

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  
1400 New York Avenue, NW  
5 Washington, DC 20530  
(202) 598-2240

FILED  
2012 MAY 31 10 31 11  
U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
LAS VEGAS

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

10 -oOo-

11 UNITED STATES OF AMERICA, )  
12 Plaintiff, )  
13 v. )  
14 MICHELLE DELUCA, )  
15 Defendant. )

CASE NO. *2:12-CR-113-JCM*  
**PLEA MEMORANDUM**

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, MICHELLE DELUCA, and the defendant's attorney,  
20 Shawn Perez, 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:

24 INTENTIONALLY LEFT BLANK  
25  
26  
27

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	
21	(U.S.S.G. §2B1.1(a)):	7
22	Loss Amount of \$10,000 to \$30,000	
23	(U.S.S.G. §2B1.1(b)(1)(c)):	4
24	Sophisticated Means	
25	(U.S.S.G. §2B1.1(b)(9)(c)):	2
26	TOTAL	13

27

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 her 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           12. Defendant agrees to make restitution to the Sunset Cliffs HOA community where  
5 she obtained an interest in a condominium in furtherance of this scheme, as described below in  
6 Section IV. Defendant understands and agrees that this amount could be as much as \$20,000, the  
7 total amount of monies she received for her participation in the scheme. Defendant understands  
8 that any restitution imposed by the Court may not be discharged in whole or in part in any present  
9 or future bankruptcy proceeding.

10 **G. Forfeiture**

11           13. The parties agree that the government will not request that the Court require  
12 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless  
13 order that Defendant shall pay forfeiture, the government agrees that such amount shall be the total  
14 amount of the monies she received for her participation in the scheme, and in no event more than  
15 \$20,000. In the event of any order by the Court that Defendant shall pay forfeiture, the Defendant  
16 knowingly and voluntarily agrees to the following:

- 17           a. to abandon or to forfeit the property to the United States;
- 18           b. to relinquish all right, title, and interest in the property;
- 19           c. to waive her right to any abandonment proceedings, any civil administrative  
20 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture  
21 proceedings (“proceedings”) of the property;
- 22           d. to waive service of process of any and all documents filed in this action or any  
23 proceedings concerning the property arising from the facts and circumstances of this case;
- 24           e. to waive any further notice to the defendant, the defendant’s agents, or the  
25 defendant’s attorney regarding the abandonment or the forfeiture and disposition of the property;
- 26           f. not to file any claim, answer, petition, or other documents in any proceedings
- 27

1 concerning the property;

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

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

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

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

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

16 **H. Waiver of Appeal**

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

25 16. Defendant also waives all collateral challenges, including any claims under Title  
26 18, United States Code, Section 2255, to the defendant's conviction, sentence and the procedure by  
27

1 which the Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective  
2 assistance of counsel.

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

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

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

15 **J. Limitations**

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

24 **K. Cooperation**

25 20. Defendant agrees, if requested by the United States, to provide complete and  
26 truthful information and testimony concerning Defendant's knowledge of all other persons who are  
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 21. 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 Guideline  
6 calculation. The Court has the sole discretion to grant such a motion.

7 22. 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 23. 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 she has been or is a subject, target,  
26 party, or witness;

27

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 inquiries, 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 24. 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 25. Defendant agrees that if Defendant, at any time after the signature of this Plea  
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 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.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**II. PENALTY**

26. 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 subject to supervised release for a term of not greater than five (5) years.

27. 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.

28. 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**

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

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

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

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

**IV. FACTS**

30. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

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

1           32. From as early as in or around May 2007 through in or around February 2009,  
2 Defendant knowingly participated in a scheme to control various Homeowner Association (HOA)  
3 boards of directors so that the HOA boards would award the handling of construction defect  
4 lawsuits and remedial construction contracts to a law firm and construction company designated by  
5 Defendant's co-conspirators.

6           33. Defendant became involved in this scheme in or around spring 2007 when she was  
7 hired by the owner of the co-conspirator construction company. She was paid in cash to do various  
8 odd jobs and eventually acted as the office manager. Soon after she was hired, Defendant agreed  
9 to get involved in the "condominium business" with the other co-conspirators and to become an  
10 HOA board member.

11           34. In order to accomplish this scheme, several individuals agreed to act as straw  
12 purchasers of condominium units in numerous Nevada HOA communities. These straw purchasers  
13 represented to mortgage lenders that: (i) they were to be the true owners of the properties; (ii) they  
14 had made the down payment; (iii) they would make the monthly mortgage payments; and, (iv) they  
15 intended to live in the properties. In truth and in fact, co-conspirators provided down payments  
16 and monthly payments, including HOA dues and mortgage payments, for these properties and were  
17 the true owners of the properties. In most instances, the co-conspirators did not occupy the units  
18 they purported to purchase.

19           35. In other instances, co-conspirators transferred a interest in a condominium unit to  
20 another co-conspirator to make it appear as if the co-conspirator was a bona fide homeowner and  
21 eligible for election to the respective HOA board of directors. On or about May 30, 2007,  
22 Defendant acquired a 50% interest in a unit at Sunset Cliffs by quit-claim deed. A co-conspirator  
23 signed her name to the quit-claim documents and paid another co-conspirator to notarize the  
24 property transfer documents without Defendant appearing before the notary public as required by  
25 statute.

26           36. The unit she partially acquired had previously been purchased by a co-conspirator  
27 straw purchaser. A third co-conspirator, not the defendant, occupied the unit as a partial payment

1 for his own involvement in the scheme. Defendant knew the mortgage payments and other  
2 monthly fees were paid by the co-conspirators, and they were the true beneficial owners.

