

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

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In the Matter of the

Investigation by ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York, of

AOD No. 15-240

15 BROAD STREET, LLC; 15 BROAD STREET  
MANAGERS, LLC; 20 PINE STREET, LLC; 20 PINE  
STREET MANAGERS, LLC; 85 ADAMS STREET,  
LLC; AND 85 ADAMS STREET MANAGERS, LLC; AI  
PROPERTIES AND DEVELOPMENTS (USA) CORP.;  
and AI HOLDINGS (USA) CORP.,

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

Pursuant to the Martin Act, New York General Business Law (“GBL”) § 352 *et seq.*, and New York Executive Law (“Executive Law”) § 63(12), ERIC T. SCHNEIDERMAN, Attorney General of the State of New York (the “NYAG”) investigated the conduct of 15 Broad Street, LLC; 15 Broad Street Managers, LLC; 20 Pine Street, LLC; 20 Pine Street Managers, LLC; 85 Adams Street, LLC; and 85 Adams Street Managers, LLC; AI Properties and Developments (USA) Corp.; and AI Holdings (USA) Corp. (collectively “Respondents”), in connection with an offering of real estate securities in New York State.

This Assurance of Discontinuance (“Assurance”) contains the findings of the NYAG’s investigation and the relief agreed to by the NYAG and Respondents.

## **FINDINGS**

### **I. The Respondents**

1. Respondent 15 Broad Street, LLC (“15 Broad”), a Delaware limited liability company, is the named sponsor of an offering of condominiums located at 15 Broad Street in Manhattan.

2. Respondent 15 Broad Managers, LLC (“15 Broad Managers”), a Delaware limited liability company, is the sole member of 15 Broad.

3. Respondent 20 Pine Street LLC (“20 Pine”), a Delaware limited liability company, is the named sponsor of an offering of condominiums located at 20 Pine Street in Manhattan.

4. Respondent 20 Pine Street Managers LLC (“20 Pine Managers”), a Delaware limited liability company, is the sole member of 20 Pine.

5. Respondent 85 Adams Street, LLC (“85 Adams”), a Delaware limited liability company, is the named sponsor of an offering of condominiums located at 85 Adams Street in Brooklyn.

6. Respondent 85 Adams Street Managers, LLC (“85 Adams Managers”), a Delaware limited liability company, is the sole member of 85 Adams.

7. Respondent AI Properties and Developments (USA) Corp. (“AI Properties”), a New York corporation, is a member of 15 Broad Managers, 20 Pine Managers, and 85 Adams Managers. The other member of 15 Broad Managers, 20 Pine Managers, and 85 Adams Managers is an entity called Boymelgreen Family LLC.

8. Respondent AI Holdings (USA) Corp. (“AI Holdings”), a Delaware corporation, is the sole owner of AI Properties.

9. 15 Broad and 15 Broad Managers, together with AI Properties and AI Holdings, are the “15 Broad Respondents.”

10. 20 Pine and 20 Pine Managers, together with AI Properties and AI Holdings, are the “20 Pine Respondents.”

11. 85 Adams and 85 Adams Managers, together with AI Properties and AI Holdings, are the “85 Adams Respondents.”

## **II. Respondents’ Martin Act Obligations**

### **A. The Purpose of the Martin Act**

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

13. The Martin Act’s prohibitions against fraud apply to any person, partnership, corporation, company, trust or association, or any agent or employee thereof who makes or takes part in a public offering of real estate securities in or from New York State. GBL § 352-e(1)(a).

14. The NYAG is empowered to issue subpoenas for documents, information and testimony; to initiate special proceedings where Martin Act violations are found; and to seek injunctive relief and restitution. GBL §§ 352(1) and (2), 352-i, 353, and 354.

### **B. Truthful and Complete Disclosures**

15. 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 NYAG. GBL § 352-e(2).

16. Under the Martin Act, a plan must provide an adequate factual basis with 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.” *Id.* § 352-e(1)(b).

17. When a sponsor submits a proposed plan, NYAG reviews the plan to confirm that it contains the disclosures required by law. *Greenthal & Co. v. Lefkowitz*, 32 N.Y.2d 457, 462 (1973).

18. If the disclosures appear sufficient, the NYAG accepts the plan for filing and the sponsor is permitted to begin marketing and selling units. GBL §352-e(2). NYAG does not approve offering plans.

19. NYAG requires that a sponsor and its principals explicitly and prominently certify in the offering plan that the representations in the plan are true and correct. *See, e.g.*, Part 20.4(b) of Title 13 of the New York Codes, Rules and Regulations (“NYCRR”).

### **C. Sponsor Control**

20. One of the disclosures required under the Martin Act and related regulations concerns sponsor control of the condominium’s board of managers. *See* 13 NYCRR § 20.3(u).

