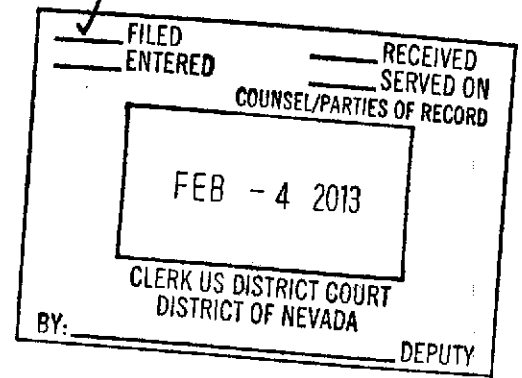




1 CHARLES LA BELLA  
Deputy Chief  
2 KATHLEEN McGOVERN  
Deputy Chief  
3 MARY ANN MCCARTHY  
Trial Attorney  
4 Fraud Section, Criminal Division  
U.S. Department of Justice  
5 1400 New York Avenue, NW  
Washington, DC 20530  
6 (202) 598-2240

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

10 -oOo-

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RALPH PRIOLA,

15 Defendant.

**2:13-cr-00016-JCM-NJK-1**

) CASE NO.

) **PLEA MEMORANDUM**  
)  
)  
)  
)

16  
17 The United States of America, by and through Charles La Bella, Deputy Chief, Kathleen  
18 McGovern, Deputy Chief, and Mary Ann McCarthy, Trial Attorney, U.S. Department of Justice,  
19 Criminal Division, Fraud Section, the defendant, RALPH PRIOLA, and the defendant's attorney,  
20 John Moran, Jr., submit this plea memorandum. The United States and the defendant have reached  
21 the following plea agreement, which is not binding on the court:

22 **A. The Plea**

23 1. Defendant will plead guilty to Count One of the information, charging Defendant  
24 with conspiracy to commit wire and mail fraud, in violation of Title 18, United States Code,  
25 Section 1349. Defendant also agrees to pay restitution or to the forfeiture of the property set forth  
26 in this Plea Memorandum.  
27

1 **B. Additional Charges**

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

6 **C. Sentencing Guideline Calculations**

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

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

|    |                                                                      |    |
|----|----------------------------------------------------------------------|----|
| 14 | Base Offense Level<br>(U.S.S.G. §2B1.1(a)):                          | 7  |
| 15 |                                                                      |    |
| 16 | Loss Amount of more than \$20,000,000<br>(U.S.S.G. §2B1.1(b)(1)(L)): | 22 |
| 17 |                                                                      |    |
| 18 | More than 250 victims<br>(U.S.S.G. §2B1.1(b)(2)(C)):                 | 6  |
| 19 |                                                                      |    |
| 20 | Sophisticated Means<br>(U.S.S.G. §2B1.1(b)(9)(c)):                   | 2  |
| 21 |                                                                      |    |
| 22 | Aggravated Role: Manager/Supervisor<br>(U.S.S.G. §3B1.1(b))          | 3  |
| 23 |                                                                      |    |
| 24 | TOTAL                                                                | 40 |

25 5. Acceptance of Responsibility: Pursuant to U.S.S.G. §3E1.1(a), the United States  
26 will recommend that the defendant receive a 2-level adjustment for acceptance of responsibility  
27 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

1 limitation, financial information; (c) denies involvement in the offense or provides conflicting  
2 statements regarding defendant's involvement; (d) attempts to withdraw the guilty plea; (e)  
3 engages in criminal conduct; (f) fails to appear in court; or (g) violates the conditions of  
4 Defendant's pretrial release conditions.

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

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

11 **D. Other Sentencing Matters**

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

20 9. By letter, dated April 30, 2009, a copy of which is attached hereto as Exhibit 1, and  
21 incorporated by reference into the Plea Memorandum, the United States Attorney's Office for the  
22 District of Nevada ("USAO"), provided guidance and clarity to the defendant and his counsel, John  
23 Moran, Jr., regarding the treatment the defendant would receive if he chose to provide the  
24 Government with a proffer. The defendant thereafter did provide the USAO with a proffer as  
25 outlined in the April 30, 2009 letter. Thus, the terms of the April 30, 2009 USAO letter are  
26 incorporated into this Plea Memorandum. The stipulations in this Plea Memorandum do not bind

27

1 either the United States Probation Office or the Court. Both Defendant and the United States are  
2 free to: (a) supplement the facts by supplying relevant information to the United States Probation  
3 Office and the Court, and (b) correct any and all factual inaccuracies relating to the calculation of  
4 the sentence.

5 **E. Fines and Special Assessment**

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

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

10 **F. Restitution**

11 12. Defendant agrees to make full restitution to the victims of the offense, as described below  
12 in Section IV. Defendant understands and agrees that this amount could be no more than \$24.8  
13 million. Defendant understands that any restitution imposed by the Court may not be discharged in  
14 whole or in part in any present or future bankruptcy proceeding.

