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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, Plaintiff, v. PATRICK BERGSRUD, Defendant.	CASE NO. **PLEA MEMORANDUM**

The United States of America, by and through Charles G. La Bella, Deputy Chief, and Mary Ann McCarthy, Trial Attorney, U.S. Department of Justice, Criminal Division, Fraud Section, the defendant, PATRICK BERGSRUD, and the defendant's attorney, Tom Ericsson, 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 thirteen (13) co-defendants, **ROSALIO ALCANTAR, ROBERT BOLTEN, GLENN BROWN, PAUL CITELLI, MICHELLE DELUCA, CHARLES HAWKINS, SAMI ROBERT HINDIYEH, BRIAN JONES, LISA KIM, MORRIS MATTINGLY, ARNOLD MYERS, ANTHONY ROY**

WILSON, and **JEANNE WINKLER** successfully entering their guilty pleas together with Defendant **PATRICK BERGSRUD**, and that all pleas are accepted by the Court.

A. <u>The Plea</u>

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. <u>Additional Charges</u>

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. <u>Sentencing Guideline Calculations</u>

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

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The parties agree that the loss calculation will be calculated on an individual basis, with Defendant BERGSRUD's loss calculated as follows:

Loss Amount of $200,000 to $400,000 (U.S.S.G. §2B1.1(b)(1)(G)):	12
TOTAL	21

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

7. 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 PATRICK BERGSRUD 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.

8. 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 PATRICK BERGSRUD 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.

9. 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 PATRICK BERGSRUD 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.

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

D. <u>Other Sentencing Matters</u>

11. 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.

12. 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

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

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

F. Restitution

15. 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 $369,252.76, which is the actual loss attributed to his condominium units at Vistana and Chateau Nouveau, plus the amount he helped to withdraw from the Vistana HOA construction defect settlement account minus those funds already recovered by law enforcement, plus the amount of money or things of value he received 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

16. 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 attributed to his condominium units at Vistana and Chateau Nouveau, plus the amount he helped to withdraw from the Vistana HOA construction defect settlement account minus those funds already recovered by law enforcement, plus the amount of money or things of value he received for his participation in the scheme, and no event more than $369,252.76. 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.

17. 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

18. 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.

19. 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

20. 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.

21. 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

22. 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. Cooperation

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

24. In the event the government decides in its sole discretion that the assistance provided by 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 Sentencing Guideline calculation. The Court has the sole discretion to grant such a motion.

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

26. 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 government, Defendant has provided substantial assistance which would merit a motion by the United States for a downward departure from the applicable Guideline:

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

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

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

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

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

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

g. The timeliness of Defendant's assistance.

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

L. <u>Breach</u>

28. 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

29. 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.

30. 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.

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

III. ELEMENTS

32. 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

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

34. 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.

35. From at least as early as in or around July 2007 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.

36. 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. In order to accomplish this scheme, Defendant BERGSRUD acted as a real estate agent, identifying condominiums in HOA communities for purchase by the co-conspirators. For instance, Defendant encouraged the co-conspirators to purchase units at Mission Pointe.

37. 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 agent arranged for the down payments to be funded by a co-conspirator and arranged for the money to be transferred to the escrow accounts.

38. In order to accomplish this scheme, Defendant BERGSRUD agreed to act as a straw purchaser at several Las Vegas HOA communities, including Vistana and Chateau Nouveau. On or about July 27, 2007, Defendant purchased a unit at Chateau Nouveau, and on or about September 20, 2007, Defendant purchased a unit at Vistana. In fact, Defendant's co-conspirators provided the down payments and monthly payments, including HOA dues and mortgage payments, for these properties and were the true owners of the properties. Defendant signed and submitted false and fraudulent loan applications and closing documents to the financial institutions in order to finance and close on the properties on behalf of his co-conspirators.

39. 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.

40. 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.

41. 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. On or about September 18, 2007, Defendant received an ownership interest at Horizons at Seven Hills by quit-claim deed. On or about August 8, 2008, Defendant received an ownership interest at Mission Pointe when the co-conspirator construction company owner purchased the unit with cash for the Defendant. On that same day, Defendant took direction from his co-conspirators and transferred a 50% ownership interest in the Mission Pointe unit to another co-conspirator. Defendant understood that the co-conspirators intended to use these ownership interests to nominate and elect co-conspirator HOA board members and to further the objects of the conspiracy.

42. The co-conspirator real estate agents, including Defendant BERGSRUD, assisted with the paperwork involved in such transfers and arranged for the completion of the paperwork. For instance, on or about December 3, 2007, Defendant requested the recording of a quit-claim deed that transferred an ownership interest in a unit at Vistana from one co-conspirator to another co-conspirator; and, on or about February 5, 2008, Defendant requested the recording of a quit-claim deed that transferred an ownership interest in a unit at Horizons at Seven Hills from one co-conspirator to another co-conspirator. Defendant used his real estate company to record these and other transactions on behalf of the co-conspirators.

43. 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.

44. 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.

45. 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.

46. 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 Co-Conspirators A and B 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.

47. After Defendant BERGSRUD purchased the properties for his co-conspirators, and thus purported to become a member of the HOA communities, he agreed to run for election to the HOA boards of directors. On or about October 18, 2007, he ran and was elected to the Vistana HOA Board of Directors. Defendant knew this Vistana election was rigged. Defendant breached

his statutory fiduciary duty to the homeowners 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.

48. 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 and on other occasions he took direction from co-conspirators who attended these meetings to vote in furtherance of the conspiracy.

49. 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.

50. 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 November 16, 2007, Defendant voted to pay $1,528,250 to the co-conspirator construction company, related to the construction defect remediation work; (ii) on or about August 14, 2008, Defendant voted to pay $200,000 to the co-conspirator construction company, related to the construction defect remediation work; and, (iii) on or about February 14, 2008, Defendant voted to pay $1,025,217.37 to the co-conspirator construction company, related to the construction defect remediation work.

51. On or about December 30, 2008, after local and federal law enforcement officials executed search warrants at the homes and businesses of several of his co-conspirators, Defendant,

at the direction of co-conspirators, further abused his power as a board member at Vistana by withdrawing the remaining $450,000 from the Vistana HOA construction defect settlement account for the sole purpose of enriching the co-conspirators at the expense of the bona fide homeowners.

52. On or about April 30, 2009, Defendant took out a $50,000 mortgage on the Mission Pointe condominium that was purchased in cash for him by the co-conspirators. He did so for the sole purpose of enriching himself. He failed to make a payment on the loan.

53. This entire process created the appearance of legitimacy since bona fide homeowners believed the elected board members and other third parties were, as fiduciaries, acting in their best interest rather than to advance the financial interests of co-conspirators. In fact, Defendant BERSGRUD 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

54. 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.

55. 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.

56. 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.

57. 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.

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

April 2, 2012
DATED

CHARLES LA BELLA
Deputy Chief

Mary Ann McCarthy
MARY ANN McCARTHY
Trial Attorney
United States Department of Justice
Criminal Division, Fraud Section

3/7/12
DATED

PATRICK BERGSRUD
Defendant

3/7/12
DATED

TOM ERICKSON
Defense Counsel