21. In a condominium, the board manages the building’s affairs and has power to “significantly restrict the bundle of rights a property owner normally enjoys.” *Levandusky v. One Fifth Avenue Apartment Corp.*, 75 N.Y.2d 530, 536 (1990) (Kaye, J.).

22. The regulations require that a sponsor describe in the plan whether the sponsor will retain control of the board of managers after the closing of the first unit and the consequences to unit owners of that retention of control. *Id.*

23. The sponsor is required to disclose the timing and manner in which it will relinquish control of the board. *Id.*

24. A sponsor’s “continuing hold” on the board of managers “is inconsistent with the very concept of condominium ownership.” *In re Cenvill Cmtys., Inc.*, 82 Misc.2d 418, 421-22 (Sup. Ct., Special Term, N.Y. Cnty. 1975).

**D. Certificates of Occupancy**

25. Under the New York City Construction Codes, new buildings constructed in New York are required to have a certificate of occupancy certifying that the building substantially conforms to the approved construction plans, the provisions of the New York City Construction Codes and other applicable laws and rules. NYC Admin. Code § 28-118.2.

26. Temporary certificates of occupancy (“TCOs”) may be issued where the entire work of the building is not yet complete but certain portions may be occupied without threatening public safety, health or welfare. §28-118.15.

27. TCOs are valid for a limited period of time and upon expiration must be renewed or the building may no longer be occupied. *Id.*

28. A permanent certificate of occupancy (“PCO”) is issued when all of the requirements of the construction code have been met. NYC Admin. Code § 28-118.2. TCOs and PCOs are issued by the Department of Buildings (the “DOB”).

29. The Martin Act requires that sponsors hold down payments in escrow until a PCO is obtained. The Act provides:

[A]ll deposits, down-payments or advances made by purchasers of residential units shall be held in a special escrow account pending delivery of the *completed* apartment or unit and a deed or lease whichever is applicable, unless insurance of such funds in a form satisfactory to the attorney general has been obtained prior thereto.

*Id.* § 352-e(2-b) (emphasis added).

30. In New York City, a “completed” unit for GBL § 352-e(2-b) purposes is a unit for which the DOB has issued a PCO. *See* 13 NYCRR § 20.3(t)(13). The NYAG allows releases from the escrow only to the extent that a sponsor’s engineer or architect certifies that some lower amount than the total amount of down payments will be necessary to complete the work required

to get a PCO. *Id.* at § 20.3(t)(13)(i).

31. The NYAG also requires that sponsors certify that they will secure a PCO and, if the PCO is not obtained prior to the first closing, will secure and renew a TCO until the PCO is obtained. *See* 13 NYCRR § 20.3(t)(11).

32. If a sponsor does not anticipate getting a PCO within two years of the first closing, the sponsor must disclose that fact and highlight it as a special risk. *Id.*

#### **E. Building Code Compliance**

33. NYAG requires that sponsors disclose whether units at a condominium will be constructed in accordance with all applicable zoning and building laws. *See* 13 NYCRR § 20.3(e)(3).

34. In New York City, buildings must comply with the New York City Building Code.

35. The 1968 Building Code governs the construction of the properties at 15 Broad Street, 20 Pine Street and 85 Adams Street.

36. The 1968 Building Code mandates that walls between individual apartments and common corridors must have a fire-rating of 1 hour. *See* NYC Admin. Code § 27-341. This means that, should a fire happen, the wall would not begin to burn for at least one hour after the fire started.

#### **F. Tax Exemption and Abatement under Section 421-g of the Real Property Tax Law**

37. Section 421-g of New York's Real Property Tax Law ("RPTL") granted an exemption and abatement of real property taxes to properties in Lower Manhattan that were converted from commercial to residential use. Section 421-g was in force from 1995 to 2006.

38. The purpose of Section 421-g was to promote more productive use of non-

residential buildings in Lower Manhattan and to revitalize the Financial District.

### **III. The 15 Broad Respondents' Offering of Condominiums at 15 Broad Street**

#### **A. The 15 Broad Plan**

39. On March 8, 2004, 15 Broad submitted a proposed offering plan for the 15 Broad Street property to NYAG (the "15 Broad Plan").

40. The 15 Broad Plan was accepted for filing by NYAG on July 15, 2004.

41. The 15 Broad Respondents submitted 20 amendments to the Plan, in the period from August 4, 2004 to March 1, 2007.

42. The 15 Broad Plan disclosed that the development would contain 382 residential units and 18 retail units.

43. The 18 retail units are made up of two units at 15 Broad Street, 15 units at 55 Exchange Place and one unit at 23 Wall Street.

44. The 23 Wall Street portion of the property is the former headquarters of J.P. Morgan & Co.; it is on the National Register of Historic Places and was granted landmark status by New York City.

