

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

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In the Matter of the

**Investigation by Eric T. Schneiderman,
Attorney General of the State of New York, of**

Assurance No. 14-082

Harold L. Gruber, Esq. and Harold L. Gruber, P.C.

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ASSURANCE OF DISCONTINUANCE

The New York Attorney General (“NYAG”) commenced an investigation pursuant to New York State Executive Law (“EL”) § 63(12) and the Martin Act, New York General Business Law (“GBL”) § 352 *et seq.*, into the conduct of Harold L. Gruber, Esq. and Harold L. Gruber, P.C. (collectively, the “Respondents”) in connection with the offering of real estate securities at The Mirada, a newly-constructed condominium located at 161-171 East 110th Street, New York, New York.

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

The Respondents neither admit nor deny paragraphs 1 through 62 below of the NYAG’s Findings, but wish to avoid the time and expense of protracted litigation.

THE NEW YORK ATTORNEY GENERAL’S FINDINGS

A. The Respondents

1. Harold L. Gruber is an attorney-at-law admitted to practice and residing in New York State.

2. Harold L. Gruber, P.C. is a New York professional corporation owned and controlled by Mr. Gruber. Together, Harold L. Gruber and Harold L. Gruber, P.C. have represented hundreds of offerors of real estate securities before the NYAG, for purposes of complying with the Martin Act and the NYAG's regulations promulgated thereunder.

B. Respondents' Legal Obligations Under the Martin Act

3. In New York State, the initial offer and sale of condominium units is governed by the Martin Act, and as such cannot be publicly offered for sale unless and until the offeror of the securities, known as the sponsor, has filed with the NYAG an offering plan and a broker-dealer registration statement. *See* GBL §§ 352-e(1)(a), 359-e(3).

4. The offering plan must provide an adequate factual basis upon which a potential purchaser can intelligently make a decision whether to buy or not to buy. Among other things, the offering plan must disclose: (i) a description of the property being offered; (ii) the names, addresses and business backgrounds of sponsor's principals; (iii) the names, addresses and business backgrounds of those who are to participate in the property's management; and (iv) the interests and profits of the promoters, officers, directors, trustees or general partners in the promotion and management of the venture. *Id.* § 352-e(1)(b).

5. The offering plan must also disclose any felony convictions of sponsor or any of its principals, and any prior bankruptcies of the sponsor or its principals that may be material to the offering plan or an offering of securities generally, and that occurred within 15 years prior to the submission of the proposed offering plan. 13 NYCRR § 20.3(ab); *see also* GBL §352-e(6) (authorizing the NYAG to promulgate rules and regulations under the Martin Act). Similarly, a sponsor's broker-dealer registration statement must disclose the sponsor's business history including any bankruptcy filings, criminal record and educational background, and that of every

person or entity controlling the sponsor, each of whom is statutorily defined as a principal of the sponsor. *See* GBL §§ 359-e(1)(d), 359-e(3)(a).

6. To ensure that an offering plan contains the disclosures required by law, a sponsor must submit a proposed offering plan to the NYAG. When a proposed offering plan is not adequate to satisfy its informational purpose, the NYAG may refuse to accept it, thereby preventing condominium units from being offered for sale to the public. *Id.* § 352-e(2-b).

7. A sponsor and its principals must certify that the offering plan is complete, current and accurate. 13 NYCRR § 20.4(b).

8. When submitting a proposed offering plan, and immediately prior to the plan being accepted by the NYAG for filing, the attorney who represents the sponsor before the NYAG must submit a transmittal letter expressly affirming that:

I prepared the attached offering plan and Exhibits based on information from the sponsor. I have read all the printed copy submitted to the Department of Law but expressly disclaim any responsibility to have made an independent inspection of the building(s) or property or investigation of the information furnished to me by sponsor. I have no actual knowledge of any violation of Article 23-A of the General Business Law or Part 20 of the regulations promulgated by the Department of Law, nor do I have actual knowledge of any material fact omitted or any untrue statement of any material fact included in the offering plan.

Id. § 20.4(a).

9. A sponsor and its principals have an ongoing obligation to amend the plan to disclose any material changes that have occurred since the plan was accepted by the NYAG for filing. *Id.* § 20.5(a)(1).

10. In addition, prior to closing title to any units, the sponsor must submit, and the NYAG must accept for filing, an amendment to the offering plan disclosing that the plan has

been declared “effective.” *Id.* § 20.3(q). Where a condominium consists of six or more units, the sponsor must file an amendment, known as the effectiveness amendment, stating that bona fide purchasers have signed purchase agreements for at least 15% of the units offered under the offering plan. *Id.* § 20.3(1), (3)-(4). The sponsor must include as an exhibit to the effectiveness amendment an affidavit of a principal of the sponsor that sets forth, *inter alia*, a list of the units being counted to declare the plan effective. *Id.* § 20.5(e)(5).

