

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

THOMAS T. DEMERY

Criminal No. 92-227-SSH

*Dean Exhibit
0944*

PLEA AGREEMENT

The United States of America, by and through Arlin M. Adams, Independent Counsel, and David Eisenberg, George Ellard and Melissa G. Murphy, Associate Independent Counsel, and the defendant, THOMAS T. DEMERY, with his attorneys, John P. Hume and Martin P. Willard, hereby notify the Court that, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the following Plea Agreement has been negotiated and entered into:

1. Charges: The Defendant agrees to enter a plea of guilty in the United States District Court for the District of Columbia to the two count felony information appended hereto as Exhibit A, which charges the Defendant with accepting and receiving a gratuity, in violation of 18 U.S.C. §201(c)(1)(B), and obstruction of justice, in violation of 18 U.S.C. § 1503.

Pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure, the defendant agrees to waive in open court the presentment of these charges by indictment. As to the charge of

accepting and receiving a gratuity, the defendant also agrees to waive the limitations provision of 18 U.S.C. § 3282, which requires, in relevant part, that an information shall be instituted within five years next after an offense has been committed.

At the time of sentencing in this matter, the United States will move to dismiss all counts against the defendant THOMAS T. DEMERY in the Indictment dated June 9, 1992 and in the Superseding Indictment dated December 4, 1992.

2. Factual Admission of Guilt: The defendant admits that he is in fact guilty of the charges of accepting and receiving a gratuity and obstruction of justice and agrees that he will make a factual admission of guilt before the Court.

3. Stipulation of the Circumstances of the Offense: The parties agree that the statement of facts appended hereto as Exhibit B accurately sets forth the relevant facts and circumstances of the Defendant's actual offense conduct. The parties understand that the Court is not bound by this statement of facts and that the failure of the Court to accept it will not void this plea agreement or serve as a basis for the withdrawal of the Defendant's guilty plea.

4. Potential Penalties: The Defendant understands that the charge of accepting a gratuity, in violation of 18 U.S.C. § 201(c)(1)(B), carries a statutory maximum penalty of two years

imprisonment and a \$250,000 fine and that the charge of obstruction of justice, in violation of 18 U.S.C. § 1503, carries a statutory maximum penalty of five years imprisonment and a \$250,000 fine or in the alternative, a greater fine based on gain to the defendant derived from the offense. In addition, pursuant to 18 U.S.C. § 3013(a)(2)(A), both counts carry a special assessment of \$50.00.

5. Sentencing: The Defendant understands that the sentence to be imposed on him, which may be up to the maximum penalty allowed by law, will be determined solely by the Court and that the Office of Independent Counsel ("Office") cannot and does not make any promises, representations, or predictions regarding what sentence the Court will impose.

The parties agree that the charged offense of accepting and receiving a gratuity does not involve conduct that occurred after November 1, 1987 and, therefore, the Sentencing Reform Act of 1984 ("Act") and the Federal Sentencing Guidelines ("Guidelines") promulgated pursuant thereto do not apply to the sentencing on that count. The defendant understands, however, that the Court may be guided in its sentence on this charge by a computation under the Act and Guidelines to be provided by the United States Probation Office for non-guideline charges.

The Defendant further understands that as to the charged offense of obstruction of justice, his sentence will be determined in accordance with the Act and Guidelines, but that the Court may depart from those guidelines under some circumstances.

The Office will not oppose a request on behalf of the Defendant that, as to the offense of obstruction of justice, he be sentenced within the limits of the sentencing guideline range set out in the Stipulated Statement of Computation of Sentencing Guidelines Range for both charges, appended hereto as Exhibit C. The parties agree that this statement is accurate and includes the proper calculations for base offense conduct and adjustments. The parties further acknowledge that the United States Probation Office and the Court are not bound by such computations. The computation for the non-guidelines offense of accepting and receiving a gratuity, which the parties also agree is accurate and includes the proper calculations for base offense conduct and adjustments, is submitted in recognition that the Probation Office calculates guideline ranges for such offenses as a non-binding guide for the Court.

The Office will not oppose a request on behalf of the Defendant that the sentences imposed on both counts run concurrently.

The Defendant understands that if the Court imposes a sentence greater than that provided in the sentencing guidelines or which is in any other way unsatisfactory to him, he cannot withdraw his guilty plea. This does not, however, limit the Defendant's right to appeal an unlawful sentence.

