

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CHARITIES BUREAU

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In the Matter of

Assurance No. 21-011

**Investigation by LETITIA JAMES,  
Attorney General of the State of New York, of**

Empire Development Fund 3 LLC, Empire Development Fund 4 LLC,  
Empire Development Fund 2 LLC, Empire Terrace LLC,  
Empire Development Fund LLC, 1634 Dean LLC,  
Empire Development X LLC, Elmo Realty Co., Inc.,  
East 110th Street LLC, 375 Pleasant Inc., East 123, LLC,  
My Bronx LLC, Harlem Development Fund LLC, and Moujan Vahdat,

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG” or “Attorney General”) commenced an investigation pursuant to Section 715 of the Not-for-Profit Corporation Law (“N-PCL”), to determine whether an action should be instituted against Empire Development Fund 3 LLC, Empire Development Fund 4 LLC, Empire Development Fund 2 LLC, Empire Terrace LLC, Empire Development Fund LLC, 1634 Dean LLC, Empire Development X LLC, Elmo Realty Co., Inc., East 110th Street LLC, 375 Pleasant Inc., East 123, LLC, My Bronx LLC, Harlem Development Fund LLC (collectively, “Purchaser Entities”), and Moujan Vahdat, a real estate developer (the “Developer”) who through the Purchaser Entities engaged in real estate transactions with religious corporations which were subject to statutory review by the Attorney General. The Developer transacts business through the Purchaser Entities, which he owns and controls. (The Developer and the Purchaser Entities are collectively referred to as “Respondents”). This Assurance of Discontinuance (“Assurance”) contains the

findings of the OAG's investigation and the relief agreed to by the OAG and Respondents (collectively, the "Parties").

## **BACKGROUND**

1. The Attorney General's Charities Bureau has oversight over religious corporations and not-for-profit corporations in New York State, including their directors and officers. The OAG is responsible for supervising charitable organizations, including religious organizations, and protecting the beneficiaries of charities from unscrupulous practices in the management of charitable assets. By statute, the Attorney General represents the interests of the ultimate charitable beneficiaries in certain transactions involving the transfer of assets and the disposition of proceeds of assets of charitable and religious organizations, and is tasked with the responsibility to protect the value of those assets.

2. Religious institutions in New York state are required to adhere to the procedures set forth in the N-PCL because Religious Corporation Law §12 provides that "a religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor pursuant to §511 of the not-for-profit corporation law...." N-PCL § 511-a also provides a mechanism for obtaining approval of such a transaction directly from the Attorney General.

3. Under either N-PCL §§ 511 or 511-a, a party seeking such approval must present a verified petition to the appropriate state supreme court, or to the OAG, setting forth, among other matters: (i) a statement of the fair value of the property being conveyed; (ii) the consideration to be received by the corporation in exchange for its property and the intended use of such proceeds by the corporation; (iii) a statement that the consideration and the terms of the transaction are fair and reasonable to the corporation, and that the purposes of the corporation, or

the interests of its members will be promoted thereby, with a statement of the reasons the corporation reached this conclusion; and (iv) evidence of proper authorization of the transaction by the directors, members and any other governing bodies of the corporation.

4. Upon presentation of the petition to the Court, N-PCL § 511(b) requires that the Attorney General receive notice and provide a no objection conclusion or state any objections to the petition in advance of the petition being heard by the Court.

5. Between 2015 and 2017, the Charities Bureau approved petitions for the sale to the Developer through one of the Purchaser Entities of five properties owned by African Methodist Episcopal churches (“AME”) and two owned by Church of God in Christ (“COGIC”) churches. The OAG issued an administrative approval for the sale of one of those properties, and the other six petitions were approved by the Court after OAG filed a response of “no objection” in reliance on the veracity and completeness of the representations and supporting documentation in the relevant petitions.

6. After the seven transactions closed and title to six of the properties and control of the seventh passed to the Developer, the Attorney General became aware of allegations that certain terms and conditions that formed the basis of OAG “no-objections” or approval of the transactions had been modified, amended, or were otherwise not performed, despite Court Orders or an administrative approval to the contrary.

7. The Attorney General thereafter commenced an investigation (the “Investigation”) that caused it to examine the circumstances of these seven transactions. The five AME Church transactions involved St. John AME, Bethel Tabernacle AME, Greater Bethel AME, Ebenezer AME, and Metropolitan AME (collectively, the “AME Transactions”). The two COGIC Church

transactions involved Healing from Heaven Temple COGIC and Childs Memorial Temple COGIC (collectively, the “COGIC Transactions”).

8. The Investigation found that certain senior clergy in the AME and a pastor in one of the COGIC churches, on the one hand, and the Developer, on the other, had financial relationships that were not disclosed to the OAG or members of the relevant congregations in connection with approval of the respective transactions. The payments by the Developer and receipt of undisclosed benefits by the clergy had the capacity to, and did, have a material adverse influence on the exercise of independent judgment by the clergy, and by others relying upon them. These financial relationships inured to the personal benefit of the clergy and to the detriment of their respective congregants, to whom the clergy owed fiduciary duties. The key decision makers received undisclosed payments and gifts from the Developer or the Purchaser Entities resulting in transactions that violated N-PCL § 715, and the OAG is authorized under N-PCL § 715 to seek to obtain financial and other relief from those participating in or benefiting from these transactions, including the Developer.

### **OAG’s FACTUAL FINDINGS**

The OAG has made the following factual findings:

#### **The Parties**

##### **A. The Developer and the Purchaser Entities**

9. The Developer is a real estate developer who operates his business through the Purchaser Entities, generally single purpose LLCs for which he is either the sole or managing member, and which, as a general matter, are formed for the purpose of owning the property at a particular location. The Developer exercises dominion and control over these entities, all of which operate from the same address.

10. Respondent Elmo Realty Co., Inc., is a domestic New York corporation through which the Developer conducts business operations.

11. Respondent Empire Development Fund 3 LLC is a New York Limited Liability Company and is the entity that purchased the property of St. John AME Church. Empire Development Fund 3 LLC also issued payment to one of the clergy.

12. Respondent Empire Development Fund 4 LLC is a New York Limited Liability Company and is the entity that purchased the property of Metropolitan AME Church. Empire Development Fund 4 LLC also issued payments and IRS Form 1099's to clergy.

13. Respondent Empire Development Fund 2 LLC is a New York Limited Liability Company and is the entity that purchased the property, as a "wholly owned subsidiary" of Respondent My Bronx LLC, of Healing from Heaven Temple COGIC. Empire Development Fund 2 LLC also issued an IRS Form 1099 to one of the clergy.

14. Respondent Empire Terrace LLC is a New York Limited Liability Company and is the entity that purchased the property of Greater Bethel AME Church.

15. Respondent Empire Development Fund LLC is a New York Limited Liability Company and is the entity that purchased the property of Childs Memorial Temple COGIC. Empire Development Fund LLC also issued payment and an IRS Form 1099 to the wife of one of the clergy.

16. Respondent 1634 Dean LLC is a New York Limited Liability Company and is the entity that entered into the 99-year ground lease with Bethel Tabernacle AME Church. 1634 Dean LLC also issued payments and IRS Form 1099's to clergy.

17. Respondent Empire Development Fund X LLC is a New York Limited Liability Company and is the entity that purchased the property of Ebenezer AME Church. Empire Development Fund X LLC also issued payments and IRS Form 1099's to clergy.

18. Respondent 375 Pleasant Inc. is a New York domestic corporation that made payment to the Presiding Elder.

19. Respondent East 110<sup>th</sup> Street LLC is a New York Limited Liability Company that issued payments and an IRS Form 1099 to one of the clergy.

20. Intentionally left blank.

21. Respondent My Bronx LLC is a New York Limited Liability Company. The Closing Statement for the Healing from Heaven COGIC transaction states that the Purchaser Entity Empire Development Fund 2 LLC is "a wholly owned subsidiary of My Bronx LLC".

22. Respondent East 123, LLC is a New York Limited Liability Company.

23. Respondent Harlem Development Fund LLC is a New York Limited Liability Company that issued a payment to one of the clergy.

**B. The AME Church and Its Process for the Sale of Property**

24. The AME is a Methodist religious organization that is overseen by 21 active bishops, and organized into 20 Episcopal Districts, covering thirty-nine countries, on five continents.

25. The AME Church describes itself as a "connectional organization," which has a multi-tiered hierarchy. See <https://www.ame-church.com/our-church/our-structure/>. The governance of the AME Church, and its policies, are set forth in writing in The Doctrine and Discipline of the African Methodist Episcopal Church.

26. The General Conference, which is at the top of the AME hierarchy, is composed

of Bishops, who lead the Episcopal Districts. Within each Episcopal District, the AME incorporates entities known as Annual Conferences. The Annual Conference has authority over all AME churches within a defined geographic area that is further subdivided into Districts.

27. New York is part of the First Episcopal District, which also includes Bermuda, Delaware, New England, New Jersey, and Pennsylvania. New York has two Annual Conferences, one of which is the New York Annual Conference of the African Methodist Episcopal Church (“NYAC”). NYAC is registered with New York’s Department of State as a domestic not-for-profit corporation.

28. At all relevant times, the Bishop of the AME First Episcopal District (hereinafter, the “Bishop”), oversaw all AME churches within New York. By virtue of the AME’s Doctrine and Discipline, the Bishop is also the President of NYAC.

29. Each AME District is led by a Presiding Elder who is appointed by the Bishop of that District.

30. In a Presiding Elder’s District, the appointed Presiding Elder meets with the local churches that comprise the District, at least once every three months for a Quarterly Conference. At the end of an Annual Conference year, a Presiding Elder reports to the Bishop at the Annual Conference and makes recommendations for pastoral appointments.

31. At all relevant times, the Presiding Elder of NYAC’s Brooklyn-Westchester District (hereinafter the “Presiding Elder”) was also the Director of Stewardship and Leadership Development for NYAC. In June 2018, the Bishop also named the Presiding Elder as the First Episcopal District’s “Development Officer”.

32. All five AME churches at issue are located within two NYAC districts—the Brooklyn-Westchester District and the Manhattan District. NYAC’s Board of Trustees, with the

Bishop as its Chairperson and President, had responsibility to oversee, and held the ultimate authority to approve, all real estate transactions involving AME properties in New York, including each of the transactions with Respondent the Developer and the Purchaser Entities. The Presiding Elder served as the Bishop's liaison with the Developer for all of the AME Transactions.

33. The process for the sale of property owned by an individual AME Church is set forth in the AME's Doctrine and Discipline, and requires three levels of approval within the Church hierarchy, each of which is evidenced by a resolution by (i) the individual church's Board of Trustees and members of the congregation; (ii) the Quarterly Conference; and (iii) the Annual Conference.

