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2 MARY ANN McCARTHY
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3 Fraud Section, Criminal Division
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5 (202) 598-2240

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

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9
10 UNITED STATES OF AMERICA,)
11 Plaintiff,) CASE NO.
12 v.) ADDENDUM TO PLEA
13 BRIAN JONES,) MEMORANDUM
14 Defendant.)

15
16 The United States of America, by and through Charles G. La Bella, Deputy Chief, and
17 Mary Ann McCarthy, Trial Attorney, U.S. Department of Justice, Criminal Division, Fraud
18 Section, the defendant, BRIAN JONES, and the defendant's attorney, Chris Aaron, submit this
19 Addendum to the Plea Memorandum, which was signed by the defendant on November 14, 2011.

20 **I. GROUP PLEA/PACKAGE PLEA AGREEMENT**

21 This agreement is contingent on at least five (5) of the thirteen (13) co-defendants,
22 **ROSALIO ALCANTAR, PATRICK BERGSRUD, ROBERT BOLTEN, GLENN BROWN,**
23 **PAUL CITELLI, MICHELLE DELUCA, CHARLES HAWKINS, SAMI ROBERT**
24 **HINDIYEH, LISA KIM, MORRIS MATTINGLY, ARNOLD MYERS, ANTHONY ROY**
25 **WILSON, and JEANNE WINKLER** successfully entering their guilty pleas together with
26 Defendant **BRIAN JONES**, and that all pleas are accepted by the Court.

27 The United States and the defendant have agreed to the following additions to the Plea

1 Memorandum, which are not binding on the court:

2 1. The United States will make a recommendation that the defendant receive a 1-
3 level downward adjustment from the defendant's base offense level for Defendant BRIAN JONES
4 and at least four (4) other co-defendants' group plea pursuant to Title 18, United States Code,
5 Section 3553(b), on the condition that the co-defendants' change of pleas are entered and
6 conditionally accepted by the Court on or before the defendant's sentencing hearing.

7 2. The United States will make a recommendation that the defendant receive a 2-
8 level downward adjustment from the defendant's base offense level for Defendant BRIAN JONES
9 and at least eleven (11) other co-defendants' group plea pursuant to Title 18, United States Code,
10 Section 3553(b), on the condition that the co-defendants' change of pleas are entered and
11 conditionally accepted by the Court on or before the defendant's sentencing hearing.

12 3. The United States will make a recommendation that the defendant receive a 3-
13 level downward adjustment from the defendant's base offense level for Defendant BRIAN JONES
14 and at least seventeen (17) other co-defendants' group plea pursuant to Title 18, United States
15 Code, Section 3553(b), on the condition that the co-defendants' change of pleas are entered and
16 conditionally accepted by the Court on or before the defendant's sentencing hearing.

17 4. The defendant acknowledges that no more than a total of 3-levels will be
18 recommended for a group plea reduction. If less than five defendants enter guilty pleas, the
19 Government will not make any motion for a group plea downward departure.

20 **II. ACKNOWLEDGMENT**

21 5. Defendant acknowledges that this agreement is in addition to the original Plea
22 Memorandum, signed by the defendant on November 14, 2011, and the provisions of the original
23 Plea Memorandum still apply.

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1 6. Defendant acknowledges by the Defendant's signature below that Defendant has
2 read this Addendum to the Plea Memorandum, that Defendant understands the terms and
3 conditions set forth herein, and that Defendant has discussed these matters with Defendant's
4 attorney.

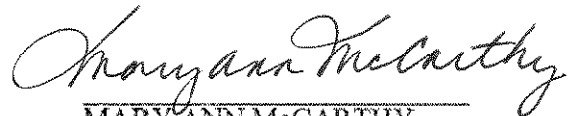
5 7. Defendant acknowledges that Defendant is, in all respects, satisfied by the
6 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
7 the defendant the burdens and benefits of this agreement.

8 8. Defendant, Defendant's attorney, and the attorney for the United States
9 acknowledge that the Plea Memorandum and this Addendum to the Plea Memorandum contains
10 the entire agreement negotiated and agreed to by and between the parties, and that no other promise
11 has been made or implied by either the Defendant, Defendant's attorney, or the attorney for the
12 United States.