11. All proposed amendments to offering plans must be submitted to the NYAG with an Amendment Filing Form, by which a disclosed principal of the sponsor certifies that the offering plan, as amended, complies with the Martin Act. *Id.* § 20.5(b).

12. The Martin Act further requires that:

[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.

GBL § 352-e(2-b) (emphasis added). In New York City, a “completed” unit for purposes of complying with GBL § 352-e(2-b) is a unit for which the City’s Department of Buildings (“DOB”) has issued a permanent certificate of occupancy (“PCO”). *See* 13 NYCRR § 20.3(t)(13). The purpose of GBL § 352-e(2-b) is to prevent sponsors from using purchasers’ down payments for construction purposes, and to ensure that each sponsor completes its project.

13. All of purchasers’ down payments must be held in escrow until a sponsor obtains a PCO for the property, *or* until sponsor’s engineer, architect or other qualified expert certifies the cost to complete construction and to obtain a PCO. 13 NYCRR § 20.3(t)(13). Based on the expert’s certification, the escrow agent may release monies from the special escrow account exceeding the so-certified amount. *Id.* Alternatively, a sponsor may deposit with the escrow

agent an unconditional, irrevocable letter of credit or a surety bond in the so-certified amount.

Id.

14. A purchaser's down payment continues to be the purchaser's money, and thus must be held in trust until actually employed in connection with the consummation of the securities transaction, and must not be commingled. GBL § 352-h (Trust Funds); *see also id.* § 352-e(1)(b).

C. The Representations in a Broker-Dealer Registration Statement and Offering Plan that the Respondents Prepared and Submitted to the NYAG on Behalf of the Sponsor of The Mirada

15. On or about December 14, 2006, on behalf of their client, 110th Street Development LLC, the sponsor of the offering at The Mirada (the "Sponsor"), the Respondents prepared and submitted to the NYAG a proposed offering plan for The Mirada.

16. On or about March 30, 2007, the Respondents submitted to the NYAG a broker-dealer registration statement for filing on behalf of Sponsor. Sponsor's broker-dealer registration statement represented that Nancy Scarpinito was the sole principal of the Sponsor.

17. On May 17, 2007, Sponsor's offering plan for The Mirada was accepted by the NYAG for filing (the "Plan").

18. Pursuant to 13 NYCRR § 20.4(a), the Respondents submitted two attorney transmittal letters—one when the proposed plan was submitted for filing on December 14, 2006, and another immediately prior to its acceptance for filing on May 17, 2007—affirming that Mr. Gruber is familiar with the Martin Act and the NYAG's regulations promulgated thereunder; that he prepared the Plan based on information from the Sponsor; and that he has no actual knowledge of any violation of the applicable law, nor any actual knowledge of any material fact omitted or any untrue statement of any material fact included in the Plan.

19. The Plan's "Identity of Parties" section represented that Sponsor's sole principal was Nancy Scarpinito. The Plan represented that "[t]here are no felony convictions, bankruptcies, judgment injunctions against either the Sponsor or its Principals [sic]."

20. The Plan's "Rights and Obligations of Sponsor" section represented that Sponsor would not close title to any unit in The Mirada before the DOB issued a certificate of occupancy, which specifies the legal use and occupancy of the building. The Plan further represented that, if the first closing occurs after the issuance of a temporary certificate of occupancy ("TCO"), but prior to a PCO, Sponsor would maintain all of purchasers' down payments in a special escrow account, unless Sponsor's engineer or architect certified that a lesser amount was necessary to complete construction and obtain a PCO. Based on the expert's certification, only the amount exceeding the so-certified amount would be released from escrow. Alternatively, Sponsor would deposit with an escrow agent an unconditional irrevocable letter of credit or post a surety bond in the so-certified amount.

21. The Plan's "Procedure to Purchase" section represented that in order to purchase a residential unit in The Mirada, a purchaser must execute a purchase agreement and return it to the Sponsor with a check in the amount of 10% of the purchase price, as a down payment, drawn to Harold L. Gruber, Esq., as attorney.

22. The Plan represented that Mr. Gruber would act as Sponsor's escrow agent, holding all of purchasers' down payments in an escrow account at Citibank in trust for purchasers.

23. The Plan further represented that Sponsor would comply with the escrow and trust fund requirements of GBL §§ 352-e(2-b) and 352-h.

24. The Plan's "Closing Costs and Adjustments" section represented that closings

would occur at the offices of Harold L. Gruber, P.C. and purchasers were required to pay Harold L. Gruber, P.C., which was acting as Sponsor's counsel, a fee for the preparation of closing documents, of \$950 per closing.

25. The Plan also included a copy of the "Escrow Agreement for Contract Deposit" purportedly executed by Mr. Gruber, and Mrs. Scarpinito as the Sponsor's sole disclosed principal.