6. Cooperation: The Defendant agrees that he will cooperate completely, candidly, and truthfully with all investigators and

attorneys of the Office, by truthfully providing all information in his possession relating directly or indirectly to all criminal activity and related matters of which he has knowledge. The Defendant will provide such information whenever, and in whatever form, the Office shall reasonably request. This includes, but is not limited to, submitting to interviews at such reasonable times and places as are determined by counsel for the Office, providing all documents and other tangible evidence requested of him, and testifying completely and truthfully before any federal grand jury or at any trial or other proceeding. The Defendant acknowledges that he has a continuing obligation under this agreement to provide this Office, at the earliest reasonable opportunity, with all relevant information relating directly or indirectly to all criminal activity and related matters of which he has knowledge, regardless of whether he is directly questioned by this Office or the Office otherwise requests information regarding such criminal activity and related matters.

7. Section 3553(e) Motion: If the Defendant completely fulfills all his obligations under this agreement, at the time of sentencing the Office will advise the Court of the full nature, extent and value of the cooperation provided by the Defendant. The Office will evaluate the cooperation provided by the Defendant pursuant to the preceding paragraph and if it determines, in its sole discretion, that the Defendant has rendered substantial assistance in the investigation or prosecution of others involved

in criminal activities, then it will file a motion pursuant to 18 U.S.C. §3553(e) and U.S.S.G. § 5K1.1, which will so advise the Court. The Defendant understands that these provisions allow the Court to impose a sentence that departs from the guideline range established by the United States Sentencing Commission. The Defendant understands, however, that the Court will have the sole discretion to determine the actual sentence, and that the Office cannot and does not make any promises, representations, or predictions regarding what sentence the judge will impose.

8. Additional Charges: If the Defendant completely fulfills all of his obligations under this agreement, the Office agrees, except as provided below, not to bring any additional charges against the Defendant related to the subject matter of the Superseding Indictment or any other matters within the mandate of the Office, as amended. The agreement set forth in this paragraph applies only to conduct occurring prior to the date of this plea agreement and is limited to criminal activity about which the Defendant has informed the Office. The agreement set forth in this paragraph does not apply to any additional charges that could be brought against the Defendant for actions related to different matters than those described in this paragraph. Furthermore, the agreement set forth in this paragraph does not apply to crimes of violence, to criminal violations of the federal tax laws (except as to charges pertaining to the subject matter of the Information) or

to any drug-related offenses under Title 21, United States Code.

9. Breach of Agreement: The Defendant agrees that in the event he fails to comply with any of the provisions of this agreement, or refuses to answer any questions put to him, or knowingly makes any false or misleading statements to investigators or attorneys for the Office, or knowingly makes any false or misleading statements or commits any perjury before any grand jury or court, or knowingly commits any additional crimes, the Office will have the right to characterize such conduct as a substantial breach of this agreement, in which case the Office's obligations under this agreement will be void and it will have the right to prosecute the Defendant for any and all offenses that can be charged by the Office. The Defendant further agrees that if this Office should determine that he has breached this agreement, this Office will be free to prosecute him for any offense set forth in the Superseding Indictment and for any other offense not otherwise barred from being prosecuted as of the date of this agreement because of the expiration of the applicable statute of limitations. However, such prosecution must be instituted within 180 days after the Defendant has received written notice from this Office that this agreement has been breached. The Defendant agrees not to raise the statute of limitations as a defense in such prosecutions.

10. Use of Information: The Defendant understands that, except in the circumstances described in this paragraph, the Office

will not use against him any statements he makes or other information he provides pursuant to this agreement in any criminal case, other than a prosecution for perjury or making false statements in connection with or subsequent to this agreement. The Defendant agrees that: (a) the Office may use against him information directly or indirectly derived from statements he makes or information he provides pursuant to this agreement in connection with any prosecution brought under the provisions of paragraph 8 of this agreement; (b) in the event that the Defendant is ever a witness in any judicial proceeding, the attorney for the Office may cross-examine him concerning any statements he has made or information he has provided pursuant to this plea agreement, and evidence regarding such statements and information also may be introduced in rebuttal; (c) statements the Defendant makes and information he provides pursuant to this agreement may be used in the plea and sentencing proceedings on the charges that are the subject of this agreement; and (d) in the event of a breach of this agreement as described in paragraph 9, any statements made or information provided by the Defendant, whether prior to or subsequent to this agreement, may be used against him, without limitation, in any federal, state or local prosecution. The Defendant knowingly and voluntarily waives any rights he may have pursuant to Fed. R. Evid. 410 and Fed. R. Crim. P. 11(e)(6), which might otherwise prohibit the use against him of such information under the circumstances just described.

11. Waivers: The Defendant agrees that this agreement shall constitute a written waiver of any and all defenses he might have to the charges set forth in the information attached hereto as Exhibit A, including but not limited to defenses relating to constitutional or statutory speedy trial rights, jurisdiction (including the jurisdiction of the Office), venue, and the statute of limitations. The Defendant also waives any challenge he might have to the constitutionality of the Sentencing Guidelines.

12. Making Cooperation Known: The Office agrees to bring the cooperation of the Defendant to the attention of other agencies or authorities if so requested by the Defendant.

