organized-crime figure and negotiated an arrangement concerning the laundering of old United States currency that was represented to be cash accumulated by the former head of

organized crime in Chicago, during the course of fifty years of criminal activity by organized crime in Chicago. The aforementioned known organized-crime figure had a reputation for violence, and was believed to have acted as an enforcer for organized-crime in Chicago. Defendant, during a series of tape-recorded meetings and phone conversations, assisted that person in laundering over \$2.2 million in old United States currency. In so doing, defendant again put himself at personal risk of danger.

- Resulting Risk of Physical Harm to Defendant. It is the government's position that defendant's extensive and substantial cooperation will cause defendant to face a significant risk of physical harm once the fact of his cooperation becomes a matter of public record. Due to this risk, it is the government's position that defendant should not live or work in the Chicago area for an indefinite period, and that defendant should only return to the Chicago area under the protection of law-enforcement authorities, such as the FBI. As a result of that relocation, defendant has and will continue to suffer great disruption in his personal life.

(b) **Aggravation.** In aggravation, the government will advise the Court of various matters, including but not limited to the following examples:

- Using a False Social Security Number to Obtain a False Driver's License. On February 16, 1993, defendant, with the assistance of an employee of the Illinois Secretary of State's office, obtained a fictitious State of Illinois driver's license in the name of "John DiVito." Subsequently, defendant advised the FBI

that he had the fictitious license; the FBI thereafter instructed defendant not to use such fictitious license except as authorized to further the undercover investigation.

• False Statement to FBI. In January 1995, defendant falsely stated to a Special Agent of the FBI that he had obtained a large amount of currency from a family member, when in fact, defendant had obtained a portion of such currency from receipts from dumping which occurred in late 1994 at his business location at 74th Street in Chicago, Illinois.

• Dumping in Violation of Local Ordinance. During the time period of his cooperation, defendant's companies, with the authorization of defendant, dumped construction and excavation debris at various sites in the Chicago area in violation of local ordinances and without the permission of the government. Specifically, defendant caused his company to dump asphalt shavings and other excavation debris in violation of local ordinance at (1) a location near 43rd and Knox in Chicago and (2) at the company yard at 74th and Western in Chicago, without authorization of the government. After the government learned of the dumping at those sites, it instructed defendant to take the necessary steps to clean up those sites. While those steps were being taken by defendant, defendant, at the request of the government, participated in a series of undercover scenarios in which he paid or attempted to pay bribes to public officials/employees in connection with the dumping at those sites.

- Failure to Abide by the Guidelines of the FBI. On several occasions after July 1992, defendant failed to follow certain explicit guidelines of the FBI in connection with certain investigations in which he had previously agreed to cooperate.

- Any Future Discovery of Additional Aggravating Factors. Defendant understands that the government will advise the Court at the time of sentencing of any matters in aggravation discovered by the government after defendant's plea of guilty but before his sentencing.

20. At the time of sentencing, the government, taking into consideration all factors in aggravation and mitigation, will be free to recommend whatever sentence it deems appropriate. In addition, at the time of sentencing, those government lawyers who will have worked with defendant in connection with his undercover work or his trial testimony will appear, if reasonably available, before the Court at the sentencing and be prepared to comment on all matters in aggravation and mitigation.

21. Assuming defendant cooperates truthfully and fully from the date of defendant's plea of guilty and the execution of this Agreement until the date of sentencing, the government at the time of sentencing shall move the Court, pursuant to Guideline § 5K1.1, to depart from the applicable guideline range. It is understood by the parties that the Court is neither a party to nor bound by this Agreement, and, subject to the limitations of the sentencing guidelines, may impose the maximum penalties as set forth in paragraph 8 above. Defendant acknowledges that if the Court does

not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea. Defendant specifically acknowledges that if the Court does not grant a government motion pursuant to Guideline § 5K1.1, and refuses to depart downward from the applicable sentencing-guideline range, defendant will have no right to withdraw his guilty plea.

22. Regarding the potential fine and restitution, defendant understands that Title 18, United States Code, Sections 3663 and 3664, and Guidelines §§ 5E1.1 and 5E1.2 set forth the factors to be weighed in setting a fine and restitution in this case. Defendant will cooperate fully with the USAO and the United States Probation Office in their determination of the appropriate amount of restitution to be ordered by the Court. Such cooperation shall include truthful disclosure by defendant of his financial status, including all tax returns and related information as may be requested. Defendant's cooperation shall further include providing full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances in order to determine the proper restitution which defendant may be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

Public Record of Charge and Plea

23. Defendant agrees this Agreement shall be filed and become a part of the record in this case.

24. Defendant acknowledges that the information in this case has been filed under seal, and therefore has not been of public record, since the date of the filing of the information. Defendant will not oppose any motion by the government to have all matters relating to case 95 CR 756, including this Agreement, placed and maintained under seal. Defendant understands that after the expiration of any sealing order or the entry of a Court order unsealing matters relating to case 95 CR 756, the information and this Agreement will be matters of public record and then may be disclosed to any person.

Period of Time Agreement Applies

25. Defendant understands that his compliance with each part of this Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of this Agreement is a violation of the Agreement. He further understands that in the event he materially violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement. Defendant understands and agrees that in the event that this Agreement is breached by defendant, and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute

of limitations between the signing of this Agreement and the commencement of such prosecutions.

Promises Made to Defendant

26. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

If Court Refuses to Accept Defendant's Plea of Guilty

27. Should the judge refuse to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

Defendant Has Read and Understands this Agreement

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: December 27, 1995

JAMES B. BURNS
United States Attorney

JOHN CHRISTOPHER
Defendant

JOHN N. GALLO
Assistant United States Attorney

JEFFREY SCHULMAN
Attorney for Defendant