

### **13 NYCRR Section 23.3: Format and content**

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Plans subject to this Part must comply with the format and minimum disclosure requirements set forth herein in addition to the requirements of provisions of article 23-A of the G.B.L. and article 9-B of the Real Property Law or the laws regulating condominiums in the state where the property is located.

(a) *Cover.* The outside front cover of the offering plan shall contain the following information in the following order:

(1) If any nonpurchasing residential tenant may be evicted by application of the provisions of G.B.L., sections 352-eee and 352-eeee, rent regulatory laws, or after expiration of a lease term, the cover shall contain the following statement in boldface roman type at least as large as eight-point modern type and at least two points leaded:

**THIS IS AN EVICTION PLAN. SEE PAGE\_\_\_\_\_.**

If G.B.L., section 352-e(2-a), 352-eee or 352-eeee or other such local law is applicable, also state:

**NONPURCHASING TENANTS OTHER THAN ELIGIBLE SENIOR CITIZENS AND ELIGIBLE DISABLED PERSONS WILL BE EVICTED.**

(2) If the plan is a noneviction plan, the cover shall contain the following statement in boldface roman type at least as large as eight-point modern type and at least two points leaded:

**THIS IS A NONEVICTION PLAN. NO NONPURCHASING TENANT WILL BE EVICTED BY REASON OF CONVERSION TO CONDOMINIUM OWNERSHIP.**

(3) The title in boldface type: **CONDOMINIUM OFFERING PLAN** followed by the name of the condominium and the address of the property.

(4) The total amount of the offering, which shall be based on the maximum aggregate price at which the units are initially offered. State the number of units being offered. The minimum aggregate price at which the units are initially offered to tenant purchasers also may be included.

(5) The amount of the working capital fund and/or reserve fund to be retained by the condominium. The amount of the reserve fund shall be in compliance with applicable local law. If there is a working capital fund and this fund may be diminished or depleted for closing adjustments, so indicate. If there is no working capital fund or reserve fund provided by the sponsor, indicate -0-.

(6) The name principal business address of the sponsor, selling agent, and the condominium. Telephone numbers may also be included. The address of the sponsor must not be in care of sponsor's attorney.

(7) The statement "Date of acceptance for filing," which shall be the date the Department of Law files the plan. The term of the initial offer is 12 months commencing on the date of the letter from the Department of Law stating that the plan is filed. The term may be extended by an amendment to the offering plan. The date of the plan should be left blank when

(a) the proposed plan is first submitted to the Department of Law and (b) when the final plan is submitted to the Department of Law.

(8) If the plan contains a special risk section, the statement: "SEE PAGE \_\_\_\_\_ FOR SPECIAL RISKS TO PURCHASERS" must be printed apart from other print and be in capital letters, in boldface roman type at least eight-point modern type and at least two points leaded.

(9) The front cover of a proposed offering plan first submitted to the Department of Law shall contain the following statement in capital letters printed in red in boldface roman type of at least eight-point modern type and at least two points leaded. The following statement shall not appear on the front cover of final offering plans (black books) filed with the Department of Law:

THIS IS A PROPOSED OFFERING PLAN ("RED HERRING") TO CONVERT THIS BUILDING TO A CONDOMINIUM. IT HAS BEEN SUBMITTED TO THE NEW YORK STATE DEPARTMENT OF LAW, REAL ESTATE Finance Bureau. CONDOMINIUM UNITS MAY NOT BE SOLD OR OFFERED FOR SALE UNTIL THE OFFERING PLAN IS FILED WITH THE DEPARTMENT OF LAW.

(10) The following statement in capital letters printed in boldface roman type at least as large as eight-point modern type and at least two points leaded must be included on the cover of all plans filed with the Department of Law:

THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL THESE CONDOMINIUM UNITS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE DEPARTMENT OF LAW PRIOR TO SELLING OR OFFERING TO SELL ANY CONDOMINIUM UNIT. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

(b) *Table of contents.* The format and order set forth in this subdivision must be followed in the table of contents. Include headings for the subjects not marked with an asterisk. In addition, a limited number of headings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk in the table of contents, and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses. Documentation listed in Part II of the table of contents shall be included in full in Part II of the plan. The texts of such documents which will be binding upon the sponsor or the board of managers, such as the purchase agreement, the power of attorney, the unit deed, the condominium declaration, and the bylaws of the condominium shall be consistent with the disclosures in the plan and shall conform to the requirements of this section.

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(c) *Special risks.* This section, if applicable, must be on a separate page following the table of contents. All features of a plan which involve significant risk, or are reasonably likely to affect disproportionately or unusually the common charges or obligations of unit owners in future years of condominium operation, must be conspicuously disclosed and highlighted. A brief description of the nature of the risk should be given in this section and a more thorough description should be given in a referenced later section. Uncertainties as to whether a risk should be described in this section should be resolved in favor of inclusion.

(1) Disclose whether sponsor is reserving the right to rent rather than sell units as they become vacant and whether sponsor is limiting its right to rent rather than sell based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions upon which the sponsor would resume sales. If a mortgage currently encumbers the property or will encumber the property at the time of the first unit closing, disclose the terms of the mortgage as they apply to sponsor's obligation to market units for sale as they become vacant, including any minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of a minimum release price set by the mortgagee or a required minimum payment per sale which must be made to the mortgagee in order for the mortgagee to release its lien from the unit being sold, and limits or requirements imposed by the mortgagee for sponsor to rent rather than sell under specified market conditions. If sponsor is reserving an unconditional right to rent rather than sell, the cover of the plan must state in bold print:

**BECAUSE SPONSOR IS RETAINING THE UNCONDITIONAL RIGHT TO RENT RATHER THAN SELL UNITS, THIS PLAN MAY NOT RESULT IN THE CREATION OF A CONDOMINIUM IN WHICH A MAJORITY OF THE UNITS ARE OWNED BY OWNER-OCCUPANTS OR INVESTORS UNRELATED TO THE SPONSOR. (SEE SPECIAL RISKS SECTION OF THE PLAN.)**

Further disclose, in the Special Risks section, that because sponsor is not limiting the conditions under which it will rent rather than sell units, there is no commitment to sell more units than the 15 percent necessary to declare the plan effective and owner-occupants may never gain effective control and management of the condominium.

(2) If the bylaws of the condominium do not include a provision that after the initial sponsor control period, a majority of the board of managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the sponsor and its principals, this fact must be disclosed as a special risk and the cover of the plan must state in bold print:

**PURCHASERS FOR THEIR OWN OCCUPANCY MAY NEVER GAIN CONTROL OF THE BOARD OF MANAGERS UNDER THE TERMS OF THIS PLAN. (SEE SPECIAL RISKS SECTION OF THE PLAN.)**

Disclose further that owner-occupants and non-resident owners, including sponsor, may have inherent conflicts on how the condominium should be managed because of their different reasons for purchasing, i.e., purchase as a home as opposed to as an investment.

(d) *Election forms for eligible senior citizens and eligible disabled persons.* In an eviction plan, if G.B.L., section 352-eee is applicable, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-5 and SH-2, respectively. In an eviction plan, if G.B.L., section 352-e(2-a) or 352-eeee is applicable, include the eligible senior citizen and eligible disabled person election forms promulgated by the Department of Law, forms SH-1 and SH-2, respectively.

(e) *Introduction.* The introduction must:

(1) explain that the purpose of the offering plan is to set forth all the material terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Department of Law. State that amendments will be served on all offerees as defined in section 23.1(d) of this Part;

(2) state that the condominium is subject to and complies with the New York Condominium Act or the law regulating condominiums in the state where the property is located;

(3) identify the sponsor, and state when the sponsor acquired the property or sponsor's interest as a contract vendee;

(4) Disclose sponsor's intent with regard to the sale of units offered for sale in the plan. Disclose whether sponsor represents that it will endeavor in good faith to sell units rather than rent as they become vacant. If sponsor makes a bulk sale of all or some of its units, the transferee successor sponsor is bound by sponsor's representations regarding its commitment to sell units. If a mortgage currently encumbers the property or will encumber the property at the time of the first unit closing, disclose the terms of the mortgage as they apply to sponsor's obligation to market units for sale as they become vacant, including any minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of either a minimum release price set by the mortgagee or a required minimum payment per sale which must be made to the mortgagee in order for the mortgagee to release its lien from the unit being sold, and limits or requirements imposed by the mortgagee for sponsor to rent rather than sell under specified market conditions. Disclose any conditions under which sponsor reserves the right to rent rather than sell units after they become vacant, based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which sponsor would resume sales. If sponsor retains unconditional discretion to rent rather than sell units, include on the cover of the plan the warning set forth in paragraph (1) of this subdivision and discuss as a special risk.

