IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA

Plaintiff,

Case No. 14-20025-01/-CDM-DJW

FILED IN OPEN COURT

TIMOTHY M. OBRIEN, CLERK

1-11-16

JUSTIN JOHNSON

٧.

Defendant.

PLEA AGREEMENT PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 11(c)(1)(C)

The United States of America, by and through Assistant United States Attorney,
Jabari B. Wamble, and Justin Johnson the defendant, personally and by and through
his counsel, Shazzie Naseem, hereby enter into the following Plea Agreement pursuant
to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

1. <u>Defendant's Guilty Plea.</u> The defendant agrees to plead guilty to Count 1 of the Superseding Information charging a violation of 15 U.S.C. § 645, that is, False Statements to the Small Business Administration. 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 of the Superseding Information to which he has agreed to plead guilty is not more than 2 years of imprisonment, a \$5,000 fine, 1 year of supervised release, and a \$100 mandatory special assessment.

The defendant also agrees to plead guilty to Count 2 of the Superseding Information charging a violation of 18 U.S.C. § 1957, that is, Money Laundering. 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 2 of the Superseding Information to which he has agreed to plead guilty, is not more than 10 years of imprisonment, a \$250,000 fine, 3 years of supervised release, 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.

The United States Business Administration (SBA) is an independent agency of the Executive Branch of the Federal Government. It is charged with the responsibility of providing financial assistance to small businesses in the United States.

The SBA delivers assistance to small businesses through SBA's Loan Programs. The SBA administers the 7(a) loan program and sets guidelines for the loans made by independent lenders under this program. The SBA does not loan money to small businesses under the 7(a) loan program. Rather, when the SBA approves a loan under the 7(a) program, it provides a guaranty to the independent lender that the SBA will repay a percentage of a qualified loan in the event that a borrower defaults. An SBA loan guaranty transfers the risk of borrower non-payment from the independent lender to the SBA, up to the amount

SBA Express is a specialized subsection of the SBA 7(a) loan program, which streamlines the procedures that a qualified lender has to follow in order to obtain an SBA guaranty on a small business loan. An independent lender that qualifies for the SBA Express loan has only to submit an SBA Form 1920SX with attachments and follow SBA regulations in order to obtain an SBA loan guaranty.

Lenders also have the option of submitting an electronic application, known as ETRAN, which essentially contains the same information as the 1920X. Whether submitted in the form 1920X, or ETRAN, the SBA does not perform its own independent analysis of the loan application, but relies upon the independent lender's evaluation.

Bank of the Prairie (BOP) was a lender at 18675 West 151st Street, Olathe, Kansas. The deposits of BOP were insured by the Federal Deposit Insurance Corporation (FDIC), under certificate number 4626.

BOP has been an authorized SBA 7(a) lender since March 4, 2004 and still maintains its eligibility to make SBA General 7(a) loans. BOP was approved for participation in the SBA Express loan program on February 22, 2007; however, BOP's SBA Express Lender status was made inactive in February 2011 after being placed under a consent order by FDIC.

Justin Johnson was married to Penny Johnson. Justin Johnson owned and operated several construction-related businesses, to include "J-Right", "Midland Concrete", "A-Vision Landscape", "Stucco Masters", "Kingdom Homes", and "Timberview Construction". Penny Johnson was employed as a bookkeeper for Justin Johnson's various businesses.

In order for Justin Johnson to gain funding for his related businesses using the SBA Express loan program, Penny Johnson was utilized as a nominee borrower to obtain an SBA loan for Timberview Construction. Although the stated purpose of the loan was to "purchase equipment", the loan funds were actually used to pay-off equipment loans and make payments on construction loans held in the name of Justin Johnson's various entities. BOP loan funds were also used by Penny and Justin for their own personal use.

On or about January 1, 2009, Justin Johnson and Penny Johnson signed the Kansas Secretary of State, General Partnership/Limited Liability Partnership form amending the ownership of Timberview Construction to reflect that "Sole Member and President status has changed from Justin Johnson to Penny Johnson". This form was placed in the BOP Timberview Construction loan file, but was never filed with the Kansas Secretary of State. Justin Johnson continued to transact business as the President of Timberview Construction after Penny Johnson obtained the SBA guaranteed loan.

On January 1, 2009 Penny Johnson and Justin Johnson created approximately five Bills of Sale where Penny Johnson d/b/a Timberview Construction, LLC agreed to purchase \$283,564.00 of equipment from Justin Johnson and his various businesses which include "J-Right", "Midland Concrete", "A-Vision Landscape and Design", and "Stucco Masters".

