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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, Plaintiff, v. FRANK SUTTON, Defendant.	CASE NO. **PLEA MEMORANDUM**

The United States of America, by and through Charles La Bella, Deputy Chief, and Mary Ann McCarthy, Trial Attorney, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, FRANK SUTTON, and the defendant's attorney, Richard Wright, submit this plea memorandum.

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

I. GROUP PLEA/PACKAGE PLEA AGREEMENT

This agreement is contingent on at least five (5) of the fourteen (14) co-defendants, **ROSALIO ALCANTAR, PATRICK BERGSRUD, ROBERT BOLTEN, GLENN BROWN, PAUL CITELLI, MICHELLE DELUCA, CHARLES HAWKINS, SAMI ROBERT HINDIYEH, BRIAN JONES, LISA KIM, MORRIS MATTINGLY, ARNOLD MYERS,**

JEANNE WINKLER and **ANTHONY ROY WILSON**, successfully entering their guilty pleas together with Defendant **FRANK SUTTON**, and that all pleas are accepted by the Court.

A. The Plea

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

B. Additional Charges

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

C. Sentencing Guideline Calculations

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

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

Base Offense Level (U.S.S.G. §2B1.1(a)):	7
Sophisticated Means (U.S.S.G. §2B1.1(b)(9)(c)):	2

The parties agree that the loss calculation will be calculated on an individual basis. The

parties agree that the appropriate loss calculations with respect to Defendant SUTTON are as follows:

Loss Amount of $30,000 to $70,000 (U.S.S.G. §2B1.1(b)(1)(D)):	6
TOTAL	15

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

6. The United States will make a recommendation that the defendant receive a 1-level downward adjustment from the defendant's base offense level for Defendant FRANK SUTTON and at least four (4) other co-defendants' group plea pursuant to Title 18, United States Code, Section 3553(b), on the condition that the co-defendants' change of pleas are entered and conditionally accepted by the Court on or before the defendant's sentencing hearing. If less than five (5) defendants enter guilty pleas, the Government will not make any motion for a group plea downward departure.

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

8. The United States will make a recommendation that the defendant receive a 3-

level downward adjustment from the defendant's base offense level for Defendant FRANK SUTTON and at least seventeen (17) other co-defendants' group plea pursuant to Title 18, United States Code, Section 3553(b), on the condition that the co-defendants' change of pleas are entered and conditionally accepted by the Court on or before the defendant's sentencing hearing. The defendant acknowledges that no more than a total of 3-levels will be recommended for a group plea reduction.

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

D. Other Sentencing Matters

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

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

E. Fines and Special Assessment

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

13. Defendant will pay the special assessment of $100 per count of conviction at the time of sentencing.

F. Restitution

14. Defendant agrees to make full restitution to the victims of the offense, in this case the homeowners' associations described below in Section IV. Defendant understands and agrees that this amount could be as much as $33,584.81, which is the actual loss for the property at Mission Ridge plus the payments and things of value he received from the co-conspirators for his participation in the scheme. In return for Defendant agreeing to make restitution, the United States agrees not to bring any additional charges against the defendant for the conduct giving rise to the relevant conduct. Defendant understands that any restitution imposed by the Court may not be discharged in whole or in part in any present or future bankruptcy proceeding.

G. Forfeiture

15. The parties agree that the government will not request that the Court require Defendants to pay forfeiture in addition to restitution. However, should the Court nevertheless order that Defendants shall pay forfeiture, the government agrees that such amount shall be the actual loss from the property at Mission Ridge, plus any money and things of value he received in connection with the scheme, and in no event more than $33,584.81. In the event of any order by the Court that Defendant shall pay forfeiture, the Defendant knowingly and voluntarily agrees to the following:

a. to abandon or to forfeit the property to the United States;

b. to relinquish all right, title, and interest in the property;

c. to waive his right to any abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture proceedings ("proceedings") of the property;

d. to waive service of process of any and all documents filed in this action or any 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.

16. 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

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

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

I. Additional Promises, Agreements, and Conditions

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

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

J. Limitations

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

K. Breach

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

II. PENALTY

23. 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.

24. 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.

25. 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.

