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**FILED**  
JEFFREY A. APPERSON, CLERK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

JAN 08 2010

U.S. DISTRICT COURT  
WESTN. DIST. KENTUCKY  
PLAINTIFF

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:08-CR-119-S

ROBERT FELNER

DEFENDANT

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States of America, by Candace G. Hill, United States Attorney for the Western District of Kentucky, and defendant, Robert Felner, and his attorneys, Scott Cox, Mark Miller, and Mark Chandler have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Indictment in this case with violations of Title 18, United States Code, Sections 371, 1341, and 1956(h) and Title 26, United States Code, Section 7201. Defendant further acknowledges that the Indictment in this case seeks forfeiture of the items identified in Count 10 of the Indictment pursuant to Title 18, United States Code, Sections 981 and 982, and Title 28, United States Code Section 2461, by reason of the offenses charged in Counts 1 and 2 Indictment.

2. Defendant has read the charges against him contained in the Indictment, and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crimes with which he has been charged.

3. Defendant will enter a voluntary plea of guilty to Counts 1 through 9 in this case.

Defendant will plead guilty because he is in fact guilty of the charges. The parties agree to the following factual basis for this plea:

Mail fraud and conspiracy to commit mail fraud

From 2001 through 2008 Robert Felner and Thomas Schroeder executed a scheme to defraud the University of Rhode Island (URI), the University of Louisville (U of L), and the Rock Island County Counsel on Addiction (RICCA). More particularly, they embezzled and conspired to launder approximately \$1,646,972 belonging to URI, \$510,000 belonging to U of L, and \$88,750 belonging to RICCA. In addition Felner attempted to embezzle another \$180,000 from the University of Louisville. During the course of the scheme they used or caused to be used the United States mail to mail multiple contracts, invoices, and checks.

During the course of the scheme Felner and Schroeder fraudulently diverted payments intended for URI from the Atlanta, Santa Monica, and Buffalo School Districts into bank accounts they controlled at Citizens Bank in Rhode Island, A.B.&T. in Illinois, and B.B.T. in Kentucky. These three accounts were in the name of the National Center on Public Education and Prevention ("NCPEp). From 2001 to 2007 they caused payments from Atlanta totaling \$1,005,972, from Buffalo totaling \$326,000, and from Santa Monica totaling \$375,000 to be diverted from URI and deposited into these NCPEp bank accounts. A division of URI, the National Center on Public Education and Social Policy (NCPE), actually performed the work for Atlanta, Buffalo, and Santa Monica but Felner and Schroeder diverted the payments to the NCPEp bank accounts they controlled. NCPEp performed no services to any of these school districts.

Felner and Schroeder also used NCPEp to embezzle funds received from U of L under a September 1, 2005, \$694,000 federal earmark grant. Felner and Schroeder caused the University of Louisville to issue \$450,000 in payments to NCPEp by fraudulently alleging NCPEp performed work pursuant to the grant. NCPEp did not perform the work. These payments were deposited into the three NCPEp bank accounts controlled by Felner and Schroeder.

Felner also fraudulently attempted to cause U of L to make an additional \$180,000 in payments to NCPEp in May of 2008. Felner in requesting these payments fraudulently represented that NCPEp completed additional work for U of L. These payment were never issued.

Felner also caused U of L to make approximately \$60,000 in payments to URI and NCPE for worked Felner represented NCPE completed for the NCLB Grant. These payments were intended by Felner as payment to NCPE for work it performed for the Atlanta, Buffalo, and Santa Monica schools. NCPE actually completed no work related to the NCLB Grant. In addition, in

April of 2008 Felner attempted to send another \$60,000 from U of L to NCPE for additional that work he fraudulently represented to U of L that NCPE completed.

From June 2004 through July 2008, Felner and Schroeder fraudulently caused RICCA to make \$88,750 in payments to Felner and NCPEp for work allegedly performed by Felner pursuant to a contract with RICCA. No such work was performed and these funds were deposited into NCPEp accounts controlled by Felner and Schroeder and were later withdrawn by Schroeder.

From 2001 through 2008 approximately \$2,245,772 in funds were fraudulently deposited into three bank accounts in the name of NCPEp that were controlled by Felner and Schroeder. These funds were withdrawn by Schroeder and Felner and were used for their personal benefit. A.B.&T., B.B.&T., and Citizens Bank were federally insured financial institutions.

#### Tax evasion and conspiracy to defraud I.R.S.

Felner evaded payment of his 2002 federal income taxes by failing to pay approximately \$161,644.77 in taxes. Felner failed to report approximately \$441,408 in income in 2002 that he received from NCPEp bank accounts. He used the entity NCPEp to conceal this income from the I.R.S.

Felner evaded payment of his 2003 federal income taxes by failing to pay approximately \$54,142.50 in taxes. Felner failed to report approximately \$172,000 in income in 2003 that he received from NCPEp bank accounts. He used the entity NCPEp to conceal this income from the I.R.S.

Felner evaded payment of his 2004 federal income taxes by failing to pay approximately \$107,289.75 in taxes. Felner failed to report approximately \$321,500 in income in 2004 that he received from NCPEp bank accounts. He used the entity NCPEp to conceal this income from the I.R.S.

