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 CENTRAL DIST. OF CALIF.  
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9 Attorneys for Plaintiff  
 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) No. CR **07-00455**  
 14 )  
 Plaintiff, ) PLEA AGREEMENT FOR  
 15 ) DEFENDANT RICHARD A. MAIZE  
 v. )  
 16 )  
 RICHARD A. MAIZE, )  
 17 )  
 Defendant. )  
 18 )

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1 I.

2 **INTRODUCTION**

3 1. This constitutes the Plea Agreement between defendant  
4 Richard A. Maize ("defendant") and the United States Attorney's  
5 Office for the Central District of California ("the USAO") in the  
6 above-captioned case. This Plea Agreement is limited to the USAO  
7 and does not bind any other federal, state, or local prosecuting,  
8 administrative, or regulatory authorities.

9 II.

10 **PLEA**

11 2. Defendant gives up the right to indictment by a grand  
12 jury and agrees to plead guilty to the Information charging  
13 defendant with (a) one count of conspiracy, in violation of  
14 18 U.S.C. § 371, (b) three counts of bank fraud, in violation of  
15 18 U.S.C. § 1344(1), and (c) one count of false statement on a  
16 tax return, in violation of 26 U.S.C. § 7206(1).

17 III.

18 **NATURE OF THE OFFENSES**

19 3. For defendant to be guilty of Count One of the  
20 Information, which charges conspiracy in violation of Title 18,  
21 United States Code, Section 371, the following must be true:

22 a. Beginning no later than about November 1999, and  
23 continuing through at least July 2002, there was an agreement  
24 between two or more people to commit the crimes of:

25 i. Bank fraud, in violation of 18 U.S.C.  
26 § 1344(1); and

27 ii. Loan fraud, in violation of 18 U.S.C. § 1014;  
28

1           b. Defendant became a member of the conspiracy  
2 knowing of its objects and intending to help accomplish them; and

3           c. One of the members of the conspiracy performed at  
4 least one overt act for the purpose of carrying out the  
5 conspiracy.

6           4. For defendant to be guilty of Counts Two through Four  
7 of the Information, which charge bank fraud in violation of  
8 Title 18, United States Code, Section 1344(1), the following must  
9 be true:

10           a. Defendant knowingly executed, attempted to  
11 execute, or participated in a scheme to defraud a financial  
12 institution as to a material matter;

13           b. Defendant did so with the intent to defraud; and

14           c. The financial institution was insured by the  
15 Federal Deposit Insurance Corporation at the times of the  
16 offenses.

17           5. Loan fraud, in violation of 18 U.S.C. § 1014, has the  
18 following elements:

19           a. Defendant made a false statement or report, or  
20 willfully overvalued any land, property, or security, to a  
21 federally insured bank;

22           b. Defendant made the false statement or report, or  
23 the willful overvaluation, to the bank knowing it was false; and

24           c. Defendant did so for the purpose of influencing in  
25 any way the action of the bank upon any application or loan.

26           6. For defendant to be guilty of Count Five of the  
27 Information, which charges false statement on a tax return in  
28 violation of Title 26, United States Code, Section 7206(1), the

1 following must be true:

2 a. Defendant willfully made and signed a tax return  
3 for the year 2001 that he knew contained false information as to  
4 a material matter; and

5 b. The return contained or was verified by a written  
6 declaration that it was made under the penalties of perjury.

7 7. Defendant admits that defendant is, in fact, guilty of  
8 conspiracy, bank fraud, and false statement on a tax return, as  
9 described in paragraphs 3 through 6 and in the Information.

10 **IV.**

11 **MAXIMUM PENALTIES**

12 8. The statutory maximum sentence that the Court can  
13 impose for a violation of Title 18, United States Code, Section  
14 371, is: 5 years imprisonment; a 3-year period of supervised  
15 release; a fine of \$250,000 or twice the gross gain or gross loss  
16 resulting from the offense, whichever is greater; and a mandatory  
17 special assessment of \$100.

18 9. The statutory maximum sentence that the Court can  
19 impose for each violation of Title 18, United States Code,  
20 Section 1344(1), is: 30 years imprisonment; a 5-year period of  
21 supervised release; a fine of \$1,000,000 or twice the gross gain  
22 or gross loss resulting from the offense, whichever is greater;  
23 and a mandatory special assessment of \$100.

24 10. The statutory maximum sentence that the Court can  
25 impose for a violation of Title 26, United States Code, Section  
26 7206(1), is: 3 years imprisonment; a 1-year period of supervised  
27 release; a fine of \$250,000 or twice the gross gain or gross loss  
28 resulting from the offense, whichever is greater; a mandatory

1 special assessment of \$100; and payment of the costs of  
2 prosecution.

3 11. Therefore, the total statutory maximum sentence that  
4 the Court can impose for defendant's convictions of conspiracy,  
5 bank fraud, and false statement on a tax return is: 98 years  
6 imprisonment; a 5-year period of supervised release; a fine of  
7 \$3,350,000 or twice the gross gain or gross loss resulting from  
8 the offenses, whichever is greater; a mandatory special  
9 assessment of \$500; and, on Count Five of the Information,  
10 payment of the costs of prosecution.

11 V.

12 **SUPERVISED RELEASE**

13 12. Supervised release is a period of time following  
14 imprisonment during which defendant will be subject to various  
15 restrictions and requirements. Defendant understands that if  
16 defendant violates one or more of the terms or conditions of any  
17 supervised release imposed, defendant may be returned to prison  
18 for all or part of the term of supervised release, which could  
19 result in defendant serving a total term of imprisonment greater  
20 than the total statutory maximum stated in paragraph 11.