26. This escrow agreement represented that "[a] fiduciary relationship shall exist between Escrow Agent and purchasers, and Escrow Agent acknowledges its fiduciary obligations." The escrow agreement further represented that "Sponsor agrees that it shall not interfere with Escrow Agent's performance of its fiduciary duties and compliance with the Attorney General's regulations."

27. Between 2007 and 2012, ten amendments to the Plan were accepted by the NYAG for filing, each of which was prepared and submitted on behalf of Sponsor by the Respondents. The representations made in the first, second, third, fifth, sixth and eighth amendments to the Plan bear no impact on this Assurance.

28. On or about March 31, 2008, the Respondents prepared and submitted to the NYAG a proposed fourth amendment to the Plan on behalf of Sponsor. On May 30, 2008, the fourth amendment to the Plan was accepted by the NYAG for filing (the "Fourth Amendment"). The Fourth Amendment declared the Plan effective, a prerequisite to Sponsor's closing title to any unit in The Mirada.

29. On or about April 22, 2009, the Respondents prepared and submitted to the NYAG a proposed seventh amendment to the Plan. On April 1, 2010, the seventh amendment to the Plan was accepted by the NYAG for filing (the "Seventh Amendment"). The Seventh

Amendment represented that Sponsor had obtained a TCO, and closed title to the first residential unit in The Mirada on August 6, 2008 at the offices of Harold L. Gruber, P.C.

30. The Seventh Amendment also reiterated that it is Sponsor's duty to ensure that the TCO remains current and in full force and effect until Sponsor obtains a PCO.

31. On or about August 16, 2011, the Respondents prepared and submitted to the NYAG a proposed ninth amendment to the Plan. On November 30, 2011, the ninth amendment to the Plan was accepted by the NYAG for filing (the "Ninth Amendment"). The Ninth Amendment reaffirms the Plan's representation that the "individual principal of 110th Street Development LLC is Nancy Scarpinito."

32. The Ninth Amendment also acknowledged that Sponsor has an obligation to correct the water leaks throughout the façade of the building.

33. On or about December 8, 2011, the Respondents prepared and submitted to the NYAG a proposed tenth amendment to the Plan. On February 16, 2012, the tenth amendment to the Plan was accepted by the NYAG for filing (the "Tenth Amendment"). The Tenth Amendment represents that "[t]he Sponsor recognizes that some of the repair work specified in the report prepared by the Condominium's Architect is necessary . . . Sponsor has not completed that work as of this date."

D. The Representations in the Offering Plan for The Mirada Were False

i. Nancy Scarpinito Was Not the Sole Principal of the Sponsor

34. In violation of GBL §§ 352-e(1)(b) and 359-e(6), both the Sponsor's Plan and broker-dealer registration statement misrepresented that the sole principal was Nancy Scarpinito.

35. In reality, The John Scarpinito Trust was at all times the managing member of the Sponsor, and Joseph Scarpinito and Shiraz Sanjana managed the Sponsor's business affairs.

36. In response to a *subpoena duces tecum*, Mr. Scarpinito disclosed that The John Scarpinito Trust currently holds an 85% equity interest in Sponsor. Mr. Scarpinito further disclosed that he is the trustee of The John Scarpinito Trust, created by his father John Scarpinito for the benefit of John Scarpinito's grandsons, James and Joseph Scarpinito.

37. In response to a *subpoena duces tecum*, Mrs. Scarpinito disclosed that she has no ownership interest in any corporation, partnership or limited liability company; that The John Scarpinito Trust holds an 85.19% ownership interest in Sponsor; and that Messrs. Joseph Scarpinito and Shiraz Sanjana manage Sponsor's business affairs. According to Mrs. Scarpinito's attorney's affirmation of compliance, Joseph Scarpinito and Shiraz Sanjana contributed to the collection and assembly of the information and documents produced in response to this subpoena.

38. Pursuant to a *subpoena ad testificandum*, Mrs. Scarpinito testified under oath that she does not, nor has she previously participated in the development, public offer or sale of any condominium units. Mrs. Scarpinito repeatedly directed inquiries about her involvement in real estate businesses to her son, Joseph Scarpinito.

39. When documents purporting to bear Mrs. Scarpinito's signature were shown to her, she testified that she did not sign the documents, and twice suspected that her signature could have been forged.

40. On two occasions, when asked, Mrs. Scarpinito testified that she did not recognize the name Harold Gruber.

41. Indeed, Mr. Gruber represented that he has not spoken to Mrs. Scarpinito in approximately eight years.

ii. Mr. Scarpinito Concealed His Role in Sponsor's Offering to Avoid Disclosing a Personal Bankruptcy and Felony Conviction for Bank Fraud

42. In violation of GBL §§ 352-e(1)(b) and 359-e(3)(a), the Sponsor's Plan and broker-dealer registration statement concealed the identities and business backgrounds of Sponsor's actual principals, Joseph Scarpinito, Shiraz Sanjana, and The John Scarpinito Trust (collectively, the "Developers"), including Mr. Scarpinito's personal bankruptcy and his felony bank fraud conviction.

