

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CONSUMER FRAUDS AND PROTECTION BUREAU

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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**In the Matter of**

**Assurance No. 19-104**

**Investigation by LETITIA JAMES, Attorney General of  
the State of New York, and LINDA A. LACEWELL,  
Superintendent of Financial Services, of**

**ATALAYA CAPITAL MANAGEMENT LP and  
ACM VISION V LLC**

**Respondents.**

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**ASSURANCE OF DISCONTINUANCE**

**WHEREAS**, the Office of the Attorney General of the State of New York (“NYAG”) and the New York Department of Financial Services (the “Department”), following an investigation, have determined that Vision Property Management, LLC and its affiliated LLC corporations, (hereinafter referred to collectively as “Vision”), through its offering of seller financing agreements in New York, engaged in illegal predatory lending and related deceptive, abusive, unfair and unconscionable acts and practices;

**WHEREAS**, that investigation led to an investigation of the companies providing funding to Vision, including ACM Vision V LLC and other investment vehicles managed by Atalaya Capital Management LP (collectively “Atalaya”);

**WHEREAS**, NYAG and the Department have agreed to the terms of an Assurance of Discontinuance (the “Assurance”) with Atalaya.

**WHEREAS**, this Assurance contains the findings of the NYAG and the Department, and the relief agreed to by Atalaya; and

**NOW THEREFORE**, the NYAG, the Department and Atalaya are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

### **DEFINITIONS**

1. “Due Diligence” for purposes of this Assurance means conducting a reasonable review of any proposed or existing project, venture or investment by a third party, including through the retention and use of legal counsel, to ensure that such project, venture or investment will not result in a Violation of Law.

2. “Violation of Law” for purposes of this Assurance means a violation of any federal, New York State or New York local criminal or civil statute, established common law doctrine, regulation, rule or ordinance.

### **FINDINGS**

The findings of the NYAG’s and Department’s investigation are as follows:

3. Atalaya Capital Management LP is a Delaware Limited Partnership registered to do business in New York, with its principal office located at 780 Third Avenue, 27th Floor New York, New York. According to its website, “Atalaya is a privately held, SEC-registered alternative investment advisory firm” that “focuses on making private credit and special opportunity investments.”

4. Atalaya formed and controlled ACM Vision V LLC (“ACM REIT”), a Delaware limited liability company that is not registered with the New York Department of State, Division of Corporations and that has its principal place of business at 780 Third Avenue 27th floor, New York, New York. ACM REIT is approximately 98% owned by an investment fund managed by Atalaya Capital Management LP and approximately 1% owned by each of Alex Szkaradek and Vision co-founder Antoni Szkaradek.

5. As discussed below, Atalaya provided financing to subsidiaries of Vision, a South Carolina company that buys distressed residential real properties at a discount and sells many of them at a substantial markup to lower income, working class consumers. The NYAG and the Department filed an action against Vision and its chief executive officer on August 1, 2019 in the Southern District of New York. *The People of the State of New York, et al. v. Vision Property Management, LLC, et al.*, 19-cv-7191-JSR (Aug. 1, 2019).

***Vision's Seller Financing Business Model***

6. The properties purchased and resold by Vision generally have been vacant for a long time and often require significant repairs to make them habitable and compliant with local building codes. The purchase price that Vision pays to acquire these properties, which are purchased in bulk from government entities or from private parties that have been unable to sell them via traditional channels, reflects that condition. Vision is not generally in the business of repairing or rehabilitating these properties. Rather, it typically passed the cost to repair the properties to the consumer.

7. Vision targets consumers who want to own a home but, due to bad credit or other issues, could not qualify for a “traditional loan.” Vision claims that it offers a “unique” program that can be their path to the “American dream of homeownership.” Vision characterizes itself as a consumer-friendly alternative to larger irresponsible financial institutions.