21 13. Defendant and the USAO agree that the Court should  
22 impose the following terms and conditions of supervised release:

23 a. Without the prior written approval of the  
24 United States Probation Office ("USPO"), defendant shall not work  
25 in mortgage lending, mortgage brokering, mortgage banking, real  
26 estate brokering, or real estate appraising.

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28



1 Maize In Connection With Plea Agreement (the "Factual  
2 Statement"). Defendant agrees that, in return for the USAO's  
3 compliance with its obligations under this Plea Agreement, the  
4 amount of restitution is not restricted to losses related to,  
5 associated with, or arising from the counts to which defendant is  
6 pleading guilty. Defendant agrees that the amount of restitution  
7 may include all losses related to, associated with, or arising  
8 from all relevant conduct in connection with the Information,  
9 this Plea Agreement, and the Factual Statement.

10 16. Defendant and the USAO agree that offenses committed by  
11 defendant against property (namely, conspiracy in violation of  
12 Title 18, United States Code, Section 371, and bank fraud in  
13 violation of Title 18, United States Code, Section 1344(1)) gave  
14 rise to this Plea Agreement. Defendant and the USAO further  
15 agree that identifiable victims (namely, RBC Mortgage Company  
16 ("RBC"), and Lehman Brothers Bank, FSB ("Lehman")) suffered  
17 pecuniary losses from the conspiracy and fraudulent scheme in  
18 which defendant participated.

19 17. Defendant agrees that neither of the circumstances  
20 described in Title 18, United States Code, Section 3663A(c)(3)  
21 exists in this case, and defendant agrees that mandatory  
22 restitution applies in this case. Defendant further agrees that  
23 defendant will not seek the discharge of any restitution  
24 obligation, in whole or in part, in any pending or future  
25 bankruptcy proceeding.

26 **B. Full Amounts Of The Victims' Losses**

27 18. Defendant and the USAO agree that the full amounts of  
28 the victims' losses from the conspiracy and fraudulent scheme

1 described in the Information, this Plea Agreement, and the  
2 Factual Statement, are:

- 3 a. \$18,243,454.14 in losses sustained by RBC; and
- 4 b. \$438,279 in losses sustained by Lehman.

5 **C. Apportionment Of Liability For Restitution To**  
6 **RBC Mortgage Company**

7 19. If and only if the Court finds that any other federal  
8 criminal defendant(s) contributed to RBC's losses within the  
9 meaning of Title 18, United States Code, Section 3664(h), then  
10 defendant reserves the right, under that section, to ask the  
11 Court at sentencing to apportion liability, for payment of the  
12 full amount of RBC's losses, among defendant and such other  
13 defendant(s), in order to reflect the level of each defendant's  
14 contribution to RBC's losses and to reflect the economic  
15 circumstances of each defendant. However, notwithstanding the  
16 foregoing sentence:

17 a. Defendant agrees that the full amount of RBC's  
18 losses, which resulted from the scheme described in the Factual  
19 Statement, is \$18,243,454.14; and

20 b. Defendant will make all pre-sentencing restitution  
21 payments specified in paragraphs 22, 23, and 25.

22 20. The USAO reserves the right to ask the Court at  
23 sentencing to order defendant to pay restitution to RBC  
24 calculated on the basis of the full amount of RBC's losses, as  
25 set forth in subparagraphs 18(a) and 28(a)(i). The USAO also  
26 reserves the right to contest and oppose any apportionment of  
27 restitution that defendant proposes, as well as any methodology,  
28 theory, or factual claims upon which defendant bases any such

1 apportionment. The USAO agrees not to ask the Court to order  
2 defendant to pay restitution for contractual interest on the  
3 loans described in the Factual Statement, which interest is  
4 unpaid as of the date that defendant is sentenced.

5 **D. Pre-Sentencing Restitution Payments To Be Made By Defendant**

6 21. Defendant agrees to make pre-sentencing restitution  
7 payments totaling \$2,750,000, in accordance with the schedule set  
8 forth in paragraphs 22, 23, 24, and 25, by wire-transferring, or  
9 causing to be wire-transferred, the specified amounts to the  
10 victims' accounts, as directed by the USAO.

11 **1. Restitution Payments At Or Before Guilty Pleas**

12 22. On the date that defendant enters his guilty pleas  
13 pursuant to this Plea Agreement, or no later than 60 calendar  
14 days after the date that defendant signs this Plea Agreement  
15 (whichever date first occurs), defendant shall pay the following  
16 restitution to the following victims:

17 a. \$561,721 to RBC; and

18 b. \$438,279 to Lehman.

19 **2. Quarterly Restitution Payments Between Guilty Pleas  
20 And Sentencing**

21 23. Defendant shall make quarterly restitution payments of  
22 \$125,000 to RBC, between the date that defendant enters his  
23 guilty pleas pursuant to this Plea Agreement and the date that  
24 defendant is sentenced.

25 24. Defendant shall begin making the quarterly restitution  
26 payments specified in paragraph 23 on whichever of the following  
27 dates first occurs after defendant makes the payments specified  
28 in paragraph 22: October 20, 2007; January 20, 2008; or April 20,

1 2008. The date on which defendant makes the first quarterly  
2 restitution payment is hereafter referred to as the "commencement  
3 date". Defendant shall continue to make the quarterly  
4 restitution payments specified in paragraph 23 on or before every  
5 January 20, April 20, July 20, and October 20 following the  
6 commencement date, through and including the date that defendant  
7 is sentenced.