43. In 1991, Mr. Scarpinito defaulted on a \$1.4 million loan from Gateway State Bank.

44. To avoid personal liability on the loan, Mr. Scarpinito filed for bankruptcy under Chapter 7 of the Bankruptcy Code.

45. Gateway State Bank brought an adversary proceeding. After a trial, the court found that Mr. Scarpinito induced the bank to provide a loan by providing the bank with a personal financial statement that omitted contingent liabilities of over \$7 million, a forged financial statement, and a forged accounting report.

46. The court described Mr. Scarpinito as "a cunningly devious entrepreneur" and concluded that "if anyone ever intended deceit, it was Joseph Scarpinito." As a result, the court excepted Mr. Scarpinito's debt to the bank from discharge.

47. In 1996, Mr. Scarpinito pled guilty to the charge of violating 18 U.S.C. § 1344 by committing bank fraud, a felony.

48. According to Mr. Scarpinito, the felony conviction involved his procuring of a loan from Mountain Ridge State Bank by using a personal financial statement that omitted a \$2 million contingent liability.

49. Thus, the Developers used Mrs. Scarpinito as a front by disclosing her as Sponsor's sole principal in the Offering Plan, to conceal Joseph Scarpinito's personal bankruptcy and felony fraud conviction from purchasers, avoiding the disclosure legally required under the Martin Act and its implementing regulations.

iii. Respondents Knowingly Submitted to the NYAG Documents that Misrepresented Mrs. Scarpinito's Role in the Offering, and Made Other Misrepresentations to Perpetuate the False Pretense that the Respondents Were Acting on Mrs. Scarpinito's Behalf

50. In violation of GBL § 353, the Respondents were concerned in, participated in, and acted in furtherance of the Developers' fraudulent practices.

51. In representing the Sponsor before the NYAG, Mr. Gruber's client was Mr. Sanjana, not Mrs. Scarpinito.

52. At Mr. Sanjana's instruction, the Respondents prepared Sponsor's Plan and its ten amendments, thereby constructing and perpetuating the false pretense that Mrs. Scarpinito was the sole person who controlled Sponsor's offering.

53. In fact, Mr. Gruber has not spoken to Mrs. Scarpinito in approximately eight years.

54. Pursuant to Mr. Gruber's direction, and upon Mr. Scarpinito's written authorization, in his capacity as the sole trustee of The John Scarpinito Trust, two Harold L. Gruber, P.C. employees, named LaVida Dowdell and Samantha Barchitta, acted as Sponsor's agents for closing of unit sales for 65 of the 67 units in The Mirada.

55. Both Ms. Barchitta and Ms. Dowdell have never met or spoken to Mrs. Scarpinito.

56. The only person Ms. Dowdell associated with Sponsor was Shiraz Sanjana.

57. Mr. Sanjana would appear at Harold L. Gruber, P.C. with documents he claimed had been “pre-signed” by Mrs. Scarpinito, and would direct the documents be notarized without the actual personal appearance of the purported affiant, for submission to the NYAG. At Messrs. Sanjana’s and Gruber’s direction, Ms. Barchitta followed this direction on several occasions.

58. In all, the Respondents prepared, fraudulently authenticated and then knowingly submitted to the NYAG a total of nine sworn documents that misrepresented Mrs. Scarpinito’s role in the offering, perpetuating the false pretense that the Respondents were acting on Mrs. Scarpinito’s behalf:

- i. In connection with the second amendment to the Plan, an Amendment Filing Form notarized by Samantha Barchitta on November 8, 2013, without the actual, personal appearance of the purported affiant.
- ii. In connection with the third amendment to the Plan, an Amendment Filing Form notarized by Samantha Barchitta on December 20, 2007, without the actual, personal appearance of the purported affiant.
- iii. In connection with the Fourth Amendment, an Amendment Filing Form notarized or caused to be notarized by Harold L. Gruber on March 28, 2008, without the actual, personal appearance of the purported affiant.
- iv. In connection with the Fourth Amendment, two affidavits notarized or caused to be notarized by Harold L. Gruber on March 28, 2008 without the actual, personal appearance of the purported affiant. These affidavits were required to declare the plan effective, pursuant to 13 NYCRR §§ 20.5(e)(5) and 20.5(e)(6)(ii).
- v. In connection with the fifth amendment to the Plan, an Amendment Filing Form caused to be notarized by Harold L. Gruber on June 27, 2008 without the actual, personal appearance of the purported affiant.
- vi. In connection with the sixth amendment to the Plan, an Amendment Filing Form notarized or caused to be notarized by Harold L. Gruber on July 25, 2008 without the actual, personal appearance of the purported affiant.
- vii. In connection with the Ninth Amendment, an Amendment Filing Form notarized or caused to be notarized by Harold L. Gruber on July 26, 2011 without the actual, personal appearance of the purported affiant.