8. Vision’s “unique” business model is structured as seller financing. Seller financing simply means that the property seller, rather than a bank, provides the funding to finance a property purchase. Instead of advancing money to the purchaser as a typical mortgage lender would, the seller extends credit by deferring payment of the full purchase price in exchange for the purchaser making installment payments over a specified period of time and at a set interest rate until the loan is repaid.

9. Vision originally used a Contract for Deed (“CFD”) agreement to carry out its seller financing transactions. A typical CFD agreement included a purchase agreement and a promissory note that obligated the consumer to pay principal and interest, at a rate between 7% and 10%, typically over a twenty or thirty-year period. The right to occupy, and the obligation to maintain and repair the property, transferred to the consumer upon the execution of the CFD agreement, but Vision retained record ownership until the consumer paid off the balance of the purchase price. Thus, instead of transferring title and filing a mortgage against the property, Vision retained title ownership as security on the purchaser’s obligation to repay the loan.

10. While Vision’s CFD agreements facially charged an interest rate between 7% and 10%, the agreements included financing charges that could raise the rate as high as 25% in certain circumstances where interest payments were capitalized.

***Atalaya’s Funding of Vision’s Property Acquisitions and the Switch to the LOP Agreement***

11. Vision approached Atalaya in 2012 as a potential lender to help fund Vision’s bulk acquisition of properties. An introductory email explained that “Vision buys pools of foreclosed low-end houses ... and sells or leases them long-term. As an example, a home will be bought for \$10,000 and sold in a few months for \$40,000 or put out on CFD with a UBP [sic] of \$45,000 and an implied interest rate of 8.25%.” Atalaya knew that Vision did not report payments under these agreements to credit rating agencies because Vision was trying to avoid the scope of regulations imposed on licensed mortgage lenders.

12. During this time, Vision was considering a shift in its business in part to avoid the increasing regulatory scrutiny applied to seller financing. After the financial crisis, however, there was increased regulation of seller financing in New York and at the federal level. After 2011, anyone who originated more than three seller financing agreements in any consecutive 12-month period in New York needed to be licensed as a mortgage banker and comply with all of

the laws and regulations that apply to the origination of mortgage loans. At the same time, changes in federal made clear that anyone processing a seller financing agreement needed to be licensed as a mortgage loan originator.

13. Given this changing regulatory landscape, Vision proposed modifying the form of its consumer agreements from a Contract for Deed agreement to a Lease with Option to Purchase (“LOP”) agreement, in part for purposes of favorable tax treatment for its investors, and in part to avoid applicable state licensing issues and regulatory scrutiny. In 2012, Vision discussed its decision to modify the consumer agreements from CFDs to LOPs with Atalaya, which, after consulting with counsel, accepted it.

14. Vision made clear to Atalaya that the use of LOP agreements would not change the underlying substance of Vision’s seller financing business. Vision gave Atalaya a “Lease Purchase Amortization” spreadsheet which, based on a hypothetical transaction, contemplated a lease that used substantially the same pricing and payment structure as Vision’s CFD agreements. Vision simply changed the consumer-facing terminology it used to suggest consumers were signing a lease agreement with an option to purchase. What Vision once called a down payment was renamed the “option consideration,” while the loan principal payments were called the “option credit[s].”

15. Through these option payments, as through principal payments under the prior CFD agreements, Vision’s customers acquired and built up equity in the properties. Vision’s customers also built significant equity (in this case “sweat equity”) in the property through the substantial repairs and improvements they were often required to make, just as they had previously done under the CFD agreements.

16. The economics of the LOP were no different from the original CFD seller

financing agreements. Vision priced and accounted for its lease agreements with the same interest rates it charged on its CFD agreements, used financing terminology such as down payment, PITI (“principal, interest, taxes and insurance”) original balance and unpaid principal balance to describe the transaction and continued to transfer all of the obligations to repair and maintain the property, along with a number of other obligations and risks typically placed on the owner, onto the consumer.