45. The 15 Broad Respondents closed title to the first residential unit on March 27, 2006. The last closing was on March 14, 2008. All units have been sold.

#### **B. 15 Broad Property and RPTL 421-g**

46. In or around 2004, 15 Broad submitted an application for a certificate of eligibility to receive a property tax exemption and abatement on the 15 Broad property under RPTL Section 421-g.

47. 15 Broad's application for the 421-g tax exemption and abatement was approved and the residential condominiums at the 15 Broad property began receiving the 421-g tax exemption and abatement as of July 1, 2007.

48. On that date, 15 Broad still owned 30 of the residential condominium units at the 15 Broad property. As a result, 15 Broad was the beneficiary of the 421-g tax exemption on these units until it sold each of them. 15 Broad collected approximately \$270,000 in tax exemptions and abatements under Section 421-g of the RPTL.

### **C. Representations by the 15 Broad Respondents in the 15 Broad Plan**

#### **1. Completeness of Disclosures**

49. The 15 Broad Respondents certified that the 15 Broad Plan contained complete and accurate information, did not omit any material fact and did not contain any untrue statement of a material fact.

50. The 15 Broad Respondents also certified that they "have primary responsibility for compliance with [the Martin Act and the regulations under it] and such other laws and regulations as may be applicable."

#### **2. Securing a Certificate of Occupancy**

51. In the 15 Broad Plan, the 15 Broad Respondents represented that, prior to the first closing, 15 Broad would cause a TCO for the residential unit to be issued by the DOB. The 15 Broad Respondents also represented that they would attempt to obtain a PCO from the DOB within two years after the first closing, subject to force majeure, actions by unit owners or tenants of unit owners, or any other cause over which the Sponsor has no control.

52. The 15 Broad Respondents also represented that:

Sponsor will, at its sole cost and expense, do and perform all work, and will supply for the Building all materials that shall be necessary in order to cause the



temporary certificate of occupancy to be continuously renewed and to obtain a permanent certificate of occupancy.

53. At the time of the first closing in March 2006, the 15 Broad Respondents had not secured a PCO for the property.

### **3. Escrow of Funds to Obtain a Certificate of Occupancy**

54. In the 18th Amendment to the 15 Broad Plan, which was accepted by the NYAG on October 6, 2006, the 15 Broad Respondents represented that their architect had certified that \$9.4 million would be required to secure a PCO.

55. In the 18<sup>th</sup> Amendment, the 15 Broad Respondents represented that the \$9.4 million was being held in a dedicated escrow account (the “15 Broad PCO Escrow”) “as security for Sponsor’s obligation to complete the work needed to obtain a PCO for the building.”

56. In that amendment, the 15 Broad Respondents also represented that, if their architect or engineer certified that a lesser amount was needed, funds might be released to Respondents from the 15 Broad PCO Escrow.

57. But, the 15 Broad Respondents represented, until a PCO was obtained, the funds in the 15 Broad PCO Escrow would not drop below \$470,000.

### **4. Board Control**

58. The by-laws of the 15 Broad Condominium (the “15 Broad By-Laws”), as disclosed in the 15 Broad Plan and later recorded, establish an 11 member board of managers (the “15 Broad Board”). Seven of the Board seats are allocated to the residential unit owners. Two seats are held by the 15 Broad retail unit owners. One seat is held by the 55 Exchange Place retail unit owners. One seat is held by the 23 Wall Street retail unit owner.

59. The 15 Broad Respondents disclosed in the 15 Broad Plan that 15 Broad would retain control of the Board during the “Initial Control Period.” The Initial Control Period ends upon the *later* of: (i) sale of 95% of the residential units; or (2) the issuance of a PCO.

**D. The 15 Broad Respondents’ Failure to Fulfill the Representations in the 15 Broad Plan**

60. Contrary to their representations for securing a PCO, since the issuance of the initial TCO in March 2006, the 15 Broad Respondents have failed to secure a PCO for the 15 Broad property. They have failed to take virtually any action to get a PCO.

61. Contrary to their representations as to the 15 Broad PCO Escrow, between October 2006, when that escrow was funded, and April 2007, the 15 Broad Respondents also made withdrawals from the escrow account. As of April 2007, the 15 Broad PCO Escrow contained approximately \$57,000.

62. Because the 15 Broad Respondents have not obtained a PCO, the Initial Control Period that the 15 Broad Respondents established in the 15 Broad Plan has not yet ended. As such, the 15 Broad Respondents, rather than the unit owners of the 15 Broad property, remain in control of the 15 Broad Board nearly *nine years* after the first closing. For seven of those nine years, Respondents have not owned a single unit in the building.