(5) summarize the number and the type of units being offered in this offering plan, whether the units are residential or otherwise, any parking or recreational facilities, and refer to schedule A for prices. Identify any units or property interests that are not being offered, such as commercial space, the superintendent's apartment and common areas. If applicable, note any air rights or transferable development rights benefitting or encumbering the property. Make reference to the section of the plan disclosing any such reservation of air or developmental rights;

(6) outline the basic aspects of condominium ownership, including the following:

(i) that each purchaser owns his or her unit outright and is entitled to exclusive possession of that unit together with an interest in and right to use the common elements, and exclusive right to use limited common elements, if applicable;

(ii) a description of the differences between space owned exclusively by a unit owner and common elements and limited common elements, where applicable;

(iii) that each unit owner must pay common charges in accordance with the New York Condominium Act, RPL section 330(i) and (m), or applicable State and local law;

(iv) that each unit owner is obligated to comply with the declaration, the bylaws, rules and regulations and any other requirements of the board of managers;

(v) any restrictions on use, resale, leasing or mortgaging; the Department of Law may, in its discretion, require an opinion from counsel for sponsor or independent counsel as to the legality and enforceability of these restrictions;

(vi) the authority of the board of managers to manage the condominium, and the unit owner's right to vote for members of the board of managers;

(vii) that each unit will be separately taxed and may be separately mortgaged;

(viii) a unit owner's responsibility for maintenance and repairs and for casualty and liability insurance as distinguished from the obligations of the board of managers;

(ix) if applicable, that the condominium board does not have the right to approve or disapprove purchasers, that there is no limit on the number of owners who may purchase for investment rather than for personal occupancy and that there may always be a substantial percentage of owners who are non-residents; and

(x) discuss the transitional phase of the conversion process from rental building to condominium. Disclose that because the plan can be declared effective based on sales of 15 percent of the units to tenants or bona fide purchasers

for their own occupancy, purchasers may be living in a mixed rental/owner-occupied building for an indeterminate period of time and that owner-occupants may not control the board or operation of the property during such transition or ever, unless the bylaws provide for an owner-occupant majority on the board. Further discuss how the existence of rent regulated, non purchasing, tenants, who have a right to continued occupancy, may affect the speed of the conversion process. Discuss other aspects of living in a mixed rental/owner-occupied building, including different interests of owners and renters and the consequences of sponsor's continuing role in the building;

(7) if applicable, state the number of units subject to each applicable rent regulatory law;

(8) refer to schedule A for price information. State the length of any exclusive purchase period(s), that there will be no increase in prices to tenants during any exclusive purchase period for tenants, and that sponsor will not accept purchase agreements from nontenant purchasers for occupied units during any exclusive purchase period;

(9) disclose and specify if any equipment or fixtures described in the plan are not included in the offering price, or if the offering price is conditioned on the equipment and fixtures selected;

(10) state whether any nonpurchasing tenant may be evicted by application of the provisions of G.B.L., section 352-eee or 352-eeee, rent regulatory laws, or after expiration of a lease term. Refer to the sections of the plan that explain the rights of purchasing and nonpurchasing tenants. Do not characterize the plan as a "noneviction" plan if nonpurchasing tenants are entitled to remain only for the balance of a lease term. State under what circumstances, if any, tenants will remain subject to a rent regulatory law after tax exemption or abatement benefits expire;

(11) state that the prices are not subject to approval by the Department of Law or any other government agency;

(12) state that the plan delivered to tenants and prospective purchasers contains all of the material terms of the transaction. State that copies of the plan, all documents referred to in the plan and all exhibits submitted to the Department of Law in connection with the filing of the plan will be available for inspection without charge and for copying at a reasonable charge to prospective purchasers and their attorneys at the office of the selling agent or sponsor;

(13) state any lawful limitations on who may purchase units;

(14) include the following paragraph printed in boldface roman type at least as large as eight-point modern type and at least two points leaded:

**THE PURCHASE OF A CONDOMINIUM UNIT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A PURCHASE AGREEMENT.**

(f) *Location and area information.* This section should:

(1) Describe the location of the property and surrounding areas. If the property is not located in a highly urban area, describe the transportation, shopping, recreational, medical, religious and educational facilities available. Describe the police, fire, water, sanitation, snow removal and road maintenance services. If any such services are not provided by the local taxing authorities, the cost of such services must be included in schedule B.

(2) Describe the zoning of the site and what uses are permitted as of right, including landmark designation and any approvals required. If any adjoining areas are undeveloped, disclose the permitted uses of the adjoining areas.

(3) If sponsor or any principals of sponsor own, in whole or part, or have an option or right to acquire, in whole or part, any adjacent areas which are not fully developed, disclose such facts and the present intention of sponsor and principals with respect to the development of such areas.

(g) *Offering prices and related information (schedule A).*

(1) Schedule A must appear on a separate page entitled “schedule A” and list the following information for each unit in columnar form. Units identified must include all units which will be newly constructed and which will be part of the condominium pursuant to sponsor’s intention to retain developmental rights. If the units are not yet being offered, the offering price for the units need not be included. Column headings may be shortened and abbreviated. Indicate that all projected charges are for a stated 12-month period, e.g., January 1, 20\_\_\_\_\_ to December 31, 20\_\_\_\_\_. Totals must be given for subparagraphs (iv), (v), (viii) and (ix) of this paragraph:

- (i) unit identification;
- (ii) rent regulatory status of each unit, and which units are vacant;
- (iii) number of bedrooms and bathrooms;
- (iv) approximate total area of each unit;
- (v) offering price for each class of purchasers;
- (vi) percentage of common interest;
- (vii) maximum mortgage on each unit (if financing is offered);
- (viii) maximum monthly mortgage charge on each unit (if financing is offered);
- (ix) projected monthly and annual common charges for the first year of operation;
- (x) projected monthly and annual real estate taxes for the first year of operation;
- (xi) projected total monthly carrying charges for the first year of operation (this is a total of items [viii], [ix] and [x]); and
- (xii) projected annual carrying charges deductible for income tax purposes (if applicable).

(2) Detailed footnotes must support and explain the information in schedule A. These footnotes must include, but are not limited to the following:

- (i) For the number of rooms, state the method of calculating the number of rooms or approximate total area in each unit. If rooms are calculated in accordance with an industry standard, refer to the industry standard employed. Indicate which units, if any, have the use of a limited common element.
- (ii) For the offering price, explain any differences in prices to classes of purchasers. Prior to the filing of an effectiveness amendment, plans subject to G.B.L., section 352-eee or 352-eeee may not contain different prices for different classes of tenants in occupancy on the filing date. Refer to the portion of the plan that explains price changes.
- (iii) For the offering price, refer to the portion of the plan that explains any closing costs that a purchaser may have to pay.
- (iv) For the percentage of common interest, disclose the basis for calculating the percentage of common interest including a reference to the method selected pursuant to section 339(i) of the Real Property Law, or applicable State law.
- (v) For the projected monthly carrying charges, disclose that if sponsor is not offering or procuring mortgage financ-

ing and if the purchaser obtains financing, the purchaser's debt service will be an additional expense. Disclose that projected carrying charges do not include certain costs for which the unit owner is responsible such as (where applicable) repairs to the interior of the unit, separately metered gas, electricity, hot water, heat, air conditioning and cable television service. If unit owners individually pay for heat and hot water costs, or for costs usually included in the common charges, refer to schedule B-1 for individual carrying charges, see paragraph (h)(5) of this section.

(vi) State the aggregate of the monthly rents currently payable from tenants of all occupied units, or a reasonable approximation thereof.

(vii) For the projected real estate taxes, state that after the condominium is divided into individual tax lots, each unit will be taxed as a separate tax lot for real estate tax purposes and the unit owner will not be responsible for the payment of, nor will the unit be subject to, any lien arising from the nonpayment of taxes on other units. Refer to the section of the plan which discusses real estate taxes, see subdivision (z) of this section.

(viii) For the projected income tax deduction, explain that the projected tax deduction (where applicable) may vary in future years due to changes in the interest rate on the unit owner's mortgage (if any) or from changes in the allocation of constant debt service payments to interest and principal, or due to changes in real property taxes resulting from the expiration of real estate tax benefits, or from changes in the assessed value, the tax rate or the method of assessing real property.

(h) *Budget for first year of condominium operation (schedule B).* The plan must describe all projected income and expenses for the first year of condominium operation in schedule B.

(1) The budget shall be based upon a specified 12-month period to commence on the date when it can reasonably be projected that condominium operation will begin and no sooner than 12 months after the submission of the offering plan for filing. When calculating the projection, include the expiration of any exclusive period and sufficient time to arrange for the closings. If the actual or anticipated date of commencement of condominium operation is to be delayed more than six months from the budget year projected in the offering plan, the plan must be amended to include a revised budget disclosing current projections. If such amended projections exceed the original projections by 25 percent or more, the sponsor must offer all purchasers the right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right, whether or not sponsor offers to guarantee the previous budget projection. Sponsor must return any deposit or downpayment to purchasers who rescind within a reasonable period of time. Sponsor may not declare a plan effective where there are any material changes to the budget if these changes have not been disclosed by a duly filed amendment to the offering plan.

(2) If the sponsor is reserving developmental rights and intends to add additional units which will be part of the condominium, the budget must reflect expenses associated with the operation of the space to be newly constructed, including footnotes and supporting documentation required by section 20.3(i) of this Title.