13. No Other Agreements: No other agreements, promises, understandings or representations have been made by the parties or their counsel other than those contained in the writing herein, nor will any such agreements, promises, understandings or representations be made unless committed to writing and signed by

the Defendant, Defendant's counsel, and an attorney for the Office of Independent Counsel.

Respectfully submitted,

OFFICE OF INDEPENDENT COUNSEL

Thomas T. Demery
THOMAS T. DEMERY

Arlin M. Adams by DE
Arlin M. Adams
Independent Counsel

John P. Hume
John P. Hume, Esquire
Counsel for THOMAS T. DEMERY

David Eisenberg
David Eisenberg
Associate Independent Counsel

Martin P. Willard JH
Martin P. Willard
Counsel for THOMAS T. DEMERY

George Ellard
George Ellard
Associate Independent Counsel

Melissa G. Murphy
Melissa G. Murphy
Associate Independent Counsel

Date: June 16, 1993

We are counsel for THOMAS T. DEMERY. We have fully explained to MR. DEMERY his rights with respect to the offenses charged in the information appended hereto as Exhibit A. We have carefully reviewed every part of this Plea Agreement, including the appended Statement of Facts (Exhibit B) and the Stipulated Statement of Computation of Sentencing Guidelines Range (Exhibit C), with him. To our knowledge, his decision to enter into this Plea Agreement and to stipulate to the facts is informed and voluntary.

John P. Hume
John P. Hume, Esquire
Counsel for THOMAS T. DEMERY

6/16/93
Date

Martin P. Willard JH
Martin P. Willard
Counsel for THOMAS T. DEMERY

6/16/93
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	CRIMINAL NO. <u>92-227-SSH</u>
v.	)	Violations:
THOMAS T. DEMERY	)	18 U.S.C. § 201(c)(1)(B)
Defendant	)	(Illegal Receipt of a
	)	Thing of Value by a
	)	Public Official)
	)	18 U.S.C. § 1503
	)	(Obstructing the
	)	Administration
	)	of Justice)

CRIMINAL INFORMATION

THE UNITED STATES, BY AND THROUGH THE OFFICE OF INDEPENDENT COUNSEL, CHARGES THAT:

INTRODUCTION TO COUNTS

1. The United States Department of Housing and Urban Development ("HUD"), an agency and department of the United States, was created by Act of Congress to administer federal programs that provide assistance for housing and development of the nation's communities. 5 U.S.C. § 624. Among the programs administered by HUD pursuant to Section 8 of the United States Housing Act of 1937 were the following:

A) the Moderate Rehabilitation program, which was designed to stimulate rehabilitation of existing substandard rental housing and to provide rental subsidies for low income families living in the rehabilitated units. 42 U.S.C. § 1437(f).

B) the Loan Management Set-Aside ("LMSA") program, which was designed to reduce claims on HUD's insurance fund by aiding housing projects insured by the Federal Housing Administration or held by HUD that had immediate or potentially serious financial difficulties that might result in their default. 42 U.S.C. § 1439(d)(4); 24 C.F.R. § 886.101(c)(1987).

2. From in or about August of 1986 to January 28, 1989, the defendant THOMAS T. DEMERY served as HUD's acting and subsequently confirmed Assistant Secretary for Housing-Federal Housing Commissioner ("Assistant Secretary for Housing"). In such position, the defendant THOMAS T. DEMERY had the official responsibility for, and was the chief administrator of, the Moderate Rehabilitation and LMSA programs.

COUNT ONE

3. Paragraphs 1 B) and 2 of the Introduction to this Information are realleged and incorporated herein as though fully set forth in this Count.

4. At all times material herein, Seligman & Associates ("S & A") was headquartered in Bloomfield Hills, Michigan and was operated principally by Irving Seligman. S & A managed, through its affiliate, Scott Management Company of Royal Oak, Michigan (also referred to as "S & A"), the following multifamily housing projects for which S & A sought subsidies from HUD and of which Irving Seligman was a part owner:

- A) Southland I, a 424 unit project in Taylor, Michigan;
- B) Southland II, a 96 unit project in Taylor, Michigan;

and

C) Camelback Towers, a 254 unit project in Phoenix, Arizona.

5. From in or about June 26, 1987 and continuing thereafter up to and including October 31, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY, while a public official, and otherwise than as provided by law for the proper discharge of his official duties, did directly and indirectly, seek, receive and accept from Irving Seligman a thing of value personally, that is, \$100,000 through S & D Mortgage, an entity under the control of Irving Seligman, in the form of a second mortgage loan that provided terms and conditions far more favorable than the defendant THOMAS T. DEMERY could have obtained from sources of such funding usually available to the public, for and because of official acts performed and to be performed by him, including his official acts in connection with Irving Seligman's requests for LMSA funding for Southland I and II and Camelback.