63. A committee of the 15 Broad Board sued Respondents 15 Broad, 15 Broad Managers, AI Properties and others alleging, among other things, construction defects at the 15 Broad property. That case is currently pending in New York State Supreme Court, New York County, under Index Number 102963/09 (the “15 Broad Litigation”).

**E. Respondents’ Improper Receipt of Tax Exemptions and Abatements**

64. The 15 Broad Respondents applied for and received significant property tax relief under Section 421-g of the RPTL. This property tax relief was granted to Respondents in order

to encourage the revitalization of Lower Manhattan. The 15 Broad Respondents benefited from that tax relief but failed to complete the 15 Broad project, leaving a landmarked New York City building vacant and disused for ten years.

#### **IV. The 20 Pine Respondents' Offering of Condominiums at 20 Pine Street**

##### **A. The 20 Pine Plan**

65. On April 14, 2005, 20 Pine submitted a proposed offering plan for the 20 Pine Street property to NYAG (the "20 Pine Plan").

66. The 20 Pine Plan was accepted for filing by NYAG on January 3, 2006.

67. The 20 Pine Respondents submitted 24 amendments to the Plan, in the period from January 26, 2006 to August 25, 2011.

68. The 20 Pine Plan disclosed that the development would contain 409 residential units and 4 retail units.

69. The 20 Pine Respondents closed title to the first residential unit on March 10, 2008. The last closing was on November 5, 2013. All units have been sold.

##### **B. Representations by the 20 Pine Respondents in the 20 Pine Plan**

###### **1. Completeness of Disclosures**

70. The 20 Pine Respondents certified that the 20 Pine Plan contained complete and accurate information, did not omit any material fact and did not contain any untrue statement of a material fact.

71. The 20 Pine Respondents also certified that they "have primary responsibility for compliance with [the Martin Act and the regulations under it] and such other laws and regulations as may be applicable."

## **2. Securing a Certificate of Occupancy**

72. In the 20 Pine Plan, the 20 Pine Respondents represented that, prior to the first closing, 20 Pine would cause a TCO for the residential unit to be issued by the DOB. The 20 Pine Respondents also represented that they would attempt to obtain a PCO from the DOB within two years after the first closing, subject to force majeure, actions by unit owners or tenants of unit owners, or any other cause over which the Sponsor has no control.

73. The 20 Pine Respondents also represented that:

Sponsor will, at its sole cost and expense, do and perform all work, and will supply for the Building all materials that shall be necessary in order to cause the temporary certificate of occupancy to be continuously renewed and to obtain a permanent certificate of occupancy.

74. At the time of the first closing in March 2008, the 20 Pine Respondents had not secured a PCO for the property.

## **3. Escrow of Funds to Obtain a Certificate of Occupancy**

75. In the 20 Pine Plan, the 20 Pine Respondents represented that all deposits, down-payments or advances collected from unit purchasers would be held in escrow until a PCO was issued (“20 Pine Escrow”). But, the 20 Pine Respondents represented, if their architect or engineer certified that some lesser amount was necessary to secure a PCO, any balance in the 20 Pine Escrow over and above that certified amount would be released to the 20 Pine Respondents. In other words, the 20 Pine Respondents represented that until a PCO was issued, they would hold in escrow all funds necessary to obtain a PCO.

## **4. Board Control**

76. The by-laws of the 20 Pine Condominium (the “20 Pine By-Laws”), as disclosed in the 20 Pine Plan and later recorded, establish a nine member board of managers (the “20 Pine

Board”). Seven of the Board seats are allocated to the residential unit owners. Two seats are held by the retail unit owners.

77. The 20 Pine Respondents disclosed in the 20 Pine Plan that 20 Pine would retain control of the Board during the “Initial Control Period.” The Initial Control Period ends upon the *later* of: (i) sale of 95% of the residential units; or (2) the issuance of a PCO.

**C. The 20 Pine Respondents’ Failure to Fulfill the Representations in the 20 Pine Plan**

78. The 20 Pine Respondents failed to secure a PCO for the 20 Pine property for more than six years.

79. A PCO was ultimately issued on June 10, 2014, only after the initiation by NYAG of an investigation of the 20 Pine Respondents.

80. Contrary to their representations as to the 20 Pine Escrow, the 20 Pine Respondents did not hold in that escrow the funds necessary to secure a PCO.

81. According to the 20 Pine Respondents’ own architect, the amount necessary to secure a PCO as of November 2008 was \$11.5 million. In that month, the 20 Pine Escrow had a balance of only \$10.5 million.

82. According to the 20 Pine Respondents’ architect, the amount necessary to secure a PCO as of February 2009 was \$10.3 million. In that month, the 20 Pine Escrow held only \$9.2 million.

83. Between February 2009 and November 2013, the month in which the last unit was sold, the 20 Pine Respondents emptied the 20 Pine Escrow completely, despite the fact that they had not secured a PCO and despite the fact that the most recent architect certification stated that \$10.3 million was necessary to get a PCO.