(3) The budget for the condominium must be in the following format. Headings marked with an asterisk may be omitted if not applicable to the offering. Additional income, expenses or cost items unique to a building or unit should be added whenever appropriate to reflect additional sources of income, expenses, costs or unique circumstances.

SCHEDULE B  
Budget for First Year of Condominium Operation  
Beginning \_\_\_\_\_ 1, 20\_\_\_\_

Projected Income	
Common Charges .....	\$ _____
* Commercial .....	\$ _____
* Laundry .....	\$ _____
* Other (explain) .....	\$ _____
TOTAL .....	\$ _____



Projected Expenses

* Labor .....	\$ _____
Heating .....	\$ _____
Utilities (electricity and gas) .....	\$ _____
Water charges and sewer rents .....	\$ _____
Repairs, maintenance and supplies .....	\$ _____
* Service contracts .....	\$ _____
Insurance .....	\$ _____
* Management fees .....	\$ _____
Legal fees and audit fees .....	\$ _____
Other .....	\$ _____
* Interest on promissory notes payable to sponsor .....	\$ _____
* Contingency .....	\$ _____
* Homeowners' association dues .....	\$ _____
TOTAL .....	\$ _____

(4) Detailed footnotes must support and explain the projected amounts in schedule B. The footnotes must set forth the basis or assumptions for each projection.

(i) Commercial income. Briefly describe any contracts or leases that will provide income to the condominium. State whether the condominium is required to provide heat, water, electricity, gas or insurance, and describe any other specific additional costs under the contract or lease. State the name and business address of each contractor or lessee, the annual income, and the expiration date of the contract or lease. If applicable, state whether the sponsor may rent vacant nonresidential space or extend the term of existing leases. State whether the rent to be collected could be less than the rent set forth in schedule B for the space. Sponsor must amend the plan if any new lease or extension of any existing lease is for a term in excess of two years.

(ii) Labor costs. State the number of full- and part-time existing staff, the number of full- and part-time staff projected for the condominium in schedule B, and whether the staff will be union members. If the budget reflects a reduction in the existing staff, disclose what effect this will have on the existing level of services. Disclose whether such reduction is lawful. The labor budget must include benefits required by federal, State or local law or required by contract such as workers' compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance and payroll taxes. Specify the wages and the cost of each applicable benefit. The budget must reflect current wage rates and reasonably anticipated increases or increases mandated by contract. If applicable, state the expiration dates of all union contracts. If there is nonunion labor in the building, discuss whether their wages meet State minimum wage laws.

(iii) Heating, cooling and hot water costs. State the type and quantity of energy projected to be used during the year and the projected cost per gallon or other pricing unit inclusive of sales tax for all energy costs for providing heat, air conditioning and hot water for the building. State the basis for projecting the quantity of energy to be used. Unless it would be misleading for a particular building, base the projected quantity of energy on the average quantity of energy purchased for the prior three years. State the quantity of energy purchased in each of the three prior years, the average cost per gallon or other pricing unit and the total cost per year. The Department of Law may, from time to time, issue pricing guidelines to reflect minimum fuel costs.

(iv) Utilities (electricity and gas). State the basis for the projected consumption and projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth, e.g., estimate based on current tariffs plus 10 percent increase. Unless it would be misleading for a particular building, base the projected quantity of the utilities on the average quantity of the utilities purchased for the prior three years.

(v) Water charges and sewer rents. State the present rents and charges and base the projection on reasonably anticipated increases for the first year of condominium operation. If the water charges or sewer rents are metered charges, state the consumption for the prior three years. If water and/or sewer charges will be separately billed by local authorities or utility companies to individual unit owners, the estimated individual annual charges should be stated in a

separate column in schedule A or (if appropriate) schedule B-1.

(vi) Repairs, maintenance and supplies. Itemize the material components of the expense for repairs and maintenance, such as interior repairs, roofing, exterior repairs (including walls, foundations, windows, doors and locks), heating system (fuel burner, boiler, pipes, radiators), plumbing, electrical work, exterminating, grounds maintenance (snow removal, gardening and landscaping, where applicable), janitor supplies, painting of common areas, and such building services and maintenance items not included under service contracts or other expenses. If the total budgeted amount is less than 80 percent of the maintenance expense indicated in the prior two years of certified financial statements, disclose and explain the reason for the projected decrease in expenses.

(vii) Service contracts. State the name of the contractor, the service, the annual cost and the expiration date of the contract. Highlight as a special risk any contract with an expiration date more than five years after the anticipated closing date unless it is customary in the area to enter into a long-term contract for the service rendered (e.g., cable TV contract).

(viii) Insurance. The budget for insurance must provide, and the condominium must have at closing, fire and casualty insurance under an agreed amount replacement cost policy or under a policy including at least an 80 percent co-insurance provision so that the insured shall not be a coinsurer. Discuss the adequacy of the insurance to replace the building in the event of total loss and to avoid being a coinsurer in the event of partial loss. Disclose the items covered, the coverage amount limits, the deductibles and the exposures insured against.

(a) The budget for insurance must provide and the condominium must have public liability insurance at closing.

(b) State that insurance coverage meets the requirements of any mortgage lender procured by the sponsor.

(c) The fire, casualty and general liability insurance must be on terms that provide:

(1) that each unit owner is an additional insured party;

(2) that there will be no cancellation without notice to the board of managers;

(3) a waiver of subrogation;

(4) a waiver of invalidity because of the acts of the insured and unit owners; and

(5) a waiver of pro rata reduction if unit owners obtain additional coverage.

(d) If the following items are not included in the budget and are applicable to the offering, state that coverage for them is not included and may be available at extra cost: officers' and directors' liability; rent insurance; water damage; elevator collision; boiler and machinery; excess liability; auto liability; fidelity bond and garage keeper's liability.

(e) The plan must alert unit owners to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to unit contents, replacements, additions, fixtures and improvements, and liability coverage for occurrences within the unit or, where applicable, on limited common elements.

(ix) Management contract. State the basis for the projected management fee. The projected cost must include any costs required by the terms of the management agreement, such as bonding. If the cost of a manager or the management contract is greater or substantially less than the prevailing cost for similar services, state the prevailing cost which would be charged for these services. If no manager or management contract is provided for in the budget, highlight as a special risk and state the services that unit owners will have to provide.

(x) Legal fees and audit fees. If the budgeted amount for legal fees is less than \$5,000, the footnote must indicate the extent to which legal services are budgeted. Audit fees must be based on and refer to a fee quotation from a certified public

accountant for preparing the yearly financial statements for the condominium.

(xi) Other expenses. Include expenses such as employer association dues (if applicable), building telephone or switchboard expenses, applicable license fees, registration and municipal permits, provision for income taxes and any other taxes payable by the condominium (if so indicated in the tax opinion), and miscellaneous expenses, including interest, not provided for in other lines.

(xii) Contingency fund. State that the contingency fund (if any) is intended to provide for any unanticipated expenses or unanticipated increases in the projected expenses. Distinguish between the contingency fund and a reserve for capital expenditures.

(5) If unit owners must pay separately for heating and hot water costs directly to the utility, such as energy for heat pumps, baseboard, radiant or space heaters, individually fired boilers, or for integrated cooling, projections for these individual costs shall be set forth and explained in schedule B-1 (next following). This schedule shall present in chart format applicable individual expense categories for typical units of various size and layouts, supported by detailed footnotes containing information similar to the corresponding footnotes described in this section for schedule B.

(6) If membership in a homeowners' association or similar entity is included or is to be sold in conjunction with the offering of condominium units, a projected schedule of income and expenses shall be set forth and explained in schedule C in compliance with section 22.3(e) of this Title.

(i) Compliance with Real Property Law, section 339(i). Include an opinion from a licensed real estate broker or other expert appraiser who does not have any beneficial interest in the sponsor or in the profitability of the conversion. The opinion must be signed by a duly authorized signatory or by the firm and must state:

(1) what experience the broker or appraiser has had with offering plans and with selling cooperative or condominium units and other relevant expertise;

(2) whether the broker or appraiser is the selling agent or managing agent for the property; and

(3) the method selected pursuant to Real Property Law, section 339(i) or applicable State law and the factual basis for calculating the percentage of common interest in the condominium under that method.

(j) *Commercial units*. If one or more of the condominium units is to be used for commercial, professional, retail or other than residential or combined residential/home occupation purposes:

(1) describe the use or proposed use of the commercial unit(s) and disclose the basis for projecting the share of expenses attributable to the commercial unit(s);

(2) state that the common charges payable by each commercial unit owner are sufficient to cover the expenses fairly attributable to such unit;

(3) highlight as a special risk if the commercial unit(s) is not restricted to its current use or if the commercial unit owner(s) has the right to subdivide the unit;

(4) if applicable, state that the allocation of common charges attributable to the commercial unit(s) shall also reflect special or exclusive use or availability or exclusive control of particular common areas;

(5) if applicable, state that the declaration and bylaws authorize the board of managers to specially allocate or apportion profits and expenses or specific expense items based on special or exclusive use or availability or exclusive control of particular units or common areas. State the method of resolving disputes between the commercial unit owner(s) and the board of managers concerning any special allocations;

(6) state whether the commercial unit owner(s) has rights or obligations which differ from those of the residential unit owners. Describe any such differences and state that such rights and obligations will not have a material adverse impact upon the condominium; and

(7) the attorney who prepared the plan must note any commercial unit(s) in the transmittal letter to the Department of Law required by section 23.2(c)(1) of this Part.