34. For the AME Transactions, four of the churches, St. John AME, Greater Bethel AME, Ebenezer AME, and Metropolitan AME, were located in Harlem. The Quarterly Conference approval for each of those transactions was signed by the presiding elder for the Manhattan District. The fifth AME Church, Bethel Tabernacle AME, is located in Brooklyn, and the Presiding Elder signed the Quarterly Conference approval as the presiding elder for the Brooklyn-Westchester District.

35. Once the Quarterly Conference issued its approval of the sale transactions involved herein, the sale terms are required to be taken up by NYAC for its review and approval. Minutes of NYAC Board meetings in the relevant time period reflect the Board's consideration of multiple potential development deals.

36. The AME process requires that NYAC's Board of Trustees approve each transaction; the results are then memorialized in a resolution of the NYAC Board reflecting whether NYAC approved the terms of the transaction, on the specific date. The NYAC resolution



reflecting such approval is the final step needed to support a Verified Petition for approval of the sale by the OAG and/or the Court. The NYAC Board of Trustee resolution is attached to the Verified Petition submitted to the Court or to the Attorney General as an exhibit.

37. As the Chairperson of the NYAC Board of Trustees and NYAC's President, the Bishop signed four of the five resolutions purportedly evidencing NYAC's Board of Trustees approval for each particular transaction. Another Trustee signed the fifth resolution.

38. The Bishop and the Presiding Elder knew that the executed NYAC and Quarterly Conference resolutions evidencing approval of the sales were necessary and would be annexed to each Verified Petition submitted to OAG and the Court, and that the Attorney General would rely upon those resolutions in making its determination whether to approve or object to the sale.

39. None of the resolutions submitted by the churches in connection with the Verified Petitions or the Verified Petitions themselves disclosed payments by the Developer or the Purchaser Entities to the Bishop or the Presiding Elder, or that either had a financial relationship with the Developer. Each Verified Petition submitted by the churches in order to obtain approval of these transactions contained a statement that each such transaction was arms-length.

#### **The COGIC Church and It's Process for the Sale of Property**

40. The Church of God in Christ, Inc. ("COGIC") is a Christian church in the Holiness-Pentecostal tradition. It is the largest Pentecostal denomination in the United States. Its membership includes millions of members.

41. The COGIC Church is organized by dioceses called "jurisdictions," each presided over by a bishop. There are nine ecclesiastical jurisdictions in New York.

42. For an individual COGIC Church to sell its property, its bylaws require approvals by the church's Board of Trustees, as well as by the membership of that church. Resolutions

reflecting those approvals by votes must be included in the petitions submitted to OAG, together with affidavits setting forth the procedures followed and the results of the vote.

43. At all relevant times to the Investigation, the Pastor of Childs Memorial COGIC (“Pastor 1”) also served as a finder of church properties for the Developer to purchase and develop. As further set forth below, Pastor 1 was paid by the Developer for his work as a finder.

**The OAG Process for Review of the Sale, Lease, or Mortgaging of Real Property by Religious Organizations**

44. The Attorney General, through the Charities Bureau, receives notice of an intended real property transaction by a religious organization through receipt of the verified petition. The Attorney General reviews the content of the petition, including all verified representations and supporting documents, and if it finds that the petition complies with the statutory requirements under N-PCL §§ 510 and 511, OAG advises the Court that it has “No Objection” and the Court will issue its determination. In an N-PCL § 511-a transaction, the OAG engages in the same process, but can issue an administrative approval without the Court’s intervention.

45. OAG’s review of a petition under N-PCL § 511 or 511-a includes an analysis of: (i) the financial condition of the corporation; (ii) the fair value of the property being conveyed; (iii) the consideration to be received by the corporation in exchange for its property and the intended use of such proceeds; (iv) the purposes of the corporation and the interests of its members; and (v) proper authorization of the transaction by the directors, members and any governing bodies of the corporation. Petitions require a sworn statement signed by an appropriate officer or Board member of the charitable or religious organization verifying the truth of the contents of the petition.

46. To meet the statutory requirement of “fair and reasonable consideration”, the OAG requires that an appraisal of the value of the property at the time of execution of the purchase and sale agreement. The appraisal must be prepared by an independent, New York State certified appraiser and contain a full zoning analysis of the property. In addition, the OAG in appropriate cases considers whether the property was adequately marketed, bids were obtained and thoroughly considered, and a determination was properly made as to the highest price and best opportunity for the corporation.

47. Where the sale of religious property involves the delivery of alternative forms of consideration such as property, the payment of outstanding debts and liabilities or the promise of future payments, as is the case for all the development deals involved in the Investigation, the OAG assesses the then present value of such consideration. Such alternative forms of payment can include:

- (a) An agreement by the purchaser/developer to pay outstanding debts of the religious organization, such as mortgages, tax liens or other loans;
- (b) The payment by the purchaser/developer of the organization’s transaction expenses; the cost of the appraisal; funds to provide for the relocation of a temporary house of worship if the religious organization will be displaced by the sale and has not secured permanent alternative worship space;
- (c) The promise of a new house of worship and/or community facility in the newly built premises; and
- (d) The promise by the purchaser/developer of future payments to the religious organization derived from the cash flow of the purchaser/developer’s new building.

48. The five AME Transactions and two COGIC Transactions in the Investigation all were subject to the statutory process; six of the transactions were Court-approved upon notice to OAG, and one—Greater Bethel AME—was administratively approved by OAG.

49. The parties, at or after closing, and without approval from the Attorney General or the Court, on multiple occasions entered into addenda to the sales contracts, including addenda that diminished or removed protections for the church, such as extending deadlines for delivery of in-kind consideration or eliminating the requirement to provide payment and performance bonds or letters of credit that serve to secure or induce performance.

50. At various points throughout 2017, 2018 and 2019, the Developer and the Purchaser Entities stopped or did not pay contractually required monthly rent subsidies and/or other monthly monetary obligations to several churches. In contemplation of this Assurance and the resulting resolution of the Investigation, the Developer has warranted that any of those obligations in arrears will be brought current as of the execution date of this Assurance.

51. The core consideration of new construction or complete renovation (as distinct from the preparatory work of demolition or remediation) has not taken place on any of the properties.

### **The Relationship Between the Parties**

52. Beginning in 2013, the Developer first took steps to identify for purchase and possible development properties owned by churches in the New York city area. As a general matter, developing those properties was a profit-making endeavor for the Developer. At the same time, the transactions could provide financial relief to churches that were in many cases heavily financially leveraged. These development transactions typically entailed (i) demolition or remediation of the current church building; (ii) erection of a new multi-story building or

refurbished property containing a church sanctuary and/or community facility delivered as separate, independent condominiums to be owned by seller church; and (iii) ownership of the remainder of the building by a Purchaser Entity with space to be used for residential and/or commercial use.

53. At the time of the first of the church transactions, the Developer had no prior experience with any church development deals but had completed a number of real estate projects.

54. Developer was introduced to Pastor 1, the pastor at Childs Memorial COGIC, by a real estate broker who had a connection to Pastor 1's wife. In December 2014, Respondent Empire Development Fund LLC entered into a purchase and sale agreement for Childs Memorial, which ultimately closed in January 2016.

55. In or about 2015, after Respondent Empire Development Fund LLC had entered into the contract of sale with Childs Memorial COGIC, but before the transaction closed more than a year later, the Developer engaged Pastor 1 as a paid "finder" to assist him in locating churches (of any denomination) that were interested in selling their properties in development deals.

56. In 2015, Pastor 1 introduced the Developer to a non-clergy AME parishioner who had connections to leadership in the AME church community. After a meeting with the Developer on April 20, 2015, the parishioner, through an entity set up for this purpose, also began serving as a paid "finder" for the Developer (the "Third-Party Finder"). The Third-Party Finder facilitated preliminary discussions between the Developer and the pastor of St. John AME, located in Harlem, about a potential sale. Those early conversations extended into May 2015,

when the Third-Party Finder also identified Bethel Tabernacle AME in Brooklyn to the Developer as another potential acquisition.

57. The Third-Party Finder thereafter helped facilitate a meeting between the Developer, the Bishop, the Presiding Elder, and Pastor 1 in May 2015. The Third-Party Finder sent an email to the Developer on May 6, 2015, advising the Developer as to the upcoming meeting and informing him that “the Bishop has the final say on any contract dealing with the churches.” The Third-Party finder also explained that the Presiding Elder “is someone the Bishop confides in, has respect for what he thinks and who might be given the task to find what church would gain the most from your offer.” The Third-Party Finder also informed the Developer that a “cluster” of AME churches could be presented to him for possible sale.

58. By written agreement dated as of May 14, 2015, the Developer agreed to pay the Third-Party Finder an amount equal to 6% of the cash component of any church transaction that closed which the Third-Party Finder brought to Developer.

59. The meeting took place on May 15, 2015. At the meeting, the Bishop solicited from the Developer a large donation (the “Initial Donation”) for which the Developer would receive recognition as a sponsor of the AME’s 2016 Bicentennial celebration.

60. At this same time, and throughout the relevant time period, the Developer continued to use Pastor 1 as a “finder” of church properties, including at times with respect to AME churches where the Developer was also paying others as “finders.”

61. Pastor 1 received multiple payments from the Developer or the Purchaser Entities between June 2015 and November 2015, during the period that the Childs Memorial COGIC

transaction was in contract, but still being negotiated, including as to amendments of the terms of the transaction that were entered into in November and December 2015.<sup>1</sup>

62. In addition, after the Childs Memorial COGIC closing in January 2016, the Developer continued to pay Pastor 1 “finder’s fees” for identifying other potential properties during the time period that Pastor 1 was the primary decision-maker for the church as to post-closing amendments that changed terms of the Childs Memorial COGIC transaction (without OAG or Court approval).

63. In June 2015, on Pastor 1’s introduction and as further described in this Assurance, the parties signed a contract of sale for the property of Healing from Heaven Temple COGIC, located at 2535 Frederick Douglass Blvd., New York, New York, to Respondent Empire Development 2 LLC.

64. At the same time, the AME churches continued to pursue deals with the Developer. On June 7, 2015, the Presiding Elder traveled to New York in advance of a series of meetings that were to take place among the Developer and the pastors of St. John AME and Bethel Tabernacle AME, as well as their attorneys.

65. In anticipation of those meetings, the Developer sought confirmation via text message to the Presiding Elder on June 7, 2015, that the Presiding Elder would be authorized to discuss financial terms on behalf of the AME, to which the Presiding Elder replied that he was in fact so authorized.

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<sup>1</sup> These payments included: on June 5, 2015, Respondent East 110<sup>th</sup> Street LLC paid Pastor 1 via three separate checks, a total of \$10,000.00. On July 23, 2015, Respondent East 110<sup>th</sup> Street LLC paid Pastor 1 via three separate checks, the amounts of \$4,000.00, \$4,000.00, and \$2,000.00. On August 24, 2015, Respondent East 110<sup>th</sup> Street LLC paid Pastor 1 \$10,000.00 via check. On November 24, 2015, Respondent Entity East 110<sup>th</sup> Street LLC paid Pastor 1 \$20,000.00 via check.