(In Violation of Title 18, United States Code, Section 201(c)(1)(B)).

COUNT TWO

6. Paragraphs 1 A) and 2 of the Introduction to this Information are realleged and incorporated herein as though fully set forth in this Count.

7. From in or about March of 1982 through in or about January of 1988 a group of persons who at various times referred to themselves as the Winn Group (the "Winn Group") and who were headquartered in Denver, Colorado, were principally led by Philip

D. Winn. Various members of the Winn Group formed a number of real estate partnerships to acquire and develop low-income housing projects.

8. At various times material herein, members of the Winn Group had an interest in obtaining HUD subsidies for their projects, including Moderate Rehabilitation program funding for the Richland Manor and North Trace projects in Richland, Washington and the Fox Run project in Victoria, Texas.

9. Beginning in or about October 20, 1987, within the District of Columbia and elsewhere, the defendant THOMAS T. DEMERY, in response to requests by Philip D. Winn, took official acts to direct HUD Moderate Rehabilitation funding to public housing authorities in Richland, Washington and Victoria, Texas.

10. From on or about December 28, 1987, through and including January 3, 1988, within the District of Colorado, the defendant THOMAS T. DEMERY and his family stayed at a condominium in Vail, Colorado partly owned by Philip D. Winn, and used a vehicle owned by Philip D. Winn.

11. The defendant THOMAS T. DEMERY never paid for the use of the Vail condominium partly owned by Philip D. Winn or for the use of the vehicle owned by Philip D. Winn.

12. From on or about May 15, 1990, and continuing up to the present time, a grand jury and its successor grand juries duly impaneled and sworn in the United States District Court for the District of Columbia, were conducting an investigation into possible violations of United States laws prohibiting, among other

matters, the demand and offer of bribes and gratuities (18 U.S.C. § 201) and conspiracy to defraud the United States and HUD of the impartial conduct of HUD's business free from deception, fraud and improper and undue influence (18 U.S.C. § 371).

13. It was material to this grand jury investigation to determine, among other matters, whether the defendant THOMAS T. DEMERY, in his position as HUD Assistant Secretary for Housing, was aware of the identity of developers and consultants who had sought or obtained Section 8 Moderate Rehabilitation program funding and whether the defendant THOMAS T. DEMERY had been influenced by those developers and consultants.

14. As the defendant THOMAS T. DEMERY well knew, the grand jury duly issued and caused to be served on him a subpoena duces tecum dated May 18, 1990 which directed the defendant THOMAS T. DEMERY to return documents to the grand jury on June 13, 1990, including but not limited to the following:

6. All documents relating to any of the persons (other than yourself) listed on Exhibits A or B hereto.

Among the names listed on the attached Exhibits was that of Philip Winn.

15. On or about July 13, 1990, within the District of Columbia, the defendant THOMAS T. DEMERY caused to be returned to the grand jury a receipt falsely stating as follows:

Received 500 Dollars Cash from Thomas Demery on February 14, 1988 for the use of Scorpio Condominium unit in Vail, Colorado from December 28, 1987 to January 3, 1988.

16. On or about July 13, 1990, within the District of

Columbia, the defendant THOMAS T. DEMERY corruptly influenced, obstructed and impeded and endeavored to influence, obstruct and impede the due administration of justice by causing the document described in paragraph 15 to be returned to the grand jury.

(In Violation of Title 18, United States Code, Section 1503)

Respectfully Submitted,
OFFICE OF INDEPENDENT COUNSEL

Arlin M. Adams
ARLIN M. ADAMS
INDEPENDENT COUNSEL | by D.E.

Dated: June 17, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

THOMAS T. DEMERY

)
)
) Criminal No. 92-0227-SSH
)
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)

STATEMENT OF FACTS

Were the United States to proceed to trial in this case, it would prove the following beyond a reasonable doubt:

I. HUD Programs and The Defendant THOMAS T. DEMERY

1. The United States Department of Housing and Urban Development ("HUD"), an agency and department of the United States, was created by Act of Congress to administer federal programs that provide assistance for housing and development of the nation's communities. 5 U.S.C. § 624. Among the programs administered by HUD pursuant to Section 8 of the United States Housing Act of 1937 were the following:

A) the Moderate Rehabilitation program, which was designed to stimulate rehabilitation of existing substandard rental housing and to provide rental subsidies for low income families living in the rehabilitated units. 42 U.S.C. § 1437(f).

B) the Loan Management Set-Aside ("LMSA") program, which was designed to reduce claims on HUD's insurance fund by aiding housing projects insured by the Federal Housing Administration or

held by HUD that had immediate or potentially serious financial difficulties that might result in their default. 42 U.S.C. § 1439(d)(4); 24 C.F.R. § 886.101(c)(1987).