(k) *Changes in prices and units.*

(1) State that the offering price to be paid by tenants will not increase during any applicable exclusive period.

(2) State that the offering prices set forth in schedule A must be changed by a duly filed amendment to the plan when the change in price is an across-the-board increase or decrease affecting one or more lines of units or unit models, or is to be advertised, or is a price increase for an individual purchaser. If applicable, state that prices are negotiable unless it would constitute a prohibited discriminatory inducement and the sponsor may enter into an agreement with an individual purchaser to sell one or more units at prices lower than those set forth in schedule A without filing an amendment.

(3) State that no change will be made in the size or number of units and/or their respective percentages of common interest, and that no material change will be made in the size or quality of common elements, except by amendment to the plan and, when applicable, to the declaration.

(4) State that unless an affected purchaser consents, no material change will be made in unit size, layout, or percentage of common interest if a purchase agreement has been executed and delivered to the sponsor for that unit and the purchaser is not in default.

(5) State that no material change will be made in the size and no material adverse change will be made in the quality of common elements unless purchasers not in default receive a right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or downpayment promptly to purchasers who rescind.

(l) *Accountant's certified statements of operation.* Include certified statements of income and expenses, prepared on an annual basis, for the two most recent fiscal years of operation prepared by an independent certified public accountant. No report need be filed for a fiscal year which ends less than three months prior to the date the proposed offering plan is submitted to the Department of Law. If the building has been in operation for less than two years, include a statement for the period since the building began operations. If, after the plan is filed but before it is declared effective, a more recent fiscal year has ended and the sponsor has had three additional months after the end of the more recent fiscal year to prepare a certified statement, sponsor must amend the plan to include the certified statement for the more recent fiscal year.

(1) The accountant's certification must:

(i) state that the examination was made in accordance with generally accepted auditing standards and included such tests of the accounting records and other auditing procedures as the accountant considered necessary in the circumstances;

(ii) state that, in the accountant's opinion, the statement of income and expenses presents fairly the income and expenses of the building for the periods specified in conformity with generally accepted accounting principles; and

(iii) be signed by a duly authorized signatory or by the firm.

(2) The statement of income and expenses should conform as nearly as possible to the order of presentation and categories presented in schedule B.

(3) The following income or expense items and other such items that are not applicable to the operation of the building

as a condominium may be excluded: depreciation, vacancy advertising, credit checking, interest income, rental commissions, and painting of and repairs to individual apartments.

(m) *Rights of eligible senior citizens and eligible disabled persons.* If G.B.L., section 352-e(2-a), 352-eee or 352-eeee is applicable (or in cases where applicable local law confers special rights for senior citizens, disabled persons, or other protected class of tenants), and the plan provides that it is an eviction plan, include the following information on the rights of eligible senior citizens and eligible disabled persons.

(1) Explain that senior citizens and disabled persons who meet the eligibility requirements may not be evicted by unit owners or any subsequent purchaser at any time because the building is converted to condominium ownership or under owner occupancy provisions of rent codes.

(2) If G.B.L., section 352-eee is applicable, state that:

(i) an eligible senior citizen is a nonpurchasing tenant who is 62 years of age or older on the date the plan is declared effective and the spouse of any such tenant on such date;

(ii) G.B.L., section 352-eee does not require that a tenant file an election form in order to qualify as an eligible senior citizen. However, it is advised and requested that a tenant who believes he or she is or will become an eligible senior citizen within 12 months from the date the plan is filed, complete the election form SH-5 promulgated by the Department of Law and included in the plan. This senior citizen election form may be completed, signed, notarized and returned to the sponsor;

(3) If G.B.L., section 352-e(2-a) or 352-eeee is applicable, explain that an eligible senior citizen is a nonpurchasing tenant and the spouse of a nonpurchasing tenant who:

(i) is 62 years of age or older on the date that the plan is filed with the Department of Law (filing date); and

(ii) has elected not to purchase his or her apartment within 60 days from the presentation date by completing the senior citizen election form in the plan, signing the form and having the signature notarized, and personally delivering it to the named sponsor or selling agent at a location specified in the plan or by mailing it by certified or registered mail, return receipt requested to the named sponsor or selling agent at the location specified in the plan. In the event that the plan becomes subject to G.B.L., section 352-e(2-a) after the plan was accepted for filing, (a) the plan must be amended immediately after the statute becomes applicable to such offering, and (b) such election may be made within 60 days of presentation of such amendment;

(4) Explain that an eligible disabled person is a nonpurchasing tenant and spouse of a nonpurchasing tenant who:

(i) has an impairment which results from anatomical, physiological or psychological conditions, other than addiction to alcohol, gambling, or any controlled substance, which is demonstrable by medically acceptable clinical and laboratory diagnostic techniques, and which is expected to be permanent, and which prevents the disabled person from engaging in any substantial gainful employment on the date the Department of Law accepted the plan for filing; and

(ii) has elected not to purchase his or her apartment within 60 days from the presentation date by completing the disabled person election form in the plan, signing the form and having the signature notarized, and personally delivering it to the named sponsor or selling agent at a location specified in the plan or by mailing it by certified or registered mail, return receipt requested to the named sponsor or selling agent at the location specified in the plan; and

(iii) if the disability first occurs after acceptance of the plan for filing, then such election may be made within 60 days following the onset of such disability unless during the period subsequent to 60 days following the presentation of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser. In the event that the plan becomes subject to G.B.L., section 352-e(2-a) after the plan was accepted for filing, (a) the plan must be amended immediately after the statute becomes applicable to such of-

fering, and (b) such election may be made within 60 days of presentation of such amendment.

(5) Describe the protections given to eligible senior citizens and eligible disabled persons under G.B.L., section 352-e(2-a), 352-eee or 352-eeee, including the following:

(i) No eviction proceedings will be commenced at any time against either eligible senior citizens or eligible disabled persons, except for nonpayment of rent, illegal use or occupancy of the apartment, refusal of reasonable access to the owner or a similar breach of obligations to the landlord.

(ii) Eligible senior citizens and eligible disabled persons who reside in apartments subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto.

(iii) The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing by the Department of Law shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. Complaints concerning such increases may be referred to the New York State Department of Law, Real Estate Finance Bureau, 120 Broadway, 23<sup>rd</sup> Floor, New York, N.Y. 10271.

(iv) The rights granted under the plan and rent regulatory laws to eligible senior citizens and eligible disabled persons may not be abrogated or reduced, regardless of any expiration of or amendment to G.B.L., section 352-e(2-a), 352-eee or 352-eeee.

(v) Each owner of a unit occupied by an eligible senior citizen or eligible disabled person shall be bound by the provisions of the G.B.L. and the terms of the plan. The bylaws of the condominium must require that such purchase is subject to all the rights of the eligible senior citizen or eligible disabled person occupying the apartment and that the purchaser, his successors and assigns shall continue to be bound as long as such occupancy continues.

(6) Sponsor may dispute the election by a tenant to be an eligible senior citizen or an eligible disabled person by applying to the Department of Law for a determination of the tenant's eligibility within 30 days of the receipt of the election form pursuant to section 23.8 of this Part. The Department of Law shall issue a determination of eligibility within 30 days thereafter.

(7) In the absence of fraud, the determination by the Department of Law is the sole method for resolving a dispute as to whether a tenant is an eligible senior citizen or eligible disabled person. The determination by the Department of Law is reviewable only through a proceeding under article 78 of the Civil Practice Law and Rules.

(8) State that an election not to purchase shall not preclude an electing senior citizen or disabled person from subsequently purchasing his or her apartment on the terms and conditions set forth in section 23.8 of this Part.