17. As a prospective lender, Atalaya consulted with Vision regarding the creation of the new LOP agreement, received financial records indicating that Vision was accounting for the agreement the same way it accounted for CFD agreements, and obtained tax opinions that shaped how Vision structured the agreement that Vision would offer to New York consumers for four years, from 2013 until at least 2018. Atalaya also received regular reporting regarding Vision’s business from Vision’s owners and senior management. Atalaya reviewed the performance of the properties sold by Vision and conducted due diligence on Vision’s operations. Atalaya management was, in some instances, included on emails regarding individual properties and participated in decisions regarding modifications to transactions that were in default.

18. Based on reports that Atalaya requested regarding Vision’s operations, Atalaya was either aware, or should have been aware, that Vision was engaged in an illegal, predatory mortgage lending business, but agreed to fund property acquisitions by Vision, and thereby help Vision expand its operations. Atalaya also knew or should have known that Vision would use the funding it was providing to buy uninhabitable houses, and then contract with financially distressed consumers through LOP agreements that shifted the duty to repair and maintain the houses from Vision onto those consumers.

***Vision Targeted Vulnerable Consumers and Left Them in Unsafe and Sometimes Uninhabitable Properties***

19. Consumers generally found out about Vision or specific Vision properties by spotting a sign in the window or lawn of a property or by reading a listing on a website, such as Craigslist.

20. Many of Vision's properties had serious undisclosed conditions that rendered them unsafe or uninhabitable. These included: water damage, pest infestations, flood damage, furnace issues, shoddy or missing electrical wiring, stripped out copper piping, missing water tanks, missing heaters, mold, asbestos, missing septic systems, and severely damaged, i.e. rotted out, floors, walls and/or roofs. Entire portions of some homes (most commonly, flooded basements) could not be used in certain Vision properties. This posed a safety and health hazard to occupants, including the elderly, young children, teenagers and other adults. Some properties were condemned.

21. Vision generally did not provide consumers with detailed written disclosures or inspection reports, so any problems not visually spotted on a property viewing were often undisclosed. Most consumers were told the property was being sold "as-is."

22. Vision's business model depended on low-to-moderate income consumers with limited options agreeing to shoulder heavy homeowner burdens of maintenance and repair of distressed homes, often in extremely poor condition. Vision was successful in attracting its target clientele and approved consumers who, for example, work seasonally or part time, or else depend upon fixed income such as social security disability, a pension or social security income to support themselves and their family.

23. Vision's agreements saddled consumers with limited incomes and assets with significant undisclosed interest payments and a substantial amount of home repairs to

perform. Notably, not only did Vision knowingly target economically vulnerable consumers, they then undertook almost no analysis of these consumers' ability to make the payments required under the agreements, even ignoring the often expensive repairs that they were required to perform by the terms of the agreements.

***Atalaya's Funding of Vision's Acquisition of Properties in New York***

24. Vision and its affiliates used Atalaya financing in connection with at least 110 transactions for residential real properties located in New York, primarily in central and upstate New York.

25. ACM REIT currently holds title to two properties located in New York that are in active status, *i.e.* have a New York consumer residing in the property and making monthly payments.

26. In or around January 2017, when a series of news articles highlighted concerns regarding Vision's business model and the conditions of certain properties, such as those described above in paragraphs 19-23, Atalaya immediately pulled back from, and shortly thereafter fully ceased funding, new Vision transactions.

***Vision's and Atalaya's Violations of Law***

27. In connection with entering into LOP agreements with New York consumers, Vision engaged in material misrepresentations and deceptive practices, including

- a. misrepresenting to consumers that the LOP transactions were "leases," misrepresenting and concealing from consumers that Vision was actually engaged in disguised financing, and misrepresenting the cost of that financing, including the interest rate that was actually being paid by consumers;



- b. impliedly representing to its consumers that it had provided them with all legally required disclosures designed to help them understand the terms of their transactions and that Vision was property licensed to make and originate loans in New York, when in fact, these implied representations were not true;
- c. impliedly and expressly misrepresenting to consumers that they could enter into so-called leases that obligated the consumers to fix and maintain the properties and that such provisions in a lease were legally enforceable; and
- d. misrepresenting and concealing from consumers the full extent of the uninhabitable and dangerous conditions at the properties and the cost of repairs that was needed to make the properties safe and habitable.

