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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 -oOo-

9
10 UNITED STATES OF AMERICA,)
11 Plaintiff,) CASE NO.
12 v.) PLEA MEMORANDUM
13 MORRIS MATTINGLY,)
14 Defendant.)

15
16 The United States of America, by and through Charles La Bella, Deputy Chief, and Mary
17 Ann McCarthy, Trial Attorney, U.S. Department of Justice, Criminal Division, Fraud Section, the
18 defendant, MORRIS MATTINGLY, and the defendant's attorney, Andrew Leavitt, submit this
19 plea memorandum.

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

22 I. GROUP PLEA/PACKAGE PLEA AGREEMENT

23 This agreement is contingent on at least five (5) of the nineteen (13) co-defendants,
24 ROSALIO ALCANTAR, PATRICK BERGSRUD, ROBERT BOLTEN, GLENN BROWN,
25 PAUL CITELLI, MICHELLE DELUCA, CHARLES HAWKINS, SAMI ROBERT
26 HINDIYEH, BRIAN JONES, LISA KIM, ARNOLD MYERS, JEANNE WINKLER and
27

1 ANTHONY ROY WILSON, successfully entering their guilty pleas together with Defendant
2 MORRIS MATTINGLY, and that all pleas are accepted by the Court.

3 **A. The Plea**

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

8 **B. Additional Charges**

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

13 **C. Sentencing Guideline Calculations**

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

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

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

26 The parties agree that the loss calculation will be calculated on an individual basis. The
27

1 parties agree that the appropriate loss calculations with respect to Defendant MATTINGLY are as
2 follows:

3	Loss Amount of \$120,000 to \$200,000	
4	(U.S.S.G. §2B1.1(b)(1)(F)):	10
5	TOTAL	19

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

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

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

26 8. The United States will make a recommendation that the defendant receive a 2-

1 level downward adjustment from the defendant's base offense level for Defendant MORRIS
2 MATTINGLY and at least eleven (11) other co-defendants' group plea pursuant to Title 18, United
3 States Code, Section 3553(b), on the condition that the co-defendants' change of pleas are entered
4 and conditionally accepted by the Court on or before the defendant's sentencing hearing.

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

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

13 **D. Other Sentencing Matters**

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

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

1 **E. Fines and Special Assessment**

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

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

6 **F. Restitution**

7 15. Defendant agrees to make full restitution to the victims of the offense, in this case
8 the homeowners' associations described below in Section IV. Defendant understands and agrees
9 that this amount could be as much as \$190,471.03, which is based on the payments and things of
10 value he received from the co-conspirators for his participation in the scheme. In return for
11 Defendant agreeing to make restitution, the United States agrees not to bring any additional
12 charges against the defendant for the conduct giving rise to the relevant conduct. Defendant
13 understands that any restitution imposed by the Court may not be discharged in whole or in part in
14 any present or future bankruptcy proceeding.

15 **G. Forfeiture**

16 16. The parties agree that the government will not request that the Court require
17 Defendants to pay forfeiture in addition to restitution. However, should the Court nevertheless
18 order that Defendants shall pay forfeiture, the government agrees that such amount shall be the
19 amount of money and things of value he received in connection with the scheme, and in no event
20 more than \$190,471.03. In the event of any order by the Court that Defendant shall pay forfeiture,
21 the Defendant knowingly and voluntarily agrees to the following:

- 22 a. to abandon or to forfeit the property to the United States;
23 b. to relinquish all right, title, and interest in the property;
24 c. to waive his right to any abandonment proceedings, any civil administrative
25 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
26 proceedings ("proceedings") of the property;
27

1 d. to waive service of process of any and all documents filed in this action or any
2 proceedings concerning the property arising from the facts and circumstances of this case;

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

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

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

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

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

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

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

21 **H. Waiver of Appeal**

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

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

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

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

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

21 **J. Limitations**

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

4 **K. Cooperation**

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

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

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

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

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

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

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

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

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

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

14 g. The timeliness of Defendant's assistance.