(n) *Rights of existing tenants.*

(1) Describe the rights of tenants as established in the General Business Law, the New York City Rent Stabilization Law, the New York City and State Rent Control Laws, the Emergency Tenant Protection Act, article 7C of the Multiple Dwelling Law, or as granted by the sponsor. Include in the offering plan only the descriptions that are applicable to the particular tenants who reside in the building. Include discussions of:

(i) The exclusive period. State:

(a) all bona fide tenants in occupancy on the date the plan is accepted for filing will have the exclusive right to purchase their dwelling units for 90 days after the plan is presented;

(b) any bona fide tenant with the right to renew a lease on the date the plan is accepted for filing has the right to purchase as a tenant during the exclusive period;

(c) any bona fide tenant who has the right to continued occupancy on the date the plan is accepted for filing has the right to purchase as a tenant during the exclusive period;

(d) for the purpose of determining who has the right to purchase during the exclusive period, a bona fide tenant of record with an unexpired lease on the date the plan is accepted for filing shall be presumed to be a tenant in occupancy even if the tenant has sublet his or her dwelling unit or the dwelling unit is not the tenant's primary residence;

(e) a bona fide sublessee in occupancy on the date the plan is accepted for filing has the right to purchase during the exclusive period if he or she: ( 1 ) sublets from a non-bona fide tenant, or (2) has obtained written permission to purchase his or her dwelling unit from a bona fide tenant of record. Nothing herein shall be construed to deprive an owner of any legal remedy for illegal occupancy;

(f) a residential occupant entitled to protection under article 7-C of the Multiple Dwelling Law has the right to purchase during the exclusive period;

(ii) any protected period of occupancy before a tenant may be evicted;

(iii) any period of time during which a tenant has the right to purchase on the terms obtained by an outside purchaser;

(iv) any provisions of notice to the tenants or posting of the percentage of tenants who have purchased units, or percentage of units for which sponsor has accepted purchase agreements;

(v) any protection against rent increases for nonpurchasing tenants. State that complaints of unconscionable rent increases proscribed by law may be referred to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, NY 10005;

(vi) the provision to nonpurchasing tenants of all services and facilities required by law on a nondiscriminatory basis. Refer to the services described in the Obligations of Owners of Dwelling Units Occupied by Nonpurchasing Tenants section of the plan;

(vii) any requirement that tenants or their representatives be allowed to inspect the building or buildings;

(viii) any protection against interruption or discontinuance of services or harassment of tenants;

(ix) the extent to which applicable law (such as G.B.L., section 352-e [2-a], 352-eee or 352-eeee) protects nonpurchasing tenants against termination or abridgement of rights acknowledged or granted in the plan in the event of expiration of or amendment to such law; and

(x) whether nonpurchasing tenants will be subject to rent increases as a result of capital improvements made by the sponsor, the board of managers or unit owners. If the plan or any amendments disclose capital improvements made or to be made by sponsor, discuss the projected cost of such improvements, the amount by which the reserve fund will be reduced to pay for such improvement, or the amount of the prospective rent pass along to each nonpurchasing tenant and the procedure which must be followed for each tenant before the rent increase may be collected. Refer to reserve fund section.

From time to time the Department of Law may promulgate model forms for the description of tenants' rights under various laws. The transmittal letter from the attorney who prepared the plan must note whether the applicable model forms are used.

(2) State that the bylaws provide that nonpurchasing tenants will be promptly notified of changes in ownership by any purchasers of their units and that the board of managers will retain and make available such information.

(3) State whether sponsor will permit the assignment or transfer of purchase agreements by tenants in occupancy prior to declaring the plan effective, and refer to the Assignment of Purchase Agreements section of the plan; see subdivision (r) of this section.

(4) State that if the sponsor amends the terms and conditions of the offering prior to the closing of the first unit to be more favorable to nonpurchasing tenants, a person entitled to purchase pursuant to clause (1)(i)(a) of this subdivision and who executed and submitted a purchase agreement for the unit the tenant occupied on the date that the plan was accepted for filing, shall benefit from the more favorable terms and conditions, even though such purchase agreement was entered into before the sponsor amended the terms. State whether the provision applies to tenants who purchased units other than their own and whether the provision applies to assignees of tenant's purchase agreements.

(5) State whether tenants in occupancy may purchase a vacant apartment or any other apartment not occupied by the tenant, the price of the other apartment, the procedure to purchase, and the procedure that will be followed if more than one tenant seeks the same apartment.

(6) State whether any tenants in occupancy have access to or an exclusive right to use any portion of the common elements, such as garage spaces, roofs or gardens and whether such rights are protected by applicable law.

(7) State that a purchase agreement from a tenant in occupancy for his or her own unit executed during any exclusive purchase period shall have priority over and preempt any purchase agreement from nontenants. This statement shall be included in the explicit terms of the purchase agreement.

(8) Highlight as a special risk and discuss if by reason of the termination of real estate tax benefits, tenants will no longer be subject to rent regulation. State when rent regulation will cease. If the plan is an eviction plan subject to G.B.L., section 352-eee or 352-eeee, or is a plan subject to G.B.L., section 352-e(2-a), discuss any protection against rent increases for eligible senior citizens and disabled persons contained in those sections. If the plan is a noneviction plan subject to G.B.L., section 352-eee or 352-eeee, discuss any protection against rent increases for nonpurchasing tenants contained in those sections.

(o) *Obligations of owners of dwelling units occupied by nonpurchasing tenants.* The discussion of the obligations of owners of dwelling units occupied by nonpurchasing tenants shall include:

(1) the rights of existing tenants to continued occupancy; and

(2) the specific laws and rent regulations such as the New York City Rent Stabilization Law and Code, New York City and State Rent Control Law, the Emergency Tenant Protection Act, the Multiple Dwelling Law, and the Multiple Residence Law, that will apply to the tenancy of the dwelling unit. Discussions of these obligations shall include:

(i) any obligation to register the unit with the Division of Housing and Community Renewal, and whether the dwelling unit is subject to rent control, rent stabilization, the Emergency Tenant Protection Act or any other type of rent regulation. State whether the dwelling unit would be subject to any form of rent regulation after the unit is vacated by the original nonpurchasing tenant;

(ii) the obligation to pay the amount due as common charges, special assessments and real estate taxes for the unit even if the amount is more than the rent received from the nonpurchasing tenant;

(iii) the obligation to provide to the nonpurchasing tenant all services required by law to the extent applicable, including the obligation to make all repairs to the unit which are not the responsibility of the board of managers of the condominium. These services may include, but are not limited to, painting, interior decoration, repairs to interior



plumbing and wiring and replacement of fixtures and of appliances, doors, hardware and windows. While the sponsor is in control of the board of managers, the sponsor must guarantee that these services will be provided if required by applicable law;

(iv) all litigation costs, fees, and any dues related to the tenancy, are the sole responsibility of the purchaser;

(v) the obligation to give renewal leases and riders as required by law and that the tenants may be evicted only on grounds permitted by law; and

(vi) all leases may be inspected by potential purchasers, and should be inspected to ascertain the purchaser's obligations;

(3) the condominium bylaws shall provide and purchase agreements for dwelling units occupied by nonpurchasing tenants shall include an agreement by the purchaser to appoint irrevocably the condominium's managing agent and its successors (or the board of managers of the condominium if no managing agent is employed by the condominium) as his or her agent to provide to the nonpurchasing tenant(s) all services and facilities required by law;

(4) purchase agreements for dwelling units occupied by nonpurchasing tenants and the bylaws for the condominium shall include an agreement by the purchaser (other than the sponsor) to deposit with the managing agent (or the board of managers of the condominium if no managing agent is to be employed) at the closing an amount not less than the greater of two months' common charges or two months' rent, to be used as working capital to furnish services required under the nonpurchasing tenant's lease and the laws and regulations specified in paragraph (2) of this subdivision. Upon notice by the managing agent (or the board of managers of the condominium) that the deposit has been diminished, the fund shall be replenished by the unit owner within a specified period of time. The declaration and bylaws shall provide that the failure of the unit owner to replenish the fund in a timely fashion shall result in the board of managers, on behalf of the unit owners, having a lien against the dwelling unit. Interest, if any, earned on the fund shall be the property of the unit owner;

(5) the responsibility imposed on the owners of dwelling units occupied by nonpurchasing tenants by General Obligations Law, section 7-103 with respect to security deposit funds.

(p) *Interim leases.*

(1) State whether the owner of the building may rent any unit that is vacant before the closing.

(2) If applicable, state that a tenant is subject to the Rent Stabilization Law or Emergency Tenant Protection Act, and under what conditions, if any, such protection will cease. Also state that the rent will not exceed the maximum rental that may be legally collectible, if any.

(3) State that the tenant will continue to be subject to applicable rent regulatory laws in the event that the plan is abandoned.

(4) State whether an uncured default under the purchase agreement is a default under the lease and whether an uncured default under the lease is a default under the purchase agreement. If an uncured default under the lease can result in a default under the purchase agreement, state that before the sponsor may utilize the default under the lease to declare a default under the purchase agreement, the sponsor must either obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the lessee unless the lessee has vacated the unit.

(5) State the length of time the interim lessee has to vacate the unit after a default under the purchase agreement or rescission of the purchase agreement by the lessee.

(q) *Procedure to purchase.* Describe the essential terms of the purchase agreement which must comply with this Part. State the purchase procedure, including to whom and when the purchase agreement must be returned and the deposit

payment made.

(1) State the amount or the percentage of the deposit, which may not be less than the lower of (i) \$1,000 per unit, or (ii) 10 percent of the offering price.

(2) Escrow, trust fund. The following requirements apply to all offerings and shall be fully disclosed in all offering plans subject to this Part:

(i) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of GBL sections 352-e(2-b) and 352-h and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and regulations.