66. In an email dated June 10, 2015, the Presiding Elder wrote to the Developer, thanking him for agreeing to make a charitable contribution towards AME's bicentennial celebration:

[Developer]:

I am speechless at the kindness and generosity you extended to me today with your gift. While I am eternally grateful, I was perfectly willing to wait until the Brooklyn deal was consummated. However, I humbly receive your gift with deep appreciation.<sup>2</sup>

67. The Developer responded to the Presiding Elder the same day by writing:

Please you are too kind  
Safe travels  
See you tomorrow  
Any news on St. John closing?

68. Thereafter, in an email from the Presiding Elder to the Developer on June 12, 2015, the Presiding Elder wrote:

. . . Finally, I thank you for agreeing to be a supporter of our 2016 Bicentennial. I know the plan was to have the Brooklyn deal signed by yesterday, and I know your donation was somewhat contingent on that happening. I want to assure you, however, that we are fully committed to our long-term relationship with you, and that your gift tomorrow is being sown into good ground. . . .

69. On June 13, 2015, the Developer met in Philadelphia with the Bishop and the Presiding Elder and presented the Bishop with the Initial Donation of \$200,000.00 made out to First Episcopal District AME Church Inc., via personal check, dated June 15, 2015<sup>3</sup>. The Developer also gave the Presiding Elder and the Bishop a check payable to the "African Methodist Episcopal Church" for \$2,500.00 as an "offering".

70. On June 14, 2015, the Presiding Elder sent Developer a text message, stating:

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<sup>2</sup> The "Brooklyn deal" refers to Bethel Tabernacle AME.

<sup>3</sup> The Developer's family appears as a sponsor of the Bicentennial celebration on a plaque next to the statue of Richard Allen constructed outside the First Episcopal District's headquarters in Philadelphia.



GA [Developer]. Hope you are well. Thanks again for coming to Philadelphia yesterday. The sermons are usually not that long. We appreciate your patience. Again, I thank you for the generous donation that you gave towards the offering, and the generous donation you gave to the Bishop for the bicentennial period. I hope you reminded him not to cash the check until we have the AG approval.

71. After the June 13, 2015 meeting and the Initial Donation, the Bishop and the Presiding Elder thereafter regularly presented AME properties to the Developer for possible development deals. The Bishop, as the President and Chairman of the NYAC Trustees, had substantial influence over the NYAC, which held final decision-making authority for any potential sale transactions of AME church properties in the metropolitan New York area, including in the Manhattan and Brooklyn-Westchester Districts.

72. The Presiding Elder took an active role in identifying AME properties suited for sale to the Developer. The Bishop authorized the Presiding Elder to negotiate financial terms for the sale of AME churches to the Developer within the Presiding Elder's geographic territory as the Presiding Elder of the Brooklyn-Westchester District. The Bishop also authorized the Presiding Elder to negotiate terms for deals with the Developer involving churches located outside of his district, in Manhattan.

73. When the Bishop and the Presiding Elder identified AME properties available for potential sale, the Developer considered each property presented and advised the Bishop and the Presiding Elder as to the properties he might be interested in pursuing and at what price. Once a property was identified for possible sale, the Developer negotiated basic sale terms with the pastor of the particular church, with the Presiding Elder and the Bishop remaining involved in that process. Typically, the church would indicate its desires, the Developer would make an offer, to

which the church, through their pastor, together with the Presiding Elder and the Bishop, would respond, sometimes with a counteroffer.

74. As the first two AME Transactions were being negotiated, the Developer expressed frustration with the churches' counsel's insistence on certain deal terms. The Presiding Elder apologized to the Developer for the manner in which the churches' counsel were proceeding. On July 7, 2015, the Presiding Elder sent the Developer an email that stated:

[[Developer]:

I wanted to express my personal apology for the way the Bethel Tabernacle and St. John's agreements have been handled. While I acknowledge what [I] believe are the attorney's sincere and genuine attempts to represent their clients fully, I also believe that these deals could have been handled somewhat differently. Sometimes, the process of communication makes all the difference. I am sure that [the] Bishop [...] believes in your genuine desire to work with the AME Church, and I certainly hope and pray that these 2 initial bumps does not prohibit us from working together on other projects going forward.

I am CERTAIN that all will be completely resolved in our Saturday meeting. Again, I am sorry for any misunderstanding or misinformation you may have experienced.

75. On July 22, 2015, the parties executed the Bethel Tabernacle AME lease, a 99-year ground lease and development project. Bethel Tabernacle AME is located at 1634-1650 Dean St., Brooklyn, New York. The Purchaser Entity developing the property was Respondent 1634 Dean Street LLC.

76. On August 20, 2015, the parties signed a contract for the sale of the property of St. John AME, located at 132 West 134th Street, New York, New York, to Respondent Empire Development Fund 3 LLC.

77. In an email dated August 27, 2015, from the attorney representing St. John AME to the Developer and his counsel, with a copy to the Bishop, the pastor of St. John AME, and the Presiding Elder of the Manhattan District, the attorney wrote:

Mr. [Developer] and Mr. [.....]:

The status of the process of approval with the AME Church is as follows. The Trustee's (sic) of St. John AME have approved the Site Development Agreement and Purchase and Sale Agreement. The Quarterly Conference has authorized the same. The matter is now before the Bishop and the New York Annual Conference Board of Trustees. . . .

Upon receipt of the approval of the New York Annual Conference Trustees and the financials I will forward to you a copy of the petition along with resolutions and exhibits which will be submitted to the Attorney General well before the timeline in the agreement.

78. On September 6, 2015, the Presiding Elder sent the Developer a text message stating that the Bishop was close to signing off on the St. John AME transaction, and that the Presiding Elder "also ha[d] at least 3 other churches ready for [the Developer] to consider."

79. In a text message exchange on October 8, 2015, the Presiding Elder asked the Developer, "How much can I expect, if anything, from the Metropolitan deal?" The Developer responded, "\$100K". The Presiding Elder wrote, "Great" and "Thank you" and "More churches on the way...."

80. As discussed below, the Presiding Elder ultimately received \$75,000 from the Developer following that transaction; the Developer paid the Bishop \$200,000 following that transaction.

81. On November 4, 2015, Respondent Empire Development Fund LLC paid the Presiding Elder \$5,000.00 via check.

82. The Healing from Heaven Temple COGIC transaction sought and received Court approval on November 19, 2015, and was the first of the subject church properties to close, which occurred on December 11, 2015.

83. The Verified Petition submitted by Healing from Heaven COGIC in support of the sale to Empire Development Fund 2 LLC contained a certification by the Secretary of the Board of Trustees of Healing from Heaven, dated October 22, 2015, expressly noting Pastor 1's role in recommending the Developer:

3. A discussion of the bid process and the qualifications of the developer and the advisors retained by the Church was held. Members and Trustees of the Church indicated that the Pastor, Trustees and/or the Church had interviewed several developers before it came to the attention of [the] Pastor . . . that [Pastor 1], a close associate of his, recommended the current developer based on the qualifications, experience and willingness of the Developer to complete the necessary transaction. The pastor then interviewed the Developer and, based upon the Pastor's report and a meeting with [Pastor 1], the membership and the Board of Trustees agreed to proceed with the Developer. . . .

84. In connection with the Healing from Heaven closing, Respondent Empire Development Fund 2 LLC listed on its counsel's Closing Statement as "a wholly owned subsidiary of Respondent My Bronx LLC", paid Pastor 1 a finder's fee of \$170,000.00, and that amount was included in the final closing payment to Healing from Heaven. That same day, on December 11, 2015, an intermediary representing Healing from Heaven wired \$165,000.00 directly to Pastor 1's personal bank account.

85. Also, in December 2015, Respondent Purchaser Entity 375 Pleasant Inc. paid the Presiding Elder \$5,000.00 via check.

86. The Developer and the Presiding Elder thereafter discussed the possibility of the Presiding Elder working for Elmo Realty, while continuing to maintain his role as the Presiding Elder of the Brooklyn-Westchester District.

87. The Presiding Elder sent the Developer an email dated December 28, 2015, the subject line of which was “Your Job Offer”, and concluded the email by stating:

My thought is that it would be more beneficial TO YOU for me to continue working as a Presiding Elder/Minister, because this position and title gives me entrée’ into many places. Maintaining my ministerial role and title would also allow me to keep my membership on the Mayor's Clergy Advisory Council. While my first calling, of course, is the ministry, I don't see any conflict or problem with my role as a Presiding Elder and in working with you. I'm a pretty good worker, and somehow manage to successfully fit it all in. I quickly ran this idea by [the] Bishop [...] today, and he absolutely supports the idea of me accepting this position. We will talk more when he comes to town on Thursday, but in his mind, it's something I should do.

88. On December 28, 2015, the Childs Memorial COGIC transaction received Court approval. On January 15, 2016, the Childs Memorial COGIC transaction closed. In connection with that closing, Respondent Empire Development Fund LLC paid the licensed real estate broker \$446,000.00 as a broker’s fee, which was disclosed at the closing. At closing, Empire Development Fund LLC also paid Pastor 1’s wife \$50,000.00, via check. The closing statement only identified payment of a “finder’s fee” in this amount to an undisclosed recipient. The real estate broker also wrote a check to Pastor 1’s wife for an additional \$50,000.00. That payment was not disclosed at the closing. The real estate broker expressly characterized that payment in an email later forwarded to the Developer on June 29, 2016, as a “kickback check”.

89. Pastor 1 signed and submitted the Verified Petition in support of the sale of the church property for which he was the pastor, Childs Memorial Temple COGIC, to the Developer. The Childs Memorial Verified Petition, dated December 7, 2015, contained the following language:

ELEVENTH: No Trustee, officer or key employee (or their relatives) has a direct or indirect financial or other relationship with Empire Development, LLC and/or its subcontractors and any advisors to either Empire Development, LLC or the Church. No Trustee, officer or key employee (or their relatives) will receive any direct or indirect financial benefit from the transaction.

FOURTEENTH: This is an arms-length transaction and no person or entity have raised, or have a reasonable basis to raise, objections to the subject transaction. This transaction is fair and reasonable and in the best interests of Petitioner.

FIFTEENTH: All of the terms and conditions of the subject transaction are herein disclosed and no side deals exist.

90. An affidavit submitted by the Secretary of the Board of Childs Memorial, also dated December 7, 2015, and annexed as an exhibit to the Verified Petition, contained the following language:

No Trustee, officer or key employee (or their relatives) has a direct or indirect financial or other relationship with the Developer and/or its subcontractors and any advisors to either the Developer or the Church and covenants that any such persons will disclose to the Trustees and/or the membership if they or their relatives enter into a relationship that may give rise to a conflict during the construction period, and will recuse themselves from all deliberations from such time regarding the project.