8 **3. Balance Of Pre-Sentencing Restitution Payments**

9 25. Defendant shall pay to RBC, on or before the date that  
10 defendant is sentenced, the difference between \$2,750,000 and the  
11 sum of all restitution payments made by defendant pursuant to  
12 paragraphs 22 and 23.

13 **E. Payments Previously Made To RBC Mortgage Company**

14 26. Before the date of defendant's execution of this Plea  
15 Agreement, defendant and/or entities and individuals associated  
16 with defendant paid \$869,041 to RBC in connection with  
17 two agreements. Defendant and the USAO agree that the amount of  
18 restitution still owed by defendant to RBC as of the date that  
19 defendant is sentenced should be reduced by this \$869,041, under  
20 Title 18, United States Code, Section 3664(j)(2)(A). However,  
21 nothing about the foregoing two sentences affects, changes,  
22 restricts, or limits in any way defendant's obligation to make  
23 all pre-sentencing restitution payments specified in  
24 paragraphs 22, 23, and 25.

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1 **F. Monies That May Be Received By RBC Mortgage Company From**  
2 **The Receivership Estate**

3 27. If, on or before the date that defendant is sentenced,  
4 RBC receives:

5 a. Any monies from the Receivership Estate ("the  
6 Receivership Estate") administered by the Court-appointed  
7 Receiver in Lehman Brothers Bank, FSB, v. Beverly Hills Estates  
8 Funding, Inc., et al., CV 03-2702-DDP; or

9 b. Any criminal restitution payments from any other  
10 defendant(s), in any federal criminal case arising from the same  
11 conspiracy and fraudulent scheme to which defendant is pleading  
12 guilty; or

13 c. Any other payments meeting the requirements of and  
14 criteria set forth in 18 U.S.C. § 3664(j)(2);

15 Then defendant and the USAO agree that the amount of  
16 restitution still owed by defendant to RBC as of the date that  
17 defendant is sentenced should be reduced by the monies so  
18 received.

19 **G. Procedure For Determining Amount Of Restitution**  
20 **Still Owed By Defendant To RBC Mortgage Company**  
21 **At Time Of Sentencing**

22 28. Defendant and the USAO agree that the Court, at the  
23 time of defendant's sentencing, should order defendant to pay  
24 additional restitution to RBC, calculated as follows:

25 a. The lesser of:

26 i. \$18,243,454.14, which is the full amount of  
27 RBC's losses, as specified in subparagraph 18(a); or

28 ii. The amount that the Court determines is owed  
by defendant to RBC, if the Court determines to apportion

1 liability, for payment of the full amount of RBC's losses, among  
2 defendant and any other defendant(s) meeting the criteria set  
3 forth in paragraph 19; minus

4 b. The amounts paid by defendant pursuant to  
5 paragraphs 22(a), 23, and 25; minus

6 c. The amounts previously paid to RBC as specified in  
7 paragraph 26; minus

8 d. Any other monies received by RBC, on or before the  
9 date that defendant is sentenced, as described in paragraph 27.

10 **VII.**

11 **PROBATION / PAROLE / SUPERVISED RELEASE REVOCATION**

12 29. Defendant understands that if defendant is presently on  
13 probation, parole, or supervised release in another case, the  
14 convictions in this case may result in revocation of such  
15 probation, parole, or supervised release.

16 **VIII.**

17 **SUSPENSION / REVOCATION OF PROFESSIONAL LICENSE**

18 30. Defendant understands that if defendant holds a  
19 professional license, the convictions in this case may result in  
20 the suspension or revocation of that license.

21 **IX.**

22 **COLLATERAL CONSEQUENCES**

23 31. Defendant understands that, by pleading guilty,  
24 defendant may be giving up valuable government benefits and  
25 valuable civic rights, such as the right to vote, the right to  
26 possess a firearm, the right to hold office, and the right to  
27 serve on a jury.

1 X.

2 **FACTS**

3 32. The USAO and defendant agree to the facts set forth in  
4 the Factual Statement, which has been filed under seal and  
5 concurrently with this Plea Agreement. Defendant has signed the  
6 Factual Statement under penalty of perjury, and agrees that the  
7 facts in it are true. The facts in the Factual Statement are  
8 intended and sufficient to (a) support defendant's guilty pleas,  
9 and (b) establish the Sentencing Guidelines factors set forth in  
10 Section XII of this Plea Agreement. The facts in the  
11 Factual Statement do not include everything that defendant did or  
12 everything that other people did in the conspiracy and fraudulent  
13 scheme. The facts in the Factual Statement do not include  
14 everything defendant knows about the conspiracy and fraudulent  
15 scheme. The Factual Statement is not a complete description or  
16 narrative of everything that happened in the conspiracy and  
17 fraudulent scheme.

18 XI.

19 **WAIVER OF CONSTITUTIONAL RIGHTS**

20 33. By pleading guilty, defendant gives up the following  
21 rights:

- 22 a. The right to persist in a plea of not guilty.
- 23 b. The right to a speedy and public trial by jury.
- 24 c. The right to the assistance of counsel at trial,  
25 including, if defendant could not afford an attorney, the right  
26 to have the Court appoint one for defendant. Despite pleading  
27 guilty, defendant retains the right to be represented by counsel  
28 -- and, if necessary, to have the Court appoint counsel if

1 defendant cannot afford counsel -- at every other stage of the  
2 proceedings.

3 d. The right to be presumed innocent and to have the  
4 burden of proof placed on the government to prove defendant  
5 guilty beyond a reasonable doubt.

6 e. The right to confront and cross-examine witnesses  
7 against defendant.