(ii) Mandatory escrow agreement. All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction shall be held pursuant to a written agreement entered into between the sponsor, the purchaser, and the escrow agent. Said provisions may be included in a separate escrow agreement or in the purchase agreement, and are referred to in this paragraph (3) as the “escrow agreement.” The plan must set forth the material terms of the escrow agreement. The sponsor shall specify the exhibit in Part II of the plan that contains the escrow agreement. If a separate escrow agreement is used, a copy of the full agreement must be contained as a separate exhibit to the plan in Part II. Disclose, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the escrow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank, any provision for payments by the sponsor under an indemnity in favor of the escrow agent and whether the sponsor will compensate the escrow agent for acting as such. The plan and escrow agreement must include language conforming to subsections (vi)--(viii), below. However, the failure to include such language in the plan or escrow agreement shall not excuse the sponsor and the escrow agent from compliance with said subsections.

(iii) Payments. All funds received from purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the purchaser to the order of the attorney or law firm as escrow agent.

(iv) The escrow agent. The escrow agent must be an attorney or firm of attorneys admitted to practice in the State of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement. The authorized signatories on the escrow account must be attorneys admitted to practice in the State of New York or admitted in a foreign jurisdiction who submit to the jurisdiction of the State of New York for any cause of action arising out of the escrow provisions set forth in the escrow agreement. Neither the escrow agent nor any authorized signatory on any account may be the sponsor, the selling agent, the managing agent, or a principal thereof. However, a law firm that has a member who is a principal may be the escrow agent provided that members of the firm who are signatories on the account are not themselves principal. Only an attorney or a member of a firm acting as escrow agent shall be a signatory on any account and only such attorney shall be authorized to release funds. The name, address and telephone number of the escrow agent and of each attorney who is a signatory must be stated in the plan.

(v) The account(s): All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five business days after the escrow agreement is signed by all necessary parties in an attorney's segregated special escrow account or accounts in a bank or banks doing business in the State of New York which account(s) is/are covered by Federal Deposit Insurance Corporation (the “FDIC”). Sponsor shall state the applicable FDIC insurance limits, whether and to what extent the deposits, down payments, or advances are insured, and whether sponsor may utilize more than one segregated special escrow account for each deposit, down payment, or advance. Include as a special risk that deposits in excess of said limits will not be federally insured. An attorney shall open and maintain any such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts main-

tained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a subaccount for each purchaser is acceptable. The name of any account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of any account. Funds from this account may be released only by signature of the attorney(s) who is/are named as an authorized signatory or signatories. Neither the sponsor nor any principal of the sponsor may be an authorized signatory on any account. Funds must be placed in an interest-bearing account or accounts, with all interest credited to the purchaser, unless the sponsor elects to place the funds in a separate Interest-On-Lawyer's-Account

("IOLA") for each plan pursuant to Judiciary Law section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from any account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of any account.

(vi) Notification to purchaser. Within 10 business days after the escrow agreement is signed by all necessary parties, the escrow agent shall notify the purchaser that such funds have been deposited in the bank indicated in the offering plan, and provide any account number, and the initial interest rate. If the purchaser does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the purchase and rescind within 90 days after tender of the deposit. Complaints concerning the failure to honor such cancellation requests may be referred to the New York State Department of Law, 120 Broadway, 23<sup>rd</sup> Floor, New York, N.Y. 10271. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the purchaser.

(vii) Escrow revisions. Before funds are transferred to any new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to any new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may not be substituted for any escrow account, unless a special exemption under exceptional circumstances is first requested by the sponsor and is granted by the Attorney General, following the procedures of section 20.3(o)(4) of this Title. In such event, and only after the Department of Law grants such exemption in writing, the provisions of section 20.3(o)(5), (6) and (7) of this Title are applicable.

(viii) Release of funds. The escrow agreement and the plan must set forth the requirements and procedures for the release of the escrowed funds. These shall include:

(a) Under no circumstances shall sponsor seek release of the escrowed funds of a defaulting purchaser until after consummation of the plan. Consummation of the plan does not relieve the sponsor of its obligations pursuant to GBL section 352-h.

(b) The escrow agent shall release the funds in escrow if so directed:

(1) pursuant to terms and conditions set forth in the escrow agreement upon closing of title to the unit;

(2) in a subsequent writing signed by both sponsor and purchaser; or

(3) by a final, non-appealable order or judgment of a court; or

(4) by a final, non-reviewable determination of the Attorney General pursuant to subparagraph (viii) of this paragraph so long as the purchase agreement provides for dispute resolution by the Attorney General and was signed on or before March 1, 2013.

(c) If the escrowed funds are not released pursuant to subparagraph (b), above, and the escrow agent receives a request by either party to release the funds, the escrow agent must give both parties prior written notice of not fewer than 30 days before releasing said funds. If the escrow agent has not received notice of objection to the release of the funds at the expiration of the 30 day period, the funds shall be released and the escrow agent shall provide further

written notice to both parties informing them of said release. If the escrow agent receives a written notice from either party objecting to the release of the escrowed funds within said 30 day period, the escrow agent shall continue to hold said funds until otherwise directed pursuant to subparagraph (b), above. However, the escrow agent shall also have the right at any time to deposit the funds contained in the escrow account with the clerk of a court in the county in which the unit is located and shall give written notice to both parties of such deposit.

(d) The sponsor shall not object to the release of the escrowed funds to:

(1) a purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan; or

(2) all purchasers after an amendment abandoning the plan is accepted for filing by the Department of Law.

(ix) Disputes.

(a) In the event of a dispute arising in connection with a purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the purchaser or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the deposit and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party making such application shall contemporaneously send to all other parties a copy of such application.

(b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the purchaser and the escrow agent shall abide by any interim directive issued by the Attorney General.

(c) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in accordance with a final, non-reviewable determination of the Attorney General.

(d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

(e) If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit and any interest earned thereon until:

(1) both the sponsor and purchaser direct payment to a specified party in accordance with a written direction signed by both the sponsor and purchaser; or

(2) a final, non-appealable order or judgment of a court; or

(3) the escrow agent deposits the disputed amount into court.

(f) In no event shall the escrow agent release funds in dispute, other than a payment of such funds into court, until any dispute is finally resolved either by determination of the Attorney General or by order or judgment of a court of competent jurisdiction or by written agreement of the sponsor and the purchaser.

(x) Exhibits to plan. Copies of the forms provided by the bank for opening the escrow account and the form of escrow agreement if separate from the purchase agreement, must be included as Exhibit B-22 of the submission.

(xi) Records on file. The escrow agent shall maintain all records concerning any escrow account for seven years after release of the funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by one of them or by the successor firm and shall notify the Department of Law of such transfer.

(xii) Review and audit. The Department of Law may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.

(xiii) Waiver void. Any provision of any contract or agreement, whether oral or in writing, by which a purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of this section of the regulations shall prevail over any conflicting or inconsistent provision in the offering plan or in a purchase agreement.

(xiv) Trust obligation of sponsor. Nothing herein contained shall diminish or impair the sponsor's statutory obligation to each purchaser or subscriber pursuant to GBL section 352-h to hold in trust all deposits, advances or payments made in connection with the offer until consummation of the transaction with such purchaser or subscriber. Consummation of the plan does not relieve sponsor of its obligations pursuant to GBL section 352-h. Funds from any escrow account remain the property of the purchaser until consummation of the transaction. Such funds shall not be part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.

(xv) Transition. All funds required to be held pursuant to GBL sections 352-e(2-b) and 352-h on the effective date of this section shall be transferred into escrow accounts in compliance with this regulation within 60 days thereafter.

(3) Highlight as a special risk any provision allowing sums in excess of 10 percent of the purchase price to be retained as liquidated damages, other than the actual cost incurred for any special work ordered by the purchaser. Highlight as a special risk if sponsor may seek specific performance of the purchase agreement.

(4) Any time-is-of-the-essence provision concerning purchaser's obligations must be explained in easily understandable terms and must be highlighted as a special risk.

(5) State that after the amendment declaring the plan effective has been accepted for filing, the sponsor will fix dates for closing title to all units for which purchase agreements have been executed by serving notice on all purchasers and tenants stating the date of the first closing and setting each closing date. Such notice will be served in compliance with section 23.1(d)(1) of this Part no less than 30 days before the date set for the closing of the units. Sponsor may permit purchasers to waive this 30-day provision by including such waiver in the plan or in an amendment thereto.

(6) Sponsor must make a written demand for payment after default 30 days before forfeiture of the deposit shall be declared.

(7) State whether and when the purchaser is required to sign a power of attorney to the board of managers of the condominium, the number of days within which the power of attorney must be returned to the selling agent or sponsor, and the consequences of not returning the power of attorney.

(8) The plan shall state that:

(i) at sponsor's option nontenant purchasers will be afforded:

(a) not fewer than seven days after delivering an executed purchase agreement together with the required deposit to rescind the purchase agreement and have the full deposit refunded promptly. The purchaser must either personally deliver a written notice of rescission to the sponsor or selling agent within the seven-day period, or mail the notice of rescission to the sponsor or selling agent and have the mailing postmarked within the seven-day period; or

(b) not fewer than three business days to review the offering plan and all filed amendments prior to executing a purchase agreement unless fewer than three business days remain in the statutory time period to declare the plan

effective; and

(ii) tenants are afforded not fewer than three business days to review the offering plan and all filed amendments prior to executing a purchase agreement unless fewer than three business days remain in the statutory time period to declare the plan effective.

