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NANCY SWEENEY  
CLERK DISTRICT COURT  
FILED BY LISA KALLIO  
DEPUTY

2013 AUG 30 A 11: 57

*Attorneys for the State of Montana*

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*Attorney for the Defendant*

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

STATE OF MONTANA,  
  
Plaintiff,

vs.

ROBERT MCKAY,  
  
Defendant.

) Cause No. DC-2013-<sup>D</sup>267

) **ACKNOWLEDGMENT OF WAIVER  
OF RIGHTS BY PLEA OF NOLO  
CONTENDRE AND PLEA AGREEMENT**

I, ROBERT MCKAY, am prepared to enter a plea of *nolo contendere* in the above-entitled matter.

This plea is being made voluntarily and is not the result of force or threats or of promises made.

I acknowledge that my attorney has explained to me and advised me of the following and I fully understand that:

1. I am charged in Count I with FRAUDULENT PRACTICES (common scheme), a felony, in violation of Mont. Code Ann. §§ 30-10-301(1)(b), and punishable by not more than ten (10) years in the state prison or a fine of not more than \$5,000.00, or both.

1 2. I have the right to plead not guilty.

2 3. I have the right to be tried by a judge or a jury, and at trial, as well as the following  
3 rights:

- 4 (A) The right to the assistance of counsel;  
5 (B) The right to have testimony from my witnesses;  
6 (C) The right to confront and cross-examine witnesses against me;  
7 (D) The right not to be compelled to incriminate myself;  
8 (E) The right to require my guilt to be proven beyond a reasonable doubt.

9 4. By pleading *nolo contendere* I give up the right to a trial by judge or jury, the right to  
10 have witnesses testify on my behalf, the right to confront and cross-examine witnesses against me,  
11 the right not to be compelled to incriminate myself and the right to appeal any finding of guilt.

12 5. Pursuant to Mont. Code Ann. § 46-12-204, and conditioned upon the understandings  
13 specified herein, I agree to plead *nolo contendere* to FRAUDULENT PRACTICES (common  
14 scheme), a felony, with the following understandings:

15 The State and Defendant agree, pursuant to Mont. Code Ann. §§ 46-12-211(a) and (b),  
16 Defendant should receive a sentence that is deferred for a period of three (3) years subject to the  
17 following conditions:

- 18 (a) He shall remain law abiding;  
19 (b) Before the end of his three year deferred sentence, he shall pay total restitution in the  
20 amount of \$702,813.01, broken down as follows:  
21 (A) \$379,750 of the proceeds he received and did not turn over to  
22 Highlander Holdings, LLC, will be paid to Pearl Mining Company;  
23 (B) \$175,658.59 in promissory note payments paid by Highlander to the  
24 Defendant him will be paid to Highlander;  
25 (C) \$147,404.42 in promissory note interest paid by Highlander to Defendant  
26 will be paid to Highlander;  
27 (c) If he has not done so by the time of Sentencing, the Defendant must:  
28 (A) Forgive the \$2,563,758.08 promissory note payable in which Highlander  
is the debtor and Defendant is the creditor;

- (B) Forgive \$75,208.77 in capitalized interest payable in which Highlander is the debtor and Defendant is the creditor;
- (C) Forgive \$5,291.95 in capitalized interest payable in which Highlander is the debtor and Defendant is the creditor;
- (D) Forgive \$183,360.54 on a note payable in which Highlander is the debtor and Defendant is the creditor;
- (E) Rescind all security interests in the aforementioned promissory notes;
- (F) Rescind all interest in Highlander Holdings, LLC, Morning Star Mining, LLC, Stirling Reclamation LLC, and White Horse LLC;
- (G) Surrender all of his units in Highlander back to Highlander.

(d) He shall pay all mandatory fines, surcharges, and court costs imposed by the Court.

6. I understand that this plea agreement is an agreement between me and the prosecutor and that the Court has not, and cannot, participate in the making of this agreement. The recommendation of the prosecuting attorney in no way binds the Court when imposing sentence.

7. I understand that on my plea of *nolo contendere* alone, I could lawfully be sentenced to the maximum punishment authorized for the offense to which I plead *nolo contendere* and that the court may limit my availability for parole.

8. I have considered the most severe sentence that could be imposed, and I understand that no lesser included offenses apply to my case.

9. I understand that my plea of *nolo contendere* to this offense may affect any sentence I am currently serving.

10. I acknowledge that I am satisfied with the services of my attorney and that there has been ample time to prepare a defense.

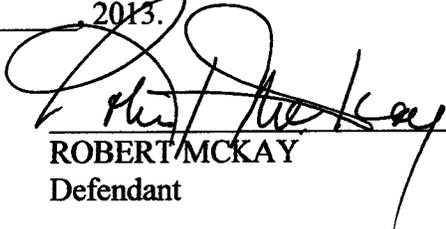
11. I am not suffering from any emotional or mental disability from any cause including mental defect or impairment or the taking of drugs, alcohol or prescription medicine and I fully understand what I am doing.

12. I am satisfied that my lawyer has been fair to me, has advised me fully of my rights, and has represented me properly.

1 The following facts lead me to believe *nolo contendere* is the appropriate plea:

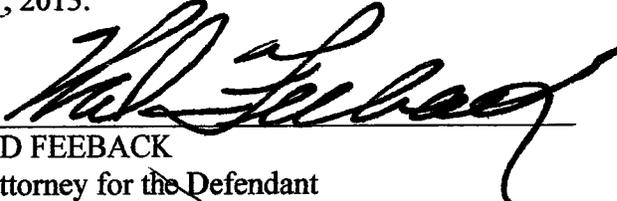
2 Count I: That from on or about May 2009, until on or about June 2012, I willfully neglected  
3 to inform potential investors of how their money would be used.

4 DATED this 15 day of August, 2013.

5  
6   
7 ROBERT MCKAY  
8 Defendant

9 I, KD FEEDBACK certify that the Defendant has read the above, or I have read the  
10 above to the Defendant, and I have advised the Defendant of the above and explained it to him and I  
11 am satisfied that he understands all his rights and that his plea of *nolo contendere* is being voluntarily  
12 made, and that he understands he is waiving such rights by entry of said plea.

13 DATED this 19<sup>th</sup> day of August, 2013.

14  
15   
16 KD FEEDBACK  
17 Attorney for the Defendant

18 DATED this 29<sup>th</sup> day of August, 2013.

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21 JESSE LASLOVICH  
22 BRETT O'NEIL  
23 Special Assistant Attorneys General  
24 Special Deputy County Attorneys  
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