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

20 **L. Breach**

21 28. Defendant agrees that if Defendant, at any time after the signature of this Plea
22 Memorandum and execution of all required certifications by Defendant, Defendant's counsel, and
23 for the government, knowingly violates or fails to perform any of Defendant's obligations under
24 this Memorandum ("a breach"), the government may declare this Memorandum breached. All of
25 Defendant's obligations are material, a single breach of this Plea Memorandum is sufficient for the
26 government to declare a breach, and Defendant shall not be deemed to have cured a breach without
27 the express agreement of the government in writing. If the government declares this Memorandum

1 breached, and the Court finds such a breach to have occurred, then: (a) if Defendant has previously
2 entered a guilty plea pursuant to this Memorandum, Defendant will not be able to withdraw the
3 guilty plea, and (b) the government will be relieved of all its obligations under this agreement.

4 II. PENALTY

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

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

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

17 III. ELEMENTS

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

20 a. First, from as early as in or about August 2003 through at least in or about
21 February 2009, there was an agreement between two or more persons to commit mail fraud and
22 wire fraud;

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

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

26 IV. FACTS

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

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

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

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

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

26 38. Once the straw purchases were complete, the beneficial owners and co-
27

1 conspirators often found tenants to rent the units. The beneficial owners received the rental
2 payments and continued to pay the mortgages and various expenses associated with the straw
3 purchase.

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

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

16 41. Defendant became involved in this conspiracy in the early part of 2004 when he
17 was hired by the co-conspirator construction company to provide certain security services. Shortly
18 after he was employed, Defendant agreed with the co-conspirator construction company owner to
19 act as a straw purchaser at Vistana.

20 42. In order to accomplish this scheme, Defendant agreed with the co-conspirator
21 construction company owner to set-up a shell company called Mattingly & Associates, for the
22 purpose of managing the co-conspirator properties. In or around October 2005, Defendant hired a
23 loan processor to work at Mattingly & Associates and directed her to notarize mortgage documents
24 without the signatory appearing before her as required by statute on behalf of the co-conspirators,
25 and to collect rental payments for the conspiracy-controlled properties.

26 43. Defendant agreed to purchase unit 204 at Vistana. Defendant began the
27 paperwork, but then allowed a co-conspirator to finalize the purchase. With the defendant's

1 assistance, on or about June 30, 2004, the co-conspirator purchased the property, in order to make
2 it appear that the co-conspirator was a legitimate owner in the community and qualified for a
3 position on the Vistana HOA board of directors.

4 44. On or about September 27, 2004, Defendant purchased unit 213 at Vistana.
5 Defendant signed and submitted a false and fraudulent loan application and closing documents to
6 the financial institution in order to finance and close on the property on behalf of his co-
7 conspirators. The co-conspirators then made the monthly payments, including the HOA dues and
8 mortgage payments, for Defendant's unit.

9 45. On or about August 23, 2007, Defendant signed two quit-claim deeds, which
10 transferred a 5% ownership interest each in unit 213 at Vistana to two separate co-conspirators.
11 The quit-claim deeds were notarized by another co-conspirator. The purpose of these transfers was
12 to make it appear that these co-conspirators were legitimate owners in the community, and that
13 they were qualified for a position on the HOA Board of Directors.

14 46. On or about August 2, 2005, Defendant's name was used by his co-conspirators to
15 purchase unit 401 at Park Avenue with a cashier's check. The co-conspirator construction
16 company owner provided the funding for this purchase. This unit, in Defendant's name, was
17 thereafter sold to another co-conspirator, on or about November 22, 2005, and that co-conspirator
18 then used the ownership interest to become a board member at Park Avenue. A co-conspirator
19 notarized the mortgage documents associated with this sale. The proceeds of the sale went to the
20 co-conspirator construction company owner.

21 47. On or about August 19, 2005, unit 1169 at Chateau Versailles was purchased in
22 Defendant's name. The co-conspirator construction company owner provided the funding for this
23 purchase. On or about December 19, 2005, Defendant appeared on the election ballot for the
24 Board of Directors, but another co-conspirator was elected to the board during this election. On or
25 about January 3, 2006, this unit was sold to another co-conspirator, and that co-conspirator then
26 used the ownership interest to become a board member at Chateau Versailles. Defendant's name
27

1 appears as the endorser of the check from the sale, and it was thereafter deposited in the co-
2 conspirator construction defect attorney's account on or about December 30, 2005.