84. Because the 20 Pine Respondents did not obtain a PCO until 2014, when NYAG began its investigation, they remained in control of the 20 Broad Board six years after the first closing. For two of those years, the 20 Pine Respondents did not own a single unit in the building.

85. A committee of the 20 Pine Board sued Respondent 20 Pine alleging, among other things, construction defects at the 20 Pine property. That case is currently pending in New York State Supreme Court, New York County, under Index Number 152960/12 (the “20 Pine Litigation”).

## **V. The 85 Adams Respondents’ Offering of Condominiums at 85 Adams Street**

### **A. The 85 Adams Plan**

86. On July 7, 2004, 85 Adams submitted a proposed offering plan for the 85 Adams Street property to NYAG (the “85 Adams Plan”).

87. The 85 Adams Plan was accepted for filing by NYAG on December 24, 2004.

88. The 85 Adams Respondents submitted 15 amendments to the Plan, in the period between February 18, 2005 and February 25, 2008.

89. The 85 Adams Plan disclosed that the development would contain 79 residential units and 2 retail units. The first closing occurred on February 27, 2007.

90. The 85 Adams Respondents closed title to the first residential unit on February 27, 2007. The last closing was on August 27, 2008. All units have been sold.

**B. Representations by the 85 Adams Respondents in the 85 Adams Plan**

**1. Completeness of Disclosures**

91. The 85 Adams Respondents certified that the 85 Adams Plan contained complete and accurate information, did not omit any material fact and did not contain any untrue statement of a material fact.

92. The 85 Adams Respondents also certified that they “have primary responsibility for compliance with [the Martin Act and the regulations under it] and such other laws and regulations as may be applicable.”

**2. Fire Safety**

93. In the 85 Adams Plan, the 85 Adams Respondents represented that the building would be constructed so as to comply with all applicable regulations of the Building Code.

94. One of the requirements under the Building Code is that walls separating common corridors from individual units must be built of 1 hour fire-rated construction.

**C. The 85 Adams Respondents’ Failure to Fulfill the Representations in the 85 Adams Plan**

95. The 85 Adams Respondents failed to construct the property at 85 Adams in accord with the Building Code. At locations probed by the 85 Adams Board, the walls separating units from common corridors do not meet the Building Code’s requirement of 1 hour fire-rated construction.

96. The 85 Adams Board sued Respondents 85 Adams, 85 Adams Managers, AI Properties and others alleging, among other things, construction defects at the 85 Adams property. That suit is currently pending in New York State Supreme Court, Kings County under the Index Number 28165/09 (the “85 Adams Litigation”).

## **VI. NYAG's Investigation and Respondents' Lack of Cooperation**

97. On May 31, 2013, NYAG issued subpoenas *duces tecum* to Respondents seeking information and documents relating to the 15 Broad, 20 Pine and 85 Adams offerings.

98. Respondents failed to comply with the subpoenas.

99. On February 27, 2014, NYAG brought a petition under Section 354 of the Martin Act against the 15 Broad Respondents and others. The petition sought entry of an order against the respondents in that proceeding requiring them to provide discovery relating to the 15 Broad offering. The petition also sought entry of an ordering directing the respondents in that proceeding to deposit \$470,000 into the 15 Broad PCO Escrow and to surrender control of the 15 Broad Board for the duration of NYAG's investigation.

100. On February 27, 2014, Justice Richard F. Braun, Supreme Court, New York County, granted the NYAG petition and entered the requested order (the "Order").

101. On March 10, 2014, the 15 Broad Respondents moved to vacate the Order and successfully argued that the Order should be stayed pending the resolution of the motion to vacate.

102. On April 25, 2014, after briefing and oral argument, Justice Debra James denied the 15 Broad Respondents' motion and lifted the temporary stay on the Order.

103. On May 29, 2014, the 15 Broad Respondents filed a motion to reargue the motion to vacate.

104. On December 23, 2014, Justice Debra James granted the motion for reargument but re-affirmed her prior decision on the 15 Broad Respondents' motion to vacate.



105. The 15 Broad Respondents failed to comply with the Order's direction to deposit \$470,000 into the 15 Broad PCO Escrow until October 2014, nine months after the Order was entered.

106. NYAG finds that Respondent's foregoing conduct in paragraphs 1 through 105 above violates the Martin Act, Part 20 of Title 13 of the New York Codes, Rules and Regulations, the New York City Building Code and Executive Law § 63(12).