- viii. In connection with the Ninth Amendment, an affidavit entitled “Disclsoure [sic] Statement,” notarized or caused to be notarized by Harold L. Gruber on September 12, 2011 without the actual, personal appearance of the purported affiant. This disclosure statement represented that: (i) the Office of the Attorney General directed Sponsor to make certain disclosures in an affidavit; (ii) Mrs. Scarpinito is the principal of Sponsor; and that Sponsor is in the process of resolving the water leaks throughout the façade of the building and the damage caused within units by water infiltration.

59. Of those nine documents, six were certifications required by 13 NYCRR § 20.5(b) that the Plan, as amended, complied with the Martin Act. The other three were fraudulent affidavits. Respondents acted in furtherance of fraudulent practices by submitting these nine false documents to the NYAG in connection with proposed amendments to the Plan.

E. Despite the Developers Never Obtaining a PCO, Mr. Gruber Illegally Released All of Purchasers’ Down Payments

60. In violation of GBL § 352-e, Sponsor never obtained a PCO for The Mirada, despite its repeated representations in the Plan that it would do so.

61. The purchasers of units in The Mirada, to whom Mr. Gruber had fiduciary duties, collectively paid \$3,216,697.45 in down payments that the law required to be escrowed pending completion of construction as security for procurement of the PCO.

62. In violation of GBL §§ 352-e(2-b) and 352-h, and the representations made in the Plan, Mr. Gruber released this money from the escrow account to the Developers prior to their obtaining a PCO, and without any certification from an architect or engineer concerning the cost of completing construction and obtaining the PCO.

PROSPECTIVE RELIEF

WHEREAS, the Respondents neither admit nor deny paragraphs 1 through 62 above of the NYAG’s Findings, but wish to avoid the time and expense of protracted litigation;

WHEREAS, the NYAG is willing to accept the terms of this Assurance pursuant to EL § 63(15) and to discontinue its investigation as against the Respondents including the investigation initiated under GBL § 354, in lieu of commencing a statutory proceeding against the Respondents pursuant to EL § 63(12) and the Martin Act concerning the Respondents' conduct in the offer of residential condominium units at The Mirada; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

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

1. Respondents are 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 the practice of law before the NYAG on behalf of securities broker-dealers, drafting or preparing securities-related documents such as broker-dealer registration statements, offering plans, amendments thereto, or no-action applications; or associating with or providing consultation to any individual law firm, or other business concerning securities-related matters governed by the Martin Act and the NYAG's accompanying regulations. However, nothing herein shall be construed to prohibit the Respondents from representing individual buyers or sellers in the resale of any condominium or cooperative unit.

2. Respondents hereby irrevocably waive any right to apply to the Court to vacate, modify or dissolve the permanent injunction set out in paragraph 1 of the Prospective Relief provisions of this Assurance, and the following portions of the Court's Order, dated December 4, 2013, in *In re the Inquiry of Eric T. Schneiderman*, Index No. 4521792/2013 (the "Order"):

ORDERED that all Respondents, their agents and employees are hereby restrained from violating Article 23-A of the GBL, and from engaging in the fraudulent, deceptive and illegal acts alleged herein; and it is further

ORDERED that all Respondents, and their agents and employees, are hereby restrained from engaging in any act directly or indirectly relating to the offer, purchase, sale, issuance, advertisement, marketing, promotion, distribution, negotiation, exchange or transfer of securities in or from New York State, including without limitation, submitting, or causing to be submitted, to the New York Attorney General any documents relating to securities including, without limitation, broker-dealer registration statements, proposed offering plans, proposed amendments, no-action applications and tax opinions, except that within two business days after service of this Order, Respondents Harold L. Gruber, P.C. and Harold L. Gruber, Esq. shall submit the documents that are legally required to withdraw as a sponsors' attorney for all pending submissions, and except that nothing in this Order shall prohibit Harold L. Gruber from transferring purchasers' down-payments from a special escrow account held by Mr. Gruber to a successor escrow agent . . .

Annexed hereto as Exhibit A is a copy of the Order.

3. Harold L. Gruber, P.C. shall fully cooperate with the NYAG's ongoing investigation into the Developers' offer and sale of units at The Mirada.

