

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
REAL ESTATE FINANCE BUREAU

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In the Matter of

Assurance No. 19-017

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

City Island Reserve LLC and Curtis A. Pollock,

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to General Business Law § 352 and Executive Law § 63(12) into the conduct of City Island Reserve LLC and Curtis A. Pollock (collectively, the “Respondents”) concerning the On the Sound Condominium (the “Condominium”). This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondents (OAG and Respondents are collectively referred to herein as the “Parties” and individually as a “Party”).

**OAG’s FINDINGS**

**I. The Respondents and Background**

1. Respondent City Island Reserve LLC is a New York limited liability company with its office located at 152 West 57<sup>th</sup> Street, New York, New York 10019. City Island Reserve LLC (“Sponsor”) is the sponsor of the Condominium.

2. Respondent Curtis A. Pollock is the Principal of Sponsor.

3. The Condominium is a condominium with forty-three residential units located on Island Point Road on City Island in the Bronx, New York 10464.

4. The Offering Plan for the Condominium was accepted for filing on February 4, 2015 and has been amended sixteen times. The seventeenth amendment to the Offering Plan was submitted on November 15, 2018.

## **II. Legal Standard**

5. The Martin Act protects the public from fraudulent practices in the public offer and sale of securities. GBL § 352 *et seq.*

6. The Martin Act requires that before a sponsor (or developer) of a condominium may offer or sell units, the sponsor must submit an offering plan to OAG. GBL § 352-e(2).

7. Sponsors of real estate securities are allowed to make sales based only on the information, statements, literature, or representations in the offering plan. GBL § 352-e(5). All prospective purchasers must be furnished with true copies of the offering plan that have been accepted by the OAG. *Id.*

8. The sponsor and its principals are required to certify the truthfulness of the representations made in the offering plan. 13 NYCRR § 20.4(b).

9. Under the Martin Act, an offering plan must provide an adequate factual basis pursuant to which potential purchasers may make a judgment of whether to invest, and “shall not omit any material fact or contain any untrue statement of fact.” GBL § 352-e(1)(b).

## **III. The Tidal Wetlands Act**

10. The boundaries of the Condominium include areas designated Tidal Wetlands and Tidal Wetlands Adjacent Areas (designated “Tidal Wetlands” and “Adjacent Area” respectively)

under Article 25 of the New York State Environmental Conservation Law, also known as the “Tidal Wetlands Act.”

11. The Tidal Wetlands Act provides that anyone conducting any “Regulated Activity” in the Tidal Wetlands or Adjacent Areas must first obtain the consent of, and a permit from, the New York State Department of Environmental Conservation (“DEC”) to perform such regulated activity. Regulated Activities include, but are not limited to: any form of draining, dredging, excavation, and removal (directly or indirectly) of soil from any Tidal Wetland; the erection of any structures or roads, the driving of any pilings, or placing of any other obstructions; and any other activity within the Tidal Wetlands or the Adjacent Areas which may substantially impair or alter the natural condition of the Tidal Wetlands.

12. Conducting a Regulated Activity without a permit constitutes a violation of the Tidal Wetlands Act, which can result in a significant penalty (under the provisions of the Tidal Wetlands Act, up to \$10,000 per day for each violation) as well as criminal sanctions and injunctive relief.

13. None of the above facts described above in paragraphs (10)-(12) were disclosed to purchasers or prospective purchasers until Sponsor submitted its Sixteenth Amendment to the Offering Plan, which was accepted for filing on October 30, 2018. Prior to the date of the submission of the Sixteenth Amendment, there were eighteen closings at the Condominium and fourteen units in contract at the Condominium.

#### **IV. The 2015 Consent Order with the New York State Department of Environmental Conservation**

14. On May 8, 2015, Sponsor entered into an Order on Consent (the “2015 Consent Order”) with DEC to settle claims by DEC that Sponsor violated certain construction conditions

and requirements set forth in the work permits issued by DEC in connection with the construction of the Condominium project.