91. At the time of the above attestations, Pastor 1 had a financial relationship with the Developer for acting as a “finder” for other potential church properties. Additionally, a “side deal” existed between Pastor 1 and the Developer, the Developer and Pastor 1’s wife, and Pastor 1 and the licensed real estate broker.

92. At this same time, the Presiding Elder continued to expand his personal financial relationship with the Developer. The Presiding Elder sent the Developer an email on January 21, 2016, that stated:

Thanks again for the opportunity to work with you and everyone at Elmo Realty as we try to make the lives of churches better.

I want my work and compensation to represent you, therefore, I prayerfully submit the following compensation proposal:

1. I would like to receive the previously agreed upon balance due from the Bethel Tabernacle/Dean Street deal since this was in place already, and,

quite frankly, I have plans for the use of these funds.

2. I would like to receive the previously agreed upon \$100k from the Ebenezer deal once it closes.
3. I would like to receive \$10,000 per month effective March 1.
4. I think I would like all amounts made payable to the Brooklyn-Westchester District. I will check with my accountant to verify. Please advise if this is possible. Thanks again for the opportunity.

93. On February 1, 2016, the Presiding Elder sent an email to the Presiding Elder of the AME's Manhattan District and copied the Bishop, forwarding the contract and terms from the Developer for the purchase of the property of Ebenezer AME. The email stated:

Agreements attached. Even though the required meetings have not yet been held, these docs need to be executed ASAP. The agreement is contingent on the church providing all necessary approvals.

94. On February 23, 2016, the parties signed a contract for the sale of the property of Ebenezer AME, located at 170 East 123<sup>rd</sup> St., New York, New York, to Respondent Empire Development Fund 3 LLC.<sup>4</sup>

95. In March 2016, the Parties signed a contract for the sale of the property of Greater Bethel AME, located at 32 West 123<sup>rd</sup> St., New York, New York, to Respondent Empire Terrace LLC.

96. On March 15, 2016, the St. John AME transaction received Court approval.

97. The St. John AME transaction closed on March 29, 2016. On that same day, Respondent Purchaser Entity Empire Development Fund 3 LLC paid Pastor 1 \$40,000.00 via check. The memo line on the check says: "Broker's Fee -- 132 West 134<sup>th</sup> Street NYC", the address of St. John AME.

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<sup>4</sup> At the closing on June 6, 2017, the Developer substituted Respondent Empire Development X, LLC as the actual owner.

98. On April 29, 2016, the Bethel Tabernacle AME transaction received Court approval.

99. In an email exchange beginning on May 2, 2016, an employee of Elmo Realty, on behalf of the Developer, emailed the Presiding Elder requesting that the Presiding Elder and the Bishop each provide an IRS Form W-9 to the Developer. When the Presiding Elder asked whether the form should be completed in his name personally or on behalf of the Brooklyn-Westchester District, the Developer's employee replied, "In your personal name. It's for the finder fee payment". The Presiding Elder forwarded the request to the Bishop's assistant on May 3, 2016, who asked, "Is this form for him personally or for the First District?" to which the Presiding Elder replied, "It is for him personally. He asked that I send it to you."

100. The Bethel Tabernacle AME transaction closed on May 10, 2016. On the same day, Respondent Entity 1634 Dean LLC paid the Bishop \$200,000.00 via check. The Bishop deposited that check into his personal bank account.

101. On May 12, 2016, two days after the Bethel Tabernacle AME closing, Respondent Entity 1634 Dean LLC paid the Presiding Elder \$46,750.00 by check. The Presiding Elder deposited that check into his personal bank account.

102. On May 21, 2016, the Presiding Elder sent an email to the Developer that stated:

I have committed myself to this work. I believe I have given you and [the] Bishop [...] the best I have. In light of this, and since I do a lot of work, would you consider adjusting the amounts you give me and Bishop. Now Bishop gets \$200k, I get \$100k. Proposal – I get \$200k and Bishop gets \$100k; or, we each get \$150k each. I really want to buy a home before the end of this year. This would help me reach that goal.

103. There is no evidence that the amounts that the Developer paid each of the Bishop and the Presiding Elder changed in response to the Presiding Elder's request.



104. On June 13, 2016, Respondent 1634 Dean Street paid Pastor 1 \$20,000.00 via check. Pastor 1 deposited that check into his personal bank account.

105. On June 21, 2016, the contract for the sale of the property of Metropolitan AME, located at 58 West 135<sup>th</sup> Street, New York, New York, to Respondent Empire Development Fund 4 LLC, was executed.

106. On August 8, 2016, Respondent 1634 Dean LLC paid the Presiding Elder \$10,000 via check. The Presiding Elder deposited that check into his personal bank account.

107. On August 12, 2016, the Presiding Elder sent an email to the Developer stating, “Thanks for helping me to acquire my [. . .] new car. You continue to be a blessing to me and my family.”

108. On November 2, 2016, the Attorney General issued an administrative approval of the Greater Bethel AME transaction.

109. On January 26, 2017, the Greater Bethel AME Transaction closed. Under the terms of the lease agreement between Greater Bethel and Respondent Empire Terrace LLC, Greater Bethel was to be responsible for arranging and paying for the costs of its utilities within six months of the lease commencement. At the closing, a change in the material terms of the transaction was presented in place of the contractually agreed upon terms. The monthly rent on the 99-year leaseback from the church as lessee to the Developer as landlord was changed from \$1/month to \$1,500/month. This (i) changed the OAG approved-terms of the transaction, which had attributed significant value to a basically rent-free lease; and (ii) rendered the approval of the terms of the transaction by the congregation and church hierarchy meaningless. The Bishop and the Presiding Elder were aware of, but did not object to, those material changes to the financial terms of the transaction. In fact, the Presiding Elder called during the closing to direct, per the

Bishop's order, Greater Bethel's pastor to proceed with the revised, unapproved transaction despite the lack of valid approvals.

110. Greater Bethel could not afford to pay the revised rent of \$1,500/month. When the church failed to pay its rent at the substantially higher price, the Developer threatened to and did file a lawsuit to evict the church.<sup>5</sup> At other times, the Developer, through Empire Terrace LLC, Greater Bethel's landlord after purchasing the property, threatened to and then permitted the heat and electricity in the church to be shut off during the winter. The Developer also failed to respond to repeated complaints from Greater Bethel that the sanctuary ceiling was caving in.

111. The Bishop and the Presiding Elder were aware of the problems the church was having with the Developer. Portions of the ceiling did collapse, causing substantial damage to the sanctuary and to the pastor's robes, and injuring a parishioner, who later filed a personal injury lawsuit.

112. While Greater Bethel was experiencing substantial difficulties with the Developer as a landlord, the Bishop and the Presiding Elder nevertheless continued to facilitate the sale of the property of Ebenezer AME to the Developer through the Purchaser Entity. In connection therewith, on March 7, 2017, the attorney for Ebenezer AME transmitted to the Bishop, the Presiding Elder, Pastor 1, Ebenezer's pastor, another Presiding Elder, the Developer's counsel, and the Developer's employee, copies of the draft resolutions that needed to be signed. In an email dated March 23, 2017, the attorney for Ebenezer wrote to the Developer and his counsel, with a copy to Ebenezer's pastor and Pastor 1 as follows:

Dear Attorney [ . . . ] and Mr [Developer],

I am awaiting the passage of final resolutions from: (1) Ebenezer; (2) Ebenezer's trustee board; (3) the New York quarterly conference of the A.M.E. denomination;

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<sup>5</sup> Pursuant to a request by the Presiding Elder of the Manhattan District, the "rent" was reverted back to the \$1/month original agreement.

and (4) the New York Annual Conference of the denomination. I expect to receive the first 3 of those perhaps as soon as tomorrow, as the Church is meeting tonight. I spoke to Elder [ . . . ] regarding the 4th resolution which requires the Bishop's signature plus the prior passage of resolutions (1) and (2). I requested that Elder deliver the 4th resolution to me as soon as possible so that I can get the package to the AG's office in order to obtain the final approval. The AG's Office will issue its approval upon receipt of the full package with the executed resolutions, etc... Once I receive the AG's order, I can submit the request to the NY Supreme Court . . .

113. In an email dated March 29, 2017, the Presiding Elder emailed Ebenezer AME's counsel, the Developer, the Developer's counsel, the Developer's employee, the Bishop, and the pastor of Ebenezer AME, stating, "For everyone's clarity, the Bishop did initially sign the Resolution, but after further review of the language, saw that it required a meeting of the NY Conference Board of Trustees. That meeting will take place on Thursday, March 30. The Resolution should be available after that meeting."

114. Despite that, in a text message exchange with Ebenezer AME's counsel on April 14, 2017, the Developer wrote:

Mr [ ] I emailed you a resolution that was done for AME on a different church which the AG office approved and Bishop has no problem signing that tomorrow, if you can give him the resolution of Ebenizer [sic] in the same format, I am meeting him tomorrow around 11 am, can you pls see if it can be done? Thank you and best regards

115. The Bishop thereafter submitted as part of the verified petition to OAG a "Certificate of Officer of New York Annual Conference", also dated April 14, 2017, certifying as true that NYAC's Board of Trustees had met and approved the Ebenezer AME sale transaction on April 4, 2017, unanimously adopting a series of resolutions, including the following:

RESOLVED, that each member of the Board, officer, Trustee, Church member and key employee has confirmed that he or she (or their relatives) has no direct or indirect financial or other relationship with the Developer and/or its subcontractors and any advisors to either the Developer or the Church and covenants that each such person commit to disclose to the Board, the Trustees

and/or the membership if they or their relatives enter into any relationship that may give rise to a conflict during the construction period, and will recuse himself/herself from all deliberations regarding the Project. Further, each such party shall covenant that any material relationship should be disclosed in writing by the Church to the Attorney General. . . .

116. At the time the above was submitted, the Bishop knew that both he and the Presiding Elder had a financial relationship with the Developer, and that they were receiving payments directly from the Developer; that their relationship with the Developer and those payments were not disclosed to the Board, the trustees, and/or the membership; that the Bishop had failed to recuse himself from all deliberations involving the Ebenezer project; and that the nature of the financial relationship had not been disclosed to the Attorney General.

117. On April 17, 2017, the Ebenezer AME NYAC resolution was transmitted by email from the Presiding Elder to Ebenezer's counsel, copying the Bishop, with a blind copy to the Developer.

118. On May 11, 2017, the Ebenezer AME transaction received Court approval.

119. On May 18, 2017, the Metropolitan AME transaction received Court approval.

120. On May 20, 2017, the Developer, through an account belonging to Empire Development X LLC, paid Pastor 1 \$35,000.00 by check.

121. The Ebenezer AME transaction closed on June 6, 2017. On June 7, 2017, the Bishop received a \$200,000.00 payment by check from Empire Development Fund X LLC. The Bishop deposited that check into his personal bank account.

122. On the same date, Empire Development X LLC made a payment to the Presiding Elder's District, Brooklyn-Westchester, of \$80,100. That check was deposited into the Brooklyn-Westchester District bank account on June 7, 2017.