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14 DENIS J. McINERNEY
15 Chief
16 United States Department of Justice,
17 Criminal Division, Fraud Section

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2/16/2012
DATED

CHARLES LA BELLA
Deputy Chief



MARY ANN McCARTHY
Trial Attorney
United States Department of Justice
Criminal Division, Fraud Section

2/14/12
DATED



BRIAN JONES
Defendant

2/15/12
DATED



CHRIS AARON
Defense Counsel

1 CHARLES G. LA BELLA
Deputy Chief
2 NICOLE SPRINZEN
MARY ANN McCARTHY
3 Trial Attorneys
Fraud Section, Criminal Division
4 U.S. Department of Justice
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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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11 UNITED STATES OF AMERICA,)
12 Plaintiff,) CASE NO.
13 v.) **PLEA MEMORANDUM**
14 BRIAN JONES,)
15 Defendant.)
16

17 The United States of America, by and through Charles G. La Bella, Deputy Chief, and
18 Nicole Sprinzen and Mary Ann McCarthy, Trial Attorneys, U.S. Department of Justice, Criminal
19 Division, Fraud Section, the defendant, BRIAN JONES, and the defendant's attorney, Chris Aaron,
20 submit this Plea Memorandum.

21 **I. PLEA AGREEMENT**

22 The United States and the defendant have reached the following plea agreement, which is
23 not binding on the court:

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1 **A. The Plea**

2 1. Defendant will plead guilty to Count One of the information, charging Defendant
3 with conspiracy to commit wire and mail fraud, in violation of Title 18, United States Code,
4 Section 1349. Defendant also agrees to pay restitution and to the forfeiture of the property set forth
5 in this Plea Memorandum.

6 **B. Additional Charges**

7 2. The U.S. Department of Justice, Criminal Division, Fraud Section, agrees to bring
8 no additional criminal charges in the District of Nevada against the defendant relating to or arising
9 from the offenses charged in the information, except for any crime of violence and any crime
10 unknown to the Fraud Section before the time the parties sign this Plea Memorandum.

11 **C. Sentencing Guideline Calculations**

12 3. Defendant understands that the Court is required to consider United States
13 Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) among other factors in
14 determining the defendant’s sentence. Defendant understands that the Sentencing Guidelines are
15 advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise its
16 discretion to impose any reasonable sentence up to the maximum set by statute for the crime of
17 conviction.

18 4. The parties agree that the following calculations of the United States Sentencing
19 Guidelines (2010) apply:

20	Base Offense Level (U.S.S.G. §2B1.1(a)):	7
21		
22	Loss Amount of \$5,000 to \$10,000 (U.S.S.G. §2B1.1(b)(1)(B)):	2
23		
24	Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(c)):	2
25		
25	Abuse of a Position of Trust (U.S.S.G. §3B1.3)	2
26		
26	TOTAL	13

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1 5. Pursuant to U.S.S.G. §3E1.1(a), the United States will recommend that the
2 defendant receive a two (2) level downward adjustment for acceptance of responsibility unless
3 Defendant (a) fails to make a complete factual basis for the guilty plea at the time it is entered; (b)
4 is untruthful with the Court or probation officers in any respect, including, without limitation,
5 financial information; (c) denies involvement in the offense or provides conflicting statements
6 regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in
7 criminal conduct; (f) fails to appear in court; or (g) violates the conditions of Defendant's pretrial
8 release conditions.

9 6. Defendant's Criminal History Category will be determined by the court.

10 **D. Other Sentencing Matters**

11 7. The parties agree that the Sentencing Guideline calculations are based on
12 information now known and could change upon investigation by the United States Probation
13 Office. It is possible that factors unknown or unforeseen by the parties to the Plea Memorandum
14 may be considered in determining the offense level, specific offense characteristics, and other
15 related factors. In that event, the defendant will not withdraw his plea of guilty. Both the
16 defendant and the United States are free to: (a) supplement the facts by supplying relevant
17 information to the United States Probation Office and the Court, and (b) correct any and all factual
18 inaccuracies relating to the calculation of the sentence.