28. The NYAG and the Department find that these misrepresentations constitute deceptive acts and practices under The Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5536 (a)(1)(B), deceptive practices under New York General Business Law (“GBL”) § 349, and repeated and/or persistent statutory fraudulent acts under Executive Law § 63(12).

29. Atalaya had knowledge of the terms of Vision’s LOP agreements and how they were priced, accounted for and, at a high level, represented to consumers. Atalaya funded Vision’s property acquisitions and helped to structure the LOP agreement, and thereby provided substantial assistance to Vision in carrying out these deceptive, abusive and fraudulent acts and practices.

30. Accordingly, the NYAG and the Department find that Atalaya also violated the CFPA, 12 U.S.C. § 5536 (a)(1)(B), New York General Business Law (“GBL”) § 349, and

Executive Law § 63(12).

31. In addition to engaging in the unfair, deceptive and abusive business practices discussed above, Vision also engaged in additional unfair and abusive business practices by:

- a. entering into financial transactions with consumers who Vision knew were unlikely to be able to bear the burden of making monthly payments in addition to the cost of making the properties habitable, safe and legally compliant and without fully assessing the consumers' ability to repay those loans while making necessary repairs to ensure their homes were habitable, safe and legally compliant;
- b. structuring its LOP transactions so that upon default, consumers lost any equity they built up in the property through payments of principal or repairs to the property without any compensation; and
- c. placing consumers, including young children, the disabled and/or the elderly, into residential properties with known health and safety hazards, such as black mold, asbestos and water damage.

32. The NYAG and the Department find that this conduct constitutes unfair and abusive acts and practices under The Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5536 (a)(1)(B).

33. Through its funding of property acquisitions and knowledge of certain of Vision's business operations, especially concerning the LOP agreements, Atalaya knew or should have known that Vision entered into transactions with consumers who were unlikely to be able to bear the full burden of making monthly payments in addition to the costs of repairing the properties and without assessing consumers' ability to repay the loans while making necessary repairs.

Atalaya also knew that Vision's LOP agreements could require consumers to give up any equity they built up in the property through payments or repairs if the consumers defaulted. Atalaya also knew or should have known that Vision placed consumers into residential properties with potential health and safety issues. In addition, Atalaya funded Vision's acquisition of properties and helped to structure the LOP agreement, and thereby provided substantial assistance to Vision in carrying out the unfair and abusive acts and practices described above. Accordingly, the NYAG and the Department find that Atalaya also violated the CFPA, 12 U.S.C. § 5536 (a)(1)(B). Vision's LOP agreements contained a number of unconscionable contract terms, including, but not limited to:

- a. requiring consumers to take the property "as is," to maintain the premises in a safe and non-hazardous condition and to bring the premises up to code within a reasonable period of time not exceeding three months of the date of execution of the agreement;
- b. permitting Vision to enter the premises on 24 hours' notice to inspect consumers' performance in bringing the premises up to code and maintaining the premises in a safe and non-hazardous condition;
- c. allowing Vision to unilaterally terminate the agreement and evict the consumer if Vision deemed that performance to be unsatisfactory.
- d. requiring consumers, as purported tenants, to be responsible for all estate taxes and casualty and general liability insurance, including to the extent the amount of payments increased; and
- e. making consumers responsible for payment or alleviation of any encumbrances, taxes, assessments and/or impositions (including fees,

property violations, fine, water/sewer charges, electrical/gas usage charges, garbage fees, property taxes levied, etc.) that might be legally levied or imposed or that are delinquent or currently due at the time of the execution of the agreement.