3 37. Co-conspirators managed and operated the payments associated with maintaining  
4 many, if not all, of the straw properties owned and controlled by co-conspirators by running a so-  
5 called "Bill Pay Program," pursuant to which co-conspirators funded the properties through several  
6 limited liability companies at the direction of a co-conspirator. Many of these payments were  
7 wired from California to Nevada. Defendant maintained some of the co-conspirators' accounting  
8 books as part of her job as office manager at the construction company.

9 38. After the co-conspirators obtained an ownership interest in an HOA community,  
10 they agreed to run for election to the respective HOA boards of directors. On or about June 20,  
11 2007, Defendant ran for and was elected to the Sunset Cliffs' HOA board of directors. Defendant  
12 agreed to use her position to be the "eyes and ears" for the co-conspirators on the board. The  
13 election was rigged and allowed Defendant and another co-conspirator to win seats on the board,  
14 giving the co-conspirators majority control at Sunset Cliffs. A co-conspirator signed and submitted  
15 a Nevada statutory Conflict of Interest Form on Defendant's behalf, but failed to disclose her  
16 relationship to the co-conspirators. During her tenure, Defendant also failed to disclose her conflict  
17 of interest.

18 39. To ensure the straw purchasers would win the elections, co-conspirators employed  
19 deceitful tactics, such as creating false phone surveys to gather information about homeowners'  
20 voting intentions, using mailing lists to vote on behalf of out-of-town homeowners unlikely to  
21 participate in the elections, and submitting fake and forged ballots. Co-conspirators also hired  
22 private investigators to find "dirt" on the bona fide candidates in order to create smear campaigns.

23 40. Another tactic Defendant's co-conspirators used to rig certain HOA board elections  
24 was to prepare forged ballots for out-of-town homeowners and either cause them to be transported  
25 or mailed to California and thereafter to have the ballots mailed back to Las Vegas from various  
26 locations around California so as to make it appear that the ballots were completed and mailed by  
27 bona fide homeowners residing outside Nevada.

1           41. Co-conspirators also attempted to create the appearance that the elections were  
2 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were  
3 led to believe that these “special election masters” were supposed to: (i) contact the bona fide  
4 homeowners to inform them of the election; (ii) mail the bona fide homeowners election ballots and  
5 voting instructions; (iii) collect and secure those election ballots returned by mail until the date of  
6 the election; and, (iv) preside over the HOA board election, including supervising the counting of  
7 ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf  
8 of Defendant’s co-conspirators for their assistance in rigging the elections.

9           42. Defendant was aware that many of these HOA elections were rigged, and that the  
10 co-conspirators were using licensed attorneys to assist in the rigging. Defendant attended meetings  
11 at several co-conspirator attorneys’ law offices and observed their participation at several rigged  
12 elections. She also acquired the election materials for several rigged elections, including elections  
13 at Chateau Nouveau and Chateau Versailles, but failed to disclose it to the bona fide homeowners.

14           43. Defendant further breached her statutory fiduciary duty to the homeowners by  
15 accepting from her co-conspirators compensation, gratuity, and other remuneration that improperly  
16 influenced, or reasonably appeared to influence, her decisions, resulting in a conflict of interest. In  
17 fact, shortly before she was elected, Defendant received a \$10,000 “loan” from a co-conspirator,  
18 which Defendant never repaid. In addition, on or about October 15, 2007 and on or about October  
19 21, 2007, Defendant received checks from a co-conspirator, totaling \$10,000.

20           44. Once elected to the board, the co-conspirator board members would meet with  
21 other co-conspirators in order to manipulate board votes, including the selection of property  
22 managers, contractors, and general counsel for the HOA and attorneys to represent the HOA. These  
23 meetings were held at various locations, including the owner of the co-conspirator construction  
24 company’s house and co-conspirator attorneys’ law offices. Defendant attended these meetings and  
25 took direction from co-conspirators to use her vote to further the objects of the conspiracy.  
26 Defendant and the other co-conspirator board members also intended to vote to hire certain third-

27

1 party vendors, specifically pool and landscape companies, that agreed to kickback money and  
2 services to further the objects of the conspiracy and to financially benefit the co-conspirators.

3 45. This process created the appearance of legitimacy since bona fide homeowners  
4 believed the elected board members and property managers were, as fiduciaries, acting in their best  
5 interest rather than to advance the financial interests of co-conspirators. In fact, Defendant and  
6 others were paid or received things of value by or on behalf of their co-conspirators for their  
7 assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using  
8 their positions to manipulate the HOA's business and to further the goals of the conspiracy, and to  
9 enrich the co-conspirators at the expense of the HOA and the bona fide homeowners.

10 **V. ACKNOWLEDGMENT**

11 46. Defendant acknowledges by the defendant's signature below that Defendant has  
12 read this Plea Memorandum, that Defendant understands the terms and conditions, and the factual  
13 basis set forth herein, that Defendant has discussed these matters with Defendant's attorney, and  
14 that the matters set forth in this Memorandum, including the facts set forth in Part IV above, are true  
15 and correct.

16 47. Defendant acknowledges that Defendant has been advised, and understands, that  
17 by entering a plea of guilty the defendant is waiving, that is, giving up, certain rights guaranteed to  
18 the defendant by law and by the Constitution of the United States. Specifically, Defendant is giving  
19 up:

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

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

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

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

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

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


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

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

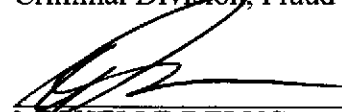
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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


11/2/11  
DATED

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

11-28-2011  
DATED

  
MICHELLE DELUCA  
Defendant

11-22-11  
DATED

  
SHAWN PEREZ  
Counsel for Defendant