19 8. The stipulations in this agreement do not bind either the United States Probation
20 Office or the Court. Both Defendant and the United States are free to: (a) supplement the facts by
21 supplying relevant information to the United States Probation Office and the Court, and (b) correct
22 any and all factual inaccuracies relating to the calculation of the sentence.

23 **E. Fines and Special Assessment**

24 9. Defendant agrees that the Court may impose a fine due and payable immediately
25 upon sentencing.

1 10. Defendant will pay the special assessment of \$100 per count of conviction at the
2 time of sentencing.

3 **F. Restitution**

4 11. Defendant agrees to make restitution to the HOA communities for which he
5 engaged as a “special election master” in furtherance of this scheme, described below in Section
6 IV. Defendant understands and agrees that this amount could be as much as \$10,000, which is the
7 amount he received as a “loan” from co-conspirators for his involvement in the conspiracy, but
8 which the co-conspirators did not intend to collect and the defendant did not intend to repay.
9 Defendant understands that any restitution imposed by the Court may not be discharged in whole
10 or in part in any present or future bankruptcy proceeding.

11 **G. Forfeiture**

12 12. The parties agree that the government will not request that the Court require
13 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless
14 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the total
15 amount of the “loan” he received in connection with his involvement in the scheme, and in no
16 event more than \$10,000. In the event of any order by the Court that Defendant shall pay
17 forfeiture, the Defendant knowingly and voluntarily agrees to the following:

- 18 a. to abandon or to forfeit the property to the United States;
- 19 b. to relinquish all right, title, and interest in the property;
- 20 c. to waive his right to any abandonment proceedings, any civil administrative
21 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
22 proceedings (“proceedings”) of the property;
- 23 d. to waive service of process of any and all documents filed in this action or any
24 proceedings concerning the property arising from the facts and circumstances of this case;
- 25 e. to waive any further notice to the defendant, the defendant’s agents, or the
26 defendant’s attorney regarding the abandonment or the forfeiture and disposition of the property;

1 f. not to file any claim, answer, petition, or other documents in any proceedings
2 concerning the property;

3 g. to waive the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.
4 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any
5 abandonment proceeding or any forfeiture proceeding concerning the property;

6 h. to waive the defendant's right to a jury trial on the forfeiture of the property;

7 i. to waive (a) all constitutional, legal, and equitable defenses to, (b) any
8 constitutional or statutory double jeopardy defense or claim concerning, and (c) any claim or
9 defense under the Eighth Amendment to the United States Constitution, including, but not limited
10 to, any claim or defense of excessive fine in any proceedings concerning the property; and

11 j. to the entry of an Order of Forfeiture of the property to the United States.

12 13. Defendant knowingly and voluntarily agrees and understands the abandonment,
13 the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the
14 property shall not be treated as satisfaction of any assessment, fine, restitution, cost of
15 imprisonment, or any other penalty this Court may impose upon the defendant in addition to the
16 abandonment or the forfeiture.

17 **H. Waiver of Appeal**

18 14. In exchange for the concessions made by the United States in this Plea
19 Memorandum, Defendant knowingly and expressly waives the right to appeal any sentence that is
20 imposed within the applicable Sentencing Guideline range as calculated by the Court, further
21 waives the right to appeal the manner in which that sentence was determined on the grounds set
22 forth in Title 18, United States Code, Section 3742, and further waives the right to appeal any other
23 aspect of the conviction or sentence, including any order of restitution and forfeiture. Defendant
24 reserves only the right to appeal any portion of the sentence that is an upward departure from the
25 applicable Sentencing Guideline range calculated by the Court.

1 15. Defendant also waives all collateral challenges, including any claims under Title
2 18, United States Code, Section 2255, to the defendant's conviction, sentence and the procedure by
3 which the Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective
4 assistance of counsel.