34. The NYAG finds that each of these contractual provisions is unconscionable within the meaning of that term as it is used in the definition of “fraud” in Executive Law § 63(12). Accordingly, the NYAG finds that the inclusion and attempted enforcement of these contractual provisions in Vision’s LOP transaction constituted repeated or persistent fraudulent acts under Executive Law § 63(12).

35. Given its funding of Vision’s property acquisitions and its assistance in structuring Vision’s LOP agreements that contained these unconscionable terms, the NYAG finds that Atalaya also violated Executive Law § 63(12).

36. Atalaya neither admits nor denies the Findings described above.

37. The NYAG and the Department are willing to accept the terms of this Assurance in lieu of commencing a statutory proceeding and to discontinue their investigation.

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

### **RELIEF**

#### ***Injunctive Relief***

38. Atalaya and its officers, directors, successors, agents, employees, and assigns, and all persons in active concert or participation with them, are hereby permanently enjoined, as follows:

- a. Atalaya shall not engage in any unfair, deceptive or abusive acts or

practices in violation of 12 U.S.C. § 5536 (a)(1)(B).

- b. Atalaya shall not engage in deceptive acts or practices in violation of GBL § 349.
- c. Atalaya shall not engage in repeated or persistent fraud in violation of Executive Law § 63(12).
- d. Atalaya shall not fund, participate in or provide assistance to any company's project, venture or investment that it knows or has reason to believe may be in Violation of Law, including **but not limited to**, federal or state banking laws, federal or state unfair, deceptive and abusive acts and practices laws, and state laws concerning rental housing.
- e. Before funding, participating in or providing assistance to any project, venture or investment by a company, or upon developing reason to believe that any such existing project, venture or investment may be in Violation of Law, Atalaya shall engage in Due Diligence to assure itself that that project, venture or investment will not be or is not in Violation of Law, or it shall refrain from further funding, participation in or provision of assistance to that project, venture or investment. All documents and materials related to such Due Diligence must be maintained for at least three years from the date of their creation.
- f. Atalaya shall not knowingly participate in or assist any company in concealing conduct that is in Violation of Law from consumers, regulators or law enforcement, or in misrepresenting conduct that is in Violation of Law or of uncertain legality as being legally compliant.

39. Within **30 days** of the Effective Date of this Assurance, ACM REIT shall either cease all business in New York or register with the New York Department of State to do business in New York.

40. Upon request, providing a reasonable time for response, Atalaya and its current management and employees shall cooperate with the NYAG and the Department in their litigation against Vision and its affiliates, including in searching for and producing relevant documents and materials, and producing witnesses for depositions or trial.

***Consumer Relief***

41. Within 30 days from the Effective Date of this Assurance, for the two properties to which ACM REIT holds legal title, Atalaya shall provide the deeds and all other legal instruments or documents necessary to pass legal title to the consumers who have outstanding transactions for those properties, and cancel and forgive any and all obligations by the consumers to perform under those transactions. Those properties are listed in Confidential Appendix A to this Assurance.

42. With the exception of the transactions listed in Confidential Appendix A, for all other transactions that Vision entered into with consumers for properties located in New York that were acquired with funding provided in whole or in part by Atalaya (hereinafter the "Identified Atalaya Transactions"), Atalaya shall within 60 days from the Effective Date of this Assurance, pay to, or cause to be paid to, the consumer(s) who signed the transaction agreement \$20,000 in restitution. The Identified Atalaya Transactions are listed on Confidential Appendix B to this Assurance. To the extent multiple consumers jointly signed an agreement for one property, the \$20,000 in restitution shall be divided up equally between or among them. Such payments shall not minimize or offset any liability Vision has to consumers receiving restitution.

43. Within 15 days of the Effective Date of this Assurance, Atalaya shall pay \$240,000.00 to the NYAG, which shall be placed by the NYAG into an escrow account for later distribution as restitution to consumers as described in paragraph 45 below.

