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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MARY ANN WATTS,

Defendant.

CASE NO. **2:11-CR-336-JCM**
PLEA MEMORANDUM

The United States of America, by and through Denis J. McInerney, Chief, U.S. Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief, Michael J. Bresnick, Assistant Chief, and Nicole Sprinzen and Mary Ann McCarthy, Trial Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, MARY ANN WATTS, and the defendant's attorney, Michael Kimbrell, submit this Plea Memorandum.

I. PLEA AGREEMENT

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

A. The Plea

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

5 **B. Additional Charges**

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

10 **C. Sentencing Guideline Calculations**

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

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

19	Base Offense Level	
20	(U.S.S.G. §2B1.1(a)):	7
21	Loss Amount (\$30,000 to \$70,000)	
22	(U.S.S.G. §2B1.1(b)(1)(D)):	6
23	Sophisticated Means	
24	(U.S.S.G. §2B1.1(b)(9)(C)):	2
25	TOTAL	15

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

7 6. Pursuant to U.S.S.G. §3E1.1(b), the United States will, in its sole discretion, make
8 a motion for an additional one-level adjustment for acceptance of responsibility prior to sentencing
9 if the defendant timely notifies the United States of the defendant's intention to plead guilty,
10 thereby permitting the United States to avoid preparing for trial and allowing for the efficient
11 allocation of resources.

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

13 **D. Other Sentencing Matters**

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

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

26 **E. Fines and Special Assessment**

1 10. Defendant agrees that the Court may impose a fine due and payable immediately
2 upon sentencing.

3 11. Defendant will pay the special assessment of \$100 per count of conviction at the
4 time of sentencing.

5 **F. Restitution**

6 12. Defendant agrees to make restitution to the HOA communities with whom she
7 contracted as a property manager in furtherance of this scheme, described below in Section IV.
8 Defendant understands and agrees that this amount could be as much as \$39,350 USD, the
9 aggregate of one-third her salary plus the rental value of the property she lived in for the nine
10 months she lived there. Defendant understands that any restitution imposed by the Court may not
11 be discharged in whole or in part in any present or future bankruptcy proceeding.

12 **G. Forfeiture**

13 13. The parties agree that the government will not request that the Court require
14 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless
15 order that Defendant shall pay forfeiture, the government agrees that it will take the position that
16 such amount shall be the aggregate of one-third her salary plus the rental value of the property she
17 lived in for the nine months she lived there resulting from her membership in the conspiracy,
18 which is estimated at the time of this Plea Memorandum to total no more than \$39,350 USD. In
19 the event of any order by the Court that Defendant shall pay forfeiture, the Defendant knowingly
20 and voluntarily agrees to the following:

- 21 a. to abandon or to forfeit the property to the United States;
22 b. to relinquish all right, title, and interest in the property;
23 c. to waive his right to any abandonment proceedings, any civil administrative
24 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
25 proceedings ("proceedings") of the property;
26 d. to waive service of process of any and all documents filed in this action or any
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proceedings concerning the property arising from the facts and circumstances of this case;

e. to waive any further notice to the defendant, the defendant's agents, or the defendant's attorney regarding the abandonment or the forfeiture and disposition of the property;

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

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

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

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

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

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

H. Waiver of Appeal

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

1 reserves only the right to appeal any portion of the sentence that is an upward departure from the
2 applicable Sentencing Guideline range calculated by the Court.

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

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

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

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

19 **J. Limitations**

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

3 **K. Cooperation**

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

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

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

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

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

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

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

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

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

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

12 g. The timeliness of Defendant's assistance.

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

18 **L. Breach**

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

4 II. PENALTY

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

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

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

17 III. ELEMENTS

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

20 a. First, from as early as in or about the spring of 2006 through at least in or about
21 February 2009, there was an agreement between two or more persons to commit mail fraud and
22 wire fraud; and

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

25 IV. FACTS

26 30. Defendant is pleading guilty because Defendant is guilty of the charged offenses.
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1 31. Defendant specifically admits and declares under penalty of perjury that all of the
2 facts set forth below are true and correct:

3 32. From as early as in or about the spring of 2006 through at least in or about
4 February 2009, Defendant knowingly participated in a scheme to control various Homeowner
5 Association (HOA) boards of directors so that the HOA boards would award the handling of
6 construction defect lawsuits and remedial construction contracts to a law firm and construction
7 company designated by Defendant's co-conspirators.

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

16 34. The straw purchasers and those who acquired a transferred interest agreed to run
17 for election to the respective HOA boards. These co-conspirators were paid in cash, check, or
18 promised things of value for their participation, all of which resulted in a personal financial benefit
19 to the co-conspirators.