5 **I. Additional Promises, Agreements, and Conditions**

6 16. In exchange for the United States entering into this memorandum, Defendant
7 agrees that (a) the facts set forth in Section IV of this Plea Memorandum shall be admissible
8 against the defendant under Fed. R. Evid. 801(d)(2)(A) in the following circumstances: (i) for any
9 purpose at sentencing; and (ii) in any subsequent proceeding, including a trial in the event the
10 defendant does not plead guilty or withdraws the defendant's guilty plea, to impeach or rebut any
11 evidence, argument or representation offered by or on the defendant's behalf; and (b) the defendant
12 expressly waives any and all rights under Fed. R. Criminal P. 11(f) and Fed. R. Evid. 410 with
13 regard to the facts set forth in Section IV of the Plea Memorandum to the extent set forth above.

14 17. The parties agree that no promises, agreements, and conditions have been entered
15 into other than those set forth in this Plea Memorandum, and will not be entered into unless in
16 writing and signed by all parties.

17 **J. Limitations**

18 18. This Plea Memorandum is limited to the Criminal Division of the United States
19 Department of Justice and cannot bind any other federal, state or local prosecuting, administrative,
20 or regulatory authority. But, this Plea Memorandum does not prohibit the United States through
21 any agency thereof, the Criminal Division of the United States Department of Justice, or any third
22 party from initiating or prosecuting any civil proceeding directly or indirectly involving the
23 defendant, including but not limited to, proceedings under the False Claims Act relating to
24 potential civil monetary liability or by the Internal Revenue Service relating to potential tax
25 liability.

1 **K. Cooperation**

2 19. Defendant agrees, if requested by the United States, to provide complete and
3 truthful information and testimony concerning Defendant's knowledge of all other persons who are
4 committing or have committed offenses against the United States or any state, and agrees to
5 cooperate fully with the United States in the investigation and prosecution of such persons.

6 20. In the event the government decides in its sole discretion that the assistance
7 provided by Defendant amounts to "substantial assistance" pursuant to U.S.S.G. § 5K1.1, the
8 United States will timely file a motion for downward departure from the applicable Guideline
9 calculation. The Court has the sole discretion to grant such a motion.

10 21. Defendant agrees that a motion for downward departure based on substantial
11 assistance shall not be made under any circumstances unless Defendant's cooperation is deemed to
12 be substantial assistance by the government. The United States has made no promise, implied or
13 otherwise, that Defendant will be granted a departure for substantial assistance. Further, no
14 promise has been made that such a motion will be made even if Defendant complies with the terms
15 of this Plea Memorandum in all respects but has been unable to provide substantial assistance as
16 determined in the sole discretion of the government.

17 22. The United States agrees to consider the totality of the circumstances, including,
18 but not limited to, the following factors, in determining whether, in the sole discretion of the
19 government, Defendant has provided substantial assistance which would merit a motion by the
20 United States for a downward departure from the applicable Guideline:

21 a. The United States' evaluation of the significance and usefulness of Defendant's
22 assistance;

23 b. The truthfulness, completeness, and reliability of any information or testimony
24 provided by Defendant;

25 c. The nature and extent of Defendant's assistance;

26 d. The truthfulness and completeness in disclosing and bringing to the attention of
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1 the Government all crimes which Defendant has committed and all administrative, civil, or
2 criminal proceedings, investigations, and prosecutions in which she has been or is a subject, target,
3 party, or witness;

4 e. The truthfulness and completeness in disclosing and providing to the Government,
5 upon request, any document, record, or other evidence relating to matters about which the
6 Government or any designated law enforcement agency inquiries, including but not limited to,
7 Defendant's personal finances;

8 f. Any injury suffered, or any danger or risk of injury to Defendant or Defendant's
9 family resulting from defendant's assistance; and,

10 g. The timeliness of Defendant's assistance.

11 23. Defendant agrees that in the event the United States files a downward departure
12 motion based upon Defendant's substantial assistance, the United States reserves the right to make
13 a specific recommendation to the Court regarding the extent of such a departure. Defendant
14 understands and agrees that the final decision as to how much of a departure, if any, is warranted
15 rests solely with the Court.