44. If, within 180 days of the Effective Date of this Assurance, Atalaya discovers any additional transactions that Vision entered into with consumers for properties located in New York that were acquired with funding provided in whole or in part by Atalaya, it shall immediately notify and provide the transaction information to the NYAG and the Department (hereinafter, such transactions, together with any additional Vision transactions funded in whole or in part by Atalaya that are identified by the NYAG or Department within 180 days of the Effective Date of Assurance, shall be referred to as the "Additional Atalaya Transactions").

45. In the event that 12 or more Additional Atalaya Transactions are discovered within 180 days of the Effective Date of this Assurance, the NYAG shall distribute the \$240,000 placed in escrow pursuant to paragraph 43 as restitution so that the consumers who signed each transaction agreement receive an equal share. In the event that fewer than 12 Additional Atalaya Transactions are discovered within 180 days of the Effective Date of this Assurance, the NYAG shall distribute the \$240,000 as restitution among the consumers who signed the transaction agreements for the Identified Atalaya Transactions and the consumers who signed the transaction agreements for the Additional Atalaya Transactions so as to equalize the total amount of restitution distributed for each Identified and Additional Atalaya Transaction under both paragraph 42 and this paragraph. Such payments shall not minimize or offset any liability Vision has to consumers receiving restitution.

46. For purposes of the restitution paid to consumers under paragraph 42, Atalaya shall use all reasonable efforts to distribute or cause to be distributed the restitution to the

consumers. Atalaya shall use all reasonable efforts to provide the consumers' last known address(es) to the NYAG and the Department for any Additional Atalaya Transactions identified within 180 days of the Effective Date. For the purposes of this agreement, reasonable efforts shall mean the use of Atalaya's own best information and/or LexisNexis, the National Change of Address database (the "NCOA") or similar services to determine each consumer's last known address and contact information and contacting that consumer by email or phone if possible to verify the current address. Payment of restitution by Atalaya pursuant to paragraph 42 shall be made by mailing a check for the restitution payment to the relevant consumer by first class mail. If any check issued pursuant to paragraph 42 is returned as undeliverable or is not cashed within two months of mailing, Atalaya shall again attempt to determine the consumer's current address including by contacting the consumer by email or phone to verify that address and/or by using LexisNexis or similar services, and resend the check.

47. Atalaya shall report to the NYAG and the Department every month, starting three months from the Effective Date of this Assurance, with a list of the names and contact information of consumers who cashed their restitution checks during the prior reporting period, a list of which consumers have not yet cashed their restitution checks and all information regarding efforts that have been made to provide those remaining consumers with their checks.

48. Atalaya shall send to all consumers who receive restitution pursuant to paragraph 42 a letter accompanying the check in a form approved by the NYAG and the Department advising the consumer that: (1) as the result of settlements with the NYAG and the Department, Atalaya is paying or causing to be paid restitution to the borrower; and (2) the consumer may seek further information on the settlement from the Department, including the website <https://www.dfs.ny.gov>, or the NYAG, including the website <http://ag.ny.gov>.



49. All restitution funds unclaimed by consumers one year from the Effective Date of this Assurance shall be escheated to the State Comptroller's office as abandoned property for the benefit of the relevant consumer.

***Penalties, Costs and Fees***

50. Within 10 business days of the Effective Date of this Assurance, Atalaya shall pay to the State of New York \$250,000.00 in civil penalties, fees and costs in accordance with written wiring instructions to be separately provided by the NYAG or the Department to Atalaya's counsel within (5) five business days of the Effective Date of this Assurance.

51. Atalaya shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil penalties, fees and costs paid pursuant to this Assurance.

**MISCELLANEOUS**

52. Atalaya 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. However, nothing in this paragraph affects Atalaya's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings, investigations, or other government inquiries to which the NYAG, the Department, or any other agency or instrumentality of the State of New York, is not a party.