15 **G. Forfeiture**

16 13. Defendant understands that the Court may require Defendant to pay forfeiture in addition  
17 to restitution. Should the Court order that Defendant shall pay forfeiture, Defendant understands  
18 and agrees that such amount could be no more than \$24.8 million. In the event of any order by the  
19 Court that Defendant shall pay forfeiture, the Defendant knowingly and voluntarily agrees to the  
20 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

27

1 any proceedings concerning the property arising from the facts and circumstances of this case;

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

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

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

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

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

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

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

20 **H. Waiver of Appeal**

21 15. In exchange for the concessions made by the United States in this Plea Memorandum,  
22 Defendant knowingly and expressly waives the right to appeal any sentence that is imposed within  
23 the applicable Sentencing Guideline range as calculated by the Court, further waives the right to  
24 appeal the manner in which that sentence was determined on the grounds set forth in Title 18,  
25 United States Code, Section 3742, and further waives the right to appeal any other aspect of the  
26 conviction or sentence, including any order of restitution and forfeiture. Defendant reserves only  
27

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

3 16. Defendant also waives all collateral challenges, including any claims under 28 U.S.C. §  
4 2255, to the Defendant's conviction, sentence and the procedure by which the Court adjudicated  
5 guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

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

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

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

18 **J. Limitations**

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

27

## 1 K. Cooperation

20. As referenced in paragraph 9 above, by letter, dated April 30, 2009, a copy of which is attached hereto as Exhibit 1, and incorporated by reference into the Plea Memorandum, the United States Attorney's Office for the District of Nevada ("USAO"), provided guidance and clarity to the defendant and his counsel, John Moran, Jr., regarding the treatment the defendant would receive if he chose to provide the Government with a proffer. The defendant thereafter did provide the USAO with a proffer as outlined in the April 30, 2009 letter. Thus, the terms of the April 30, 2009 USAO letter are incorporated into this Plea Memorandum.

9 L. Breach

21. 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 counsel 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.

21.. II. PENALTY

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

25 23. Supervised release is a period of time following imprisonment during which Defendant  
26 will be subject to various restrictions and requirements. Defendant understands that if Defendant

1 violates one or more of the conditions of any supervised release imposed, Defendant may be  
2 returned to prison for all or part of the term of supervised release, which could result in Defendant  
3 serving a total term of imprisonment greater than the statutory maximum stated above.

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

### 7 III. ELEMENTS

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

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

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

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

### 16 IV. FACTS

17 26. Defendant is pleading guilty because Defendant is guilty of the charged offenses.

18 27. Defendant specifically admits and declares under penalty of perjury that all of the facts set  
19 forth below of which the Defendant has knowledge of as a member of the conspiracy are true and  
20 correct. The parties agree that some of the facts outlined below were actions taken by  
21 Defendant's co-conspirators and without the knowledge or involvement of the Defendant at the  
22 time; however, Defendant acknowledges that he knew of the unlawful purpose of the conspiracy  
23 and willfully joined it and that he is, therefore, responsible as a member of the conspiracy for those  
24 actions that were taken by his co-conspirators in furtherance of the conspiracy. Defendant's  
25 actions in furtherance of the conspiracy include, but are not limited to, those indicated below.

26 28. From as early as in or around 2003 through at least in or around February  
27

1 2009, Defendant knowingly participated in a scheme to control various Homeowners' Association  
2 (HOA) Boards of Directors so that the HOA boards would award the handling of construction  
3 defect lawsuits and remedial construction contracts to a law firm and construction company  
4 designated by Defendant's co-conspirators.

5 35. The Defendant was a manager and supervisor of numerous co-conspirators, working  
6 directly for and at the direction of the principal architect of the criminal scheme, L.B. Defendant  
7 made cash payments to numerous co-conspirators for their participation in the scheme, as well as  
8 for expenses associated with furthering the goals of the conspiracy.

9 36. The co-conspirators would and did enlist real estate agents to identify condominium units  
10 within HOA communities for purchase by co-conspirators in connection with the scheme.

11 37. The co-conspirators would and did enlist individuals to act as straw purchasers to  
12 complete mortgage loan applications to purchase properties within the HOA communities on  
13 behalf of the beneficial owners and made false and fraudulent statements that concealed the  
14 identity and financial interest of the true beneficial owners of the properties from banks, mortgage  
15 companies, HOAs, and bona fide homeowners. Defendant made cash payments to numerous co-  
16 conspirators for their expenses related to their straw ownership of various condominium units at  
17 several HOA communities.

18 38. The co-conspirators would and did use several licensed notaries to assist in fraudulently  
19 notarizing documents in furtherance of the conspiracy without the signatory appearing before  
20 him/her as required by his/her State of Nevada notary license.

