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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No.1:06CR456
	)	
Plaintiff,	)	Judge John R. Adams
	)	
v.	)	
	)	
AHMAD Q. ELGERGAWI,	)	<u>PLEA AGREEMENT</u>
a.k.a. AHMED Q. ELGERGAWI	)	
	)	
Defendant.	)	

Pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorney, and the defendant, AHMAD Q. ELGERGAWI (hereinafter "Defendant"), agree as follows:

**MAXIMUM PENALTIES AND OTHER  
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or the Court, with the consent of the United States, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense, and the right against compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent Defendant. Defendant understands that, if Defendant pleads guilty and that plea is accepted by the Court, there will not be a further trial of any kind, so that by pleading guilty Defendant waives the right to a trial.

2. **Maximum Sentence.** The statutory maximum sentence for each count which Defendant agrees to plead guilty is as follows:

<u>Count</u>	<u>Statute</u>	<u>Maximum sentence per count</u>
1	18 U.S.C. § 157(1) (Bankruptcy Fraud)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years
2	18 U.S.C. § 157(2) (Bankruptcy Fraud)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years
3	18 U.S.C. § 157(2) (Bankruptcy Fraud)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years
4	18 U.S.C. § 152(1) (Concealment of Assets)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years
5	18 U.S.C. § 152(3) (False Oaths in Bankruptcy)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years
6	18 U.S.C. § 152(3) (False Oaths in Bankruptcy)	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years

3. **Alternative Maximum Fine.** The maximum fine that the Court may impose is the greater of the statutory maximum stated above or twice the gross pecuniary loss or gain from the offense of conviction.

4. **Sentencing and Sentencing Guidelines.** Defendant understands that the Court must impose a sentence sufficient but not greater than necessary to comply with the sentencing purposes set forth in 18 U.S.C. § 3553(a)(2) and that the Court must consider the advisory U.S. Sentencing Guidelines and other sentencing factors set forth in § 3553(a) in determining the sentence.

5. **Special Assessment.** Defendant will be required to pay a mandatory special assessment of \$100.00 per count for a total of \$600.00 due immediately upon sentencing.

6. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

7. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release.

8. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

**ELEMENTS OF THE OFFENSE(S)**

9. The elements of the offenses to which Defendant will plead guilty are:

<b>18 U.S.C. § 157(1): Bankruptcy Fraud: Count 1</b>	
<b>One:</b>	The Defendant devised a scheme to defraud or intended to later formulate a scheme to defraud;
<b>Two:</b>	The Defendant filed or caused the filing of a bankruptcy petition; and
<b>Three:</b>	The Defendant did so for the purpose of executing or concealing such a scheme or for the purpose of attempting to execute or conceal such a scheme.

<b>18 U.S.C. § 157(2): Bankruptcy Fraud: Counts 2 and 3</b>	
<b>One:</b>	The Defendant devised a scheme to defraud or intended to later formulate a scheme to defraud;
<b>Two:</b>	The Defendant filed or caused the filing of a document in a proceeding under title 11 (the Bankruptcy Code); and
<b>Three:</b>	The Defendant did so for the purpose of executing or concealing such a scheme or for the purpose of attempting to execute or conceal such a scheme.
<b>18 U.S.C. § 152(1): Concealment of Assets: Count 4</b>	
<b>One:</b>	That a bankruptcy proceeding existed under Title 11 (the Bankruptcy Code)
<b>Two:</b>	That the Defendant concealed ownership or interest in an entity and business commonly known as AHA Food Mart, Inc. aka AHA Foodmart from the trustee or from creditors;
<b>Three:</b>	That the ownership or interest in the entity and business belonged to the bankruptcy estate;
<b>Four:</b>	That the Defendant acted knowingly and fraudulently
<b>18 U.S.C. § 152(3): False Oaths in Bankruptcy: Counts 5 and 6</b>	
<b>One:</b>	On or about the time alleged in the Indictment, a bankruptcy case was pending in the United States Bankruptcy Court for the Northern District of Ohio in which the Defendant was the debtor;
<b>Two:</b>	The Defendant made a false statement or declaration regarding a material matter in or in relation to the bankruptcy proceeding.
<b>Three:</b>	The statement or declaration was made under the penalty of perjury;
<b>Four:</b>	The Defendant knew that the statement or declaration was false when it was made; and
<b>Five:</b>	That Defendant did so with the intent to defraud

**AGREEMENTS AND STIPULATIONS OF THE PARTIES**

**GUILTY PLEA / OTHER CHARGES**

10. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to Counts 1, 2, 3, 4, 5, and 6 of the Indictment in this case.

