

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

-000-

PLEA MEMORANDUM

I. PLEA AGREEMENT

INTENTIONALLY LEFT BLANK

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

2
3
4
5

6

7
8
9
0

1

2
3
4
5
6
7

8
9

00
112
3

4

5
6

1 fails to make a complete factual basis for the guilty plea at the time it is entered; (b) is untruthful
2 with the Court or probation officers in any respect, including without limitation, financial
3 information; (c) denies involvement in the offense or provides conflicting statements regarding
4 defendant's involvement; (d) attempts to withdraw the guilty plea; (e) engages in criminal conduct;
5 (f) fails to appear in court; or (g) violates the conditions of Defendant's pretrial release conditions.

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

7 **D. Other Sentencing Matters**

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

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

20 **E. Fines and Special Assessment**

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

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

1 **F. Restitution**

2 11. Defendant agrees to make full restitution to all victims of his offense. Defendant
3 understands and agrees that this amount is the total proceeds that he received from the commission
4 of his crime, which is at least \$6,000. Defendant understands that any restitution imposed by the
5 Court may not be discharged in whole or in part in any present or future bankruptcy proceeding.

6 **G. Forfeiture**

7 12. The parties agree that the government will not request that the Court require
8 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless
9 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the
10 Defendant's total proceeds from the commission of his crime, which is at least \$6,000. In the
11 event of any order by the Court that Defendant shall pay forfeiture, the Defendant knowingly and
12 voluntarily agrees to the following:

- 13 a. to abandon or to forfeit the property to the United States;
14 b. to relinquish all right, title, and interest in the property;
15 c. to waive his right to any abandonment proceedings, any civil administrative
16 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
17 proceedings ("proceedings") of the property;
18 d. to waive service of process of any and all documents filed in this action or any
19 proceedings concerning the property arising from the facts and circumstances of this case;
20 e. to waive any further notice to the defendant, the defendant's agents, or the
21 defendant's attorney regarding the abandonment or the forfeiture and disposition of the property;
22 f. not to file any claim, answer, petition, or other documents in any proceedings
23 concerning the property;
24 g. to waive the statute of limitations, the CAFRA requirements, Fed. R. Crim. P.
25 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any
26 abandonment proceeding or any forfeiture proceeding concerning the property;
27

- 1 h. to waive the defendant's right to a jury trial on the forfeiture of the property;
2 i. to waive (a) all constitutional, legal, and equitable defenses to, (b) any
3 constitutional or statutory double jeopardy defense or claim concerning, and (c) any claim or
4 defense under the Eighth Amendment to the United States Constitution, including, but not limited
5 to, any claim or defense of excessive fine in any proceedings concerning the property; and
6 j. to the entry of an Order of Forfeiture of the property to the United States.

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

12 **II. Waiver of Appeal**

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

21 14. Defendant also waives all collateral challenges, including any claims under 28
22 U.S.C. § 2255, to the Defendant's conviction, sentence and the procedure by which the Court
23 adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of
24 counsel.

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

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

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

14 **J. Limitations**

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

23 **K. Cooperation**

24 18. Defendant agrees, if requested by the United States, to provide complete and
25 truthful information and testimony concerning Defendant's knowledge of all other persons who are
26
27

1 committing or have committed offenses against the United States or any state, and agrees to
2 cooperate fully with the United States in the investigation and prosecution of such persons.

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

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

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

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

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

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

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

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

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

7 g. The timeliness of Defendant's assistance.

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

13 **L. Breach**

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

II. PENALTY

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

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

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

III. ELEMENTS

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

- a. First, from at least as early as in or about January 2008 through at least in or about February 2009, there was an agreement between two or more persons to commit mail fraud;
- b. Second, the Defendant was a party to or member of that agreement; and,
- c. Third, Defendant joined the agreement or conspiracy knowing of at least one of its objects and intending to help accomplish it.

IV. FACTS

28. Defendant is pleading guilty because Defendant is guilty of the charged offense.

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

30. From as early as in or about January 2008 through at least in or about February 2009, Defendant knowingly participated in a scheme to control various Homeowner Association

1 (HOA) boards of directors so that the HOA boards would award the handling of construction
2 defect lawsuits and remedial construction contracts to a law firm and construction company
3 designated by Defendant's co-conspirators.

4 31. In order to accomplish this scheme, Defendant's co-conspirators agreed to act as
5 straw purchasers at Las Vegas, Nevada HOA communities. Other co-conspirators provided the
6 down payments and monthly payments, including HOA dues and mortgage payments, for the
7 properties and were the true owners. Co-conspirators signed and submitted false and fraudulent
8 loan applications and closing documents to financial institutions in order to finance and close on
9 the properties. In other instances, co-conspirators transferred an interest in a HOA unit to another
10 co-conspirator to make it appear as if the co-conspirator was a bona fide homeowner.

11 32. The straw purchasers and the co-conspirators who acquired a transferred interest in
12 these properties agreed to run for election to the respective HOA boards. Once co-conspirators
13 were elected to the board, they breached their statutory fiduciary duties to the homeowners by
14 accepting compensation, gratuity, and other remuneration from their co-conspirators that improperly
15 influenced, or reasonably appeared to influence, their decisions, resulting in a conflict of interest.
16 They subsequently voted in a manner directed by and favorable to the co-conspirators.

17 33. In an effort to gain control over the Mission Pointe HOA board of directors, and
18 ultimately to direct construction defect work to a co-conspirator, Defendant and his co-conspirators
19 agreed to bribe an employee of the property management company that managed the Mission Pointe
20 condominium complex. Defendant offered the property management company employee a money
21 payment of approximately \$20,000 in exchange for her assistance in rigging a September 2008
22 board of directors election at Mission Pointe.