16 **L. Breach**

17 24. Defendant agrees that if Defendant, at any time after the signature of this Plea
18 Memorandum and execution of all required certifications by Defendant, Defendant's counsel, and
19 an attorney for the government, knowingly violates or fails to perform any of Defendant's
20 obligations under this Memorandum ("a breach"), the government may declare this Memorandum
21 breached. All of Defendant's obligations are material, a single breach of this Memorandum is
22 sufficient for the government to declare a breach, and Defendant shall not be deemed to have cured
23 a breach without the express agreement of the government in writing. If the government declares
24 this Memorandum breached, and the Court finds such a breach to have occurred, then: (a) if
25 Defendant has previously entered a guilty plea pursuant to this Memorandum, Defendant will not
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1 be able to withdraw the guilty plea, and (b) the government will be relieved of all its obligations
2 under this Memorandum.

3 **II. PENALTY**

4 25. The maximum penalty for a violation of Title 18, United States Code, Section
5 1349, is imprisonment for not more than thirty (30) years, a \$1,000,000 fine, or both. Defendant is
6 subject to supervised release for a term of not greater than five (5) years.

7 26. Supervised release is a period of time following imprisonment during which
8 Defendant will be subject to various restrictions and requirements. Defendant understands that if
9 Defendant violates one or more of the conditions of any supervised release imposed, Defendant
10 may be returned to prison for all or part of the term of supervised release, which could result in
11 Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

12 27. Defendant is required to pay for the costs of imprisonment, probation, and
13 supervised release, unless the defendant establishes that the defendant does not have the ability to
14 pay such costs, in which case the court may impose an alternative sanction such as community
15 service.

16 **III. ELEMENTS**

17 28. The essential elements of the offense of conspiracy to commit mail and wire
18 fraud, in violation of 18 U.S.C. § 1349, are as follows:

19 a. First, from as early as in or about August 2003 through at least in or about
20 February 2009, there was an agreement between two or more persons to commit mail fraud and
21 wire fraud; and

22 b. Second, the defendant was a party to or a member of that agreement; and,

23 c. Third, the defendant became a member of the conspiracy knowing of at least one
24 of its objects and intending to help accomplish it.

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1 **IV. FACTS**

2 29. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

3 30. Defendant specifically admits and declares under penalty of perjury that all of the
4 facts set forth below are true and correct:

5 31. From as early as in or around November 2006 through at least in or around
6 October 2007, Defendant knowingly participated in a scheme to control various Homeowner
7 Association (HOA) boards of directors through the rigging of HOA elections, so that the HOA
8 boards would award the handling of construction defect lawsuits and remedial construction
9 contracts to a law firm and construction company designated by Defendant's co-conspirators.

10 32. In order to accomplish this scheme, co-conspirators acted as straw purchasers of
11 properties in numerous Nevada HOA communities. The co-conspirators managed and operated the
12 payments associated with maintaining these straw properties by running a so-called "Bill Pay
13 Program," pursuant to which the co-conspirators funded the properties through several limited
14 liability companies and at the direction of a co-conspirator. Many of the payments on these straw
15 properties were wired from California to Nevada. Co-conspirators also transferred an interest in
16 some of the units to other co-conspirators to make it appear as if the co-conspirator was a bonafide
17 homeowner and eligible for election to the HOA board of directors.

18 33. After the co-conspirators obtained an ownership interest in an HOA community,
19 they agreed to run for election to the respective HOA boards of directors. To ensure the co-
20 conspirators would win the elections, co-conspirators employed deceitful tactics, such as creating
21 false phone surveys to gather information about homeowners' voting intentions, using mailing lists
22 to vote on behalf of out-of-town homeowners unlikely to participate in the elections, and submitting
23 fake and forged ballots. Co-conspirators also hired private investigators to find "dirt" on the
24 bonafide candidates in order to create smear campaigns.

25 34. Co-conspirators also attempted to create the appearance that the elections were
26 legitimate by hiring independent attorneys, including Defendant, to run the HOA board elections.
27 The homeowners were led to believe that these "special election masters" were supposed to: (i)

1 contact the bonafide homeowners to inform them of the election; (ii) mail the bonafide homeowners
2 election ballots and voting instructions; (iii) collect and secure those election ballots returned by
3 mail until the date of the election; and, (iv) preside over the HOA board election, including
4 supervising the counting of ballots. However, in truth and in fact, these attorneys were paid in cash,
5 check, and promised things of value, by or on behalf of co-conspirators for their assistance in
6 rigging the elections.