Felner evaded payment of his 2005 federal income taxes by failing to pay approximately \$10,567.59 in taxes. Felner failed to report approximately \$36,007 in income in 2004 that he received from NCPEp bank accounts. He used the entity NCPEp to conceal this income from the I.R.S.

Felner evaded payment of his 2006 federal income taxes by failing to pay approximately \$5,186.05 in taxes. Felner failed to report approximately \$29,468 in income in 2006 that he received from NCPEp bank accounts. He used the entity NCPEp to conceal this income from the I.R.S.

Felner evaded payment of his 2007 federal income taxes by failing to pay approximately \$152,036.32 in taxes. Felner failed to report approximately \$478,376 in income in 2007 that he

received from NCPEp bank accounts. He used the entity NCPEp to conceal this income from the I.R.S.

Felner and Schroeder also conspired to defraud the Internal Revenue Service by using NCPEp to conceal income from the I.R.S. Schroeder and Felner caused false IRS Form 1099's to be issued, or purposely failed to issue Form 1099's, in order to conceal income from the I.R.S. More particularly, in 2008 Schroeder issued Felner a fraudulent Form 1099 that falsely stated Felner earned \$36,450 from NCPEp in 2007. Felner used this Form 1099 to fraudulently file his 2008 federal income tax returns.

4. Defendant understands that the charges to which he will plead guilty carry a combined maximum term of imprisonment of 75 years, combined maximum fine of \$2,250,000, and a 3 year term of supervised release. Defendant understands that an additional term of imprisonment may be ordered if the terms of the supervised release are violated, as explained in 18 U.S.C. § 3583. Defendant understands that as a result of the charges to which he will plead guilty he may be ordered to forfeit the real property and items identified in Count 10 of the Indictment.

5. Defendant understands a term of imprisonment of more than one year will be imposed under the terms of this agreement, the Sentencing Guidelines require a term of supervised release and that he will then be subject to certain conditions of release. §§5D1.1, 5D1.2, 5D1.3.

6. Defendant understands that by pleading guilty, he surrenders certain rights set forth below. Defendant's attorney has explained those rights to him and the consequences of his waiver of those rights, including the following:

A. If defendant persists in a plea of not guilty to the charge[s] against him, he has the right to a public and speedy trial. The trial could either be a jury trial or a trial by the judge sitting without a jury. If there is a jury trial, 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.

B. At a trial, whether by a jury or a judge, the United States 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.

C. At a trial, defendant would have a privilege against self-incrimination and he could decline to testify, without any inference of guilt being drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

7. Defendant understands that the United States Attorney's Office has an obligation to fully apprise the District Court and the United States Probation Office of all facts pertinent to the sentencing process, and to respond to all legal or factual inquiries that might arise either before, during, or after sentencing. Defendant admits all acts and essential elements of the indictment counts to which he pleads guilty.

8. Defendant understands that the United States will inform the court that it should order payment of a total of \$510,000 in restitution payable to the University of Louisville, a total

\$88,750 payable to the Rock Island County Council on Addictions, and a total of \$1,646,972 payable to the University of Rhode Island. The restitution may be ordered payable jointly and severally with the co-defendant. The defendant further understands that he may be responsible for a fine, costs of prosecution, costs of incarceration and supervision which may be required.

9. Defendant acknowledges liability for the special assessment mandated by 18 U.S.C. § 3013 and will pay the assessment in the amount of \$100 per count for felony offenses to the United States District Court Clerk's Office by the date of sentencing.

10. At the time of sentencing, the United States will  
-agree that a sentence of 63 months is the appropriate disposition of this case.

11. Both parties have independently reviewed the Sentencing Guidelines and agree that the Guideline calculation results in a sentence of 63 months based on the following calculation:

A. The Applicable Offense Level should be determined as follows:

USSG § 2B1.1(a)(1) [Base offense level]:	7
(a)(2) [Loss between \$1,000,000 and \$2,500,000]	+16
(B)(9) [sophisticated means]:	+2
USSG § 2S1.1(a)(2)(B) [money laundering]:	+2
USSG § 3B1.3 [abuse of position of trust]:	+2
Acceptance of responsibility:	3

**Total Offense Level:**

**26**

B. The Criminal History of defendant shall be determined upon completion of the presentence investigation, pursuant to Fed. R. Crim. P. 32(c). Both parties reserve the right to object to the USSG §4A1.1 calculation of defendant's criminal history.

12. Defendant is aware of his right to appeal his conviction and that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The Defendant knowingly and voluntarily waives the right (a) to directly appeal his conviction and the resulting sentence pursuant to Fed. R. App. P. 4(b) and 18 U.S.C. § 3742, and (b) to contest or collaterally attack his conviction and the resulting sentence pursuant to 28 U.S.C. § 2255 or otherwise. Defendant understands and agrees that nothing in this plea agreement should be construed as a waiver by the United States of its right to appeal the sentence under 18 U.S.C. § 3742.

13. This Agreement is entered into by the United States on the basis of the express representation of defendant that he is making a full and complete disclosure of all assets over which he exercises control.