11. **Agreement Not To Bring Certain Other Charges:** The USAO will not bring any other charges against Defendant with respect to the conduct charged in the Indictment based on facts currently within the knowledge of the USAO.

**FACTUAL BASIS**

The parties stipulate to the following facts, which satisfy all of the elements of the offenses to which Defendant agrees to plead guilty:

12. Defendant devised and intended a scheme to defraud his creditors and the bankruptcy trustee. As part of this scheme, Defendant obtained credit cards from "First USA" and M.B.N.A. In applying for the "First USA" credit card on or about December 9, 1997, Defendant represented that his household income was \$89,000.00. In fact, his household income for calendar year 1997 was approximately \$16,100.00. In applying for the "MBNA" credit card on or about February 8, 2001, Defendant represented that his current annual salary was

\$149,000.00. In fact, his earnings from employment were only approximately \$4,360.00 for calendar year 2001. The statements made by Defendant were material and were intended to influence the credit card companies in their decision to extent credit.

13. Defendant made charges and issued convenience checks on the credit cards he obtained by providing false income information. At the time that Defendant owed debts which he had not paid in full, Defendant transferred real estate located at 3519 West 117<sup>th</sup> Street, Cleveland, Ohio through a "Warranty Deed" filed with the Cuyahoga County Recorder on January 17, 2003.

14. On August 26, 2005, Defendant filed a voluntary petition for bankruptcy with the United States Bankruptcy Court for the Northern District of Ohio, and he further filed bankruptcy schedules and a bankruptcy statement of financial affairs. By filing the bankruptcy petition, Defendant sought to discharge listed unsecured claims in the amount of \$254,250.00, some of which may have been duplicates, in order further the scheme to defraud. At the time he filed his bankruptcy case, Defendant had an interest and ownership in an entity known as AHA Food Mart, Inc. aka AHA Food Mart. Defendant further filed his



bankruptcy schedules, and bankruptcy statement of financial affairs to further and to conceal his scheme to defraud. In his bankruptcy schedules, Defendant falsely denied that he had any interests in “Stock and interests in incorporated and unincorporated business.” In his bankruptcy statement of financial affairs, Defendant falsely denied that there had been any businesses in which he had been an officer, director, managing executive, or more than 5% owner of voting or equity securities within the six years immediately preceding the commencement of the case. In fact, Defendant had at all times been more than a 5% owner of voting of equity securities in AHA Food Mart, Inc., and had further served as an officer and managing executive of AHA Food Mart, Inc. within the six years before the commencement of his bankruptcy cases. The statements made by Defendant were material to the administration of the bankruptcy case. They were made knowingly by the Defendant and for the purpose of deceiving the bankruptcy trustee and creditors in his bankruptcy case about his interest and ownership in AHA Food Mart, Inc. and his connections to AHA Food Mart, Inc. Throughout his bankruptcy case, Defendant concealed his interest in AHA Food Mart, Inc. from

the bankruptcy trustee. This interest in AHA Food Mart, Inc. belonged to the bankruptcy estate.

15. Defendant concealed this interest knowingly and with the intent to deceive the bankruptcy trustee as to the existence of his property. Defendant intended to receive the benefit of a bankruptcy discharge of his debts while at the same time fraudulently continuing to retain possession and ownership of his interest in AHA Food Mart, Inc.

16. All of the actions of Defendant occurred in the Northern District of Ohio.

**WAIVER OF APPEAL AND POST-CONVICTION ATTACK**

17. Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. The Defendant expressly waives those rights, except as reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any

sentence to the extent it exceeds the maximum of the sentencing range determined under the advisory Sentencing Guidelines in accordance with the sentencing stipulations and computations in this agreement, using the Criminal History Category found applicable by the Court. Nothing in this paragraph shall act as a bar to the Defendant perfecting any legal remedies Defendant may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

## **RESTITUTION**

18. Defendant agrees to make full restitution on such terms and conditions as the Court may impose, for the losses caused by Defendant's relevant conduct in this case, as defined under Guideline §1B1.3. Defendant agrees that he shall not seek the discharge, modification, or stay of enforcement of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

## **SENTENCING STIPULATIONS AND AGREEMENTS**

19. **Stipulated Guideline Computation.** The parties agree that the following calculation, using the Sentencing Guideline Manual dated November 1, 2006, represents the correct computation of the applicable offense level in this

case, prior to any adjustment for acceptance of responsibility. The parties agree that no other Sentencing Guideline adjustments apply.