2. From in or about August of 1986 to January 28, 1989, the defendant DEMERY served as HUD's acting and subsequently confirmed Assistant Secretary for Housing-Federal Housing Commissioner ("Assistant Secretary for Housing"). In such position, the defendant DEMERY had the official responsibility for, and was the chief administrator of, the Moderate Rehabilitation and LMSA programs.

II. Irving Seligman, Seligman & Associates and S & D Mortgage

A. The Seligman Properties

3. Seligman & Associates ("S & A") was headquartered in Bloomfield Hills, Michigan and was operated principally by Irving Seligman. S & A managed, through its affiliate, Scott Management Company of Royal Oak, Michigan (also referred to as "S & A"), the following multifamily housing projects for which S & A sought subsidies from HUD and in which Irving Seligman was a part owner:

- A) Southland I, a 424 unit project in Taylor, Michigan;
- B) - Southland II, a 96 unit project in Taylor, Michigan;

and

- C) Camelback Towers, a 254 unit project in Phoenix, Arizona.

4. S & D Mortgage Company ("S & D") was headquartered initially at Southfield, Michigan and then at Bloomfield Hills, Michigan and was operated principally by Irving Seligman. S & D

engaged in the business of lending funds to various partnerships and other entities in which S & A and others closely associated with S & A held ownership interests for the purpose of developing real estate, including multi-family properties.

B. The \$100,000 Second Mortgage to the Defendant

5. On June 26, 1987 the defendant DEMERY sent to Irving Seligman a piece of correspondence on his HUD letterhead that stated "Here is a copy of the appraisal we had discussed" and that enclosed an appraisal of the value of his personal residence.

6. On July 1, 1987 Irving Seligman sent to the defendant DEMERY a letter on blank letterhead that enclosed the following: a second deed of trust on the defendant DEMERY's personal residence, showing that S & D was securing an interest in the defendant DEMERY's residence for \$100,000; a note for the \$100,000 between S & D and the defendant DEMERY and his wife; and a check for \$50,000 made payable to the defendant DEMERY and his wife as a first installment payment of the loan.

7. On July 3, 1987 the defendant DEMERY caused \$49,900 of the \$50,000 check, which he had endorsed, to be deposited into a personal bank account in the names of himself and his wife.

8. On July 7, 1987 the defendant DEMERY signed the note referred to in paragraph 7 above.

9. Among other provisions, the loan provided for a rate of interest at prime, no payment of "points" or fees to be made at closing and no payment toward principal until the end of the loan's term. The defendant DEMERY knew that the terms as to interest rate

and lack of points and fees could not be obtained from sources of funding available to the public.

10. Throughout the term of the loan, S & D did not record the loan and did not require that the loan be accelerated or that penalties be charged when the defendant DEMERY failed to make timely payments on the loan.

11. On August 17, 1987 Irving Seligman sent to the defendant DEMERY at his HUD office a letter on S & A's letterhead marked "PERSONAL & CONFIDENTIAL," which contained a check for \$30,000 made payable to the defendant DEMERY and his wife.

12. On or about August 19, 1987 the defendant DEMERY, who had endorsed the check for \$30,000 referred to in paragraph 11 above, caused it to be deposited into a personal bank account in the names of himself and his wife.

13. On or about November 5, 1987 a representative of S & D sent to the defendant DEMERY a piece of correspondence on the letterhead of S & A, which correspondence contained the salutation "Dear Tom", noted that the defendant DEMERY owed \$1,405.41 in interest and stated and inquired by separate attachment as follows:

Tom,

You were out of town when this was due -- then I forgot about it. Do you want this sent to your office in the future?

14. On November 14, 1987 the defendant DEMERY sent to a representative of S & D a piece of correspondence on his HUD letterhead, which requested that all future correspondence be directed to his home and which contained a check made payable to S

& D for \$1,405.41.

15. On January 19, 1988 a representative of S & D sent to the defendant DEMERY a form disclosing that the defendant DEMERY had paid S & D \$1,405.41 in mortgage interest during 1987.

16. On February 10, 1988 Irving Seligman sent to the defendant DEMERY a piece of correspondence on the letterhead of S & A, which correspondence contained the salutation "Dear Tom" and enclosed a check for \$20,000 made payable to the defendant DEMERY and his wife.

17. On February 22, 1988 the defendant DEMERY, who had endorsed the check for \$20,000 referred to in paragraph 16 above, caused the check to be deposited into a personal bank account in the names of himself and his wife.

18. On September 23, 1988 a representative of S & D sent the defendant DEMERY a piece of correspondence containing the salutation "Dear Tom", notified him that as of September 23, 1988, a total of \$8,290.57 in interest was due as of that date and stated as follows:

It has been brought to my attention that I neglected to contact you concerning interest due on the above loan. According to our records, interest has been paid through October 1, 1987.