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III. ELEMENTS

26. The essential elements for the offense of conspiracy to commit wire and mail 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

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

28. Defendant specifically admits and declares under penalty of perjury that all of the facts set forth below of which the Defendant has knowledge of as a member of the conspiracy are true and correct. The parties agree that some of the facts outlined below were actions taken by Defendant's co-conspirators and without the knowledge or involvement of the Defendant at the time; however, Defendant acknowledges that he knew of the unlawful purpose of the conspiracy and willfully joined it and that he is, therefore, responsible as a member of the conspiracy for those actions that were taken by his co-conspirators in furtherance of the conspiracy. Defendant's actions in furtherance of the conspiracy are specifically indicated.

29. From at least as early as in or around October 2004 through at least in or around February 2009, Defendant knowingly participated in a scheme to control various Homeowners' Association (HOA) Boards of Directors so that the HOA boards would award the handling of construction defect lawsuits and remedial construction contracts to a law firm and construction company designated by Defendant's co-conspirators.

30. Co-conspirators would identify HOA's which potentially could bring construction defect cases, and once identified would enlist real estate agents to identify condominium units within those HOA communities for purchase.

31. Co-conspirators would then enlist individuals as straw purchasers to apply for and complete mortgage loans using their own name and credit for the purchase of properties within the HOA communities on behalf of the beneficial owners. The co-conspirators arranged for the straw purchasers to get the necessary funding for the mortgages by assisting them with the loan applications and closing documents, which included false and fraudulent statements that involved concealing the identity and financial interest of the true beneficial owners of the properties from banks, mortgage companies, HOAs, and bona fide homeowners. The co-conspirator real estate agents arranged for the down payments to be funded by a co-conspirator and arranged for the money to be transferred to the escrow accounts.

32. Once the straw purchases were complete, the beneficial owners and co-conspirators often found tenants to rent the units. The beneficial owners received the rental payments and continued to pay the mortgages and various expenses associated with the straw purchase.

33. Co-conspirators were hired to manage and operate the payments associated with maintaining these straw properties. The co-conspirators called this business of funding these properties the "Bill Pay Program." The co-conspirators involved in running the Bill Pay Program maintained several limited liability companies, at the direction of the co-conspirator construction company owner and others, for the purpose of opening bank accounts and concealing the Bill Pay Program funds. Many of the payments on these properties were wired or caused to be wired from California to Nevada.

34. On several occasions, instead of making a straw purchase, the co-conspirators transferred a partial interest in a unit to another co-conspirator for the purpose of making it appear as if the co-conspirator was a bona fide homeowner. The co-conspirator real estate agent would assist with the paperwork involved in such transfers and arranged for the completion of the paperwork.

35. Defendant became involved in this conspiracy in the early part of 2004 when he was hired by the co-conspirator construction company to provide certain security services. Shortly

after he was employed, Defendant agreed with the co-conspirator construction company owner to act as a straw purchaser at Mission Ridge.

36. In order to accomplish this scheme, on or about April 12, 2005, Defendant agreed to purchase unit 2032 at Mission Ridge. Defendant signed and submitted a false and fraudulent loan application and closing documents to the financial institution in order to finance and close on the property on behalf of his co-conspirators.

37. On or about August 11, 2005, Defendant purchased unit 301 at Park Avenue with a cashier's check that was funded by one of the co-conspirator-controlled limited liability companies. At the direction of his co-conspirators, and in order to recapture the funds, on or about December 8, 2005, Defendant sold the unit to another co-conspirator. Defendant allowed his co-conspirators to sign his name to endorse the check from the sale, and it was thereafter deposited in the co-conspirator construction defect attorney's account on or about December 30, 2005. On or about December 30, 2005, the co-conspirator transferred a 1% interest in the same property back to Defendant by quit-claim deed. The quit-claim deed was notarized by another co-conspirator and filed by the co-conspirator real estate agent. The purpose of this transfer was to make it appear that Defendant was a legitimate owner in the community, and qualified for a position on the HOA Board of Directors.

38. Many of the straw purchasers and those who acquired a transferred interest in the properties agreed with co-conspirators to run for election to the respective HOA Board of Directors. These co-conspirators were paid or promised cash, checks, or things of value for their participation, all of which resulted in a personal financial benefit to the co-conspirators.