4. When producing documents pursuant to paragraph 3 of the Prospective Relief provisions of this Assurance, for each document or portion thereof withheld from production on ground of privilege or other legal doctrine, regardless of whether a production is electronic or in hard copy, Respondents shall submit with the documents produced a statement in writing under oath, stating: (a) the type of document; (b) the date of the document; (c) the author(s) and recipient(s) of the document; (d) the general subject matter of the document; and (e) the legal ground for withholding the document.

5. The parties shall execute and submit to the Court the Stipulation annexed hereto

as Exhibit B, to be so-ordered in *In re the Inquiry of Eric T. Schneiderman*, Index No. 4521792/2013.

6. Respondents shall pay within five business days of executing this Assurance, by wire transfer, to the State of New York \$60,000 in civil penalties, fees and costs.

7. Any payments and all correspondence related to this Assurance must reference Assurance # 14-082.

8. All communications to any party pursuant to this Assurance shall be in writing and directed as follows:

If to either or both of the Respondents, to:

Harold L. Gruber, Esq.
7571 Old Post Road
Red Hook, New York 12571

with a copy to:

Alan Sclar, Esq.
Sclar Adler LLP
19 W. 34th Street, Suite 1018
New York, New York 10001

If to the NYAG, to:

Serwat Farooq
Assistant Attorney General
Real Estate Finance Bureau
Office of the Attorney General
120 Broadway, 23rd Floor
New York, New York 10271

9. The NYAG has agreed to the terms of this Assurance based on, among other things, the representations made by Respondents and their counsel, and the 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 the NYAG in his

sole discretion.

10. 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.

11. 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 the NYAG is not a party.

12. 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.

13. 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.

14. 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, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

15. 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.

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

17. Pursuant to EL § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violations of EL § 63(12), the Martin Act and GBL § 349 in any action or proceeding thereafter commenced by the NYAG.

18. If a court of competent jurisdiction finally determines that either or both of the Respondents have committed any act or omission that violates paragraph 1 of the Prospective Relief provisions of this Assurance, or the injunctive relief set out in the Order, both Respondents shall be jointly and severally liable to the State of New York in damages (actual damages being difficult or impossible to ascertain) for civil penalties in the amount of \$50,000 for each such violative act or omission and shall also pay to the NYAG the cost of enforcing this Assurance, including but not limited to attorneys' fees, expenses and court costs. The civil penalties associated with each violative act or omission are intended to be cumulative. This provision shall supplement and be in addition to the rights and remedies available to the NYAG under EL § 63(12) and the Martin Act.

19. If a court of competent jurisdiction finally determines that a Respondent has breached any provision of this Assurance other than paragraph 1 of the Prospective Relief provisions of this Assurance, the Respondent shall pay to the NYAG the cost of enforcing this Assurance, including but not limited to attorneys' fees, expenses and court costs.

20. The NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

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

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

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the 23th
day of April, 2014.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271

By: 

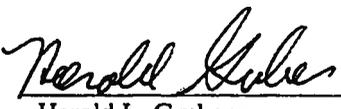
Serwat Farooq, Esq.
Assistant Attorney General

SCLAR ADLER LLP
19 W. 34th Street, Suite 1018
New York, New York 10001
Attorney for Harold L. Gruber, P.C. and Harold L. Gruber

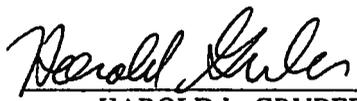
By: 

Alan Sclar, Esq.

HAROLD L. GRUBER, P.C.

By: 

Harold L. Gruber
Chief Executive Officer and Sole Shareholder



HAROLD L. GRUBER, personally

Exhibit A

Expense Motion Office

At the ~~108~~ 108 Part
of the Supreme Court of the
State of New York, 60 Centre
Street, City and State of New
York on the 4th day of
December, 2013.

Present: **JOAN B. LOBIS**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of an Inquiry by ERIC T.
SCHNEIDERMAN, Attorney General of the
State of New York,

Petitioner,

Pursuant to Article 23-A of the New York General
Business Law in regard to the acts and practices of

JOSEPH SCARPINITO, SHIRAZ SANJANA,
THE JOHN SCARPINITO TRUST, 110TH STREET
DEVELOPMENT LLC, HAROLD L. GRUBER, and
HAROLD L. GRUBER, P.C.,

Respondents,

in promoting the issuance, distribution, exchange,
advertisement, negotiation, purchase, investment advice
or sale of securities in or from New York State.