21 39. Various co-conspirators would and did join the conspiracy when they agreed to become  
22 straw purchasers at a particular HOA. Many co-conspirators signed and submitted false and  
23 fraudulent loan applications and supporting documents to financial institutions in order to finance  
24 and close on the properties. Defendant was a straw purchaser at Jasmine HOA.

25 40. In furtherance of the scheme, on or about August 3, 2005, a co-conspirator would and did  
26 open and manage five bank accounts on behalf of Co-Conspirators A and L.B. under the names of  
27 limited liability companies to conceal the identity of the beneficial owners. Numerous interstate

1 wire transfers were made to and from these accounts to fund the conspiracy and to pay co-  
2 conspirators for their participation in the scheme.

3 41. Several straw purchasers allowed the co-conspirators to transfer a 1% or greater  
4 ownership interest in their unit to another co-conspirator to make it appear that the new owner was  
5 a legitimate owner in the HOA and was qualified to run for a position on the HOA board of  
6 directors.

7 42. The co-conspirators would and did also refinance the properties in order to increase the  
8 conspiracy's capital from which additional condominiums could be purchased.

9 43. Several straw purchasers and those who acquired a transferred interest in the properties  
10 would and did agree to run for election to HOA boards. Defendant paid these co-conspirators  
11 cash, checks, or things of value for their participation, all of which resulted in a personal financial  
12 benefit to the co-conspirators.

13 44. To ensure the co-conspirators would win the elections, co-conspirators would and did  
14 employ deceitful tactics, such as creating false phone surveys to gather information about  
15 homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town homeowners  
16 who were unlikely to participate in the elections, and submitting fake and forged ballots. Co-  
17 conspirators also hired private investigators to find "dirt" on bona fide candidates in order to  
18 influence the elections.

19 45. The co-conspirators would and did rig certain HOA board elections by preparing forged  
20 ballots for out-of-town homeowners and either transported or caused them to be transported or  
21 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various  
22 locations around California so as to make it appear that the ballots were completed and mailed by  
23 bona fide homeowners residing outside Nevada. Defendant assisted in rigging HOA board of  
24 directors elections at several HOA communities in Las Vegas.

25 46. The co-conspirators would and did attempt to create the appearance that the elections  
26 were legitimate by hiring "independent" attorneys to run the HOA board elections. These "special  
27 election masters" were obligated to: (i) contact the bona fide homeowners to inform them of the

1 election; (ii) mail the bona fide homeowners election ballots and voting instructions; (iii) collect  
 2 and secure those election ballots returned by mail until the date of the election; and (iv) preside  
 3 over the HOA board election, including supervising the counting of ballots. However, in truth and  
 4 fact, certain "special election masters" were paid in cash, check, or promised things of value, by or  
 5 on behalf of the co-conspirators for their assistance in allowing the elections to be rigged.

6 Defendant made payments to the "special election masters."

7 47. Once elected, the straw purchaser board members would and did meet with co-  
 8 conspirators in order to manipulate board votes, including the selection of property managers,  
 9 contractors, general counsel and attorneys to represent the HOA. Defendant participated in these  
 10 meetings and discussed proposed board actions with the intent to benefit Defendant and his co-  
 11 conspirators.

#### 12 V. ACKNOWLEDGMENT

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

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

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

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

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

50. 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.

51. 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

12/3/12  
DATED

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

12-3-12  
DATED

Ralph Priola  
RALPH PRIOLA  
Defendant

12-3-12  
DATED

John T. Moran Jr.  
JOHN MORAN, JR.  
Counsel for Defendant

EXHIBIT 1

04/30/2009 14:35 FAX 7023886020

US ATTORNEY'S OFFICE

001/004



**United States Department of Justice**  
**United States Attorney's Office for the District of Nevada**  
 333 Las Vegas Boulevard South, Suite 5000  
 Las Vegas, Nevada 89101  
 Tele: (702) 388-6336  
 Fax: (702) 388-6020

April 30, 2009

Sent via facsimile

John Moran, Jr., Esq.  
 630 South 4<sup>th</sup> Street, #400  
 Las Vegas, Nevada 89101  
 Fax: (702) 868-5642  
 Total Pages: 4

Re: Ralph Priola

Dear Mr. Moran:

Two days ago your client, Ralph Priola, executed a Proffer Agreement. However, as you are aware, that agreement is not a cooperation agreement. Accordingly, yesterday morning you contacted me to indicate that you would like further guidance and clarity regarding the treatment Mr. Priola would receive if he chooses to provide a proffer to the Government. In light of your request, and after receiving approval from my supervisors, I have outlined below the treatment Mr. Priola can expect to receive should he proffer to the Government. To the extent the provisions set forth below conflict with the Proffer Agreement, the provisions set forth below control.