### **PROSPECTIVE RELIEF**

WHEREAS, the Respondents neither admit nor deny the NYAG's Findings set forth above;

WHEREAS, NYAG is willing to accept the terms of this Assurance pursuant to the Martin Act and Executive Law Section § 63(15) and to discontinue its investigation; and

WHEREAS, the Respondents are willing to accept the obligations imposed by this Assurance;

WHEREAS, on November 24, 2015, the 15 Broad Respondents provided to NYAG an expert report (the "Report") detailing the work needed to be done at the 15 Broad property to secure a PCO, how long such work will take to complete (the "Expected PCO Date") and how much the labor, materials, consulting and expediting services and all other components of this work will cost (the "PCO Cost Estimate");

WHEREAS, according to the Report, the Expected PCO Date is April 1, 2018 and the PCO Cost Estimate is \$748,395.00;

THEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED by and between the Respondents and NYAG that:

A. Within seven (7) calendar days of the execution of this Assurance, the 15 Broad Respondents shall permanently surrender their remaining seat(s) on the 15 Broad Board.

B. Within seven (7) calendar days of the execution of this Assurance, the 15 Broad Respondents shall establish an escrow account with NYAG (“PCO Cost Escrow”) and shall deposit two hundred seventy-eight thousand three hundred ninety-five dollars and zero cents (\$278,395) into the PCO Cost Escrow, representing the difference between the PCO Cost Estimate and the \$470,000 currently on deposit with the Clerk of the Supreme Court of the State of New York pursuant to the Order (“Court Deposit”). At the conclusion of the Section 354 proceeding, the Court Deposit shall be released pursuant to CPLR 2606 and 2607. The NYAG shall consent to the release of the Court Deposit to the 15 Broad Respondents. If, on the date that the Court Deposit is released, a PCO has not been issued for the 15 Broad property, the 15 Broad Respondents shall, within seven (7) calendar days of the release of the Court Deposit, deposit \$470,000.00 into the PCO Cost Escrow. If a PCO has been issued for the 15 Broad property at the time the Court Deposit is released, the 15 Broad Respondents need not deposit any additional funds into the PCO Cost Escrow. Upon receipt of a fully executed copy of this Assurance, Marans Weisz & Newman, LLC is authorized to release all funds it is holding in escrow in the account known as [REDACTED] account #

[REDACTED] ) to Troutman Sanders LLP, as attorneys for 15 Broad Street LLC.

C. The 15 Broad Respondents shall secure a PCO for the 15 Broad property by the Expected PCO Date or, if applicable, the Updated PCO Date (as defined below).

D. If, prior to the Expected PCO Date, the owner or tenant(s) of the 23 Wall Street retail unit files an application with the New York City Department of Buildings to perform work in the 23 Wall Street retail unit and/or the 15 Broad property that results in a delay in the

issuance of a PCO for the 15 Broad property through no fault of the 15 Broad Respondents, no later than thirty (30) calendar days prior to the Expected PCO Date, the 15 Broad Respondents may make a request to the NYAG for an extension of the Expected PCO Date (the “Extension Request”). The Extension Request shall be accompanied by a written report from 15 Broad Respondents’ architect (“Delay Report”) setting forth: (i) the work being performed by the owner or tenant of the 23 Wall Street retail unit that has resulted in a delay of the issuance of the PCO, (ii) the impact of such actions on the 15 Broad Respondents’ efforts to obtain a PCO for the 15 Broad property, (iii) the work remaining, if any, necessary to obtain the PCO for the 15 Broad property, (iv) an updated date that the PCO is expected to be issued (the “Updated PCO Date”); and (v) an updated estimate of how much the labor, materials, consulting and expediting services and all other components of securing the PCO will cost (the “Updated PCO Cost Estimate”). In the event that the Updated PCO Cost Estimate is greater than the PCO Cost Estimate, the 15 Broad Respondents shall, within seven (7) calendar days of the submission to NYAG of the Extension Request, deposit into the PCO Cost Escrow an amount equal to the difference between (i) the PCO Cost Estimate and (ii) the Updated PCO Cost Estimate. In the event that the Updated PCO Cost Estimate is less than the PCO Cost Estimate, no funds shall be released from the PCO Cost Escrow by NYAG to the 15 Broad Respondents unless and until a PCO is issued for the 15 Broad property. Within thirty (30) calendar days of NYAG’s receipt of the Delay Report, NYAG shall approve or deny the request to extend the Expected PCO Date to the Updated PCO Date. The NYAG’s approval of the request to extend the Expected PCO Date shall not be unreasonably withheld, conditioned or delayed.

E. If a PCO has not been issued for the 15 Broad property within ninety (90) calendar days of the later of the Expected PCO Date or an Updated PCO Date approved by

NYAG pursuant to the process set out in Paragraph D of this Assurance (the “First PCO Delay Date”), the 15 Broad Respondents shall pay twenty-thousand dollars and zero cents (\$20,000.00) to the 15 Broad Board as restitution for the delay in securing the PCO (the “First PCO Delay Payment”) no later than seven (7) calendar days from the First PCO Delay Date.