: **ORDER PURSUANT TO**
: **GENERAL BUSINESS LAW**
: **§ 354**

: **Index No. 452179/13**

: **Date Filed:**

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Upon reading and filing the annexed affirmation of Serwat Farooq, Assistant Attorney
General, dated December 3, 2013, with exhibits, the annexed affirmation of Marissa Piesman,
Special Counsel to the Real Estate Finance Bureau of the Office of the Attorney General, dated
December 3, 2013, and the accompanying memorandum of law, dated December 3, 2013; and
upon the application of ERIC T. SCHNEIDERMAN, Attorney General of the State of New
York, for an order pursuant to General Business Law ("GBL") § 354;

IT BEING SHOWN that the New York Attorney General has determined to commence

an action under Article 23-A of the GBL against the above-captioned Respondents and that, upon information and belief, certain Respondents' testimony, and production of certain books and records is material and necessary to the New York Attorney General's investigation; and

IT BEING SHOWN therefrom that it is this Court's duty to grant the New York Attorney General's application for an order, pursuant to GBL § 354, directing the persons mentioned in the application to appear before the Justice of the Supreme Court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books; it is hereby

ORDERED that "document" is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced or stored (manually, mechanically, electronically or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-mail), instant messages, text messages, Blackberry or other wireless device messages, voicemail, calendars, date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices and summaries; that any non-identical version of a document constitutes a separate document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical documents; and

that in the case of documents bearing any notation or other marking made by highlighting ink, the term document means the original version bearing the highlighting ink; and it is

ORDERED that Respondent Harold L. Gruber, P.C., by its Custodian of Records, appear before the Honorable [Signature], Justice of the Supreme Court, or any other Justice or Referee of this Court as may be directed, in Room 315, at the courthouse located at 60 Centre Street, New York, New York, or at any other place as this Court may direct, as follows: on the 11th of December, 2013, at 10⁰⁰ N a.m./p.m., and on any adjourned date and time thereafter, to testify under oath, and answer such questions as may be put to them by the New York Attorney General or a designated Assistant Attorney General, concerning the authenticity or location of certain documents; and to turn over originals, wherever located, whether in their possession or control, or if the originals are unavailable, copies of:

- (i) All documents relating to any and all property and monies derived by Harold L. Gruber, P.C., its officers, directors, shareholders and current and former employees in connection with the sale of residential units in The Mirada, including but not limited to a list identifying any bank, savings and loan association or other financial depository at which such property is maintained or was deposited and the corresponding account numbers and titles;
- (ii) Any retainer agreement or other document establishing Respondent Harold L. Gruber, P.C.'s representation of Respondent 110th Street Development LLC ("Sponsor") before the Office of the Attorney General for purposes of filing an offering plan and amendments for The Mirada;
- (iii) All documents relating to the closings to title to the residential units in The Mirada, including purchase agreements, mortgage commitments by financial institutions to purchasers, and checks issued or drawn in connection with such closings;
- (iv) Any and all other documents that may be requested by the New York Attorney General or a designated Assistant Attorney General during the course of this investigation;
- (v) Any and all tax returns – federal, state and local – of Harold L. Gruber, P.C. for years 2007 to 2012; and it is further

ORDERED that Sponsor, Respondent 110th Street Development LLC, by its Custodian of Records, appear before the Honorable _____, Justice of the Supreme Court, or any other Justice or Referee of this Court as may be directed, in Room 315, at the courthouse located at 60 Centre Street, New York, New York, or at any other place as this Court may direct, as follows: on the 11th of Dec. 2013 ~~January~~, 2014, at 10 a.m., and on any adjourned date and time thereafter, to testify under oath, and answer such questions as may be put to them by the New York Attorney General or a designated Assistant Attorney General, concerning the authenticity or location of certain documents; and to turn over originals, wherever located, whether in their possession or control, or if the originals are unavailable, copies of:

- (i) All documents relating to any and all property and monies derived by Sponsor and its principals, members, agents, salespersons and attorney in connection with sale of residential units in The Mirada, including but not limited to a list identifying any bank, savings and loan association or other financial depository at which such property is maintained or was deposited and the corresponding account numbers and titles;
- (ii) All Sponsor's operational documents including minutes of all meetings, resolutions, and all agreements or declarations by, between or among Sponsor, its members and principals;
- (iii) Any retainer agreement or other document establishing Respondent Harold L. Gruber, P.C.'s representation of Sponsor before the Office of the Attorney General for purposes of filing an offering plan or amendments for The Mirada;
- (iv) All documents relating to Mr. Gruber's release of purchasers' down-payments, deposits and advances from any escrow account to Sponsor, any Respondent or any other person or entity;
- (v) All documents relating to Sponsor's obtaining a permanent, or final, certificate of occupancy for The Mirada;
- (vi) All bank, financial or asset statements and documents for all accounts in Sponsor's name;
- (vii) All compensation agreements and documents including but not limited to Sponsor's policies for monetary and other payments, tangible or intangible, including salaries, commissions, bonuses and options, to officers, directors,

- (iv) All corporate or business statements, balance sheets, cash flow statements, income statements, journals, ledgers, working papers, accountant statements, evidences of wire transfers, external and internal electronic mail transmissions and similar documents; and
- (v) Any and all other documents that may be requested by the New York Attorney General or a designated Assistant Attorney General during the course of this investigation;
- (vi) Any and all tax returns – federal, state and local – of The John Scarpinito Trust for years 2007 and 2011 to 2012; and it is further