On or about March 6, 2009, Penny Johnson d/b/a Timberview Construction, LLC completed and signed the SBA Borrower Application (SBA Form 1919) as required by the SBA. On line 16 of this form, Penny Johnson answered "no" to the question, "Will more than \$10,000 of the loan proceeds be used for construction?" More than \$10,000 of SBA guaranteed loan proceeds were used for construction. Penny Johnson signed checks on behalf of "Stucco Masters" and "J-Right Construction" in excess of \$10,000 to make construction related purchases.

On March 17, 2009, Penny Johnson d/b/a Timberview Construction, signed the Promissory Note, Business Loan Agreement, Commercial Security Agreement, Guaranty Disbursement Request and Authorization, and other documents for the \$163,924.00 SBA guaranteed loan.

On or about March 17, 2009, Penny Johnson d/b/a Timberview Construction, LLC, signed the Disbursement Request and Authorization and the loan proceeds were disbursed in the following manner -

- \$62,734.53: J-Right Inc.
- \$17,472.26 Caterpillar Financial Services
- \$6,293.65: 1st Financial Bank
- \$16,798.37: Bank of Blue Valley
- \$1,500: Midland Concrete
- \$17,060.00 Stucco Masters, LLC
- \$25,125.00: Justin Johnson
- \$14,416.19: A-Vision Landscape & Design LLC
- \$103.00: Bank Fees
- \$2,421.00: SBA Guaranty Fee

On March 19, 2009 Penny Johnson signed seven Durable Powers of Attorney attesting that Timberview Construction was the owner of the following equipment

- 2003 Ford E-250 (VIN ending in 1002)
- 2004 Ford F350 (VIN ending in 4216)
- 1996 Mack DS (VIN ending in 1025)
- 2004 Ford Cargo Van (VIN ending in 5022)
- 2003 PJTR UT142 (Serial Number ending in 3408)
- 2000 J&L CROGOEXP (Serial Number ending in 0475)
- 2005 MAXE CARHLR (Serial Number 0148)

On or about March 19, 2009, BOP issued a check a \$62,734.53 BOP loan check (check #016945) to J-Right and a \$1,500.00 loan check (#016946) to Midland Concrete. These funds, approximately \$64,234.53, were deposited into Justin Johnson's business checking account at BOP. The J-Right Bank statement for March 2009 indicates the account balance prior to receiving SBA guaranteed proceeds was (-\$4,524.96) with an ending monthly balance of (-\$2,617.35).

On or about March 19, 2009, BOP wired \$17,472.26 of Timberview Construction loan proceeds to Chase Manhattan Bank, beneficiary Caterpillar Financial Services, to pay off J-Right loan (ending in 472) and another loan (ending in 275) for heavy equipment.

On or about March 19, 2009 BOP wired \$6,293.65 of Timberview Construction loan proceeds to 1st Financial Bank, Overland Park, Kansas to pay off J-Right loan (ending in 490) for a 1996 Mack CH613 (VIN ending in 1025).

On or about March 19, 2009 BOP wired \$16,798.37 Timberview loan proceeds to Bank of Blue Valley (BBV), located in Lenexa, Kansas. Approximately \$16,108.81 of the loan proceeds paid off BBV loan (ending in 291) for a trench plow forklift, and 2000 Cargo Express 16' Trailer purchased by A-Vision Landscape & Design; \$685.13 to BBV loan (ending in 103) for a 2004 Cargo Van purchased by J-Right Inc.

On or about March 19, 2009, BOP issued a \$17,060.00 loan check (#016947) to Stucco Masters, LLC, which is owned and controlled by Justin Johnson. A review of the Stucco Masters bank statements for March and April of 2009, accompanying

checks/items, and other documents revealed that the SBA guaranteed proceeds were not used for purchasing equipment which was the stated purpose of the SBA loan.

On or about March 19, 2009, BOP issued a \$25,125.00 loan check (#16948) to Justin Johnson. Justin Johnson deposited this check into First National Bank (account ending in 9292) which is jointly held by Justin Johnson and Penny Johnson. The account balance prior to the deposit of SBA guaranteed loan proceeds, on March 18, 2009, was \$1,409.35. A review of the Johnson's monthly bank statement from March 7, 2009 through April 7, 2009 reveals several purchases made using a debit card and checks which were not associated with the stated purpose of the SBA loan. Such purchases include those made at The Home Depot, Panera Bread, Wal-Mart, Wendy's, Preferred Pediatricians, Walgreens, Smokehouse Barbeque, DirecTV, and Long John Silver's.