(9) A complete copy of the purchase agreement must be included in the plan.

(10) Highlight as a special risk if the purchaser's obligation to purchase is not contingent on obtaining financing. If purchaser's obligation is contingent upon obtaining a commitment for financing or actually obtaining financing, explain the terms of the contingency. State the time within which the purchaser must notify sponsor of any inability to obtain financing. Include the purchaser's time to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may change prior to actual closing. If purchasers' obligations are contingent on obtaining a financing commitment and the financing commitment lapses or expires prior to closing, and the purchaser has made a good faith effort to extend the commitment, sponsor must grant to such purchaser a right of rescission and a reasonable period of time to exercise the right.

(11) The plan and purchase agreement must provide that any conflict between the plan and the purchase agreement will be resolved according to the terms of the plan.

(12) State that within a specified number of days after a purchaser delivers an executed purchase agreement together with the required deposit, the sponsor must either accept the purchase agreement and return a fully executed counterpart to the purchaser or reject the purchase agreement and refund the full deposit previously tendered. Discuss the outcome for the purchaser if the sponsor takes no action within the time period specified in the plan.

(13) The purchase agreement and plan may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under article 23-A of the G.B.L. The purchase agreement to be used by tenant purchasers who purchase during any exclusive period may not be modified except by a duly filed amendment to the plan.

(r) *Assignment of purchase agreements.* State whether sponsor will permit the assignment or transfer of purchase agreements by tenants prior to the declaration of effectiveness. If they will be permitted:

(1) state the conditions, if any, upon which sponsor will grant permission to assign or transfer prior to the declaration of effectiveness. Such conditions shall be specific and reasonable and applied on an objective and nondiscriminatory basis;

(2) in order for assigned or transferred purchase agreement to be counted towards effectiveness:

(i) a purchase agreement shall be signed by the tenant and the full downpayment paid by the tenant to the sponsor; and

(ii) the assignee shall provide an affidavit stating that the assignee was not procured by sponsor, the selling agent, or the managing agent, and that the assignee intends that he or she or a specified member of his or her immediate family will personally occupy the dwelling unit. The form assignee affidavit shall appear in Part II of the plan.

(s) *Effective date.* The plan must explain that the offer to sell is contingent upon the plan being declared effective and upon compliance with the relevant conditions and time periods described in the offering plan. Sponsor must conform with the following provisions in determining whether, when and how the plan will be declared effective.

(1) The plan may be declared effective by (i) an amendment to the plan or (ii) by personal service of notice on every tenant and purchaser or by commencement of service by mail in the manner required by section 23.1(d) of this Part stating that the plan is declared effective and submitting an amendment to the Department of Law within five days confirming that the plan was declared effective on a specified date. The amendment must conform to section 23.5(e) of this Part. State that the closing of the first unit shall not be fixed until the plan is declared effective and this amendment is accepted

for filing by the Department of Law.

(2) If the plan is presented pursuant to G.B.L., section 352-eee or section 352-eeee, state the minimum percentage of sales to tenants or other purchasers that are needed before the plan may be declared effective. In all plans, state that when calculating that percentage, no more than one purchase agreement by an outside purchaser or by the tenant or tenants of a particular dwelling unit shall be counted. Also state that only one purchase agreement from any tenant who leases or occupies more than one dwelling unit shall be counted towards effectiveness.

(3) If the plan is not presented pursuant to G.B.L., section 352-eee or section 352-eeee, state that the plan may not be declared effective unless tenants in occupancy or bona fide purchasers who represent in their purchase agreements that they or specified member of their immediate family intend to occupy the unit when it becomes vacant have signed purchase agreements for at least 15 percent of the units offered under the plan.

(4) State that the plan will not be declared effective based on purchase agreements:

(i) signed by purchasers who have been granted a right of rescission that has not yet expired or been waived; or

(ii) assigned or transferred without compliance with subdivision (r) of this section; or

(iii) if the purchaser was not afforded the protections required by paragraph (q)(8) of this section; or

(iv) with any purchaser who is the sponsor, the selling agent, or the managing agent or is a principal of the sponsor, the selling agent or the managing agent or is related to the sponsor, the selling agent or the managing agent or to any principal of the sponsor or the selling agent or the managing agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; except that such a purchaser other than the sponsor or a principal of the sponsor may be included to the extent permissible under section 23.5(e)(6)(viii)(c) or (e)(6)(ix)(b)(2) of this Part, as applicable. Identify by apartment number those units that will and those units that will not be counted toward declaring the plan effective.

(5) The plan must be declared effective when purchase agreements have been accepted by sponsor for 80 percent or more of the units offered under the plan.

(6) If the plan is submitted pursuant to G.B.L., section 352-eeee:

(i) for a noneviction plan, state that the plan may not be declared effective until written purchase agreements have been executed and delivered for at least 15 percent of all dwelling units in the building or group of buildings or development by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or a specified member of their immediate family occupy the dwelling unit when it becomes vacant. As to tenants who were in occupancy on the date the plan was accepted for filing, the purchase agreement shall be executed and delivered pursuant to an offering made without fraud and discriminatory repurchase agreements or other discriminatory inducements.

(ii) for an eviction plan, state that the plan may not be declared effective unless at least 51 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings on the date the offering statement or prospectus was accepted for filing shall have executed and delivered written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements;

(a) in establishing a base for computing the required 51 percent, all dwelling units in the building or group of buildings shall be included, except:

(I) those that were both vacant and not under lease on the date the offering plan or prospectus was accepted for filing by the Department of Law (the filing date); and

(2) dwelling units of eligible senior citizens and eligible disabled persons who have not subsequently purchased, unless the sponsor has disputed such election in which case the affected dwelling unit will remain in the base until such time as a final determination is made that the election is sustained.

(b) in computing the 51-percent requirement the following purchase agreements may be included:

- (1) purchases by bona fide tenants in occupancy on the filing date of their dwelling units;
- (2) purchases by bona fide tenants in occupancy on the filing date of dwelling units which are both vacant and not under lease;
- (3) purchases by bona fide tenants in occupancy on the filing date of a dwelling unit of another bona fide tenant;
- (4) purchases by the bona fide tenant of record on the filing date or by a subtenant who has the right to purchase; and
- (5) purchase of dwelling units leased to a corporation, partnership, trust, or other entity.

(iii) state that the plan will be deemed abandoned, void and of no effect if it does not become effective within 15 months from the date of issuance of the letter by the Department of Law indicating that the plan has been accepted for filing; and, in the event of such abandonment, no new plan for conversion of such building or group of buildings or development shall be submitted to the Department of Law for at least 12 months after such abandonment. Such 15-month limit shall not be extended, even if a plan is amended from an eviction plan to a noneviction plan.

(7) If the plan is submitted pursuant to G.B.L., section 352-eee:

(i) for a noneviction plan, state that the plan may not be declared effective unless at least 15 percent of those bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan is declared effective have executed and delivered written agreements to purchase under the plan. In computing the percentage necessary for effectiveness, the sponsor may include purchase agreements executed by bona fide purchasers of vacant units who intend to occupy such units and who have signed interim leases and are paying rent. As to tenants who were in occupancy on the date a letter was issued by the Attorney General accepting the plan for filing, the purchase agreement shall be executed and delivered pursuant to an offering made in good faith without fraud and discriminatory repurchase agreements or other discriminatory inducements. In establishing a base for computing the required percentage necessary for effectiveness, all dwelling units in the building, group of buildings or development shall be included in the base;

(ii) for an eviction plan, state that the plan may not be declared effective unless written agreements to purchase under the plan pursuant to an offering made in good faith without fraud and with no discriminatory repurchase agreements or other discriminatory inducements have been executed and delivered by:

(a) at least 51 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the plan was accepted for filing by the Attorney General excluding, for the purposes of determining the number of bona fide tenants in occupancy on such date, nonpurchasing eligible senior citizens who have returned completed election forms and who are 62 years old prior to the plan being declared effective, nonpurchasing and nonelecting eligible senior citizens for whom the sponsor has submitted evidence of eligibility satisfactory to the Department of Law, and nonpurchasing eligible disabled persons; and

(b) at least 35 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings or development on the date the offering statement or prospectus was accepted for filing by the Attorney General including, for the purposes of determining the number of bona fide tenants in occupancy on such date, eligible senior citizens and disabled person;



(I) in establishing a base for computing the required percentages necessary for effectiveness, all dwelling units in the building or group of buildings shall be included, except:

(i) for purposes of both the 51-percent calculation and the 35-percent calculation, those that were both vacant and not under lease on the date the offering plan or prospectus was accepted for filing by the Department of Law (the filing date); and

(ii) for purposes of the 51-percent calculation, dwelling units of eligible senior citizens who have returned completed election forms prior to the plan being declared effective, nonpurchasing eligible senior citizens for whom the sponsor has submitted evidence of eligibility satisfactory to the Department of Law, and eligible disabled persons who have not subsequently purchased, unless the sponsor has disputed such election, in which case the affected dwelling unit will remain in the base until such time as a final determination is made that the election is sustained;

(2) in computing the percentages necessary for effectiveness, the following purchase agreements may be included:

(i) purchase agreements by bona fide tenants in occupancy on the filing date for their dwelling units;

(ii) purchase agreements by bona fide tenants in occupancy on the filing date for dwelling units which are both vacant and not under lease;

(iii) purchase agreements by bona fide tenants in occupancy on the filing date for a dwelling unit of another bona fide tenant;

(iv) purchase agreements by the bona fide tenant of record on the filing date or by a subtenant who has the right to purchase; and

(v) purchase agreements for dwelling units leased to a corporation, partnership, trust, or other entity; and

(iii) state that the plan will be deemed abandoned if it does not become effective within 12 months from the date of issuance of the letter from the Department of Law indicating that the plan has been accepted for filing. In the event of abandonment, no new plan for the conversion of the building may be submitted to the Department of Law for at least 15 months after the abandonment. Such 12-month limit shall not be extended, even if the plan is amended from an eviction plan to a noneviction plan.