123. Within a few months of closing the Ebenezer AME Transaction, the Bishop received notice that the Developer was unilaterally altering terms of the deal by withholding two months' rental payments due to a dispute over whether the church met the closing conditions concerning the cleanliness of the property. On July 24, 2017, Ebenezer AME's pastor wrote to the Bishop, forwarding the Developer's letter, and stated:

I am sharing this with you for information's sake and to also let you know that [the Developer] has not been judicious in this matter . . . [the Developer] said that he had pictures and he was going to forward them. To date, there have been no pictures received . . . Further, when [the Developer] initiated an email on June 27, I inquired of him and received no response. I called his cell phone and his office on several occasions and left messages for him. He never responded. As I shared with you, Bishop, we spent over \$10,000 for the clean-up of that building. Even if there was something 'left over' it was not to the tune of \$6,000. [The Developer] is being extremely unreasonable.

124. Nevertheless, the Metropolitan AME transaction closed on September 8, 2017.

125. On September 10, 2017, Empire Development 4 LLC paid the Bishop \$200,000, and paid the Presiding Elder \$75,000; each deposited their check into their respective personal accounts.

126. On September 13, 2017, Empire Development 4 LLC paid Pastor 1 \$25,000 by check, a finder's fee for work related to the Metropolitan AME transaction.

127. On December 12, 2017, the attorney for St. John AME, sent an email to the Developer and the Developer's counsel rejecting the Developer's attempt to amend a material term sought by the Developer in connection with a separate proposed addendum to the St. John Purchase and Sale Agreement. The addendum proposed an extension of dates of the contract for an additional year. The attorney wrote:

[Developer],

I am in receipt of the proposed amendment sent to my Client. Rev. [. . . ] cannot waive the payment and performance bond for that provision can only be waived by the Court.

I believe the original agreement outlines the procedure for acquiring the adjacent property. Therefore no amendment is required.

As always you are free to contact me.

128. St. John's pastor forwarded that email exchange to the Presiding Elder the same day.

129. The Investigation also revealed that the Developer provided the Bishop with an envelope containing \$10,000 in cash, a Rolex watch, and he gifted an expensive handbag to the Bishop's wife.

130. In January and February 2018, after the commencement of the OAG Investigation, the Developer requested from the Bishop and the Presiding Elder letters that characterized the payments the Developer had made to each of them as having been made for charitable purposes for use on the churches' behalf, and had been issued to them personally for "expediency" and "convenience." The Developer previously issued IRS Form 1099s to the Bishop and the Presiding Elder for 2016 and 2017, which represented that the payments to them were for "nonemployee compensation" or "other income".

131. On January 24, 2018 (the check was incorrectly dated January 24, 2019), Respondent 1634 Dean Street LLC paid the Presiding Elder \$2,500.00.

132. Throughout 2017 and 2018, the Developer failed timely to meet contractually agreed-upon benchmarks in the Transactions. He commenced litigation to evict Greater Bethel for failing to meet its (unapproved) new rent obligations, and permitted the shut off of its heat and electricity. In addition, at various times, the Developer failed to make timely rent payments to St. John AME and Ebenezer AME. Both the Bishop and the Presiding Elder were aware of these

issues. By email dated September 21, 2018, the Presiding Elder, copying the Bishop, wrote to the Developer:

[Developer]:

I hope you are well. I understand that you are traveling out of the country.

[The] Bishop [...] is having a meeting with the NY Conference Board of Trustees today at 1 pm and needs to know the following:

1. When will St. John's monthly rental allotment be paid?
2. When will construction begin on St. John?
3. When will construction begin on Ebenezer?
4. What are the latest changes you are requesting to the Metropolitan agreement?
5. What is the status of the Dean Street project?

Please advise ASAP. Thank you.

133. In response, Developer wrote:

Good morning.

WHEN AM I GETTING 52,000 \$ owed to me by Bethel?

When will they remove the Violations

So I can go through with my financing.

Thank you

[Developer]

134. In an email dated September 25, 2018, the pastor of St. John's AME wrote to the Developer, with a copy to the Bishop, stating:

Good morning [ . . . ].

Hope this email finds you well. the Bishop would like me to get an update on the progress of moving toward the pouring of cement in October for our construction project. Please give me an update when you can.

135. By letter dated January 29, 2019, the pastor of Ebenezer AME wrote to the Bishop stating:

Bishop [...],

The property at 170 East 123<sup>rd</sup> Street was sold on June 6, 2017.

Our relocation fee was to be paid by the 15<sup>th</sup> day of every month. [The Developer] has been issuing Ebenezer a check every three months rather than monthly and has been doing so for over a year. My last conversation with [the Developer] was around December 21, 2018.

To date, [the Developer] and I have not met nor has any exterior work been done. The building is still standing and we have no updated information.

136. Despite awareness of these issues, the Bishop and the Presiding Elder continued to pursue business with the Developer.

137. The Bishop was aware of and approved the nature of the Presiding Elder’s relationship with the Developer. In June 2018, the Bishop promoted the Presiding Elder to the First Episcopal District’s “Development Officer”, a fact that the Presiding Elder shared with the Developer.

138. To date, no new construction (as distinct from demolition) or completion of remediation as contracted for in the AME Transactions or the COGIC Transactions has occurred.

**Summary of Payments**

**A. Payments to the Bishop Personally**

139. The Developer made the following payments directly to the Bishop personally, none of which were disclosed by the Bishop to the churches involved in the AME Transactions, to NYAC, to the First Episcopal District, to any Court, or to the Attorney General:

<b>Date</b>	<b>Payer</b>	<b>Recipient</b>	<b>Amount</b>
5/10/16	1634 Dean LLC	Bishop	200,000.00
6/7/17	Empire Development X LLC	Bishop	200,000.00
9/10/17	Empire Development Fund 4 LLC	Bishop	200,000.00
	Developer	Bishop	10,000 in cash
	Developer	Bishop	Rolex Watch



			and Designer Handbag
		<b>TOTAL</b>	<b>\$610,000, Rolex Watch, and Designer Handbag</b>

140. The Bethel Tabernacle AME transaction closed on May 10, 2016, the same day that the Bishop received a \$200,000 payment from 1634 Dean LLC, the purchasing entity.

141. The Ebenezer AME transaction closed on June 6, 2017, and the Bishop received a \$200,000 payment from Empire Development Fund X LLC, the purchasing entity, on June 7, 2017.

142. The Metropolitan AME transaction closed on September 8, 2017, and the Bishop received a \$200,000 payment from Empire Development Fund 4 LLC, the purchasing entity, on September 10, 2017.

143. The relevant Purchaser Entities issued the Bishop three IRS Forms 1099 for 2016 and 2017, for amounts totaling \$600,000, with a representation that the payments were for “Nonemployee Compensation” in two instances and “Other Income” in the third instance. There is no evidence that the Bishop provided services to the Developer or the entity that issued the payment and issued the IRS Form 1099 beyond exercising his authority to approve transactions.

144. In contrast to the payments the Developer made personally to the Bishop, the Developer made charitable donations to various AME entities during the period 2015 to 2017. The Developer took tax deductions on his personal tax returns for those contributions.

**B. Payments to the Presiding Elder Personally**

145. The Developer made the following payments directly to the Presiding Elder personally, none of which were disclosed by the Presiding Elder or the Bishop to the churches, to NYAC, to the First Episcopal District, to any Court, or to the Attorney General:

<b>Date</b>	<b>Payer</b>	<b>Recipient</b>	<b>Amount</b>
11/4/15	Harlem Development Fund LLC	Presiding Elder	5,000.00
12/16/15	375 Pleasant Inc.	Presiding Elder	5,000.00
5/12/16	1634 Dean LLC	Presiding Elder	46,750.00
8/8/16	1634 Dean LLC	Presiding Elder	10,000.00
9/10/17	Empire Development Fund 4 LLC	Presiding Elder	75,000.00
1/24/18	1634 Dean LLC	Presiding Elder	2,500.00
		<b>TOTAL</b>	<b>\$144,250.00</b>

146. The Bethel Tabernacle AME transaction closed on May 10, 2016, and the Presiding Elder received a \$46,750 payment from 1634 Dean LLC, the purchasing entity, on May 12, 2016.

147. The Metropolitan AME transaction closed on September 8, 2017, and the Presiding Elder received a check for \$75,000 from Empire Development Fund 4 LLC, the purchasing entity, on September 10, 2017.

148. The relevant Purchaser Entities issued the Presiding Elder IRS Forms 1099 for 2016 and 2017, totaling \$131,750, with a representation that the payments were for either “Nonemployee Compensation” or “Other Income”.

149. With respect to the AME Transactions, the Investigation found no evidence that the Presiding Elder provided services to the Developer or the entities that made the payments or issued the IRS Form 1099s beyond helping to facilitate those transactions within the AME Church.

**C. Payments to the Brooklyn-Westchester District**

150. The Developer and the Purchaser Entities made the following payments to the Brooklyn-Westchester District:

<b>Date</b>	<b>Payer</b>	<b>Recipient</b>	<b>Amount</b>
1/26/16	Developer	Brooklyn-Westchester District	5,000.00
6/7/17	Empire Development X LLC	Brooklyn-Westchester District	80,100.00
		<b>TOTAL</b>	<b>\$85,100.00</b>

151. The Ebenezer AME transaction closed on June 6, 2017, and Empire Development X LLC, the purchasing entity, made an \$80,100 payment to the Brooklyn-Westchester District on June 7, 2017.

152. The Developer took a tax deduction on his 2016 personal tax return for the payment to the Brooklyn-Westchester District for \$5,000.

153. The Developer did not take a deduction on his 2017 personal tax return for the \$80,100 payment to the Brooklyn-Westchester District in 2017.

**D. Payments to Pastor 1 Personally**

154. The Developer caused the following payments to be made directly or indirectly to Pastor 1, including while Pastor 1 was the decision-maker as to negotiated terms of the Childs Memorial COGIC transaction, both post-contract and post-closing, when deal terms were amended. Pastor 1 did not disclose these payments to any Court, or to the Attorney General:

<b>Date</b>	<b>Payer</b>	<b>Recipient</b>	<b>Amount</b>
6/5/15	East 110th Street LLC	Pastor 1	1,000.00
6/5/15	East 110th Street LLC	Pastor 1	5,000.00
6/5/15	East 110th Street LLC	Pastor 1	4,000.00
7/23/15	East 110th Street LLC	Pastor 1	4,000.00
7/23/15	East 110th Street LLC	Pastor 1	4,000.00
7/23/15	East 110th Street LLC	Pastor 1	2,000.00
8/24/15	East 110th Street LLC	Pastor 1	10,000.00
11/24/15	East 110th Street LLC	Pastor 1	20,000.00
12/11/15	Empire Development Fund LLC to Church's Intermediary /Healing from Heaven COGIC	Pastor 1	165,000.00
1/15/16	Empire Development Fund LLC	Pastor 1's Wife	50,000.00
1/15/16	Real Estate Broker	Pastor 1's Wife	50,000.00
3/29/16	Empire Development Fund 3 LLC	Pastor 1	40,000.00
6/13/16	1634 Dean LLC	Pastor 1	20,000.00
5/20/17	Empire Development X LLC	Pastor 1	35,000.00
9/13/17	Empire Development Fund 4 LLC	Pastor 1	25,000.00
		<b>TOTAL</b>	<b>\$435,000.00</b>

155. The Healing from Heaven COGIC transaction closed on December 11, 2015, and a payment of \$165,000 was made to Pastor 1 from the Developer on December 11, 2015.