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

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

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

20 51. On several occasions, co-conspirators attempted to create the appearance that
21 the elections were legitimate by hiring "independent" attorneys to run the HOA board elections.
22 These "special election masters" were to: (i) contact the bona fide homeowners to inform them of
23 the election; (ii) mail the bona fide homeowners election ballots and voting instructions; (iii)
24 collect and secure those election ballots returned by mail until the date of the election; and (iv)
25 preside over the HOA board election, including supervising the counting of ballots. However, in
26 truth and fact, the "special election masters" were selected by the co-conspirators and paid in cash,
27 check, or promised things of value, by or on behalf of the co-conspirator construction company

1 owner, for their assistance in rigging the elections. In particular, the “special election masters”
2 allowed the co-conspirators to access the ballots for the purpose of opening the ballots and pre-
3 counting the votes entered for each candidate to then know the number of fake ballots which
4 needed to be created to ensure the co-conspirator up for election won the seat on the HOA board.
5 These attorneys would run the board election knowing the co-conspirators had access to the ballots
6 and concealed their relationship with the co-conspirators from the bona fide homeowners.

7 52. After Defendant MATTINGLY obtained an ownership interest in unit 213 at
8 Vistana, and thus purported to become a member of the HOA community, he agreed with co-
9 conspirators to become a HOA board member. On or about October 27, 2004, Defendant was
10 elected to the board in a rigged election. On or about November 11, 2006, Defendant lost his seat
11 on the board. Then, on or about October 18, 2007, Defendant was re-elected to the Vistana HOA
12 Board of Directors in a rigged election and became a board member for the second time.
13 Defendant breached his statutory fiduciary duty to the homeowners at Vistana by accepting from
14 his co-conspirators compensation, gratuity, and other remuneration that improperly influenced, or
15 reasonably appeared to influence, his decisions, resulting in a conflict of interest.

16 53. Once elected, the straw purchaser board members would meet with the co-
17 conspirators in order to manipulate board votes, including the selection of property managers,
18 contractors, general counsel and attorneys to represent the HOA. Defendant attended these
19 meetings on several occasions, including on or about December 8, 2004, and on other occasions he
20 took direction from co-conspirators who attended these meetings to vote in furtherance of the
21 conspiracy.

22 54. At times the co-conspirators created and submitted fake bids for “competitors”
23 to make the process appear to be legitimate while ensuring co-conspirators were awarded the
24 contract. Once hired, co-conspirators, including property managers and general counsel, would
25 then recommend that the HOA board hire the co-conspirator construction company for remediation
26 and construction defect repairs and the co-conspirator law firm to handle the construction defect
27 litigation. In addition, the co-conspirator construction company’s initial contract for emergency

1 read this Plea Memorandum, that Defendant understands the terms and conditions and the factual
2 basis set forth herein, that Defendant has discussed these matters with Defendant's attorney, and
3 that the matters set forth in this memorandum, including the facts set forth in Part IV above, are
4 true and correct.

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

- 9 a. The right to proceed to trial by jury on the original charges, or to a trial by
10 a judge if Defendant and the United States both agree;
- 11 b. The right to confront the witnesses against the Defendant at such a trial, and to
12 cross-examine them;
- 13 c. The right to remain silent at such trial, with such silence not to be used against
14 Defendant in any way;
- 15 d. The right, should Defendant so choose, to testify in Defendant's own behalf at
16 such a trial;
- 17 e. The right to compel witnesses to appear at such a trial, and to testify in
18 Defendant's behalf; and,
- 19 f. The right to have the assistance of an attorney at all stages of such proceedings.

20 59. Defendant acknowledges that Defendant is, in all respects, satisfied by the
21 representation provided by Defendant's attorney and that Defendant's attorney has discussed with
22 the defendant the burdens and benefits of this agreement and the rights he waives herein.

23
24
25 INTENTIONALLY LEFT BLANK
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27

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

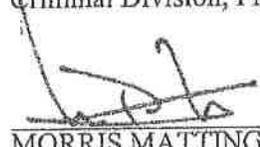
United States Department of Justice,
Criminal Division, Fraud Section



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

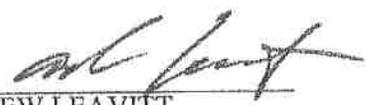
8 2 April 2012
9 DATED

13 5-30-2012
14 DATED



MORRIS MATTINGLY
Defendant

16 5-30-2012
17 DATED



ANDREW LEAVITT
Defense Counsel