I. In exchange for Mr. Priola providing truthful and complete information of all criminal activity that he and others engaged in, and are engaging in, against the United States, any state, entity or individual, as specified in the Proffer Agreement, the United States Attorney's Office for the District of Nevada (the "United States") will, in its sole discretion, evaluate whether Mr. Priola provided truthful and complete information and whether he can provide "substantial assistance," as that term is defined under Section 5K1.1 of the United States Sentencing Guidelines ("U.S.S.G."). If the United States determines that Mr. Priola provided truthful and complete information and will be able to provide substantial assistance, then the United States will enter into a non-binding plea agreement with Mr. Priola that will, among other terms, provide the following:

A. Require Mr. Priola to plead guilty to a one count criminal information charging him with conspiracy, mail fraud, or wire fraud of the United States involving

B. Require Mr. Priola to pay restitution based on the crime to which he will plead guilty and all relevant conduct, or to agree to forfeiture based on the crime to which he will plead guilty and to other crimes he may admit to having committed, or both.

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US ATTORNEY'S OFFICE

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C. Permit Mr. Priola to cooperate with the United States. The following terms regarding cooperation and a sentencing recommendation will be included in any potential plea agreement:

1. The defendant agrees to provide complete and truthful information and testimony concerning the defendant's knowledge of all persons, including himself, who are committing or have committed offenses against the United States or any state, and agrees to cooperate fully with the United States and any state and local agency in the investigation and prosecution of such persons. The defendant agrees that the information provided can be used against him to establish relevant conduct for sentencing purposes.
2. Such cooperation shall include but not be limited to:
  - a. promptly turning over to the Government, or direct the Government to, ~~any and all evidence of crime, all contraband and proceeds of crime and all assets traceable to such proceeds of crime.~~
  - b. agreeing to submit to a full and complete accounting of his financial assets, whether such assets are in his name or in the name of a third party.
  - c. testifying fully and truthfully before any Grand Jury in the District of Nevada and elsewhere, and at all trials of cases or other Court proceedings (including administrative hearings) in the District of Nevada and elsewhere, at which his testimony may be deemed relevant by the Government.
3. In the event the United States decides in the sole discretion of the United States Attorney that the assistance provided by the defendant amounts to "substantial assistance" pursuant to U.S.S.G. § 5K1.1, the United States will timely file a ~~motion for downward departure from the applicable Guideline.~~ The Court has the sole discretion to grant such a motion.
4. The defendant agrees that a motion for downward departure based on substantial assistance shall not be made under any circumstances unless the defendant's cooperation is deemed to be substantial assistance by the United States Attorney. The United States has made no promise, implied or

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U.S. ATTORNEY'S OFFICE

0003/006

otherwise, that defendant will be granted a departure for substantial assistance

5. The United States agrees to consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the sole discretion of the United States Attorney, the defendant has provided substantial assistance which would merit a motion by the United States for a downward departure from the applicable Guideline sentence:

a. The United States' evaluation of the significance and usefulness of the defendant's assistance;

b. The truthfulness, completeness, and reliability of the information or testimony provided by the defendant;

c. The nature and extent of the defendant's assistance;

d. Any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from the defendant's assistance;

e. The timeliness of the defendant's assistance; and

f. The defendant does not commit any crime after April 29, 2009, and the defendant does not violate any of the conditions of the pretrial release under which the parties expect that he will be placed under after entry of a guilty plea.

6. In the event the United States files a downward departure motion based upon the defendant's "substantial assistance," the United States will recommend that the defendant receive a sentence of home confinement or probation. The defendant understands and agrees that the final decision as to how much of a departure, if any, is warranted rests solely with the Court.

7. The defendant agrees that if the United States determines that the defendant has not provided full and truthful cooperation, has committed any federal, state or local crime between April 29, 2009, and the defendant's sentencing, has

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004/004

*violated any condition of his pretrial release or has otherwise violated any provision of the plea agreement that will be signed, then (a) the agreement and any of its obligations hereunder may be voided by the United States in its sole discretion, (b) the defendant may not withdraw the guilty plea, and (c) the defendant shall be subject to prosecution for all federal criminal offenses of which the United States has knowledge including, but not limited to, perjury and obstruction of justice. Any such prosecution may be based upon any information provided by the defendant or leads derived therefrom.*

8. *Notwithstanding all of the preceding provisions, this agreement does not foreclose prosecution of defendant for an act of murder, attempted murder, an act of physical violence against the person of another or any other conspiracy to commit any such act of violent unlawful activity, regardless of time period.*

I hope this letter provides the clarity and guidance you seek. Should you have any questions, I can be reached directly at 388-6521.

Very Truly Yours,

Paul S. Padda

Assistant United States Attorney

cc:  
Russell Marsh  
Criminal Chief

Dan Schiess  
Deputy Chief