19. On October 11, 1988 a representative of S & D sent the defendant DEMERY a piece of correspondence containing the salutation "Dear Tom" and notified him that the total interest due as of October 1, 1988, was \$8,485.01.

20. On November 1, 1988 the defendant DEMERY caused to be

sent to S & D a check for \$8,485.01 drawn on a personal account in the names of himself and his wife.

21. On January 17, 1989 a representative of S & D sent the defendant DEMERY a letter stating that he owed \$2,567.38 in interest.

22. On January 27, 1989 the defendant DEMERY caused to be sent to S & D a check for \$2,567.38 drawn on a personal bank account in the names of himself and his wife.

C. LMSA Benefits to S & A Related Project.

1. Southland I & II

23. On August 20, 1986 a representative of S & A requested that HUD award 200 units of LMSA subsidies to Southland I, to be added to 153 units of subsidies that HUD had previously awarded to Southland I.

24. On December 17, 1986 at the direction of the defendant DEMERY, HUD headquarters officials took steps to direct LMSA subsidies to Southland I & II.

25. On February 17, 1987 the defendant DEMERY directed that a memorandum be created justifying the award of 230 units of LMSA subsidies to be made to Southland I & II from HUD discretionary funds under his control.

26. On February 27, 1987 at the direction of the defendant DEMERY, HUD headquarters officials took administrative steps to make available for use on Southland I 100 units of the 200 units of LMSA subsidies that the defendant DEMERY had approved for use on Southland I and to make available for use on Southland II the 30

units of LMSA subsidies that the defendant DEMERY had approved.

27. On March 19, 1987 the defendant DEMERY directed a HUD headquarters official to take further administrative steps to make 100 units of LMSA subsidies available for use on Southland I and 30 units of LMSA subsidies available for use on Southland II.

28. On March 26, 1987 the defendant DEMERY notified the HUD Regional Administrator whose region covered the Taylor, Michigan area that the region's yearly contract authority and overall budget authority for Southland I & II had been increased as follows, thereby bringing the total number of units for eligible tenants subsidized by HUD to 253 for Southland I and to 78 for Southland II:

<u>Project</u>	<u>Units</u>	<u>Yearly Amount</u>	<u>Overall (5 year) Amount</u>
Southland I	100	\$ 325,416	\$ 1,627,080
Southland II	<u>30</u>	<u>101,220</u>	<u>506,100</u>
TOTAL	130	\$ 426,636	\$ 2,133,180

29. On August 14, 1987 a representative of S & A requested that HUD award it an additional 72 units of LMSA subsidies for Southland I beyond those granted as set forth in paragraph 28 above.

30. On September 23, 1987 Irving Seligman sent a letter to a HUD headquarters official serving as an aide to the defendant DEMERY requesting that HUD grant 101 units of Section 8 funding for Southland I and 20 units of Section 8 funding for Southland II, which units would have been in addition to those previously granted.

31. On December 28, 1987 a representative of S & A requested that HUD award it an additional 86 units of LMSA subsidies for Southland I beyond those granted as set forth in paragraph 28 above.

32. On January 5, 1988 a representative of S & A increased its request for additional units of LMSA subsidies for Southland I from 86 to 150 units.

33. On April 11, 1988 a representative of S & A requested that HUD award it an additional 171 units of LMSA subsidies for Southland I, notwithstanding that S & A had been advised on or about February 22, 1988, by the HUD area office in Detroit, Michigan that its requests for additional units of LMSA subsidies, including those set forth in paragraphs 31 and 32 above, had been rejected because they did not meet criteria for additional funding as dictated by HUD headquarters and federal regulations governing the LMSA program.

34. Between February 22, 1988 and September 30, 1988, the exact date being unknown, at the direction of the defendant DEMERY, a HUD headquarters official directed a HUD regional official to take action that resulted in the inflation of Southland I's rating such that it would become ranked within a level justifying an award of LMSA subsidies from funds not subject to the discretionary control of the defendant DEMERY.

35. On September 30, 1988 an aide to the defendant DEMERY, on behalf of the defendant DEMERY, directed HUD headquarters officials to use non-discretionary funds to increase Southland I's yearly

contract authority by \$731,316 and its overall budget authority covering a 15-year period by \$10,969,740, thereby approving an increase of 171 units for eligible tenants of LMSA subsidies for Southland I.

2. Camelback

36. On April 20, 1987 a representative of S & A called a HUD area official in Phoenix, Arizona to request that HUD award Section 8 subsidies for Camelback.

37. On May 1, 1987 a representative of S & A applied to the HUD area office in Phoenix, Arizona for an award of Section 8 subsidies for 150 units for housing elderly persons in the Camelback project.