On or about March 19, 2009, BOP signed and issued \$14,416.19 check (#016949) to A-Vision Landscape and Design which was owned, operated, and controlled by Justin Johnson. This check was deposited into A-Vision Landscape & Design (account ending in 9538) at Bank of Blue Valley in Overland Park, Kansas, which was held by Justin Johnson.

On about June 6, 2009, Penny Johnson d/b/a Timberview Construction renewed loan # 25034278; this loan was originally obtained by Justin Johnson d/b/a Timberview Construction to purchase a helicopter in 2008. In connection with the loan renewal in June 2009, a BOP Loan Workheet reveals the Lender's Analysis states that "Timberview Construction is owned and operated by Justin and Penny Johnson..." and lists related borrowings as "J-Right", "Kingdom Homes", and "Stucco Masters".

On about August 3, 2009, Justin Johnson, represented himself as the President of Timberview Construction, LLC, signed documents to affect the sale of a home located at 6808 Longview, Shawnee, Kansas. Justin Johnson, d/b/a/ "J-Right", obtained at \$328,900.00 loan from BOP, in order to construct this home in August of 2007. 32.On November 10, 2009, Justin Johnson, on behalf of Timberview Construction LLC, executed a Bill of Sale wherein Timberview Construction sold a "Phill Fuel Maker" to S.B. for \$2,500.00.

On or about January 29, 2010, Justin Johnson d/b/a J-Right and Stucco Masters, signed Commercial Security Agreements granting BOP a security interest in pieces of equipment in connection with the Timberview Construction SBA Loan; equipment which was purportedly owned by Penny Johnson d/b/a Timberview Construction the previous year. Justin Johnson also signed an Agreement to Provide Insurance for these same pieces of equipment. Continuing on or about January 29, 2010, Justin Johnson signed four separate Durable Powers of Attorney attesting that Justin Johnson d/b/a J-Right and Stucco Masters, were the owner of four vehicles securing the SBA loan. Penny Johnson previously attested that Timberview Construction were the owners of these vehicles on March 19, 2009.

On or about April 20, 2011, Penny Johnson and Justin Johnson acquired a checking account (account ending in 1074) at BOP in the name of Timberview Construction, LLC. Penny Johnson and Justin Johnson both held signatory authority on the Timberview Construction account.

In March of 2009, checks in the amount of \$14,035.10, \$12,989.97, and \$10,982.47 were deposited into BOP accounts controlled by Justin Johnson, which represented proceeds from the fraudulently gained SBA loan.

- 3. Proposed (c)(1)(C) Sentence. The parties propose, as an appropriate disposition of the case:
 - (a) sentence the defendant to time served on counts 1 and 2, one year of supervised release on count 1, and 3 years of supervised release on count 2, to run concurrently; with a condition of 6 months house arrest.
 - (b) 3 years of supervised release;
 - (c) no fine;
 - (d) the mandatory special assessment of \$100 for each count;
 - (e) restitution as deemed appropriate by the court (joint and several with codefendant Justin Johnson.

The parties acknowledge that defendant is the owner of two helicopter businesses: Timberview Helicopters and Emerald Coast Helicopters. The defendant also operates as a sole pilot for a special LOA with the FAA to do banner towing.

Additionally, the defendant derives income from a business known as Midwest Oil, which is located in the Kansas City area. As part of normal business operations and employment, defendant routinely travels to various states for flight operations for his pilot's license and oil inspections related to his employment for Midwest Oil.

The parties agree that that the defendant may continue to travel for work related purposes as a condition of his house arrest. Notice of travel for work must be provided

to the Supervising Probation Office. The parties also agree that the defendant may travel to the Kansas City area to visit his two-minor children. Notice of travel for a family visit must be provided to the Supervising Probation Office.

The parties seek this binding Plea Agreement as an appropriate disposition of the case, because if the Court permits itself to be bound by the proposed sentence, it brings certainty to the sentencing process; it assures that the defendant and the government will benefit from the bargain they have struck; it serves the interests of justice; and it assures a sentence consistent with the sentencing factors of 18 U.S.C. § 3553(a). If the Court does not agree with the sentence, the parties may be restored to the positions they maintained prior to reaching this Plea Agreement. This Plea Agreement centers on the defendant's agreement to enter his guilty plea as soon as the Court's schedule permits, thereby preserving valuable Court, prosecution, defense, United States Probation Office, United States Marshals' Service and other law enforcement resources.