8 f. The right, if defendant wished, to testify on  
9 defendant's own behalf and present evidence in opposition to the  
10 charges, including the right to call witnesses and to subpoena  
11 those witnesses to testify.

12 g. The right not to be compelled to testify, and, if  
13 defendant chose not to testify or present evidence, to have that  
14 choice not be used against defendant.

15 h. The right to pursue any affirmative defenses,  
16 Fourth Amendment and Fifth Amendment claims, and any pretrial  
17 motions that have been filed or could be filed.

18 **XII.**

19 **SENTENCING FACTORS**

20 **A. Applicable Sentencing Guidelines**

21 34. Defendant understands that the Court is required to  
22 consider the United States Sentencing Guidelines ("Sentencing  
23 Guidelines") among other factors in determining defendant's  
24 sentence. Defendant understands that the Sentencing Guidelines  
25 are only advisory, and that after considering the Sentencing  
26 Guidelines, the Court may exercise its discretion to impose any  
27 reasonable sentence up to the total statutory maximum sentence  
28 set forth in paragraph 11. Defendant and the USAO agree that:

1 a. The November 1, 2001 Sentencing Guidelines manual  
2 shall apply to defendant's convictions.

3 b. Sentencing Guidelines §§ 2B1.1, 2X1.1 shall apply  
4 to determine the offense level for defendant's conviction on  
5 Count One of the Information.

6 c. Sentencing Guidelines § 2B1.1 shall apply to  
7 determine the offense level for defendant's convictions on  
8 Counts Two through Four of the Information.

9 d. Sentencing Guidelines § 2T1.1 shall apply to  
10 determine the offense level for defendant's conviction on  
11 Count Five of the Information.

12 **B. Counts One Through Four: Conspiracy And Bank Fraud**

13 **1. Base Offense Level**

14 35. The base offense level for defendant's convictions on  
15 Counts One through Four of the Information is 6, under  
16 Sentencing Guidelines § 2B1.1(a).

17 **2. Specific Offense Characteristics**

18 36. The USAO reserves the right to seek a 22-level increase  
19 in defendant's offense level, based on an intended loss of more  
20 than \$20,000,000 to RBC and Lehman, under Sentencing Guidelines  
21 § 2B1.1(b)(1)(L).

22 37. Defendant agrees that his offense level should be  
23 increased by no less than 20 levels, based on an actual loss of  
24 more than \$7,000,000 to RBC and Lehman, under  
25 Sentencing Guidelines § 2B1.1(b)(1)(K). Defendant reserves the  
26 right to oppose any increase for loss above 20 levels.

27 38. The conspiracy and fraudulent scheme involved  
28 sophisticated means. For example, the conspirators used straw

1 borrowers to obtain loans on the homes, manipulated funds to meet  
2 verification of deposit requirements for certain loans, and used  
3 double escrows to conceal the true purchasers of the homes.  
4 Hence, defendant and the USAO agree that defendant's offense  
5 level should be increased by 2 levels under Sentencing Guidelines  
6 § 2B1.1(b) (8) (C).

7 39. Defendant and the USAO agree that, other than those  
8 specifically enumerated in paragraphs 36 through 38, no specific  
9 offense characteristics apply to defendant's convictions on  
10 Counts One through Four of the Information. Defendant and the  
11 USAO agree not to argue or suggest, to the Court or to the USPO,  
12 that any other specific offense characteristics on those counts  
13 of conviction should be imposed.

14 **3. Adjustments**

15 **a. Role In The Offenses**

16 40. The USAO reserves the right to contend that defendant's  
17 offense level should be adjusted upwards by 3 levels for  
18 managerial or supervisory role under Sentencing Guidelines  
19 § 3B1.1(b). Defendant reserves the right to oppose a 3-level  
20 upward adjustment.

21 41. Defendant reserves the right to contend that his  
22 offense level should be adjusted downwards by 2 levels for minor  
23 role under Sentencing Guidelines § 3B1.2(b). The USAO reserves  
24 the right to oppose a 2-level downward adjustment.

25 **b. Abuse Of Position Of Trust**

26 42. From no later than January 2001 through at least July  
27 2002, defendant held a position of trust as President of  
28 Americorp, which was a division of Pacific Guarantee Mortgage

1 Company ("Pacific Guarantee"). Pacific Guarantee was a  
2 subsidiary of Prism Mortgage Company ("Prism"), which in about  
3 April 2002 changed its name to RBC. Defendant's position of  
4 trust as President was characterized by professional and  
5 managerial discretion.

6 43. Defendant abused his position of trust as President of  
7 the Americorp division of Pacific Guarantee. From no later than  
8 about January 2001 through at least July 2002, and on behalf of  
9 Prism/RBC, defendant helped to submit loan application packages  
10 to Aurora Loan Services ("Aurora"), Lehman's lending agent,  
11 knowing that the loan application packages contained false  
12 information. In doing so, defendant exposed Prism/RBC to losses  
13 sustained when Prism/RBC later became obligated to repurchase the  
14 loans from Lehman. Defendant and the USAO agree that  
15 representatives of Aurora would testify that defendant's  
16 long-standing business relationship with Aurora and its  
17 underwriters facilitated Aurora's approval of the loans.  
18 Hence, defendant's abuse of his position of trust facilitated the  
19 commission or concealment of the offenses. Defendant and the  
20 USAO agree that defendant's offense level should be adjusted  
21 upwards by 2 levels under Sentencing Guidelines § 3B1.3.