F. The 15 Broad Respondents shall pay an additional twenty-thousand dollars and zero cents (\$20,000.00) to the 15 Broad Board as restitution for delay for each successive 90 day period following the First PCO Delay Date (“Additional PCO Delay Period”) in which the 15 Broad Respondents fail to secure a PCO for the 15 Broad property (the “Additional PCO Delay Payment”) until such time as a PCO is obtained for the 15 Broad property. Each Additional PCO Delay Payment shall be paid by the 15 Broad Respondents no later than seven (7) calendar days following the last day of the applicable Additional PCO Delay Period.

G. Within seven (7) calendar days of the NYAG’s receipt of written notice that the PCO for the 15 Broad property has been issued, the NYAG shall release all funds in the PCO Cost Escrow to Troutman Sanders LLP, as attorney for the 15 Broad Street Respondents, or such other person or entity as designated in writing by the 15 Broad Respondents.

H. Within thirty (30) calendar days of the execution of this Assurance, Respondents shall establish an escrow account with NYAG (the “Settlement Escrow”).

I. Within thirty (30) calendar days of the execution of this Assurance (the “Settlement Escrow Funding Date”), Respondents shall deposit the sum of [REDACTED] into the Settlement Escrow. Such amount shall be allocated as follows: [REDACTED] to the 15 Broad Litigation, [REDACTED] to the 20 Pine Litigation and [REDACTED] to the 85 Adams Litigation. The undersigned Assistant Attorney General shall provide wiring instructions. Notwithstanding the foregoing, if prior to the

Settlement Escrow Funding Date, the claims asserted against Respondents in one or more of the 15 Broad Litigation, the 20 Pine Litigation or the 85 Adams Litigation (the “Litigations”) have been resolved, by settlement, final unappealable court order or otherwise and if the Respondents provide to NYAG documents sufficient to establish that the claims at issue have been resolved and that Respondents have satisfied any payment obligations in connection therewith, Respondents need not deposit the amount allocated to the resolved Litigation(s) and Respondents’ obligation to deposit the amount allocated to the resolved Litigation(s) in this Paragraph shall be automatically extinguished.

J. Within seven (7) calendar days of the NYAG’s receipt of written notice from Respondents that the claims asserted against Respondents in one or more of the Litigations has been resolved, by settlement, final unappealable court order or otherwise, the NYAG shall release the amount allocated to the resolved Litigation(s) in the preceding paragraph to Troutman Sanders LLP, as attorney for Respondents, or such other person or entity as designated in writing by Respondents, from the Settlement Escrow. The written notice shall be accompanied by documents sufficient to establish that the claims at issue have been resolved and that Respondents have satisfied any payment obligations in connection therewith. To the extent that one or more of the Litigations has not been resolved, by settlement, final unappealable court order or otherwise by [REDACTED], the NYAG shall thereafter release the amount allocated to such unresolved Litigation(s) in the preceding paragraph as restitution to the applicable Board(s) from the Settlement Escrow.

K. The 15 Broad Respondents shall pay the sum of two million dollars and zero cents (\$2,000,000.00) by wire (the “Settlement Funds”), payable to the New York City Department of Finance (the “City”), or such other entity as may be designated in writing by the City, acting

through its Department of Housing Preservation and Development (“HPD”), in settlement of NYAG’s claim that 15 Broad improperly collected tax benefits under Section 421-g of the RPTL. The City, acting by and through HPD, shall deposit the Settlement Funds into the fiduciary fund established by HPD and known as the Affordable Housing-AG Settlement Fund. The City, acting by and through HPD, shall use the Settlement Funds to finance projects for “persons of low income” and “families of low income,” as defined in N.Y. Private Housing Finance Law § 2(19).

L. The 15 Broad Respondents shall deliver the Settlement Funds to the City within fifteen (15) business days of the execution of this Assurance; the undersigned Assistant Attorney General shall provide wiring instructions.

M. Within fifteen (15) business days of the execution of this Assurance, Respondents shall pay NYAG by wire transfer the sum of two hundred fifty thousand dollars and zero cents (\$250,000.00) for the NYAG’s expenses; the undersigned Assistant Attorney General shall provide wiring instructions.

N. If NYAG determines that Respondents have failed to satisfy fully and completely the terms in paragraphs A, B, D, E, F, H, I, K, L, and M within the time limits set forth as to each of those paragraphs or otherwise as may be agreed to by the NYAG, Respondents agree to be permanently restrained and enjoined from engaging in any securities-related business or activity, directly or indirectly, as principal, broker or agent, or otherwise, including but not limited to making or taking part in the offering or sale in or from New York State of any securities, as governed by GBL § 352-e, *et. seq.*

O. Respondents are permanently restrained and enjoined from violating the Martin Act, the accompanying regulations or other laws that govern the public offer and sale of real

estate securities within or from New York State, and from engaging in the fraudulent, deceptive and illegal acts alleged herein.