156. Between the time the Childs Memorial COGIC contract of sale was signed and the time that it closed, the Developer paid Pastor 1 a total of \$215,000.

157. The Childs Memorial COGIC transaction closed on January 15, 2016, and payments to Pastor 1's wife totaling \$100,000 were made on January 15, 2016: \$50,000 was paid by Empire Development Fund LLC and \$50,000 by a broker paid on that transaction.

158. Purchaser Entities issued Pastor 1 IRS Forms 1099 for 2015, 2016, and 2017 for a total of \$115,000 for all three years, which is less than the amounts Pastor 1 received during that period. Not all payments made by Purchaser Entities to Pastor 1 are reported in the IRS Forms 1099. The representations on the Forms 1099 issued to Pastor 1 were that the amounts were paid for "Nonemployee Compensation" or "Other Income".

159. Pastor 1's wife also received an IRS Form 1099 for \$50,000 from a Purchaser Entity for 2016. The indication on the Form 1099 issued to Pastor 1's spouse was that the amount was paid for "Other Income".

160. In contrast to the amounts the Developer paid to Pastor 1 and his wife, personally, the Developer took deductions on his personal tax returns for charitable donations he made to COGIC Churches in 2016.

### **The Transaction Terms**

161. Each of the five AME Transactions and two COGIC Transactions were development deals that consisted of multiple component parts, which made up the total consideration for the deal. These components were agreed to by contract, which was the

fundamental basis for the Verified Petition that was reviewed and approved by the OAG and the Court.

162. Each purchase price typically included a cash component that was relatively small in relation to the overall purchase price; payoff of liens and encumbrances, other transaction fees and debts; renovation or construction of a new sanctuary; a corresponding new church unit, and frequently, residual payments or other income streams to the church that were due monthly for many years into the future commencing when the new building is complete. Each transaction had scheduled dates for the different phases of construction, and many had provisions for the payment by the Developer of rent or relocation fees for the period of time that the church was displaced from its property.

163. None of the five AME or two COGIC Churches has received the full benefit of the bargain they made with the Developer, despite that the Developer and/or the Purchaser Entities hold title to the church properties with the exception of Bethel Tabernacle AME. In that transaction, the Purchaser Entity received a 99-year ground lease and thus has almost complete control of the property. Demolition of the former Houses of Worship has taken place on the following three sites: St. John AME, Ebenezer AME, and Healing from Heaven COGIC, but as of the date of this Assurance, the construction sites are empty lots.

164. The basic terms of the original AME Transactions are set forth below:

**St. John AME Church, 132 West 134<sup>th</sup> Street, New York, New York.**

- (a) Contract date: August 2015
- (b) Title passed: March 2016
- (c) Purchaser Entity: Empire Development Fund 3 LLC
- (d) Original Contractual Project Completion Date: March 2019

- (e) Components of consideration include:
  - i) \$250,000 cash at closing
  - ii) New Church Unit: 3000 sq. ft.
  - iii) Future Payment Stream of \$550 /month for 20 years increasing 3% every five years
  - iv) Relocation rental payments and penalty payments for non-delivery.

**Bethel Tabernacle AME Church, 1634-1650 Dean Street, Brooklyn, New York**

- (a) Lease signing: July 2015 (term: 99 years)
- (b) Lease Commencement Date: 10 days after court approval: approximately May 9, 2016 (rent payments due upon completion of new building)
- (c) Purchaser Entity: 1634 Dean Street LLC
- (d) Original Contractual Project Completion Date: May 2019
- (e) Components of consideration include:
  - i) \$ 1,475,000 cash at closing (includes payment of liens/liabilities)
  - ii) Future rent payments

**Greater Bethel AME Church, 32 West 123<sup>rd</sup> Street New York, New York**

- (a) Contract Date: March 2016.
- (b) Title passed: January 2017
- (c) Purchaser Entity: Empire Terrace LLC
- (d) Components of consideration include:
  - i) \$565,000 cash at closing (includes payment of liens/liabilities)
  - ii) Rent free leaseback to Church
  - iii) \$100,000 of renovations to Church Sanctuary

**Ebenezer AME Church, 170 East 123<sup>rd</sup> St., New York, New York**

- (a) Contract date: February 2016.
- (b) Title passed: June 2017
- (c) Purchaser Entity: Empire Development Fund 3 LLC listed as purchaser in documents, but purchasing entity: Empire Development X LLC
- (d) Original Contractual Project Completion Date: June 2020.
- (e) Components of consideration include:
  - i) \$330,000 cash at closing (includes payment of liens/liabilities)
  - ii) New Church Unit: 5300 sq. ft
  - iii) Future Payment Stream of \$2000/month for 20 years increasing 3% every five years.
  - iv) Relocation rental payments; professional fees and penalty for non-delivery.

**Metropolitan AME Church: 58 West 135<sup>th</sup> Street, New York, New York**

- (a) Contract date: June 2016.
- (b) Title passed: September 2017
- (c) Purchaser Entity: Empire Development Fund 4 LLC
- (d) Original Contractual Project Completion Date: Demolition to begin no later than March 2022 (4.5 years from closing); then 2.5 years to construction completion.
- (e) Components of consideration include:
  - i) \$1,200,000 cash at closing (includes payment of liens/liabilities)
  - ii) New Church Unit: 12,000 sq. ft



iii) Future Payment Stream of \$4000/month for 20 years increasing 4% every five years.

iv) Relocation rental payments and professional fees.

165. The basic terms of the original COGIC Transactions are set forth below:

**Healing from Heaven Temple; 2535 Frederick Douglas Blvd., New York, New York**

- (a) Contract Date: June 2015
- (b) Title passed: December 2015
- (c) Purchaser Entity: Empire Development Fund 2
- (d) Original Contractual Project Completion Date: December 2018
- (e) Components of consideration:
  - i) \$1,200,000 cash at closing (includes payment of liens/liabilities)
  - ii) New Church Unit: 13,000 sq. ft
  - iii) Future Payment Stream of \$6000/month for 20 years increasing 3% every five years; payments to commence upon 50% occupancy of new building.
  - iv) Relocation rental fee, payment of professional fees, and penalties for non-delivery.

**Childs Memorial Temple COGIC; 1763-71 Amsterdam Ave., New York, New York**

- (a) Contract Date: December 2014.
- (b) Title passed: January 2016
- (c) Purchaser Entity: Empire Development Fund LLC
- (d) Original Contractual Project Completion Date: originally Jan. 2019;
- (e) Components of consideration:

- i) \$2,000,000 cash at closing (includes payment of liens/liabilities)
- ii) New Church Unit: 9000 sq. ft
- iii) Future Payment Stream of \$6000/month for 25 yrs. increasing 2% every three yrs.; payments to commence upon 80% occupancy of new building.
- iv) Relocation rental fee, payment of professional fees, and penalties for non-delivery.

**CONCLUSIONS OF LAW.**

166. N-PCL §715 governs Related Party Transactions and provides, in relevant part:

(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation's best interest at the time of such determination. Any director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

(b) With respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, the board of such corporation, or an authorized committee thereof, shall:

(1) Prior to entering into the transaction, consider alternative transactions to the extent available;

(2) Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and

(3) Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative transactions.

. . .

(f) The attorney general may bring an action to enjoin, void or rescind any related party transaction or proposed related party transaction that violates any provision of this chapter or was otherwise not reasonable or in the best interests of the corporation at the time the transaction was approved, or to seek restitution, and the removal of directors or officers, or seek to require any person or entity to:

(1) Account for any profits made from such transaction, and pay them to the corporation;

(2) Pay the corporation the value of the use of any of its property or other assets used in such transaction;

(3) Return or replace any property or other assets lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate; and

(4) Pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

167. The Bishop and the Presiding Elder entered into unlawful related party transactions with the Developer, in violation of N-PCL § 715. The Developer, in repeatedly making payments to the Bishop, the Presiding Elder, and Pastor 1, that they did not disclose, participated in prohibited related party transactions, in violation of N-PCL § 715. The Developer and the Purchaser Entities are liable under those statutes to account for any profits made from such transaction, and pay them to the corporation that was harmed by the transaction; to pay that corporation the value of the use of any of its property or other assets used in such transaction; to return or replace any property or other assets lost to that corporation as a result of such transaction, together with any income or appreciation lost to that corporation by reason of such

transaction, or account for any proceeds of sale of such property, and pay the proceeds to that corporation together with interest at the legal rate.

168. Section 715(f) of the N-PCL authorizes the OAG to seek monetary relief from “any person or entity” who engaged in unlawful related party transactions or may have benefited from them.

169. The Developer and the Purchaser Entities have benefited from the transactions entered into by the churches.

170. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law set forth in paragraphs 1-169 above.

171. The Developer and the Purchaser Entities each have agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation.

172. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of law as set forth above, and to discontinue further investigation of the conduct described above during 2015 to the present.

**IT IS HEREBY UNDERSTOOD AND AGREED**, by and between the Parties:

**RELIEF**

173. Developer and the Purchaser Entities agree to provide restitution and other relief to each of the seven churches, as set forth herein. Developer agrees that as of the date of execution of the Assurance, the Developer will be current on all rent and relocation payments owed to any of the churches, in addition to any further relief as set forth herein. Each of the

seven churches shall choose one of the following four Options: (1) the Monitored Performance Option; (2) the Cash Out Option; (3) the Rescission Option; and (4) the Opt-Out Option. Within 15 days from the date of full execution of this Assurance, each church will be notified of the terms set forth herein (the “Notification Date”). Within 60 days of the Notification Date, each church will notify the OAG, the Developer, and the relevant Purchaser Entity in writing of its choice of one of the four Options below (the “Option Selection Date”), which will bind the church to the terms and timeframes outlined in this Relief Section. Developer has agreed to the financial terms of each of these Options as follows:

**Option 1: The Monitored Performance Option**

If Option 1 is selected and notice is duly provided under this section, Developer and the relevant Purchaser Entity will deliver all consideration provided for in the underlying purchase and sale agreements or site development agreement, including but not limited to, the complete construction and development of the properties and the transfer of a church unit to the church as provided for in the underlying purchase and sale or site development agreement and as set forth in the approved petition. This Option requires Developer and all relevant Purchaser Entities to agree to oversight and monitoring by a third-party construction expert (the “Project Monitor”) selected from a list of candidates as compiled by the OAG, the cost of which will be paid by Developer. The Project Monitor will set the timetable for delivery, including all revised interim deadlines, and other appropriate conditions to ensure that the churches receive the full consideration due under the approved terms of the transaction and will include penalty provisions in the event Developer fails to meet those conditions. Additional

dates, deadlines, and procedures relating to this Option are more fully set forth in Exhibit A hereto.