15. Among other things, the 2015 Consent Order obligated the Sponsor to pay a civil penalty of \$240,000 to the DEC or to non-profit conservation organizations designated by the DEC, to record a Restrictive Declaration on every unit in the Condominium, and to meet certain requirements with respect to the construction of the Condominium project. The 2015 Consent Order also suspended the payment of \$60,000 on the condition Sponsor strictly and timely complied with the requirements of the 2015 Consent Order.

16. The ongoing obligations of the Condominium under the Restrictive Declaration include:

- a. Maintaining the Property consistent with the approved layout plan and site landscaping plan attached to the Restrictive Declaration, including restricting installation of any further impervious surface areas (such as paved parking spaces) without DEC consent;
- b. Retaining a conservation easement on the portion of the Wetlands lying under water;
- c. Barring any Regulated Activities within the Wetlands;
- d. Establishing and maintaining mitigation plantings (“Mitigation Plantings”) in the Tidal Wetlands and Adjacent Area;
- e. Using “integrated pest control management” (which encourages the use of natural pest control mechanisms) rather than herbicides and fungicides, and using only compost for fertilizer; and

f. Refraining from disturbing the Mitigation Plantings by gardening, changing grade or changing vegetation.

17. All future deeds and leases are subject to and must set forth the covenants and restrictions contained in the Restrictive Declaration. Any applications for building permits by a Unit Owner also must include a copy of the Restrictive Declaration. Violations of the Restrictive Declaration may subject the violator to fines and injunctive relief by the DEC or the Attorney General's office.

18. None of the above facts described above in paragraphs (14)-(17) were disclosed to purchasers or prospective purchasers until Sponsor submitted its Sixteenth Amendment to the Offering Plan.

**V. The 2018 Consent Order with DEC**

19. On June 27, 2018, the Sponsor entered into a further Consent Order with the DEC (the "2018 Consent Order") which obligated the Sponsor to pay a civil penalty of \$500,000 to the DEC or to non-profit conservation organizations designated by the DEC, and affirmed the Sponsor's obligations as described in the 2015 Consent Order set forth above.

20. The Condominium was required to be included as a party to the 2018 Consent Order, as a successor owner of the property on which the Condominium is located.

21. None of the above facts described above in paragraphs (19)-(20) were disclosed to purchasers or prospective purchasers until Sponsor submitted its Sixteenth Amendment to the Offering Plan.

22. In the Sixteenth Amendment to the Offering Plan, Sponsor disclosed the facts recited in Paragraphs 10-12, 14-17, and 19-20 above, and represented that the Sponsor has executed a separate indemnification agreement (the "Indemnification Agreement") with the

Board of Managers of the Condominium agreeing to defend, indemnify and hold harmless the Board of Managers against any loss or liability arising out of the Sponsor's failure to comply with any of its obligations under the Consent Orders or the Restrictive Declaration. Moreover, except as set forth below, the Sponsor represented in the Sixteenth Amendment that it will be responsible for the obligations relating to the introduction, inspection and monitoring of the Mitigation Plantings for a five-year period after they have first been planted, and for causing the Board of Managers to comply with those obligations until the Sponsor has surrendered control of the Board of Managers. The Sponsor further represented in the Sixteenth Amendment that it will not be responsible for violations of the Restrictive Declaration (or the Consent Orders, if applicable) by individual Unit Owners, though, or by the Board of Managers after the Sponsor has surrendered control.

23. OAG finds that notwithstanding the disclosure contained in the 16<sup>th</sup> Amendment, Respondents' failure to disclose the facts identified in Paragraphs 10-12, 14-17 and 19-20 above on a timely basis are in violation of General Business Law § 352 and Executive Law § 63(12).

24. Respondents admit the OAG's Findings, paragraphs (1)-(23) above.

25. 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 at any time for violations of General Business Law § 352 and Executive Law § 63(12) based on the conduct described above during the period of February 2015 through October 2018.

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

## RELIEF

26. General Injunction: Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to General Business Law § 352 and Executive Law § 63(12), and expressly agree and acknowledge that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 25, *supra*, in addition to any other appropriate investigation, action, or proceeding.