P. If the date to take any action or make any payment required hereunder falls on a bank holiday or weekend, such action shall be taken or such payment shall be due on the next following business day.

Q. Nothing contained herein shall be construed or deemed to grant any person or entity a private right of action to enforce any of the obligations contained herein.

R. Respondents agree that that they shall be jointly and severally liable for delivery of the payments set forth in this Assurance.

#### **MISCELLANEOUS**

S. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondents and their counsel and NYAG's own factual investigation as set forth in the Findings above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

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

U. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Respondents' (i) testimonial obligations or (ii)

right to take legal or factual positions in defense of litigation or other legal proceedings to which NYAG is not a party.

V. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance, and any purported amendment of this Assurance that is not memorialized in a writing signed by all parties shall be deemed null and void.

W. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the NYAG.

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

Y. To the extent not already provided under this Assurance, Respondents shall, upon request by the NYAG, provide reasonable documentation and information necessary for the NYAG to verify compliance with this Assurance.

Z. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:



If to the Respondents:

Matthew J. Aaronson, Esq.  
Troutman Sanders LLP  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000

If to NYAG:

Bureau Chief  
Real Estate Finance Bureau  
Office of the Attorney General  
120 Broadway, 23rd Floor  
New York, New York 10271  
(212) 416-8100

AA. All correspondence related to this Assurance must reference Assurance No. 15-240;

BB. Acceptance of this Assurance by NYAG shall not be deemed approval by NYAG of any of the practices or procedures referenced herein, and Respondents shall make no representation to the contrary.

CC. Pursuant to New York Executive Law Section 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by NYAG.

DD. If a court of competent jurisdiction finally determines that any Respondent has breached this Assurance, that Respondent shall pay to NYAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

EE. NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. NYAG is willing to accept this Assurance pursuant to New York

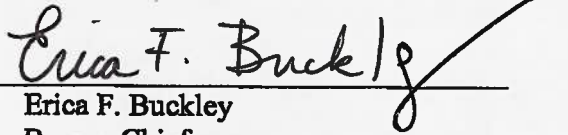
Executive Law Section 63(15), in lieu of commencing a statutory or any other proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

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

GG. This Assurance may be executed in one or more counterparts, by either original signature or signature transmitted by facsimile transmission or electronic mail, and each copy so executed shall be deemed an original.

IN WITNESS WHEREOF, this Assurance is executed by the Respondents and the  
NYAG as of January 12, 2016.

**ERIC T. SCHNEIDERMAN**  
Attorney General of the  
State of New York

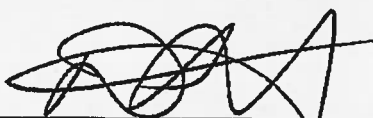
By:   
Erica F. Buckley  
Bureau Chief  
Real Estate Finance Bureau

By:   
Elissa Rossi  
Assistant Attorney General  
Real Estate Finance Bureau

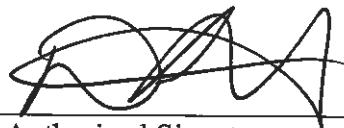
**15 BROAD STREET, LLC**  
a Delaware limited liability company

By:   
Authorized Signatory

**15 BROAD STREET MANAGERS, LLC**  
a Delaware limited liability company

By:   
Authorized Signatory

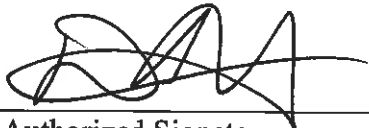
**20 PINE STREET, LLC**  
a Delaware limited liability company

By:   
Authorized Signatory

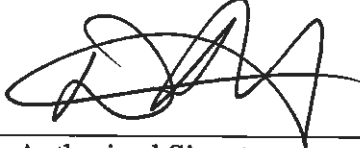
**20 PINE STREET MANAGERS, LLC**  
a Delaware limited liability company

By:   
Authorized Signatory

**85 ADAMS STREET, LLC**  
a Delaware limited liability company

By:   
Authorized Signatory

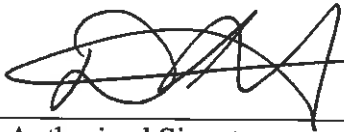
**85 ADAMS STREET MANAGERS, LLC**  
a Delaware limited liability company

By:   
Authorized Signatory

**AI PROPERTIES AND DEVELOPMENTS  
(USA) CORP.**  
a New York corporation

By:   
Authorized Signatory

**AI HOLDINGS (USA) CORP.**  
a Delaware corporation

By:   
\_\_\_\_\_  
Authorized Signatory