

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CRIMINAL DIVISION 2

FILED

JUL 29 2009

Elizabeth J. White
CLERK OF THE MARION CIRCUIT COURT

STATE OF INDIANA)

VS.)

ROBERT E. NELMS)

CAUSE NO.: 49G02-0801-FC-016272

PLEA AGREEMENT

COME NOW the defendant, Robert E. Nelms, in person and by his/her counsel, James H. Voyles, and the State of Indiana, by its Marion County Deputy Prosecuting Attorney, Mary L. Hutchison, and hereby enter into this plea agreement made pursuant to negotiations. The parties agree as follows:

1. This plea agreement, signed by the defendant, defense counsel, and the deputy prosecuting attorney assigned to this case, shall be introduced into evidence by stipulation of the parties at the time of the guilty plea.

2. The defendant enters into this plea agreement knowing that the Court has the authority to accept or reject the plea agreement and understands that the Court may take the defendant's criminal record into consideration in determining whether to accept or reject this plea agreement.

3. The defendant agrees to plead guilty to: Count I theft/FC and Count VI Securities Fraud/FC

4. The State agrees to dismiss the following charges: Counts II through V, theft/FC

5. The State agrees not to file additional charges against Robert E. Nelms in his role with Memory Gardens Management Corporation in Indiana from the time period of December 2004 through June 2009.

6. As part of this plea agreement, the defendant agrees to cooperate truthfully and completely with the Marion County Prosecutor's Office, the State of Indiana, and/or its designees, in the prosecution of Mark Singer, and/or Sherry Katz-Crank and/or any other individual(s) in any criminal proceeding(s) concerning Memory Gardens Management Corp.; as well as the prosecution of Mark Singer and/or Clayton Smart and/or Stephen Smith in the State of Tennessee; as well as the investigation into Mark Singer, and/or Sherry Katz-Crank in Ohio, New Jersey, New York and Iowa; said cooperation to include the defendant's giving of sworn truthful: statements, depositions, hearing and trial testimony. The defendant further agrees to appear for such statements, depositions, hearing and trial testimony when requested. The defendant further agrees to waive his/her right to be sentenced within thirty (30) days of the submission of his/her guilty plea. **Should the defendant not cooperate, as described above, with the State of Indiana or the Marion County Prosecutor's Office, then the defendant expressly understands and agrees that, should the State of Indiana so move, this guilty plea shall be vacated, becoming null and void, and his/her case scheduled for trial on the original charges.**

7. The State of Indiana and the defendant agree that the Court shall impose the following sentence:

- a. Total sentence shall be ten (10) years, eight (8) years executed through community corrections, placement open to argument; two (2) years suspended; two (2) years served on probation
- b. After five (5) years the defendant has the right to request modification of this sentence and the State will not object to the filing of such a request but the State reserves the right to object to any modification of the sentence.
- c. At the time of sentencing the trust accounts for Memory Gardens Management Company shall be made whole as required by the attached settlement document. The newly issued trust documents are to be paid off via the schedule included in the attached settlement document. (See Exhibit A).
- d. A third party, independent trustee, selected by the State, shall control all trust funds for Memory Gardens Management Corporation from the time of sentencing forward. The Defendant, Robert Nelms, shall not have any control of or access to the trust fund accounts, and their funds, including, but not limited to, making or directing or suggesting any investment decisions for the trust funds.
- e. Any violation of any condition of the defendant's sentence, including Technical Rule Violations, shall result in a revocation of the defendant's placement with Community Corrections and/or Probation and the remainder of his sentence must be served at the Department of Corrections.

8. At the time of the taking of the guilty plea, and again at the time of the defendant's sentencing, the State reserves the right to present testimony or statements from the victim(s) or victim representative(s).

9. Defendant hereby waives the right to appeal any sentence imposed by the Court, including the right to seek appellate review of the sentence pursuant to Indiana Appellate Rule 7(B), so long as the Court sentences the defendant within the terms of this plea agreement.

10. The defendant acknowledges that the terms and conditions of the plea agreement are based upon the defendant's criminal history known to the deputy prosecutor representing the State at the time this plea agreement is executed and who entered into the plea agreement. In the event that such information is incomplete, that a further or more accurate criminal history is discovered prior to the entry of judgment, or the defendant is charged with the commission of another offense prior to sentencing, the State reserves the right to unilaterally withdraw from this plea agreement at any time prior to the entry of judgment.

11. The defendant understands and acknowledges by his/her initials that if this plea agreement is accepted by the Court, the defendant will give up the following rights:

- REN (a) The right to be presumed innocent and to have the State prove his/her guilt beyond a reasonable doubt;
- REN (b) The right to a speedy and public trial by jury;
- REN (c) The right to confront and cross-examine the witnesses against him/her;
- REN (d) The right to have compulsory process for obtaining witnesses in his/her favor;
- REN (e) The right to remain silent and the right not to be compelled to testify against oneself;

REN

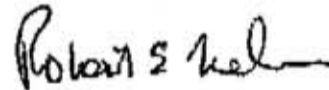
(f) The right to present evidence on one's own behalf.

12. The defendant acknowledges that entry of a guilty plea pursuant to this plea agreement constitutes an admission of the truth of all facts alleged in the charge or counts to which the defendant pleads guilty and that entry of the guilty plea will result in a conviction on those charges or counts.

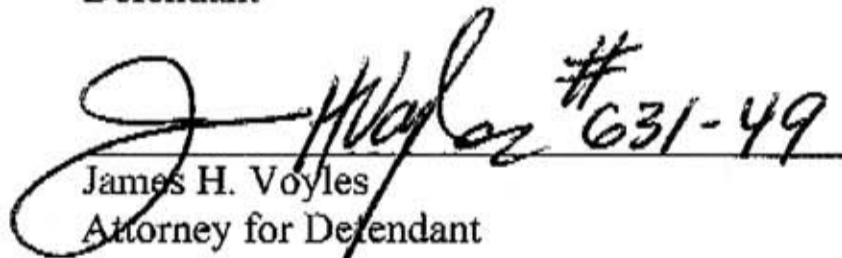
13. The defendant further acknowledges satisfaction with defense counsel's representation and competency in this matter (REN), and that the defendant believes this plea agreement to be in the defendant's best interest (REN).

14. The defendant further acknowledges that he has a right to pursue post-conviction relief, if there is a legal and factual basis to do so, and that entering a guilty plea herein does not operate as a waiver of that right.

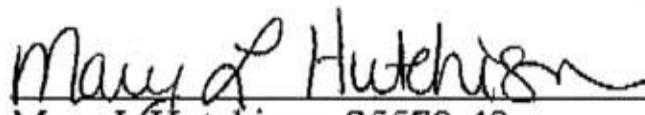
15. This plea agreement embodies the entire agreement between the parties and no promises have been made or inducements given to the defendant by the State which are not part of this written plea agreement.



Robert E. Nelms
Defendant

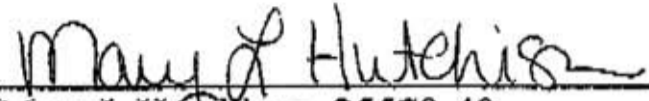


James H. Voyles
Attorney for Defendant



Mary L. Hutchison, 25579-49
Deputy Prosecuting Attorney

I hereby certify that I have informed the victim(s) of the fact that the State has entered into discussions with defense counsel concerning this plea agreement and of the contents of the agreements by the State in the plea agreement and that I will notify the victim(s) of the opportunity to be present when the Court considers whether to accept or reject this plea agreement.


Mary L. Hutchison, 25579-49
Deputy Prosecuting Attorney

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