27. Monetary Relief

- a. *Monetary Relief Amount*: Respondents shall pay to the State of New York \$105,000 in restitution (the “Monetary Relief Amount”) for the benefit of the board of the Condominium. Payment of the Monetary Relief Amount shall be made in full upon execution of this Assurance. Following receipt of the Monetary Relief Amount, OAG will pay the same to the Board of the Condominium.
- b. Payments shall be made by wire transfer.

## MISCELLANEOUS

### Subsequent Proceedings.

28. 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, or if the Assurance is voided pursuant to paragraph 34, and agree and acknowledge 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 Respondents 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 Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and
- 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).

29. If a court of competent jurisdiction determines that the Respondent(s) has/have violated the Assurance, the Respondent(s) 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:

30. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. 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.

31. Nothing contained herein shall be construed as to deprive any person of any private right under the law. However, this Assurance contemplates that Respondents may seek to claim an offset or reduction in any Related Condominium Action for the Monetary Relief Amount paid to the OAG under this Assurance. For purposes of this paragraph, "Related Condominium Action" means a private damages action brought against Respondent(s) by or on



behalf of the board of the Condominium, any unit owners in the Condominium, or any other related party or entity seeking damages based on substantially the same facts as those set forth in this Assurance for which the Board of the Condominium receives restitution as set forth in this Assurance.

32. Any failure by the OAG to insist upon the strict performance by Respondents 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 the Respondents.

Communications:

33. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 19-017, 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:

Kenneth Jacobs  
Spolzino Smith Buss & Jacobs LLP  
733 Yonkers Avenue  
Yonkers, NY 10704  
kjacobs@ssbjlaw.com

If to the OAG, to:

Ryan Goodland, Esq.  
Real Estate Finance Bureau  
Office of the New York State Attorney General  
28 Liberty Street

New York, NY 10005  
ryan.goodland@ag.ny.gov

or in his absence, to the person holding the title of Bureau Chief, Real Estate  
Finance Bureau.

Representations and Warranties:

34. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondents and their counsel and the OAG's own factual investigation as set forth in Findings, paragraphs (1)-(23) above. The Respondents represent and warrant that neither they nor their counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

36. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. Respondents further represent and warrant that City Island Reserve LLC, by Curtis A. Pollock, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of City Island Reserve LLC.

General Principles:

37. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement

shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

38. Respondents agree 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.

39. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Assurance after its effective date.

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

41. 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.

42. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

44. 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.

45. 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.


46. The effective date of this Assurance shall be the date the Assurance is signed by OAG.


CITY ISLAND RESERVE LLC

By:   
Curtis A. Pollock  
Authorized Signatory

STATE OF New York )  
COUNTY OF New York )

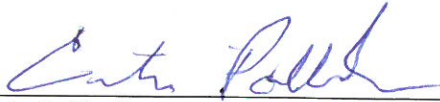
ss.:

On the 26<sup>th</sup> day of February in the year 2019 before me personally came Curtis A. Pollock to me known, who, being by me duly sworn, did depose and say that he resides at ; that he is a principal City Island Reserve LLC, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this 26<sup>th</sup> day of February, 2019   
NOTARY PUBLIC

**DAVID WITT**  
Notary Public, State of New York  
No. 01W16064809  
Qualified in Queens County  
Commission Expires October 1, 2021

CURTIS A. POLLOCK



Curtis A. Pollock

STATE OF New York )

COUNTY OF New York )

ss.:

On this 26<sup>th</sup> day of February, 2019, Curtis A. Pollock 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  
26<sup>th</sup> day of February, 2019

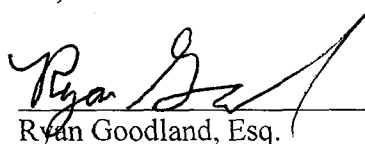
  
NOTARY PUBLIC

**DAVID WITT**  
Notary Public, State of New York  
No. 01W16064809  
Qualified in Queens County  
Commission Expires October 1, 2021

Dated: February 28, 2019  
New York, New York

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

By:



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Ryan Goodland, Esq.  
Assistant Attorney General  
Real Estate Finance Bureau