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

40. Another tactic the co-conspirators used to rig certain HOA board elections was to prepare forged ballots for out-of-town homeowners and either cause them to be transported or mailed to California and thereafter to have the ballots mailed back to Las Vegas from various locations around California so as to make it appear that the ballots were completed and mailed by bona fide homeowners residing outside Nevada. For instance, on or about April 15, 2008 and on or about April 21, 2008, a co-conspirator mailed ballots from several mail boxes in California back to Nevada in order to assist in the rigging of an election at Park Avenue.

41. On several occasions, co-conspirators attempted to create the appearance that the elections were legitimate by hiring "independent" attorneys to run the HOA board elections. These "special election masters" were to: (i) contact the bona fide homeowners to inform them of the election; (ii) mail the bona fide homeowners election ballots and voting instructions; (iii) collect and secure those election ballots returned by mail until the date of the election; and (iv) preside over the HOA board election, including supervising the counting of ballots. However, in truth and fact, the "special election masters" were selected by the co-conspirators and paid in cash, check, or promised things of value, by or on behalf of the co-conspirator construction company owner, for their assistance in rigging the elections. In particular, the "special election masters" allowed the co-conspirators to access the ballots for the purpose of opening the ballots and pre-counting the votes entered for each candidate to then know the number of fake ballots which needed to be created to ensure the co-conspirator up for election won the seat on the HOA board. These attorneys would run the board election knowing the co-conspirators had access to the ballots and concealed their relationship with the co-conspirators from the bona fide homeowners.

42. After Defendant SUTTON obtained an ownership interest in unit 301 at Park Avenue, and thus purported to become a member of the HOA community, he agreed with co-conspirators to become a HOA board member. On or about April 28, 2005, Defendant ran and was elected to the Park Avenue Board of Directors. Defendant breached his statutory fiduciary duty to the homeowners at Park Avenue by accepting from his co-conspirators compensation, gratuity, and

other remuneration that improperly influenced, or reasonably appeared to influence, his decisions, resulting in a conflict of interest.

43. Once elected, the straw purchaser board members would meet with the co-conspirators in order to manipulate board votes, including the selection of property managers, contractors, general counsel and attorneys to represent the HOA. Defendant attended these meetings on several occasions, including on or about March 28, 29, and 31 and May 18, 2006, and on other occasions he took direction from co-conspirators who attended these meetings to vote in furtherance of the conspiracy.

44. At times the co-conspirators created and submitted fake bids for "competitors" to make the process appear to be legitimate while ensuring co-conspirators were awarded the contract. Once hired, co-conspirators, including property managers and general counsel, would then recommend that the HOA board hire the co-conspirator construction company for remediation and construction defect repairs and the co-conspirator law firm to handle the construction defect litigation. In addition, the co-conspirator construction company's initial contract for emergency remediation repairs contained a "right of first refusal" clause to ensure the co-conspirator construction company was awarded the construction repair contracts following the construction defect litigation.

45. Defendant used his position on the board to vote in a manner directed by and favorable to certain co-conspirators. Specifically, Defendant participated in the following actions, among others: (i) on or about March 17, 2006, Defendant took direction from his co-conspirators and signed an "Agreement for Legal Services" that hired the co-conspirator-controlled law firm to handle the construction defect litigation; (ii) on or about March 21, 2007, Defendant took direction from his co-conspirators and voted to fire the property management company and hire the co-conspirator-controlled property management company; and, (iii) Defendant agreed with the co-conspirator construction company owner to stall mediation of the construction defect litigation until the construction defect attorney agreed to recommend to the board to award the construction repair contract to the co-conspirator-controlled construction company.

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

V. ACKNOWLEDGMENT

47. 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.

48. 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 the 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.

49. 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 the defendant the burdens and benefits of this agreement and the rights he waives herein.

50. Defendant, Defendant's attorney, and the attorney for the United States acknowledge that this Plea Memorandum contains the entire 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.

United States Department of Justice,
Criminal Division, Fraud Section

4/19/2012
DATED

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

4/6/12
DATED

FRANK SUTTON
Defendant

4/6/12
DATED

RICHARD WRIGHT
Defense Counsel