23 34. To ensure the straw purchasers would win the elections, co-conspirators employed
24 deceitful tactics, such as creating false phone surveys to gather information about homeowners'
25 voting intentions, using mailing lists to vote on behalf of out-of-town homeowners unlikely to
26 participate in the elections, and submitting fake and forged ballots. Defendant agreed with other co-
27 conspirators to provide a co-conspirator with blank ballots in order to enable the co-conspirator to

1 prepare fake and forged ballots with votes for straw purchasers with the goal of ensuring that the
2 straw purchasers would win the election. The co-conspirator then mailed the fake and forged
3 ballots that he prepared to the property management company that managed the Mission Pointe
4 condominium complex.

5 35. Once elected to the board, the co-conspirator board members would meet with
6 other co-conspirators in order to manipulate board votes, including the selection of property
7 managers, contractors, and general counsel for the HOA and attorneys to represent the HOA.

8 36. Once hired, the co-conspirator property managers and general counsel were paid
9 in cash, check, or things of value for using their positions to gain inside information and
10 recommend that the HOA board hire a co-conspirator for remediation and construction defect
11 repairs and another co-conspirator for the construction defect litigation.

12 37. This process created the appearance of legitimacy since bonafide homeowners
13 believed the elected board members and property managers were, as fiduciaries, acting in their best
14 interest rather than to advance the financial interests of co-conspirators. In fact, Defendant and
15 others were paid or received things of value by or on behalf of their co-conspirators for their
16 assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using
17 their positions to manipulate the HOA's business and to further the goals of the conspiracy, and to
18 enrich the co-conspirators at the expense of the HOA and the bonafide homeowners. For his role in
19 the scheme, Defendant received at least one payment for \$6,000 from a co-conspirator and
20 discussed potential future payments to Defendant.

21 V. ACKNOWLEDGMENT

22 38. Defendant acknowledges by the Defendant's signature below that Defendant has
23 read this Plea Memorandum, that Defendant understands the terms and conditions, and the factual
24 basis set forth herein, that Defendant has discussed these matters with Defendant's attorney, and
25 that the matters set forth in this memorandum, including the facts set forth in Part IV above, are true
26 and correct.

1 39. Defendant acknowledges that Defendant has been advised, and understands, that
2 by entering a plea of guilty the Defendant is waiving, that is, giving up, certain rights guaranteed to
3 the Defendant by law and by the Constitution of the United States. Specifically, Defendant is
4 giving up:

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

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

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

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

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

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

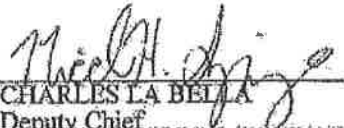
16 40. Defendant acknowledges that Defendant is, in all respects, satisfied by the
17 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
18 Defendant the burdens and benefits of this agreement and the rights that Defendant has waived
19 herein.

20
21
22 INTENTIONALLY LEFT BLANK
23
24
25
26
27

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

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


5
6
7
8
9 Oct. 25, 2011
DATED


CHARLES LA BELLA
Deputy Chief
NICOLE SPRINZEN
MARY ANN McCARTHY
Trial Attorneys
United States Department of Justice
Criminal Division, Fraud Section

10
11
12
13
14 Nov 26, 2011
DATED


SAMIR DWYER
Defendant

15
16 Nov 29, 2011
DATED


CHAD BOWERS
Counsel for Defendant

1 CHARLES G. LA BELLA
Deputy Chief
2 MARY ANN McCARTHY
Trial Attorney
3 Fraud Section, Criminal Division
U.S. Department of Justice
4 1400 New York Avenue, NW
Washington, DC 20530
5 (202) 598-2240

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

9 -oOo-

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 SAMI ROBERT HINDIYEH,

14 Defendant.

CASE NO.

ADDENDUM TO PLEA
MEMORANDUM

15 The United States of America, by and through Charles G. La Bella, Deputy Chief, and
16 Mary Ann McCarthy, Trial Attorney, U.S. Department of Justice, Criminal Division, Fraud
17 Section, the defendant, SAMI ROBERT HINDIYEH, and the defendant's attorney, Chad Bowers,
18 submit this Addendum to the Plea Memorandum, which was signed by the defendant on November
19 28, 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, BRIAN JONES, LISA KIM,
24 MORRIS MATTINGLY, ARNOLD MYERS, ANTHONY ROY WILSON, and JEANNE
25 WINKLER successfully entering their guilty pleas together with defendant SAMI ROBERT
26 HINDIYEH, and that all pleas are accepted by the Court.
27

1 The United States and the defendant have agreed to the following additions to the Plea
2 Memorandum, which are not binding on the court:

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

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

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

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

21 **II. ACKNOWLEDGMENT**

22 5. Defendant acknowledges that this agreement is in additional to the original Plea
23 Memorandum, signed by the defendant on November 28, 2011, and the provisions of the original
24

25 INTENTIONALLY LEFT BLANK
26
27

1 Plea Memorandum still apply.

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

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

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

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

17 2/7/2012
18 DATED

19
20 CHARLES LA BELLA
21 Deputy Chief

22 Maryann McCarthy
23 MARY ANN MCCARTHY
24 Trial Attorney

25 2/29/12
26 DATED

27 Sami Robert Hindiyyeh
SAMI ROBERT HINDIYEH
Defendant

2/22/12
DATED

Chad Bowers
CHAD BOWERS
Defense Counsel