22 **4. Total Offense Level Before Adjustment For Acceptance Of**  
23 **Responsibility And Any Departures**

24 44. The USAO reserves the right to contend that defendant's  
25 total offense level on Counts One through Four of the Information  
26 (prior to (a) any adjustment for acceptance of responsibility  
27 under Sentencing Guidelines § 3E1.1, and (b) any departure for  
28

1 substantial assistance under Sentencing Guidelines § 5K1.1) is  
2 35.

3 45. Defendant agrees that his total offense level on  
4 Counts One through Four of the Information (prior to (a) any  
5 adjustment for acceptance of responsibility under Sentencing  
6 Guidelines § 3E1.1, and (b) any departure for substantial  
7 assistance under Sentencing Guidelines § 5K1.1) is at least 28.

8 **C. Count Five: False Statement On A Tax Return**

9 **1. Base Offense Level**

10 46. The base offense level for defendant's conviction on  
11 Count Five of the Information is 14, under Sentencing Guidelines  
12 §§ 2T1.1(a)(1) and 2T4.1(E), because the tax loss was more than  
13 \$30,000.

14 **2. Specific Offense Characteristics**

15 47. For tax year 2001, defendant failed to report and to  
16 correctly identify the source of income exceeding \$10,000 that he  
17 derived from the conspiracy and fraudulent scheme. Hence,  
18 defendant and the USAO agree that defendant's offense level  
19 should be increased by 2 levels under Sentencing Guidelines  
20 § 2T1.1(b)(1).

21 48. Defendant and the USAO agree that, other than that  
22 specifically enumerated in paragraph 47, no specific offense  
23 characteristics apply to defendant's conviction on Count Five of  
24 the Information. Defendant and the USAO agree not to argue or  
25 suggest, to the Court or to the USPO, that any other specific  
26 offense characteristics on that count of conviction should be  
27 imposed.

28

1           **3. Total Offense Level Before Adjustment For Acceptance Of**  
2           **Responsibility And Any Departures**

3           49. Defendant and the USAO agree that defendant's total  
4 offense level on Count Five of the Information (prior to (a) any  
5 adjustment for acceptance of responsibility under Sentencing  
6 Guidelines § 3E1.1, and (b) any departure for substantial  
7 assistance under Sentencing Guidelines § 5K1.1) is 16.

8           **D. Grouping**

9           50. Defendant and the USAO agree that:

10           a. Counts One through Four shall be grouped under  
11 Sentencing Guidelines § 3D1.2(d).

12           b. Count Five shall be grouped with Counts One  
13 through Four under Sentencing Guidelines § 3D1.2(c).

14           c. The offense level for the single group shall be  
15 the offense level for Counts One through Four.

16           **E. Acceptance Of Responsibility**

17           51. The USAO agrees to move the Court to adjust defendant's  
18 offense level downward by 3 levels for acceptance of  
19 responsibility, under Sentencing Guidelines § 3E1.1, provided  
20 that all of the conditions set forth in paragraphs 56 and 57(b)  
21 are met.

22           **F. Departures**

23           52. Defendant and the USAO reserve their rights to seek any  
24 departures they believe are appropriate.

25           **G. Criminal History**

26           53. There is no agreement as to defendant's criminal  
27 history or criminal history category.  
28

1 **H. Variances Under 18 U.S.C. § 3553(a) And**  
2 **United States v. Booker**

3 54. Defendant and the USAO reserve their rights to seek any  
4 variances from the Sentencing Guidelines sentence under Title 18,  
5 United States Code, Section 3553(a), and United States v. Booker,  
6 543 U.S. 220 (2005).

7 **I. Scope Of Sentencing Stipulations**

8 55. The sentencing stipulations in this Plea Agreement do  
9 not bind the USPO or the Court. The Court will determine the  
10 facts and calculations relevant to sentencing. Both defendant  
11 and the USAO are free to:

12 a. Supplement the facts agreed to in this  
13 Plea Agreement by supplying relevant information to the USPO and  
14 the Court;

15 b. Correct any and all factual misstatements relating  
16 to the calculation of the sentence; and

17 c. Argue on appeal and collateral review that the  
18 Court's sentencing calculations are or are not error, although  
19 each party agrees to maintain its view that the calculations in  
20 this Section XII are consistent with the facts of this case.

21 **XIII.**

22 **DEFENDANT'S OBLIGATIONS**

23 56. As obligations under this Plea Agreement, and  
24 independent of and in addition to any obligation imposed as a  
25 result of defendant's term of supervised release and the  
26 conditions of that supervised release, defendant agrees:

27 a. To plead guilty as set forth in this Plea  
28 Agreement.

1           b. To provide a sufficient factual basis to support  
2 defendant's pleas of guilty as set forth in paragraph 32 and in  
3 the Factual Statement.

4           c. To pay all restitution as set forth in Section VI  
5 of this Plea Agreement, including by:

6           i. Making the required restitution payments on  
7 or before the date that defendant enters his guilty pleas, as  
8 specified in paragraph 22;

9           ii. Making the required quarterly restitution  
10 payments between the date that defendant enters his guilty pleas  
11 and the date that defendant is sentenced, as specified in  
12 paragraphs 23 and 24; and

13           iii. Making the required restitution payment on or  
14 before the date that defendant is sentenced, as specified in  
15 paragraph 25.

16           d. To pay the applicable special assessments on or  
17 before the date that defendant is sentenced.

18           e. To abide by all sentencing stipulations contained  
19 in this Plea Agreement.

20           f. To appear as ordered for all court appearances.

21           g. To obey all conditions of any bond.

22           h. To obey any other ongoing court order in this  
23 matter.

24           i. Not to commit any crime.