### **Option 2: The Cash-Out Option**

If Option 2 is selected and notice is duly provided under this section, Developer and the relevant Purchaser Entities will pay an agreed upon cash-out amount for each transaction at issue, as set forth in Exhibit B. Contemporaneously with the payment of that amount, the church will release Developer and the respective Purchaser Entity from further contractual liability and the respective Purchaser Entity shall retain title to the properties. In the case of Bethel Tabernacle AME, if the church selects this Option 2, (i) the property will be deeded to the applicable Purchaser Entity, by special warranty deed, free and clear of all liens, encumbrances, claims, and dangerous conditions; (ii) the letter of credit procured on behalf of Bethel Tabernacle AME will be canceled; and (iii) the ground lease between Bethel Tabernacle AME, as the landlord, and 1634 Dean, LLC, as the tenant, will be canceled. In the case of Greater Bethel AME, should the church select this Option 2, the lease agreement between Empire Terrace LLC, as landlord, and Greater Bethel AME, as tenant, will be canceled and Greater Bethel AME will vacate the property within 10 business days. The cash payment will be made in one lump sum, and is due to each church choosing this Option within the following time frames:

- If less than three churches select Option 2, payment to each such church shall be made within 60 days following the Option Selection Date.

- If three or more churches select Option 2, payment to each such church shall be made within 120 days following the Option Selection Date.

### **Option 3: The Rescission Option**

If Option 3 is selected and notice is duly provided under this section, Developer, through the relevant Purchaser Entity, will deed back title to the property initially acquired to each individual church by special warranty deed, free and clear of all liens, encumbrances, claims, and dangerous conditions. Contemporaneously upon transfer of the special warranty deed back to the church, except for those matters warranted in the deed, the church will release Developer and the respective Purchaser Entity from further contractual liability. In the case of the properties involving leases or leasebacks, the relevant leases will be canceled. Any cash or cash equivalent expended by Developer through a Purchaser Entity in connection with the original closing of the particular transaction for the payoff of liens, debts or liabilities or other encumbrances, repairs, or environmental remediation, and up to 50% of direct costs incurred for demolition, shall be repaid by the relevant church to Developer through the relevant Purchaser Entity at the time the deed is returned to the church or the relevant lease is canceled. For the avoidance of doubt, finders' fees, brokers' fees, closing costs, loan costs or fees, property or other taxes, title or title search fees, legal fees, or insurance fees, are not recoverable by Developer or the Purchaser Entity. Payment by each church choosing this Option is due to Developer and/or the relevant Purchaser Entity 90

days from the Option Selection Date (the “Rescission Payment Date”). Prior to the Rescission Payment Date, the property shall not be marketed or listed with any broker. If a church selecting Option 3 fails to pay the full amount due under this Option 3 to Developer or the Purchaser Entity by the Rescission Payment Date, the applicable church transaction shall not be rescinded and title to the property shall not be deeded back to the relevant church. In such circumstance, the relevant church shall be deemed to have selected Option 1, the Monitored Performance Option, and will enter into negotiations pursuant to that Option 1. In such a scenario, Developer may negotiate up to an additional six-month period to replace any financing lost as a result of the relevant church’s failure to make payment by the Rescission Payment Date.

**Option 4: Opt-Out Option**

The church may choose to opt out of participation in this settlement structure in its entirety, and will so inform the Attorney General of that decision. In that circumstance, there will be no release provided by the church to Developer. Any church that chooses this Option 4 will be required to make additional disclosures to OAG.

174. In addition to the Options set forth above, Developer and the Purchaser Entities will deposit the amount of \$280,000 to a fund established to cover the cost of reasonable legal fees, up to \$40,000 per affected church, incurred by the church in connection with securing advice and counsel regarding the election of one of the Options set forth in this Assurance. The



\$40,000 per church will be bifurcated such that each church will receive a maximum of up to \$30,000 through the Option Selection Date, and for any church choosing Options 1 or 3, an amount up to an additional \$10,000 per church will be made available for ancillary legal work related to finalizing the details of that Option. For the avoidance of doubt, any church choosing Options 2 or 4 will not be eligible for any further counsel fees after the Option Selection Date. As a condition of this Assurance, any counsel chosen by the affected church to perform such evaluation shall have no prior relationship with Developer or the Purchaser Entities, and no prior involvement with any of the underlying transactions.

175. Developer and the Purchaser Entities understand and agree that the Attorney General shall have standing and authority to enforce the terms of the Option elected by the Church, and full performance of the Option, including delay damages.

176. Developer and the Purchaser Entities expressly agree and acknowledge that a default in the performance of any obligation under this Assurance is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding, including any civil action or proceeding necessary to enforce a provision on behalf of any individual church, as contemplated in paragraph 178, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 166-169, pursuant to Executive Law § 63(15).

177. Subject to the approval of the churches selecting Option 1 and the OAG, from and after the Option Selection Date, Developer and the relevant Purchaser Entity may assign their rights and obligations under the respective purchase and sale agreements to another entity or entities, provided that any church choosing Option 1 shall receive all consideration for which

they are entitled under Option 1, upon such terms and conditions approved by those churches and the OAG, and including that any such assignee expressly agrees to be subject to the oversight of the Project Monitor.

## MISCELLANEOUS

### Subsequent Proceedings.

178. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, for false statements by any Respondent to induce this Assurance, or if the Assurance is voided pursuant to paragraph 186, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

179. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

**Effects of Assurance:**

180. This Assurance is not intended for use by any third party in any other proceeding, except for identified Churches seeking to enforce the terms of their selected option.

181. This Assurance is not intended, and should not be construed, as an admission of liability by any Respondent.

182. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of any Respondent. Respondents shall include any such successor, assignment, or transfer agreement a provision that binds the successor, assignee, or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

183. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

184. Any failure by the OAG to insist upon the strict performance by any Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by any Respondent.

**Communications:**

185. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-011, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic

mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondents, to: Jason R. Lilien, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154.

If to the OAG, to: Sharon Sash, Assistant Attorney General, 28 Liberty Street, New York, NY 10005, [Sharon.Sash@ag.ny.gov](mailto:Sharon.Sash@ag.ny.gov), or in her absence, to the person holding the title of Bureau Chief, Charities Bureau, 28 Liberty Street, New York, NY 10005.

Representations and Warranties:

186. The OAG has agreed to the terms of this Assurance based on, among other things, OAG's own factual investigation as set forth in Findings, paragraphs 1-165, above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

187. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

188. The Respondents each represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondents each further represent and warrant that Respondent Purchaser Entities, by the Developer, as the signatory to this AOD, is a duly authorized officer acting at the direction of the Board of Directors or Members of each and all Respondent Purchaser Entities.

General Principles:

189. Unless a term limit for compliance is otherwise specified within this Assurance, each Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve any Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

190. Each Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

191. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that any Respondent violates the Assurance after its effective date.

192. This Assurance may not be amended except by an instrument in writing signed on behalf of the relevant Parties to this Assurance.

193. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

194. Each Respondent acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

195. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

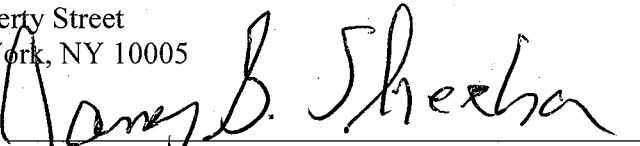
196. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

197. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

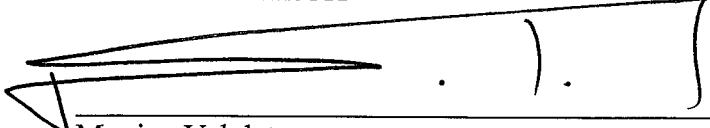
198. The effective date of this Assurance shall be February 11, 2021.

LETITIA JAMES  
Attorney General of the State of New York  
28 Liberty Street  
New York, NY 10005

By:

  
James Sheehan  
Chief, Charities Bureau

MOUJAN VAHDAT

  
Moujan Vahdat

STATE OF New York )

) ss.:

COUNTY OF N.Y. )

On this 12 day of February, 2021, Moujan Vahdat, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he executed the within instrument by his signature on the instrument.

Sworn to before me this

12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

EMPIRE DEVELOPMENT FUND 3 LLC

By: [Signature]

Name: Moujan Vahdat

Title: managing member,

STATE OF New York )

) ss.:

COUNTY OF N. Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the managing member of Empire Development Fund 3, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this

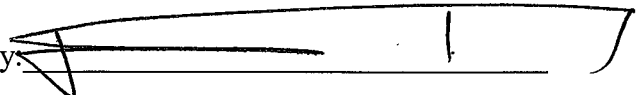
12 day of February, 2021

[Signature]  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022



EMPIRE DEVELOPMENT FUND 4 LLC

By: 

Name: Moujan Vahdat

Title: Managing member.

STATE OF New York )

ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of Empire Development Fund 4, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

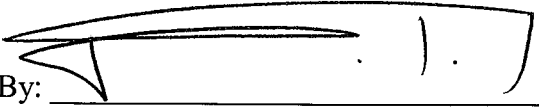
Sworn to before me this

12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

EMPIRE DEVELOPMENT FUND 2 LLC

By: 

Name: Moujan Vahdat

Title: Managing member.

STATE OF New York )

ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of Empire Development Fund 2, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

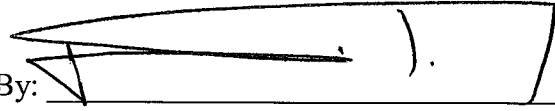
Sworn to before me this

12 day of February, 2021

  
\_\_\_\_\_  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

EMPIRE TERRACE LLC

By: 

Name: Moujan Vahdat

Title: managing member

STATE OF New York )

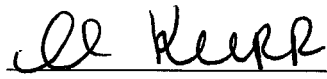
) ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of Empire Terrace, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this

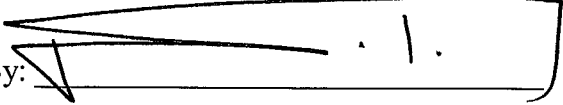
12 day of February, 2021



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HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

EMPIRE DEVELOPMENT FUND LLC

By: 

Name: Moujan Vahdat

Title: managing member

STATE OF New York )

) ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of Empire Development Fund, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

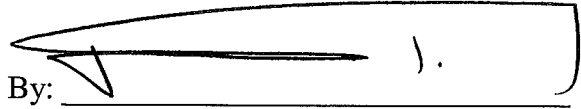
Sworn to before me this

12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

1634 DEAN LLC

By: 

Name: Moujan Vahdat

Title: Managing member

STATE OF New York )

ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of 1634 Dean, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

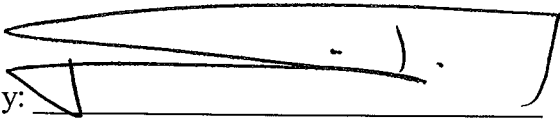
Sworn to before me this

12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

EMPIRE DEVELOPMENT X LLC

By: 

Name: Mojib Vahdat

Title: managing member,

STATE OF New York )

) ss.:

COUNTY OF N. Y. )

On the 12 day of February in the year 2021 before me personally came Mojib Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of Empire Development X, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this

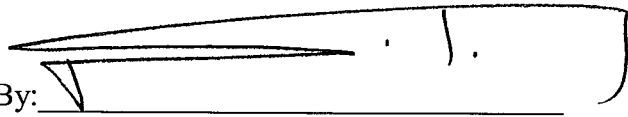
12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

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ELMO REALTY CO., INC.