ORDERED that Respondent Joseph Scarpinito appear before the Honorable _____, Justice of the Supreme Court, or any other Justice or Referee of this Court as may be directed, in Room 315, at the courthouse located at 60 Centre Street, New York, New York, or at any other place as this Court may direct, as follows: on the 11th of ~~January~~ Dec. 2013, at 10 a.m./p.m., and on any adjourned date and time thereafter, to testify under oath, and answer such questions as may be put to them by the New York Attorney General or a designated Assistant Attorney General, concerning the alleged fraudulent practices of Respondents and others acting on Respondents' behalf in the public offer and sale of residential condominium units in The Mirada; and it is further

ORDERED that Respondent Shiraz Sanjana appear before the Honorable _____, Justice of the Supreme Court, or any other Justice or Referee of this Court as may be directed, in Room 315, at the courthouse located at 60 Centre Street, New York, New York, or at any other place as this Court may direct, as follows: on the 11th of ~~January~~ Dec. 2013, at 10 a.m./p.m., and on any adjourned date and time thereafter, to testify under oath, and answer such questions as may be put to them by the New York Attorney General or a designated Assistant Attorney General, concerning the alleged fraudulent practices of Respondents and others acting on Respondents' behalf in the public offer and sale of residential

condominium units in The Mirada.

AND IT FURTHER APPEARING by the Affirmation of Assistant Attorney General Serwat Farooq, with exhibits, the Affirmation of Marissa Piesman and the Memorandum of Law that it is expedient and proper to grant certain preliminary injunctive relief against Respondents, pursuant to General Business Law § 354, because the alleged fraudulent practices threaten continued, immediate and irreparable injury to the purchasing public, and that the potential dissipation of Respondents' assets would render a judgment directing restitution ineffectual; it is

ORDERED that all Respondents, their agents and employees are hereby restrained from violating Article 23-A of the GBL, and from engaging in the fraudulent, deceptive and illegal acts alleged herein; and it is further

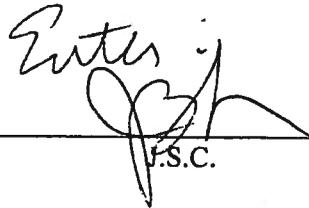
ORDERED that all Respondents, and their agents and employees, are hereby restrained from engaging in any act directly or indirectly relating to the offer, purchase, sale, issuance, advertisement, marketing, promotion, distribution, negotiation, exchange or transfer of securities in or from New York State, including without limitation, submitting, or causing to be submitted, to the New York Attorney General any documents relating to securities including, without limitation, broker-dealer registration statements, proposed offering plans, proposed amendments, no-action applications and tax opinions, except that within two business days after service of this Order, Respondents Harold L. Gruber, P.C. and Harold L. Gruber, Esq. shall submit the documents that are legally required to withdraw as a sponsors' attorney for all pending submissions, and except that nothing in this Order shall prohibit Harold L. Gruber from transferring purchasers' down-payments from a special escrow account held by Mr. Gruber to a successor escrow agent; and it is further

ORDERED that within five business days after service of this Order, Respondents

collectively deposit with the Court \$3,216,697.45, reflecting the total amount of all purchasers' down-payments that the law required be escrowed pending completion of construction as security for procurement of a permanent certificate of occupancy for The Mirada; and it is further

ORDERED that Respondents Joseph Scarpinito, Shiraz Sanjana and Harold L. Gruber each turn over a list that identifies all assets for the Respondent, and the names and addresses of all banks, savings and loan associations and other financial depositories located inside and outside New York at which Respondent maintains any account(s), together with the account numbers and titles; and it is further

ORDERED that service by delivery and leaving with each Respondent a certified copy of this Order together with the papers upon which it was granted, on or before the 6th of December, 2013, be deemed sufficient service thereof.



J.S.C.

Exhibit B

the Gruber-Respondents.

3. A facsimile or electronic signature on this Stipulation shall be deemed an original.
4. This Stipulation may be executed in counterparts.
5. Pursuant to CPLR § 4317, Special Referee Steven Liebman shall hear and

determine all issues relating to this Stipulation including but not limited to so-ordering this Stipulation.

Dated: April 23, 2014
New York, New York

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

By: 
Serwat Farooq
Assistant Attorney General
120 Broadway, 23rd Floor
New York, New York 10271

Dated: April __, 2014
New York, New York

SCLAR ADLER LLP
*Attorney for Respondents Harold L. Gruber
and Harold L. Gruber, P.C.*

By: 
Alan Sclar, Esq.
19 W. 34th Street, Suite 1018
New York, New York 10001

SO ORDERED: _____