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9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 -oOo-

12 UNITED STATES OF AMERICA,
 13 Plaintiff,
 14 v.
 15 DENISE KESER,
 16 Defendant.

CASE NC 2:11-cr-00382-GMN -GWF
PLEA MEMORANDUM

18 The United States of America, by and through Denis J. McInerney, Chief, U.S.
 19 Department of Justice, Criminal Division, Fraud Section, and Charles La Bella, Deputy Chief,
 20 Michael J. Bresnick, Assistant Chief, and Nicole Sprinzen and Mary Ann McCarthy, Trial
 21 Attorneys, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, DENISE
 22 KESER, and the defendant's attorney, Kevin Stolworthy, submit this Plea Memorandum.

23 **I. PLEA AGREEMENT**

24 The United States and the defendant have reached the following agreement, which is not
 25 binding on the court:
 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 (U.S.S.G. §2B1.1(a)):	7
21		
22	Loss Amount of \$10,000 to \$30,000 (U.S.S.G. §2B1.1(b)(1)(C)):	4
23		
24	Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(C)):	2
25		
26	Minor Role (U.S.S.G. §3B1.2)	-3
27		
	TOTAL	10

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

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

9 **D. Other Sentencing Matters**

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

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

22 **E. Fines and Special Assessment**

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

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

1 **F. Restitution**

2 11. Defendant agrees to make restitution to the HOA communities with whom she
3 contracted as a property manager in furtherance of this scheme, described below in Section IV.
4 Defendant understands and agrees that this amount could be as much as \$16,000. Defendant
5 understands that any restitution imposed by the Court may not be discharged in whole or in part in
6 any present or future bankruptcy proceeding.

7 **G. Forfeiture**

8 12. The parties agree that the government will not request that the Court require
9 Defendant to pay forfeiture in addition to restitution. However, should the Court nevertheless
10 order that Defendant shall pay forfeiture, the government agrees that it will take the position that
11 such amount shall be the total payments and other items of value received by the Defendant
12 resulting from her membership in the conspiracy, which is estimated at the time of this Plea
13 Memorandum to total no more than \$16,000. In the event of any order by the Court that Defendant
14 shall pay forfeiture, the Defendant knowingly and voluntarily agrees to the following:

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

1 7(c)(2), 32.2(a), and 32.2(b)(3), and the constitutional due process requirements of any
2 abandonment proceeding or any forfeiture proceeding concerning the property;

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

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

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

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

14 **H. Waiver of Appeal**

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

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

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

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

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

13 **J. Limitations**

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

21 **K. Cooperation**

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

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

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

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

16 a. The United States’ evaluation of the significance and usefulness of Defendant’s
17 assistance;

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

20 c. The nature and extent of Defendant’s assistance;

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

25 e. The truthfulness and completeness in disclosing and providing to the Government,
26
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1 upon request, any document, record, or other evidence relating to matters about which the
2 Government or any designated law enforcement agency inquires, including but not limited to,
3 Defendant's personal finances;

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

6 g. The timeliness of Defendant's assistance.

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

12 **L. Breach**

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

23 **II. PENALTY**

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

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

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

10 **III. ELEMENTS**

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

13 a. First, from at least as early as in or about April 2006 through at least in or about
14 February 2007, there was an agreement between two or more persons to commit wire and mail
15 fraud;

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

17 c. Third, Defendant joined the agreement or conspiracy knowing of at least one of
18 its objects and intending to help accomplish it.

19 **IV. FACTS**

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

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

23 31. From as early as in or about April 2006 through at least in or about February
24 2007, Defendant knowingly participated in a scheme to control various Homeowner Association
25 (HOA) boards of directors so that the HOA boards would award the handling of construction
26 defect lawsuits and remedial construction contracts to a law firm and construction company
27 designated by Defendant's co-conspirators.

1 32. In order to accomplish this scheme, co-conspirators acted as straw purchasers of
2 properties in numerous Nevada HOA communities. Defendant was aware that co-conspirators
3 managed and operated the payments associated with maintaining these straw properties by running
4 a so-called "Bill Pay Program," pursuant to which co-conspirators funded the properties at the
5 direction of a co-conspirator. Many of the payments on these straw properties were wired from
6 California to Nevada. Defendant was aware that co-conspirators also transferred an interest in
7 some of the units to other co-conspirators to make it appear as if the co-conspirator was a bonafide
8 homeowner.

9 33. The straw purchasers and those who acquired a transferred interest in a unit agreed
10 to run for election to the respective HOA boards. These co-conspirators were paid in cash, check,
11 or promised things of value for their participation, all of which resulted in a personal financial
12 benefit to the co-conspirators.