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

25 36. Another tactic the co-conspirators used to rig certain HOA board elections was to
26 prepare forged ballots for out-of-town homeowners and either cause them to be transported or
27 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various

1 locations around California so as to make it appear that the ballots were completed and mailed by
2 bonafide homeowners residing in California.

3 37. Co-conspirators also attempted to create the appearance that the elections were
4 legitimate by hiring independent attorneys to run the HOA board elections. The homeowners were
5 led to believe that these "special election masters" were supposed to: (i) contact the bonafide
6 homeowners to inform them of the election; (ii) mail the bonafide homeowners election ballots and
7 voting instructions; (iii) collect and secure those election ballots returned by mail until the date of
8 the election; and, (iv) preside over the HOA board election, including supervising the counting of
9 ballots. However, they, too, were paid in cash, check, and promised things of value, by or on behalf
10 of Defendant's co-conspirators for their assistance in rigging the elections. In or around November
11 2006, at the direction of co-conspirators, Defendant participated in the rigging of the election at the
12 HOA Vistana by ceding her role in the election as community manager and providing the election
13 ballots to a co-conspirator attorney acting as a "special election master."

14 38. Once elected, the co-conspirator board members would meet with other co-
15 conspirators in order to manipulate board votes, including the selection of community managers,
16 contractors, and general counsel for the HOA and attorneys to represent the HOA.

17 39. Often the co-conspirators created and submitted fake bids for "competitors" to
18 make the process appear to be legitimate while ensuring co-conspirators were awarded the contract.
19 In addition, Co-Conspirator A's initial contract for emergency remediation repairs contained a
20 "right of first refusal" clause to ensure that a co-conspirator was awarded the construction repair
21 contracts following the construction defect litigation.

22 40. Defendant employed co-conspirators and failed to disclose to HOA members their
23 conflict of interest, in violation of her fiduciary duties to the HOA.

24 41. In or around August 2006, Defendant agreed with co-conspirators to open a new
25 property management company, which would be owned and controlled by these co-conspirators, for
26 the purpose of managing the HOA board at Vistana, as well as Chateau Versailles, Chateau
27 Nouveau and others. Defendant lived in a unit at Chateau Nouveau and was given rent for free in

1 the unit for two months as a bonus for her participation in the conspiracy. Defendant ran all the
2 company's expenses and was reimbursed by a co-conspirator. She often cut her co-conspirator
3 checks from the HOA's account and paid several of the co-conspirator's employees as if they were
4 employed by the property management company in order to conceal the employees' relationship
5 with the co-conspirator.

6 42. Defendant further used her position as the community manager to allow co-
7 conspirators to create and review the HOA board meeting agendas before the board meeting, so the
8 co-conspirators could meet with the co-conspirator board members to pre-arrange how they would
9 manipulate the up-coming votes. Defendant then allowed her co-conspirators to call her phone to
10 speak with the co-conspirator board members during board meetings in order to conceal their
11 relationship.

12 43. Defendant recommended that the HOA hire individuals and companies
13 designated by her co-conspirators while concealing her and the company's relationship with the co-
14 conspirators from the bonafide homeowners. In or around November 2006, Defendant, at the
15 direction of a co-conspirator, called an emergency executive board meeting for the purpose of
16 getting the board members' signatures on the contract that was to award a co-conspirator with the
17 construction defect litigation case before the next HOA board election was held.

18 44. This process created the appearance of legitimacy since bonafide homeowners
19 believed the elected board members and community managers were, as fiduciaries, acting in their
20 best interest rather than to advance the financial interests of co-conspirators. In fact, Defendant and
21 others were paid or received things of value by or on behalf of their co-conspirators for their
22 assistance in purchasing the properties, obtaining HOA membership status, rigging elections, using
23 their positions to manipulate the HOA's business and to further the goals of the conspiracy, and to
24 enrich the co-conspirators at the expense of the HOA and the bonafide homeowners.
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V. ACKNOWLEDGMENT

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

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

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

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

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

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

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

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

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

48. Defendant, Defendant's attorney, and the attorney for the United States

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

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7 10/21/11
8 DATED

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

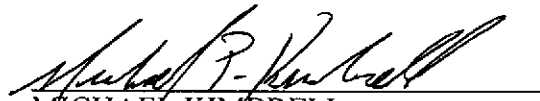

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Criminal Division, Fraud Section

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13 DATED


MARY ANN WATTS
Defendant

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16 DATED


MICHAEL KIMBRELL
Counsel for Defendant