38. On June 24, 1987 a representative of S & A sent a request to HUD headquarters that HUD review S & A's application for HUD subsidies, S & A having received a written rejection on or about May 20, 1987, from the HUD area office of its application for subsidies referred to in paragraph 37 above because Camelback did not fulfill requirements for the award of such subsidies.

39. On July 28, 1987 the Director of HUD's Office of Multifamily Housing Management, an office under the direction of the defendant DEMERY, sent to S & A a written rejection for its application for Section 8 subsidies for Camelback.

40. On July 30, 1987 Irving Seligman met with the defendant DEMERY, first for lunch and then for a meeting in the office of the defendant DEMERY.

41. On September 23, 1987 Irving Seligman requested that an

aide to the defendant DEMERY at HUD headquarters award Camelback 100 units of Section 8 funding.

42. On September 30, 1987 the defendant DEMERY authorized the grant of 75 units of LMSA subsidies from discretionary funds controlled by him, to Camelback in the amount of \$347,625 for the year commencing January 1, 1988, and a total of \$1,738,125 over a five year period beginning in January 1988.

43. On December 21, 1987 Irving Seligman signed a Housing Assistance Payments Contract with HUD, which formally committed HUD to make payments of the LMSA subsidies for eligible tenants set forth in paragraph 42 above.

III. The Winn Group

A. Winn Group Interests

44. From approximately March of 1982 through approximately January of 1988 a group of persons who at various times referred to themselves as the Winn Group (the "Winn Group") and who were headquartered in Denver, Colorado, were principally led by Philip D. Winn. Various members of the Winn Group formed a number of real estate partnerships to acquire and develop low-income housing projects located primarily in the central and western portions of the country. Silvio DeBartolomeis was a member of the Winn Group and a business associate of Philip D. Winn.

45. At various times material herein, members of the Winn Group had an interest in obtaining HUD subsidies for their projects, including Moderate Rehabilitation program funding for the Richland Manor and North Trace projects in Richland, Washington and

the Fox Run project in Victoria, Texas.

B. The Free Use of the Condominium

46. On or about June 12, 1987 the defendant DEMERY requested that a condominium in Vail, Colorado partly owned by Philip D. Winn be made available for his use for the Christmas/New Year's period in 1987/1988.

47. On October 22, 1987 Philip D. Winn directed Silvio DeBartolomeis, a member of the Winn Group, to show the condominium to the defendant DEMERY.

48. On October 22, 1987 following the direction given by Philip D. Winn as set forth above in paragraph 47 above, Silvio DeBartolomeis showed the condominium to the defendant DEMERY.

49. On December 18, 1987 Silvio DeBartolomeis discussed with the defendant DEMERY arrangements for the use of the condominium.

50. On a day in December of 1987 just prior to December 28, 1987, Philip D. Winn told Silvio DeBartolomeis to meet the defendant DEMERY and his family at the airport in Denver, Colorado in a vehicle owned by Philip D. Winn and to give the vehicle to the defendant DEMERY for his use during the holiday.

51. On or about December 28, 1987 Silvio DeBartolomeis met the defendant DEMERY and his family at the airport in Denver, Colorado and placed the vehicle owned by Philip D. Winn at the disposal of the defendant DEMERY.

52. From December 28, 1987 through January 3, 1988 the defendant DEMERY and his family stayed at the condominium in Vail, Colorado partly owned by Philip D. Winn, and used the vehicle owned

by Philip D. Winn.

53. On January 18, 1988 Philip D. Winn caused an invoice charging \$500.00 for the use of the condominium partly owned by Philip D. Winn to be sent to the defendant DEMERY.

54. The defendant DEMERY never paid for the use of the condominium partly owned by Philip D. Winn or for the use of the vehicle owned by Philip D. Winn.

C. Moderate Rehabilitation Program
Funds to the Winn Group

55. On or about September 21, 1987 Philip D. Winn requested that the defendant DEMERY direct Moderate Rehabilitation program subsidies to public housing authorities ("PHAs") serving the areas of Richland, Washington and Victoria, Texas, the Winn Group having obtained interests in housing projects in these jurisdictions for which the Winn Group intended to seek such subsidies through the respective PHAs.

56. On October 20, 1987 the defendant DEMERY discussed with the Secretary of HUD the grant of Moderate Rehabilitation program subsidies to, among other PHAs, the PHAs serving Richland, Washington and Victoria, Texas.

57. On October 22, 1987 the defendant DEMERY discussed the funding of Winn Group projects with Silvio DeBartolomeis.

58. On November 23, 1987 the defendant DEMERY discussed with the Secretary of HUD the grant of Moderate Rehabilitation program subsidies to, among other PHAs, the PHAs serving Richland, Washington and Victoria, Texas.