13 34. To ensure these co-conspirators would win the elections, Defendant was aware that
14 her co-conspirators employed deceitful tactics, such as taking control of preparing and sending out
15 ballots, putting watermarks on ballots so that they could trace the ballots, using mailing lists to send
16 ballots to homeowners and trace the returned voted ballots, and having the voted ballots sent to the
17 property management companies that they controlled so that they would have access to the ballots.
18 Defendant observed her co-conspirators using mailing lists to mail voting ballots to Vistana
19 homeowners, who would vote for co-conspirators who had been promoted for HOA board
20 positions. Defendant and her co-conspirators were instructed by a co-conspirator to use her position
21 as property manager at Chateau Nouveau to send emails to the homeowners that were intended to
22 smear the reputation of bonafide board members, which she and other co-conspirators did.

23 35. Another tactic the co-conspirators used to rig certain HOA board elections was to
24 prepare forged ballots for out-of-town homeowners and either cause them to be transported or
25 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 bonafide homeowners residing in other states.

1 36. 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 bonafide
4 homeowners to inform them of the election; (ii) mail the bonafide 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 37. Once elected, the co-conspirator board members would meet with other co-
10 conspirators in order to manipulate board votes, including the selection of property managers,
11 contractors, and general counsel for the HOA and attorneys to represent the HOA.

12 38. Once hired, the co-conspirator property managers, including Defendant, were
13 paid in cash, check, or things of value for using their positions to gain or attempt to gain inside
14 information and provide it to co-conspirators in furtherance of their efforts to obtain remediation
15 and construction defect repair work and construction defect litigation work on behalf of the HOAs.

16 39. In or around September 2006, Defendant agreed with co-conspirators to open a
17 new property management company, which would be owned and controlled by these co-
18 conspirators, for the purpose of managing the HOA board at Chateau Nouveau and others. As
19 compensation for her participation in the conspiracy, Defendant was given a weekly salary, among
20 other things, from her co-conspirators. Defendant ran all of a co-conspirator’s personal expenses on
21 a company credit card for which Defendant was a guarantor, which was reimbursed to her by a co-
22 conspirator. At a co-conspirator’s instruction, Defendant observed a co-conspirator cause on-site
23 maintenance personnel at Chateau Nouveau to quit and Defendant and her co-conspirator paid
24 through the property management company several of the co-conspirator’s employees to work at
25 Chateau Nouveau in order to conceal the employees’ relationship with the co-conspirator and so
26 that the co-conspirator would have loyal employees working at the community.

27

1 40. Defendant further concealed from the bonafide homeowners the relationship
2 that she and the property management company that she headed had with their co-conspirators in
3 order to ensure that the HOA hire the property management company.

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

13 V. ACKNOWLEDGMENT

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

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

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

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

27 c. The right to remain silent at such trial, with such silence not to be used against

1 Defendant in any way;

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

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

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

7 44. Defendant acknowledges that Defendant is, in all respects, satisfied by the
8 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
9 Defendant the burdens and benefits of this agreement and the rights that Defendant has waived
10 herein.

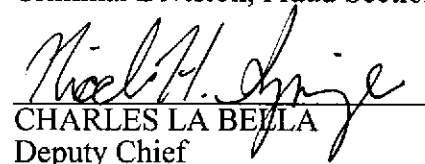
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45. Defendant, Defendant's attorney, and the attorney for the United States acknowledge that this Plea Memorandum contains the entire agreement negotiated and agreed to by and between the parties, and that no other promise has been made or implied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

OCT. 4, 2011
DATED


CHARLES LA BELLA
Deputy Chief

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

DATED

DENISE KESER
Defendant

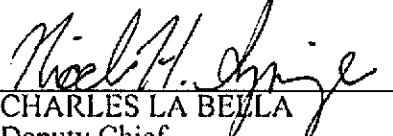
DATED

KEVIN STOLWORTHY
Counsel for Defendant

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5
6 DENIS J. McINERNEY
7 Chief
8 United States Department of Justice,
9 Criminal Division, Fraud Section

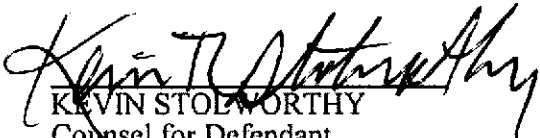
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11 OCT. 4, 2011
12 DATED


13 CHARLES LA BELLA
14 Deputy Chief
15 MICHAEL BRESNICK
16 Assistant Chief
17 NICOLE SPRINZEN
18 MARY ANN MCCARTHY
19 Trial Attorneys
20 United States Department of Justice
21 Criminal Division, Fraud Section

22
23 10/10/11
24 DATED


25 DENISE KESER
26 Defendant

27
10/10/11
DATED


KEVIN STOLWORTHY
Counsel for Defendant