53. Any failure by the NYAG or the Department to insist upon the strict performance by Atalaya of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG or the Department, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Atalaya.

54. In any subsequent investigation, civil action, or proceeding by the NYAG or the

Department to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 59, Atalaya expressly agrees and acknowledges:

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

55. If a court of competent jurisdiction determines that Atalaya has violated the Assurance, Atalaya shall pay the NYAG or the Department the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

56. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee or transferee of Atalaya. No party may assign, delegate or otherwise transfer any of its rights or obligations under this Assurance without prior written consent of the NYAG or the Department.

57. Nothing contained herein shall be construed to limit the remedies available to the NYAG or the Department in the event that Atalaya violates the Assurance after its Effective

Date.

58. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 19-104, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

- a. If to Atalaya, to: Sean Hecker ([shecker@kaplanhecker.com](mailto:shecker@kaplanhecker.com)), Kaplan Hecker & Fink LLP, 350 Fifth Avenue, Suite 7110, New York, NY 10118
- b. If to the NYAG, to: Noah H. Popp ([Noah.Popp@ag.ny.gov](mailto:Noah.Popp@ag.ny.gov)), or, in his absence, to Jane Azia, Bureau of Consumer Frauds and Protection, 28 Liberty St., New York, NY 10005
- c. If to the Department, to: Cynthia M. Reed ([cynthia.reed@dfs.ny.gov](mailto:cynthia.reed@dfs.ny.gov)), One State Street, New York, NY 10004.

59. The NYAG and the Department have agreed to the terms of this Assurance based on, among other things, representations made to the NYAG and the Department by Atalaya, either directly or through counsel, and the NYAG and the Department's own factual investigation. To the extent that representations made by Atalaya or its counsel are later found to be materially incomplete, inaccurate or misleading, this Assurance is voidable by the NYAG or the Department in their sole discretion.

60. If the NYAG or the Department believe Atalaya to be in material breach of this Assurance, the NYAG or the Department will provide written notice to Atalaya and it must, through counsel, within ten business days of receiving such notice, or on a later date if so determined in the NYAG's sole discretion, appear before the NAYG or the Department to

demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is immaterial or has been cured.

61. Atalaya's failure to make the required showing within the designated time period as set forth in paragraph above shall be presumptive evidence of Atalaya's material breach. Upon a finding by that Atalaya has breached this Assurance, the NYAG or the Department have all the remedies available to it under all applicable laws and may use any evidence available to it in connection with any ensuring hearings, notices, orders or other remedies that are available.

62. Upon the NYAG's or the Department's request, Atalaya shall provide within a reasonable period of time all documentation and information reasonably necessary for the NYAG or the Department to verify compliance with this Assurance.

63. Atalaya represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and the execution of this Assurance is duly authorized.

64. This Assurance and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

65. The Assurance may not be altered, modified, or amended unless in writing signed by the parties hereto.

66. This Assurance constitutes the entire agreement between the NYAG, the Department and Atalaya and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Assurance.

67. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been relied upon by any party to this Assurance.

68. In the event that one or more provisions contained in this Assurance shall for any

reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the NYAG and the Department, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

69. Upon the parties' execution of this Assurance, the NYAG and the Department will discontinue the investigation as to and against Atalaya solely with respect to the practices set forth in the findings of the NYAG's and the Department's investigation, through the Effective Date of this Assurance. Provided that Atalaya fully complies with the terms of this Assurance, no further action will be taken by the NYAG or the Department against Atalaya for that conduct.

70. Nothing in this Assurance shall be construed to deprive any person of or prevent any consumer from pursuing any private right or remedy at law.

71. This Assurance is not intended for use by any third party in any other proceeding. There are no third-party beneficiaries to this Assurance.

72. Nothing in this Assurance shall relieve Atalaya of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

73. Atalaya acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

75. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

76. The Effective Date of this Assurance shall be August 27, 2019

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By: Jane M. Azia  
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By: \_\_\_\_\_  
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