1. Richland Manor & North Trace - Richland, Washington

59. On January 29, 1988 the defendant DEMERY directed a HUD headquarters official to fund 158 units of Moderate Rehabilitation program subsidies for the PHA serving Richland, Washington.

60. On February 2, 1988 the defendant DEMERY signed a document that authorized funding for 158 units of Moderate Rehabilitation program subsidies for the PHA serving Richland, Washington.

61. On February 4, 1988 the defendant DEMERY notified the HUD regional administrator who had jurisdiction over the PHA serving Richland, Washington that Moderate Rehabilitation program subsidies for the PHA had been authorized for 158 units, resulting in \$1,274,112 in contract authority for one year's funding and in \$19,111,680 budgeted authority for 15 years' funding.

2. Fox Run - Victoria, Texas

62. On July 8, 1988 the defendant DEMERY directed a HUD headquarters official to authorize the funding of 150 units of Moderate Rehabilitation program subsidies for the PHA serving Victoria, Texas.

63. On July 20, 1988 the defendant DEMERY notified the HUD Regional Administrator who had jurisdiction over the PHA serving Victoria, Texas that Moderate Rehabilitation program subsidies for the PHA had been authorized for 150 units, resulting in \$1,130,400 in contract authority for one year's funding and in \$16,956,000 budgeted authority for 15 years' funding.

D. The Receipt

64. In May, 1988, the exact date being unknown, the defendant DEMERY called Silvio DeBartolomeis to demand that he supply a false receipt stating that the defendant DEMERY had paid \$500.00 for the use of the condominium at Vail, Colorado.

65. In or about the same discussion set forth above in paragraph 64 above, the defendant DEMERY told Silvio DeBartolomeis that he expected to be interviewed, or that he had already been interviewed, by agents from the HUD Office of Inspector General regarding his stay at the Vail condominium, and that he needed this receipt to support his statements to the agents.

66. A short time after the discussion set forth in paragraphs 64 and 65 above, Silvio DeBartolomeis supplied the defendant DEMERY with a receipt falsely stating as follows:

Received 500 Dollars Cash from Thomas Demery on February 14, 1988 for the use of Scorpio Condominium unit in Vail, Colorado from December 28, 1987 to January 3, 1988.

E. The Grand Jury Investigation

67. A federal grand jury sitting in the District of Columbia issued and caused to be served on the defendant DEMERY a subpoena duces tecum dated May 18, 1990 that directed the defendant DEMERY to return documents to the grand jury on June 13, 1990, including but not limited to the following:

6. All documents relating to any of the persons (other than yourself) listed on Exhibits A or B hereto.

Among the names listed on the attached Exhibits was that of Philip Winn.

68. On July 13, 1990 the defendant DEMERY caused to be returned to the grand jury the document described in paragraph 66 above, that is, a receipt falsely stating as follows:

Received 500 Dollars Cash from Thomas Demery on February 14, 1988 for the use of Scorpio Condominium unit in Vail, Colorado from December 28, 1987 to January 3, 1988.

Respectfully submitted,

Arlin M. Adams / by D.E.
Arlin M. Adams
Independent Counsel

David Eisenberg
David Eisenberg
Associate Independent Counsel

George Ellard
George Ellard
Associate Independent Counsel

Melissa G. Murphy
Melissa G. Murphy
Associate Independent Counsel

Date: June 16, 1993

Seen and Agreed, this date, the 16 day of June, 1993:

Thomas T. Demery
THOMAS T. DEMERY

John P. Hume
John P. Hume, Esquire
Counsel for the Defendant
THOMAS T. DEMERY

Martin P. Willard SJH
Martin P. Willard, Esquire
Counsel for the Defendant
THOMAS T. DEMERY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

THOMAS T. DEMERY

Criminal No. 92-0227-SSH

STIPULATED STATEMENT OF COMPUTATION
OF SENTENCING GUIDELINES RANGE

1. Count Two (Obstruction of Justice - 18 U.S.C. § 1503)

§ 2J1.2(a) Base Offense Level 12

* * * *

2(b)(2) Specific Offense Characteristic:
Substantial Interference with
the Administration of Justice
-- due to Unnecessary
Expenditure of Substantial
Governmental and Court Resources 3

§ 3E1.1 Acceptance of Responsibility (2)

Total Offense Level 13

2. Count One (Accepting and Receiving a Gratuity -
18 U.S.C. § 201(c)(1)(B))

§ 2C1.2(a) Base Offense Level 7

* * * *

2(b)(2) Specific Offense Characteristic:
Gratuity Given to an Official
Holding a High Level Decision-
making or Sensitive Position 8

§ 3E1.1 Acceptance of Responsibility (2)

Total Offense Level 13

United States v. Thomas T. Demery
Criminal No. 92-0227-SSH
Exhibit C