By: 

Name: Moujan Vahdat

Title: President

STATE OF New York )

) ss.:

COUNTY OF N.Y )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the President of ELMO REALTY Co. INC., the corporation described herein and which executed the above instrument, with full authorization of the board of directors of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this

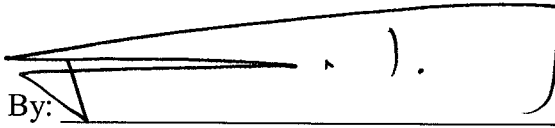
12 day of February, 2021

Heidi M Kurr  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022



EAST 110<sup>th</sup> STREET LLC

By: 

Name: Moujan Vahdat

Title: Managing member

STATE OF New York )


ss.:

COUNTY OF N. Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of East 110<sup>th</sup> Street, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this

12 day of February, 2021



NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

375 PLEASANT INC.

By: [Signature]

Name: Moujan Vahdat

Title: President

STATE OF New York )

) ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the President of 375 Pleasant Inc., the corporation described herein and which executed the above instrument, with full authorization of the board of directors of said corporation, and that he signed his name thereto by like authority.

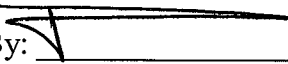
Sworn to before me this

12 day of February, 2021

[Signature]  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

EAST 123, LLC

By: 

Name: Moujan Vahdat

Title: managing member

STATE OF New York )

ss.:

COUNTY OF N.Y. )

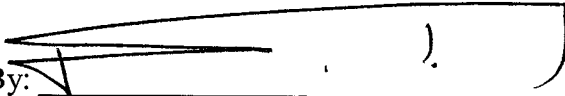
On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of East 123, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this 12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

MY BRONX LLC

By: 

Name: Moujan Vahdat

Title: Managing member

STATE OF New York )

) ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of My Bronx, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this

12 day of February, 2021

  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

HARLEM DEVELOPMENT FUND LLC

By: [Signature]

Name: Moujan Vahdat

Title: managing member

STATE OF NEW YORK )

) ss.:

COUNTY OF N.Y. )

On the 12 day of February in the year 2021 before me personally came Moujan Vahdat to me known, who, being by me duly sworn, did depose and say that he is the Managing member of Harlem Development Fund, the limited liability company described herein and which executed the above instrument, and that he has full authority to bind this entity.

Sworn to before me this

12 day of February, 2021

[Signature]  
NOTARY PUBLIC

HEIDI M KURR  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KU6375319  
Qualified in Bronx County  
My Commission Expires 05-14-2022

# **EXHIBIT A**

## **EXHIBIT A**

### **Option 1: The Monitored Performance Option**

#### **Project Monitor General Terms and Conditions**

Developer and the Purchaser Entities hereby agree that the following general terms and conditions shall govern Option 1: The Monitored Performance Option and shall apply to each church that selects Option 1 (the “Option 1 Churches”) and to the construction project contemplated by the respective Purchase and Sale Agreement and/or Site Development Agreement (the “Original Agreements” such Original Agreements to be amended as needed to reflect the terms set forth herein). Any such project shall be an “Option 1 Project” or collectively, “Option 1 Projects”; all other defined terms have the meaning as set forth in the Assurance of Discontinuance (“Assurance”).

#### **A. Overview**

The Project Monitor shall be selected and tasked with the responsibility of the oversight and monitoring of the construction of each Option 1 Project. Such oversight and monitoring will include review of timetables, financial requirements, and project staffing, including proper and adequate licensing, permitting, and bonding for architects, engineers, and contractors. The Project Monitor will review all financial plans, budgets, and construction loan terms, architectural drawings, and specifications for completeness and reasonableness. Penalties and late fees will be monitored by the Project Monitor and will be based on amounts previously agreed to in the Original Agreements. To the extent penalties and late fees are not set forth in the Original Agreements, such amounts will be negotiated between church counsel and the Developer and approved by the OAG and Project Monitor.

#### **B. Selection Process/Subsequent Full Agreement**

Within seven (7) business days of the Option Selection Date, Developer and the Purchaser Entities shall choose two (2) candidates from a list provided by OAG for consideration as the Project Monitor. The list of two (2) candidates shall include bids from each candidate for serving in the Project Monitor capacity overseeing the Option 1 Projects. Developer shall certify that none of the candidates proposed has any prior business relationship with Developer or any of the Purchaser Entities. Within ten (10) business days thereafter, OAG, upon consultation with the Option 1 Churches, shall select one of the two candidates to serve as the Project Monitor. Within fifteen (15) days of the OAG’s selection, the Project Monitor, Developer and the applicable Purchaser Entity will negotiate the terms of a written agreement setting forth the terms and conditions of the engagement, the final form of which shall be submitted to the OAG for its review and approval. The OAG will have ten (10) business days to review and approve the agreement prior to execution. The OAG will be an express third-party

beneficiary to the agreement. The Project Monitor will start immediately upon execution of the agreement.

### **C. Project Monitor Responsibilities**

The Project Monitor shall be responsible to:

1. Review timetables set by the Option 1 Church and its counsel, and Developer and the Purchaser Entities, in which construction financing will be applied for; construction will begin and be completed; security such as Payment and Performance Bonds will be delivered, and a Temporary and Final Certificate of Occupancy will be delivered. OAG will review and approve such timelines. It is understood that such timetables will be based on the timetables contained in the Original Agreements. If more than two Option 1 Churches select Option 1, the timetables for their respective projects shall each be extended by three months or such other reasonable period of time agreed to by parties and the OAG. If the Developer or Purchaser Entity's ability to comply with the timetables established hereunder are prevented, restricted or delayed as a result of a force majeure event, meaning a natural disaster, casualty, act of God, pandemic, epidemic, riot, terrorism, war, general strike or labor unrest, or such other event of similar nature that is beyond the reasonable control of the parties, in which case the Developer and Purchaser Entities, Option 1 Churches, Project Monitor and the OAG shall reasonably agree on a change to the timeframes.
2. Monitor compliance with plans and specifications.
3. Monitor progress with contract performance, and identify any problems in construction and construction timelines, including adequacy of remaining funds in relation to completion of the project(s). In order for the Project Monitor to determine the adequacy of remaining funds, Developer shall provide a financial report quarterly outlining expenditures to date and balance of funds remaining as compared to the balance of budgeted funds required for completion of the construction project.
4. Review all pertinent and required permits and licenses for architects, engineers, and contractors.
5. Monitor compliance with monthly payments, to the extent the relevant Original Agreement requires such payments.
6. Make bi-monthly reports prior to commencement of construction, and quarterly reports thereafter, and other periodic reports as necessary to the OAG, for each of the Option 1 Projects, with a copy provided contemporaneously to Developer. The reports to the OAG shall include, at a minimum, an assessment of each of the categories above.

### **D. Funding of the Project Monitor**

Developer and the relevant Purchaser Entities are jointly and severally responsible for, and agree to pay directly to, the Project Monitor all fees and expenses of the Project Monitor at the agreed upon rates reasonably incurred in connection with the Project



Monitor's performance of the Project Monitor Responsibilities (as set forth herein). Developer and the Purchaser Entities understand and agree that the Project Monitor will submit itemized invoices to them with a simultaneous copy to OAG, to request payment from Developer and the Purchaser Entities. Developer and the Purchaser Entities understand and agree that they shall tender such payments directly to the Project Monitor within thirty (30) calendar days of presentment of each of the invoices.

**E. Cooperation and Recordkeeping**

Developer and the Purchaser Entities shall use their best efforts to assist the Project Monitor in performing its obligations under this Exhibit A. Developer and Purchaser Entities shall maintain such business records related to the Option 1 Projects as may be reasonably necessary for the Project Monitor to perform its responsibilities hereunder. Developer and Purchaser Entities shall, upon reasonable advance notice, provide the Project Monitor access to such business records and employees as the Project Monitor may reasonably request. The Project Monitor will agree to maintain confidentiality of such information and not disclose to any individual or party without the Developer's and relevant Purchaser Entity's prior written approval, other than as may be required to be disclosed to the OAG in accordance with the terms hereof.

**F. Project Monitor Reporting**

Developer and the Purchaser Entities authorize the Project Monitor to make written reports, and other periodic reports, as needed, in verbal and/or written form, to OAG. The OAG agrees that it will not make such information public, subject to OAG's obligations under the New York Freedom of Information Act and New York Public Officers Law §87(2), to the extent the OAG, Developer or Purchaser Entities determine such reports contain confidential information. The OAG will provide reasonable advance notice to Developer or relevant Purchaser Entity of any request to release such information.

**G. No Waiver/Impairment**

Nothing in this Agreement shall impair or waive any rights of OAG to enforce the terms of the Assurance, including this Exhibit A, or any contract, agreement, or obligation required or arising thereunder.

**H. Termination**

The Project Monitor shall serve until all Option 1 Churches have received their Temporary Certificate of Occupancy, or at such earlier date as the OAG may determine.

# **EXHIBIT B**

**EXHIBIT B**

**Option 2: The Cash-Out Option\***

<b>CHURCH PROPERTY</b>	<b>CASH-OUT OPTION AMOUNT</b>
Metropolitan AME	\$3,790,000**
Ebenezer AME	\$3,195,000
St. John AME	\$1,345,000
Healing from Heaven COGIC	\$4,092,101
Childs Memorial COGIC	\$5,380,000
Bethel Tabernacle AME	\$3,825,000***
Greater Bethel AME	\$1,192,000****

\*Amounts are net of value previously received.

\*\*Cash-out amount would include Metropolitan AME vacating property.

\*\*\*Cash-out amount would include Bethel Tabernacle AME canceling lease and letter of credit and deeding the property to the Purchaser Entity.

\*\*\*\*Cash-out amount would include Greater Bethel AME canceling lease of sanctuary space and vacating the property.