14. Defendant agrees to the forfeiture of any interest he or his nominees may have in the assets, which he owns or over which he exercises control, which are listed in Count 10 of the Indictment.

15. By this Agreement, defendant agrees to forfeit all interests in the properties listed in Count 10 of the Indictment and to take whatever steps are necessary to pass clear title to the United States. These steps include but are not limited to surrender of title, the signing of a consent decree, a stipulation of facts regarding the transfer and basis for the forfeitures and

signing any other documents necessary to effectuate such transfers.

16. Defendant agrees to a pre-plea investigation by the United States Marshal's Service for the purpose of assessing the value of each and every asset. Defendant agrees to undergo a full debriefing in order to accomplish this end.

17. Defendant agrees to waive any double jeopardy challenges that defendant may have to any administrative or civil forfeiture actions arising out of the course of conduct that provide the factual basis for this Indictment. Defendant further agrees to waive any double jeopardy challenges that defendant may have to the charges in this Indictment based upon any pending or completed administrative or civil forfeiture actions.

18. Defendant agrees to waive any double jeopardy challenges that defendant may have to any administrative or civil forfeiture actions arising out of the course of conduct that provide the factual basis for this Indictment. Defendant further agrees to waive any double jeopardy challenges that defendant may have to the charges in this Indictment based upon any pending or completed administrative or civil forfeiture actions.

19. The parties understand that some funds seized in this case (approximately \$449,979.61) are currently subject to administrative forfeiture. The parties further understand that the ultimate decision to apply those funds toward restitution would be up to the Department of Treasury. It is the United States Attorney's Office's recommendation that those funds be applied to restitution, however this office does not make this decision.

20. The parties agree that the \$1,722.50 and \$217,510.62 (for a total of approximately \$219,233.12) placed in the District Court Clerk's Registry Account shall be applied to restitution. An agreed order to this effect will be tendered at a later date. These funds were placed in this

account by agreement between the defendant and the United States.

21. Defendant agrees not to pursue or initiate any civil claims or suits against the United States of America, its agencies or employees, whether or not presently known to defendant, arising out of the investigation or prosecution of the offenses covered by this Agreement.

22. The defendant hereby 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, or the Privacy Act of 1974, 5 U.S.C. § 552a.

23. Defendant agrees to interpose no objection to the United States transferring evidence or providing information concerning defendant and this offense, to other state and federal agencies or other organizations, including, but not limited to the Internal Revenue Service, other law enforcement agencies, and any licensing and regulatory bodies, or to the entry of an order under Fed. R. Crim. P. 6(e) authorizing transfer to the Examination Division of the Internal Revenue Service of defendant's documents, or documents of third persons, in possession of the Grand Jury, the United States Attorney, or the Criminal Investigation Division of the Internal Revenue Service.

24. If the Court refuses to accept this agreement and impose sentence in accordance with its terms pursuant to Fed. R. Crim. P. 11(c)(1)(C), this Agreement will become null and void and neither party shall be bound thereto, and defendant will be allowed to withdraw the plea of guilty.

25. Defendant agrees that the disposition provided for within this Agreement is fair and reasonable, taking into account all aggravating and mitigating factors. Defendant states that he has informed the United States Attorney's Office and the Probation Officer, either directly or through his attorney, of all mitigating factors.


26. This document states the complete and only Plea Agreement between the United States Attorney for the Western District of Kentucky and defendant in this case, and is binding only on the parties to this Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that is signed by all parties or on the record in Court. No other promises or inducements have been or will be made to defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

27. The defendant agrees to truthfully complete a personal financial statement, credit waiver, and a corporate financial statement prior to sentencing.

AGREED:

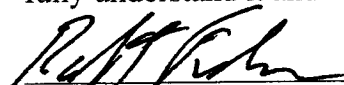
CANDACE G. HILL  
United States Attorney

By:

  
\_\_\_\_\_  
Bryan R. Calhoun  
Assistant U.S. Attorney

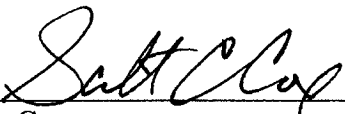
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\_\_\_\_\_  
Date

I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

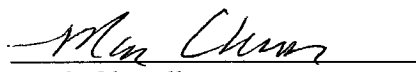
  
\_\_\_\_\_  
Robert Felner  
Defendant

12/23/09  
\_\_\_\_\_  
Date

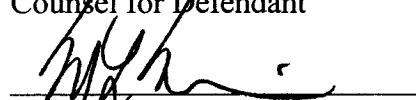
I am the defendant's counsel. I have carefully reviewed every part of this Agreement with the defendant. To my knowledge my client's decision to enter into this Agreement is an informed and voluntary one.

  
\_\_\_\_\_  
Scott Cox  
Counsel for Defendant

12-23-09  
Date

  
\_\_\_\_\_  
Mark Chandler  
Counsel for Defendant

12/23/09  
Date

  
\_\_\_\_\_  
Mark Miller  
Counsel for Defendant

12/23/09  
Date

CGH:BRC: 12/23/2009