<b>Counts 1,2, 3, 4, 5, and 6: Guideline § 2B1.1</b>		
Base offense level	+6	§ 2B1.1(a)(2)
Amount of Loss more than \$30,000.00	+6	§ 2B1.1(b)(1)(D)
Fraud during course of bankruptcy proceeding	+2	§ 2B1.1(b)(8)(B)
Subtotal before acceptance of responsibility	14	

20. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. Defendant understands, however, that the Court will determine acceptance of responsibility based on Defendant's overall conduct as of the date of sentencing.

21. **No Criminal History Category Agreement.** The parties do not have any agreement as to the Defendant's criminal history. The Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

**OTHER PROVISIONS**

22. **Guideline Calculations Not Binding on the Court.** Defendant understands that the calculations of the parties concerning the advisory Sentencing Guidelines are not binding upon the Court, that the Court alone will decide the applicable offense level and sentencing range under the advisory Sentencing Guidelines, whether there is any basis to depart from that range or impose a sentence outside of the Guidelines, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty plea, Defendant will not have the right to withdraw such plea if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

23. **Waiver of Defenses In Bankruptcy Case:** Defendant shall notify the United States Bankruptcy Court through the Clerk of Courts of his current address in Bankruptcy Case Number: 05-22902. Defendant further waives any defense grounded in statute of limitations or limitation of action in any action brought by any party, including any creditor, trustee, or United States Trustee,

seeking to vacate the discharge granted to the Defendant in Bankruptcy Case Number: 05-22902 or about December 5, 2005 under docket number 10.

24. **Agreement Silent as to Matters Not Expressly Addressed.** This agreement is silent as to all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing.

25. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty plea or conviction in this case are at any time rejected, vacated, or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any charges and make any recommendations with respect to sentencing that would otherwise be prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty plea or conviction.

**26. Agreement not Binding on other Jurisdictions and Agencies.**

Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio (USAO). It does not bind any other United States Attorney, any other federal agency, or any state or local government.

**27. Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following statements: I acknowledge receiving the assistance of counsel from attorney Damian A. Billak, Esq. concerning this plea agreement. I have fully discussed with my attorney all of my Constitutional trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, the Sentencing Guidelines, and the potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have told my attorney everything I know about the charges, any defense that I may have to those charges, and all personal and financial circumstances in possible mitigation of sentence. My attorney has done everything I have asked my attorney to do and I am satisfied with the legal

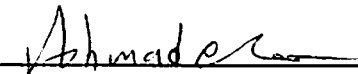
services and advice provided to me by my attorney and believe that my attorney has given me competent and effective representation.

28. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement constitutes the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In addition, Defendant states that no person has, directly or indirectly, threatened or coerced Defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

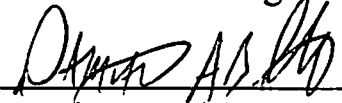


**SIGNATURES**

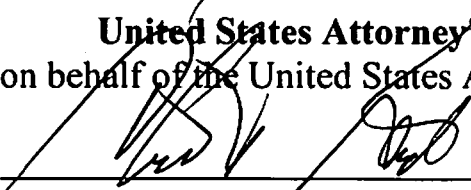
**Defendant:** I have read this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I have read, understood, and approved the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impede my ability to understand this agreement.

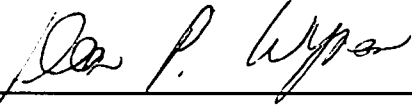
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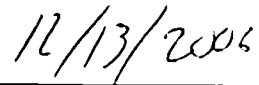
**Defense Counsel:** I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.

 12-17-06  
Damian A. Billak, Esq. Date

**United States Attorney's Office:** I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.

 12/13/06  
Christian H. Stickman Date  
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\_\_\_\_\_  
Date

**APPROVED:**

  
\_\_\_\_\_  
JOHN R. ADAMS  
UNITED STATES DISTRICT JUDGE

  
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