- 4. Application of the Sentencing Guidelines. The parties are of the belief that the proposed sentence does not offend the advisory sentencing guidelines.

 Because this proposed sentence is sought pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the parties are not requesting imposition of an advisory guideline sentence.
- 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 to dismiss any remaining charges at the time of sentencing, and agrees to not file any additional charges against the defendant arising out of the facts forming the basis for the present Superseding Information.

6. Consequences for Violating Plea Agreement. The United States' obligations under this Plea Agreement are contingent upon the defendant's continuing to manifest an acceptance of responsibility. If the defendant denies or gives conflicting statements as to his involvement, falsely denies or frivolously contests relevant conduct the Court determines to be true, willfully obstructs or impedes the administration of justice, as defined by U.S.S.G. § 3C1.1 (or willfully attempts to do so), or has engaged in additional criminal conduct, the United States reserves the right to petition the Court for a hearing to determine if he has breached this Plea Agreement.

If the Court finds by a preponderance of the evidence that the defendant (1) has breached or violated this Plea Agreement; (2) has willfully obstructed or impeded the administration of justice, as defined by U.S.S.G. § 3C1.1 (or willfully attempted to do so); (3) has engaged in additional criminal conduct; or (4) has otherwise failed to adhere to this Plea Agreement's terms, this Plea Agreement will be deemed null and void, and the United States may pursue any additional charges arising from the criminal activity under investigation, as well as any charges for any perjury, false statement, or obstruction of justice that may have occurred.

If the Court finds the defendant has violated this Plea Agreement, he understands and agrees that all statements he made, any testimony he gave before a grand jury or any tribunal, or any leads from such statements or testimony, shall be admissible against his 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 401, or any other federal rule that pertains to the admissibility of any statements he made subsequent to this Plea Agreement.

- 7. Whether to Accept the Proposed Plea Agreement and Sentence is Up to the Court. The Court has no obligation to accept the proposed Plea Agreement and sentence. It is solely within the Court's discretion whether to accept the proposed binding Plea Agreement as an appropriate disposition of the case.
- 8. Withdrawal of Plea Permitted Only if the Court Does Not Accept the Plea Agreement and Proposed Sentence. On the other hand, if the Court agrees to be bound by the proposed Plea Agreement and accepts the defendant's guilty plea, the defendant will not be permitted to withdraw his guilty plea. Only if the Court rejects the proposed Plea Agreement will the defendant be permitted to withdraw his guilty plea.
- 9. <u>Forfeiture of Assets</u>: The defendant knowingly and voluntarily agrees and consents:
 - (a) to the forfeiture of all assets that are directly and indirectly subject to forfeiture to the United States for whatever reason, including but not limited to, the following specific property: [a personal forfeiture judgment in the amount of \$163,924.00 or an amount determined by the Court; real property described as; and/or personal property described as];
 - (b) to the forfeiture of the enumerated assets pursuant to any local, state, or federal criminal, civil, judicial, or administrative forfeiture action;
 - (c) to waive all constitutional, statutory, procedural, appellate, habeas corpus, and equitable challenges in any manner against any federal, state, or local government regarding the seizure, custody, forfeiture, or disposition of the enumerated assets, including that the government's forfeiture actions constitute an excessive fine, the government failed to give proper notice in the charging instrument, the forfeiture was not addressed by the Court at the time of the guilty plea, the forfeiture was not announced at sentencing, or the forfeiture was not incorporated into the judgment;
 - (d) that the conduct described in the Factual Basis paragraph provides a sufficient factual and statutory basis for the forfeiture of the enumerated assets including: (1) the amount

- of criminal proceeds gained directly or indirectly from the violation(s) upon which any forfeiture money judgment is based; and (2) the requisite nexus between any directly-forfeitable assets and the crime(s) to which the defendant is pleading guilty;
- (e) to the immediate entry of any orders concerning any forfeiture or other disposition of the enumerated assets;
- (f) to take all steps necessary to identify and locate all assets subject to forfeiture, and to transfer custody of such assets to the government prior to sentencing, including signing any necessary transfer or title documents;
- (g) to the forfeiture of any substitute assets pursued by the government to satisfy any outstanding personal forfeiture judgment;
- (h) to the abandonment and the transfer to the government of all of his right, title and interest in the cited assets;
- (i) to the destruction or to any other disposition of the enumerated assets by any local, state, or federal agency having possession or control of the assets;
- (j) that the forfeiture, or other governmentally-determined disposition, of the enumerated assets shall not be deemed an alteration of his sentence or this agreement, and shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon his in addition to forfeiture.
- 10. Identification of Assets & Agreement Concerning Monetary Penalties

 (Restitution, Fines, Assessments, and Forfeiture: The defendant agrees to cooperate fully with the United States Attorney's Office and specifically agrees as follows:
 - (a) he agrees to provide a financial statement on a form approved by the United States Attorney's Office that discloses all assets in which he has any interest or over which he exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, as well as any transfer of assets that has taken place within three years preceding the entry of this Plea Agreement.