25           j. To be truthful at all times with the United States  
26 Pretrial Services Office, the USPO, and the Court.

27           k. To surrender as ordered for service of sentence.  
28



1 c. Not to ask the Court to order defendant to pay the  
2 costs of prosecution on Count Five of the Information.

3 d. Not to ask the Court to order defendant to pay a  
4 fine greater than the low end of the fine guideline range set  
5 forth in Sentencing Guidelines § 5E1.2.

6 e. Not to further prosecute defendant for violations  
7 of Title 18 and Title 26, United States Code, arising out of or  
8 relating to defendant's conduct described in the Factual  
9 Statement, other than the violations alleged in the Information  
10 to which defendant is pleading guilty. The USAO remains free to  
11 prosecute defendant for any and all violations arising out of or  
12 relating to any conduct by defendant other than the conduct  
13 described in the Factual Statement. Defendant agrees that at the  
14 time of sentencing the Court may consider all uncharged conduct  
15 in determining the applicable Sentencing Guidelines range, where  
16 the sentence should fall within that range, the propriety and  
17 extent of any departure from that range, and the determination of  
18 the sentence to be imposed after consideration of the Sentencing  
19 Guidelines and all other relevant factors.

20 f. Not to offer as evidence in its case-in-chief  
21 against defendant in the above-captioned case, or in any other  
22 criminal prosecution that may be brought against defendant by the  
23 USAO, any statements, documents, records, or tangible evidence  
24 made or provided by defendant pursuant to this Plea Agreement or  
25 pursuant to the letter agreement previously entered into by the  
26 USAO and defendant dated October 13, 2006 ("the Letter  
27 Agreement"). Defendant agrees, however, that the USAO may use  
28 such statements, documents, records, and tangible evidence:

1 i. To seek and obtain other evidence, which  
2 other evidence may be used for any purpose, including any  
3 prosecution and/or sentencing of defendant;

4 ii. To cross-examine defendant should defendant  
5 testify;

6 iii. To refute, rebut, or counter, at any stage of  
7 any proceeding, any evidence, argument, statement, or  
8 representation offered by or on behalf of defendant; and

9 iv. In any prosecution of defendant for false  
10 statement, obstruction of justice, or perjury.

11 g. Not to offer as evidence in connection with any  
12 sentencing proceeding against defendant, except to the extent  
13 permitted by Sentencing Guidelines § 1B1.8, any statements,  
14 documents, records, or tangible evidence made or provided by  
15 defendant pursuant to this Plea Agreement or the Letter  
16 Agreement. Defendant understands that information provided by  
17 defendant pursuant to this Plea Agreement and the Letter  
18 Agreement will be disclosed to the USPO and to the Court, and  
19 that the Court may use that information as permitted by  
20 Sentencing Guidelines § 1B1.8(b) to determine defendant's  
21 sentence.

22 h. In connection with defendant's sentencing, to  
23 bring to the Court's attention the nature and extent of  
24 defendant's cooperation.

25 i. If the USAO determines, in its exclusive judgment,  
26 that defendant has (i) complied with his obligations under  
27 paragraph 56, and (ii) provided substantial assistance to law  
28 enforcement in the prosecution or investigation of another person

1 or other people ("substantial assistance"), to move the Court  
2 pursuant to Sentencing Guidelines § 5K1.1 to calculate an offense  
3 level and corresponding Sentencing Guidelines range below that  
4 otherwise dictated by the Sentencing Guidelines, and to recommend  
5 a sentence within this reduced range.

6 **XV.**

7 **DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE**

8 58. Defendant understands the following:

9 a. Any knowingly false or misleading statement by  
10 defendant will subject defendant to prosecution for false  
11 statement, obstruction of justice, and perjury, and will  
12 constitute a breach by defendant of this Plea Agreement.

13 b. Nothing in this Plea Agreement requires the USAO  
14 or any other prosecuting or law enforcement agency to accept any  
15 cooperation or assistance that defendant may offer, or to use it  
16 in any particular way.

17 c. Defendant cannot withdraw defendant's guilty pleas  
18 even if:

19 i. The USAO does not make a motion pursuant to  
20 Sentencing Guidelines § 5K1.1 for a reduced Sentencing Guidelines  
21 range;

22 ii. The USAO makes such a motion but the Court  
23 does not grant it; or

24 iii. The Court grants such a USAO motion but  
25 elects to sentence defendant above the reduced range.

26 d. At this time the USAO makes no agreement or  
27 representation as to whether any cooperation that defendant has  
28 provided or intends to provide constitutes substantial assistance

1 meriting a motion under Sentencing Guidelines § 5K1.1.  
2 The decision whether defendant has provided such substantial  
3 assistance rests solely within the discretion of the USAO.

4 e. The USAO's determination of whether defendant has  
5 provided substantial assistance will not depend in any way on  
6 whether the government prevails at any trial or court hearing in  
7 which defendant testifies.

8 **XVI.**

9 **BREACH OF AGREEMENT**

10 59. If defendant, at any time between defendant's execution  
11 of this Plea Agreement and the later of (a) defendant's  
12 sentencing on a non-custodial sentence, or (b) defendant's  
13 surrender for service of a custodial sentence, violates or fails  
14 to perform any of defendant's obligations under this Plea  
15 Agreement, such violation or failure to perform shall constitute  
16 a breach of this Plea Agreement by defendant. By way of example  
17 only, if defendant: (a) fails or refuses to pay restitution as  
18 set forth in Section VI of this Plea Agreement, including by  
19 failing or refusing to make any of the pre-sentencing restitution  
20 payments specified in paragraphs 22, 23, and 25; (b) falsely  
21 accuses another person of criminal conduct; or (c) falsely  
22 minimizes his own role or the role of another person in criminal  
23 conduct, he will have breached this Plea Agreement.