7 35. In furtherance of the conspiracy, Defendant was hired to act as a “special election
8 master” at Chateau Nouveau and Vistana. Soon after he was selected for the position, Defendant
9 met with a representative of the Ombudsman’s Office, Nevada Department of Real Estate, to
10 discuss his role in the election process. Defendant was informed there were allegations of election
11 fraud at the HOA communities and his job was to ensure the elections were honest. Defendant was
12 informed of the proper HOA election procedures. Defendant failed to disclose his relationship with
13 the co-conspirators to the representative of the Ombudsman’s Office.

14 36. Following his meeting with the Ombudsman’s Office, and in order to create the
15 appearance of legitimacy, on or about March 1, 2007, Defendant wrote and mailed or caused to be
16 mailed a letter to the Chateau Nouveau homeowners in which he described the purpose of his
17 position and his understanding of his statutory fiduciary duties. He did so even though he knew he
18 was hired by Co-Conspirator B and other co-conspirators, and failed to disclose his relationship to
19 the co-conspirators to the bonafide homeowners.

20 37. Defendant instructed the bona fide homeowners at Chateau Nouveau and Vistana
21 to mail their election ballots to his law office under the belief that he would keep them secure until
22 the election. Defendant JONES then allowed a co-conspirator to mail the ballot materials to the
23 homeowners, which provided the co-conspirators with the opportunity to forge additional ballots for
24 the co-conspirators. Defendant also allowed co-conspirators to access the ballots unsupervised
25 before the elections. For instance, he agreed and allowed co-conspirators to use his law office
26 during which time the co-conspirators had the opportunity to open the ballots and pre-count the
27 number of votes entered for each candidate and then replace bonafide ballots with fake ballots.

1 by entering a plea of guilty the defendant is waiving, that is, giving up, certain rights guaranteed to
2 the defendant by law and by the Constitution of the United States. Specifically, Defendant is giving
3 up:

4 a. The right to proceed to trial by jury on the original charges, or to a trial by a judge if
5 Defendant and the United States both agree;

6 b. The right to confront the witnesses against Defendant at such a trial, and to
7 cross-examine them;

8 c. The right to remain silent at such trial, with such silence not to be used against
9 Defendant in any way;

10 d. The right, should Defendant so choose, to testify in Defendant's own behalf at such
11 a trial;

12 e. The right to compel witnesses to appear at such a trial, and to testify in
13 Defendant's behalf; and,

14 f. The right to have the assistance of an attorney at all stages of such proceedings.

15 43. Defendant acknowledges that Defendant is, in all respects, satisfied by the
16 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
17 Defendant the burdens and benefits of this Memorandum and the rights that Defendant has waived
18 herein.

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44. Defendant, Defendant's attorney, and the attorney for the United States acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by and between the parties, and that no other promise has been made or implied by either the Defendant, Defendant's attorney, or the attorney for the United States.

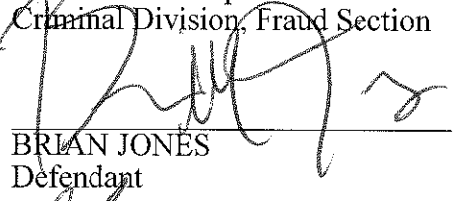
DENIS J. MCINERNEY
Chief
United States Department of Justice,
Criminal Division, Fraud Section

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DATED

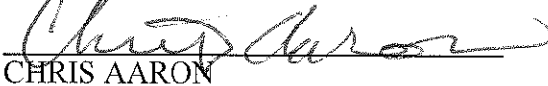

CHARLES LA BELLA
Deputy Chief

NICOLE SPRINZEN
MARY ANN McCARTHY
Trial Attorneys
United States Department of Justice
Criminal Division, Fraud Section

11/14/11
DATED


BRIAN JONES
Defendant

11/14/11
DATED


CHRIS AARON
Counsel for Defendant