- (b) he agrees to submit to an examination, prior to and/or after sentencing, which may be taken under oath, and which may include a polygraph examination.
- (c) She acknowledges that any waivers, consents, or releases he signed for purposes of the Presentence Report extend to the United States Attorney's Office.
- (d) He agrees to not encumber, transfer, or dispose of any monies, property, or assets under his custody or control, without written approval from the United States Attorney's Office.
- (e) He understands and agrees that whatever monetary penalties the Court imposes (including any fine, restitution, assessment, or forfeiture judgment), these monetary penalties will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, he understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If he is incarcerated, he agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.
- (f) If he posted funds as security for his appearance in this case, he authorizes the Court to release the funds and apply them to satisfy his financial obligations, pursuant to the Court's judgment.
- (g) He waives any requirement for demand of payment on any restitution, fine, assessment, or forfeiture judgment the Court announces on the record the day of sentencing.
- 11. Payment of Special Assessment. The defendant understands that a mandatory special assessment of \$100 per count of conviction will be entered against his at the time of sentencing. The defendant agrees to deliver to the Clerk of the United States District Court payment in the appropriate amount no later than the day of sentencing. The defendant has the burden of establishing an inability to pay the required special assessment. The parties acknowledge that if the Court finds the defendant is without resources to pay the special assessment at the time of sentencing, the Court may allow payment during his period of incarceration.

- 12. Waiver of Appeal and Collateral Attack. The defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, his conviction, or the components of the sentence to be imposed herein, including the length and conditions of supervised release, as well as any sentence imposed upon a revocation of supervised release. The defendant is aware that 18 U.S.C. § 3742 affords his 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 in accordance with the sentence recommended by the parties under Rule 11(c)(1)(C). The defendant also waives any right to challenge his sentence, or the manner in which it was determined, or otherwise attempt to modify or change his sentence, in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 (except as limited by *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001)), or a motion brought under Federal Rule of Civil Procedure 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 imposes a sentence in excess of the sentence recommended by the parties under Rule 11(c)(1)(C). However, if the United States exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may appeal the sentence received, as authorized by 18 U.S.C. § 3742(a). Notwithstanding the forgoing waivers, the parties understand that the defendant in no way waives any subsequent claims with regards to ineffective assistance of counsel or prosecutorial misconduct.
- 13. <u>FOIA and Privacy Act Waiver.</u> 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, 5 U.S.C. § 552. The defendant further waives any rights conferred under the Privacy Act of 1974, 5 U.S.C. § 552a, to prevent or object to the disclosure of records or materials pertaining to this case.

- 14. Waiver of Claim for Attorney's Fees. The defendant waives all claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.
- 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 his background, character, and conduct, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he is pleading guilty. The United States may respond to comments he or his attorney makes, or to positions he or his attorney takes, 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.
- 16. Parties to the Agreement. The defendant understands this Plea Agreement binds only his and the United States Attorney's for the District of Kansas, and that it does not bind any other federal, state, or local prosecution authority.
- 17. **No Other Agreements.** The defendant has had sufficient time to discuss this case, the evidence, and this Plea Agreement with his attorney and he is fully

satisfied with the advice and representation his attorney provided. Further, the defendant acknowledges that he 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 Plea Agreement embodies each and every term of the agreement between the parties.

18. The defendant acknowledges that he is entering into this Plea Agreement and is pleading guilty because he is guilty. He further acknowledges that he is entering his guilty plea freely, voluntarily, and knowingly.

Jalos / Van la	Date: 1/11/14
/Jabari B. Wamble	
Assistant United States Attorney	
Kim Martin Criminal Chief/Supervisor	Date: /-//-//
	Date: 1 - / (- / 6
Justin Jehnson	
Deféndant / /	
Shangi Nar	Date: 1-11-16
Shazzie N aseem	

Counsel for Defendant