24 60. Should the USAO determine, in its sole and exclusive  
25 discretion, that defendant has breached any of his obligations  
26 under this Plea Agreement, the USAO may seek a judicial finding  
27 of breach.

28

1           61. Defendant and the USAO agree that the following  
2 procedures will apply should the USAO seek a judicial finding  
3 that defendant has breached any of his obligations under this  
4 Plea Agreement:

5           a. The USAO will file a motion in the above-captioned  
6 case requesting that the Court determine whether the alleged  
7 breach occurred;

8           b. O'Melveny & Myers LLP is authorized to and will  
9 accept and serve as agent for service of process upon defendant,  
10 unless defendant designates, in a writing delivered to the USAO,  
11 another law office as authorized to accept and serve as agent for  
12 service of process upon defendant; and

13           c. The USAO will have the burden of proving the  
14 alleged breach by a preponderance of the evidence in an  
15 evidentiary hearing in which the USAO presents evidence to the  
16 Court. The Federal Rules of Evidence shall not apply at any such  
17 evidentiary hearing and the USAO may meet its burden through the  
18 presentation of hearsay evidence. Defendant will have an  
19 opportunity to challenge and rebut the USAO's evidence and to  
20 present evidence on his behalf.

21           62. Defendant agrees that the United States District Court  
22 for the Central District of California has personal jurisdiction  
23 over him for purposes of adjudicating any motion alleging a  
24 breach of this Plea Agreement, and subject matter jurisdiction  
25 over any such motion as incident to defendant's entry of his  
26 guilty pleas and sentencing.

27           63. If the Court finds that defendant has breached any of  
28 his obligations under this Plea Agreement, then:

1 a. Defendant will not be able to withdraw his guilty  
2 pleas;

3 b. Defendant will not be permitted to withdraw from,  
4 rescind, invalidate, or set aside this Plea Agreement;

5 c. Defendant will not be relieved or excused from  
6 fulfilling all of his obligations under this Plea Agreement; and

7 d. The USAO will be relieved and excused from  
8 fulfilling all of its obligations under this Plea Agreement.

9 In particular:

10 i. The USAO will no longer be bound by any  
11 agreements concerning sentencing and will be free to seek any  
12 sentence up to the total statutory maximum for the crimes to  
13 which defendant has pleaded guilty.

14 ii. The USAO will no longer be bound by any  
15 agreements regarding criminal prosecution, and will be free to  
16 prosecute defendant for any crime, including charges that the  
17 USAO otherwise would have been obligated not to prosecute  
18 pursuant to this Plea Agreement.

19 iii. The USAO will be free to prosecute defendant  
20 for false statement, obstruction of justice, and perjury based on  
21 any knowingly false or misleading statement by defendant.

22 iv. The USAO will no longer be bound by any  
23 agreement regarding the use of statements, documents, records,  
24 tangible evidence, or information made or provided by defendant  
25 pursuant to this Plea Agreement, and will be free to use any of  
26 those in any way in any investigation, prosecution, or civil or  
27 administrative action. Defendant will not be able to assert:  
28

1 (a) That those statements, documents,  
2 records, tangible evidence, or information were obtained in  
3 violation of the Fifth Amendment privilege against compelled  
4 self-incrimination; or

5 (b) Any claim under the United States  
6 Constitution, any statute, Rule 11(f) of the Federal Rules of  
7 Criminal Procedure, Rules 408 or 410 of the Federal Rules of  
8 Evidence, or any other federal rule, that statements, documents,  
9 records, tangible evidence, or information provided by defendant  
10 before or after the signing of this Plea Agreement, or any  
11 evidence derived therefrom, should be inadmissible.

12 64. If the Court finds that defendant has breached his  
13 obligation to pay restitution as set forth in Section VI of this  
14 Plea Agreement, including by failing or refusing to make any of  
15 the pre-sentencing restitution payments specified in  
16 paragraphs 22, 23, and 25, then the Court shall order defendant  
17 to immediately pay:

18 a. To Lehman: the amount yielded by subtracting from  
19 \$438,279 the sum of all restitution paid by defendant to Lehman  
20 pursuant to this Plea Agreement and before the finding of breach;  
21 and

22 b. To RBC: the amount yielded by subtracting from  
23 \$2,750,000:

24 i. \$438,279; and

25 ii. The sum of all restitution paid by defendant  
26 to RBC pursuant to this Plea Agreement and before the finding of  
27 breach.

28

1 65. Defendant shall comply forthwith with any Court order  
2 entered pursuant to paragraph 64. If defendant fails or refuses  
3 to comply forthwith with any such Court order, the USAO may bring  
4 and prosecute any and all civil and criminal contempt claims and  
5 charges against defendant.

6 66. Following any breach of this Plea Agreement by  
7 defendant, should the USAO elect to pursue any charges against  
8 defendant that were not filed as a result of this Plea Agreement,  
9 then:

10 a. Defendant agrees that the running of the  
11 applicable statutes of limitations is tolled and suspended  
12 between the date that defendant signs this Plea Agreement and the  
13 commencement of any such prosecution.

14 b. Defendant gives up all defenses based on the  
15 statutes of limitations, any claim of preindictment delay, or any  
16 speedy trial claim with respect to any such prosecution, except  
17 to the extent that such defenses existed as of the date that  
18 defendant signs this Plea Agreement.

19 **XVII.**

20 **LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK**

21 67. Defendant unconditionally and without limitation waives  
22 and gives up his right to appeal:

23 a. The restitution order imposed by the Court,  
24 including but not limited to the amount and schedule of  
25 restitution payment(s) ordered by the Court;

26 b. Any criminal fine ordered by the Court; and

27 c. The length, terms, and conditions of the period of  
28 supervised release ordered by the Court.

1 68. Defendant reserves his right to appeal the length of  
2 the term of imprisonment imposed by the Court.

3 69. Defendant gives up any right to bring a post-conviction  
4 collateral attack on the convictions or sentence, including any  
5 order of restitution, except a post-conviction collateral attack  
6 based on a claim of ineffective assistance of counsel, a claim of  
7 newly discovered evidence, or an explicitly retroactive change in  
8 the applicable Sentencing Guidelines, sentencing statutes, or  
9 statutes of conviction.

10 70. The USAO reserves its right to appeal:

11 a. The restitution order imposed by the Court,  
12 including but not limited to the amount and schedule of  
13 restitution payment(s) ordered by the Court;

14 b. Any criminal fine ordered by the Court, or the  
15 Court's decision not to order a criminal fine; and

16 c. The length, terms, and conditions of the period of  
17 supervised release ordered by the Court.

18 71. The USAO gives up its right to appeal the length of the  
19 term of imprisonment imposed by the Court, under the following  
20 conditions:

21 a. With respect to the Court's determination of the  
22 applicable Sentencing Guidelines range, the USAO gives up its  
23 right to appeal, provided that:

24 i. The Court does not depart downward in offense  
25 level or criminal history category (except by a downward  
26 departure in offense level pursuant to, and to the extent  
27 requested by, a motion by the USAO under Sentencing Guidelines  
28 § 5K1.1);



1 promise regarding the sentence defendant will receive, except  
2 that it will be within the total statutory maximum.

3 **XIX.**

4 **NO ADDITIONAL AGREEMENTS**

5 73. Except as set forth in this Plea Agreement and in the  
6 Letter Agreement, there are no promises, understandings, or  
7 agreements between the USAO and defendant or defendant's  
8 attorneys. Nor may any additional promise, understanding, or  
9 agreement be entered into unless in a writing signed by all  
10 parties or on the record in court.

11 **XX.**

12 **PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING**

13 74. The parties agree that this Plea Agreement and the  
14 Factual Statement will be made part of the record of defendant's  
15 guilty plea hearing as if the entire Plea Agreement and Factual  
16 Statement had been read into the record of the hearing.

1 This Plea Agreement is effective upon (1) signature by  
2 defendant and an Assistant United States Attorney, and  
3 (2) written approval by the United States Department of Justice,  
4 Tax Division.

5  
6 AGREED AND ACCEPTED

7  
8 UNITED STATES ATTORNEY'S OFFICE  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 GEORGE S. CARDONA  
11 Acting United States Attorney

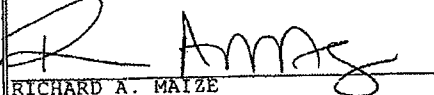
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13 05/25/07  
Date

14 JEREMY D. MATZ  
15 KENDRA S. McNALLY  
16 Assistant United States Attorneys  
17 Major Frauds Section

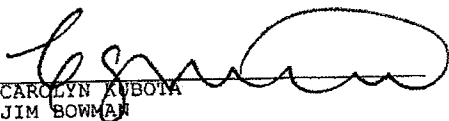
18 I have read all of this Plea Agreement and the Factual  
19 Statement and carefully discussed every part of them with my  
20 attorneys. I understand the terms of this Plea Agreement, and  
21 I voluntarily agree to those terms. Furthermore, I sign this  
22 Plea Agreement and the Factual Statement under penalty of  
23 perjury, and thereby state that all facts contained in them are  
24 true and correct. My attorneys have advised me of my rights, of  
25 possible defenses, of the Sentencing Guidelines provisions, and  
26 of the consequences of entering into this Plea Agreement.  
27 No promises or inducements have been made to me other than those  
28 contained in this Plea Agreement and in the Letter Agreement.  
No one has threatened or forced me in any way to enter into this

1 Plea Agreement. I am satisfied with my representation by my  
2 attorneys in this matter.

3   
4 RICHARD A. MAIZE  
5 Defendant

5-25-07  
Date

6  
7 We are Richard A. Maize's attorneys. We have carefully  
8 discussed every part of this Plea Agreement and the Factual  
9 Statement with our client. Furthermore, we have fully advised  
10 our client of his rights, of possible defenses, of the Sentencing  
11 Guidelines provisions, and of the consequences of entering into  
12 this Plea Agreement. To our knowledge, our client's decision to  
13 enter into this Plea Agreement is an informed and voluntary one.

14  
15   
16 CAROLYN KUBOTA  
17 JIM BOWMAN  
18 O'MELVENY & MYERS LLP  
19 Attorneys for defendant  
20 Richard A. Maize

5-25-07  
Date

21  
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CERTIFICATE OF SERVICE

I, **MELENA L. MALUNAO**, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

PLEA AGREEMENT FOR DEFENDANT RICHARD A. MAIZE

service was:

Placed in a closed envelope, for collection and interoffice delivery addressed as follows:

Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

By hand delivery addressed as follows:

By facsimile as follows:

By messenger as follows:

By federal express as follows:

**Carolyn Kubota  
O'Melveny & Myers LLP  
400 S. Hope Street  
Los Angeles, California 90071-2899**

This Certificate is executed on **May 25, 2007**, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

  
**MELENA L. MALUNAO**

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