(8) A sponsor may change an eviction plan to a noneviction plan by amending the plan prior to declaring it effective. The amendment must grant purchasers a right of rescission and a 30-day period after presentation of such duly filed amendment to exercise the right. Sponsor must return any deposit or downpayment promptly to a purchaser who rescinds with interest earned, if any, and must honor any nonrescinded purchase agreements. Thereafter, sponsor may declare the plan effective as a noneviction plan when sponsor accepts purchase agreements as required by law or by these regulations for a minimum percentage of tenants or units. If the amendment provides that the plan will become a noneviction plan immediately following the expiration of a time period, sponsor shall notify the tenants of the outcome by a notice posted and filed as provided under section 23.1(o) of this Part.

(9) A sponsor may not change a noneviction plan to an eviction plan.

(10) If the plan may be abandoned by sponsor, at its option, before it is declared effective, the plan must state that within a specified number of days after abandonment, all monies paid by purchasers shall be refunded to them in full, with interest earned, if any. Sponsor shall promptly file an amendment together with form RS-3 as required by section 23.1(n)(2) of this Part.

(11) Sponsor may not abandon the plan after effectiveness for any reason other than (i) a defect in title which cannot be cured without litigation or cannot be cured for less than a stated amount which shall not be less than one half of one percent of the total offering amount, or (ii) substantial damage or destruction of the building(s) by fire or other casualty which cannot be

cured for less than a stated amount which shall not be less than one half of one percent of the total offering amount, or (iii) the taking of any material portion of the property by condemnation or eminent domain. Sponsor must provide that any stated dollar amount relied upon as basis for abandonment after effectiveness must exclude any attorney fees or any such title defects, or determinations of any authority or regulatory association which exist on the date of presentation of the plan and are either known to the sponsor or are a matter of public record.

(12) If required by law, state the time within which the plan must be declared effective. If the plan is not declared effective within that time, or if sponsor has not received the minimum requisite number of purchase agreements within that time, state the time period which must elapse before another plan may be presented.

(t) *Terms of sale.*

(1) Describe the type of deed given to unit owners. Highlight as a special risk if the deed is not a full warranty deed or a bargain and sale deed with covenants against grantor's acts. State that a form of unit deed is contained in Part II of the plan.

(2) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing of a purchaser's unit and the rights and obligations of purchasers of damaged units.

(3) State that title to each unit and its appurtenant interest in the common elements will be conveyed at the closing free and clear of all liens, encumbrances and title exceptions other than those described in the plan and the proposed unit deed. Describe all leases, mortgages, liens, encumbrances and title exceptions that will affect the property after closing. Title exceptions may include the state of facts shown on a stated survey and any additional state of facts a subsequent survey would show, provided that such additional state of facts does not render title unmarketable.

(4) State that all personal property located within the unit on the date the purchase agreement is signed or located within the common elements on the date the declaration is filed, that is owned by the sponsor or the owner of the property, if not the sponsor, is included in the conveyance unless specifically excepted in the offering plan.

(5) State that the declaration, bylaws and floor plans for the condominium and such other documents, as required by law, will be recorded or filed prior to the first conveyance of title to a unit in accordance with the New York Condominium Act or applicable State and local law; and state the place of recording or filing.

(6) State that if applicable, prior to closing, the sponsor will procure the real property transfer gains tax tentative assessment and return (or statement of no tax due) and will, at closing, pay all taxes due and comply with the requirements of the New York State Department of Taxation and Finance.

(7) If existing mortgages will not be satisfied at or prior to the closing of the first unit, state that at the time of conveyance of the first unit, each mortgagee will either:

(i) consent to the formation of a condominium and acknowledge that its lien will be limited to unsold condominium units;

(ii) subordinate the lien of its mortgage to the declaration of condominium; or

(iii) release its lien on the condominium unit being conveyed.

(u) *Unit closing costs and adjustments.*

(1) Describe all estimated costs, fees, and charges to be paid or apportioned in connection with closings and specify whether they will be paid by purchaser or sponsor. If the sponsor is imposing any cost, fee or charge on the purchasers which by statute is an obligation of a seller, in the first instance, the offering plan must disclose that the sponsor is transferring a statutory obligation to the purchasers. Include fee and mortgage title insurance charges, State and local transfer

taxes, mortgage recording taxes, recording fees for the deed and any mortgage, power of attorney and any other documents, apportionment of taxes, water and sewer charges, and all other closing costs or adjustments.

(i) For all items to be apportioned, set forth the basis for apportionment.

(ii) Provide a numerical example of all closing costs for a typical unit.

(2) In the event that the plan requires purchaser to reimburse sponsor if any mortgage tax credit is allowed with respect to the unit being sold, note the extent of such credit and such obligation.

(3) If there are closing costs in connection with financing for qualified purchasers, this section should refer to the disclosure required by subdivision (ab) of this section.

(4) If units have not been separately assessed for real estate tax purposes prior to the closing of title to the first unit, sponsor may place in escrow, in the name of the board of managers, an amount equal to the unpaid real estate taxes which will be levied against the parcel for the six-month period following the first closing. Alternatively, the sponsor may place in escrow, in the name of the board of managers, an amount equal to the real estate taxes attributable to the unsold units for such six-month period and may collect at each unit closing the estimated amount of taxes attributable to such unit for the balance of the six-month period. The board of managers will pay the real estate taxes from any escrow account when taxes are due and payable and the funder of any escrow account will be entitled to reimbursement from unit owners to the extent of the actual assessment. No escrow will be required if the condominium bylaws include as part of the common expenses, real estate taxes on the property until the units are separately assessed and that after assessment unit owners will be reimbursed for any overpayment of taxes or assessed for an underpayment.

(v) *Rights and obligations of the sponsor.* Describe the rights and obligations of sponsor under the plan and applicable law with respect to the offering including, but not limited to, the following elements:

(1) Disclose sponsor's intent with regard to the sale of the units offered in schedule A, including whether sponsor will endeavor in good faith to sell all of the units in a reasonably timely manner. If a mortgage currently encumbers the property or will encumber the property at the time of the first unit closing, disclose the terms of the mortgage as they apply to sponsor's obligation to market units for sale as they become vacant, including any minimum number or percentage of units which must be under contract before the plan can be declared effective, the existence of either a minimum release price set by the mortgagee or a required minimum payment per sale which must be made to the mortgagee in order for the mortgagee to release its lien from the unit being sold, and limits or requirements imposed by the mortgagee for sponsor to rent rather than sell under specified market conditions. Disclose any conditions under which sponsor retains the right to rent rather than sell, based on objective articulable criteria, such as a significant decline in market prices of a specific percentage and the conditions under which sponsor would resume sales. If sponsor retains unconditional discretion to rent rather than sell units, include on the cover of the plan the warning set forth in paragraph (c)(1) of this section and discuss as a special risk.

(2) Disclose sponsor's obligation to defend any suits or proceedings arising out of sponsor's acts or omissions and to indemnify the board of managers and the unit owners.

(3) State that all representations under the offering plan, all obligations pursuant to the General Business Law, and such additional obligations under the offering plan which are to be performed subsequent to the closing date will survive delivery of the deed.

(4) Do not include any disclaimers or limitations of liability on the part of the sponsor or its principals for failure to perform any obligation imposed by applicable statute or regulation. Also do not include any financial limitation on sponsor's liability for failure to perform its obligations under the offering plan.

(5) State that sponsor agrees to pay all common charges, special assessments and real estate taxes with respect to unsold units. Sponsor must represent that it has the financial resources to meet its obligations with respect to unsold units and state the means by which it will fund its financial obligations to the condominium. If the funding source is stated as in-

come from projected sales, disclose other sources of funding, if any, that will be utilized if such projected sales are not made. Disclose whether any bond or other security has been furnished to secure sponsor's obligations.

(6) State that the sponsor will cause the board of managers to maintain the property in substantially the same condition and manner as on the date of presentation until the sponsor no longer controls the board of managers.

(7) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing of a purchaser's unit and the rights and obligations of purchasers of damaged units.

(8) State that the sponsor shall procure fire and casualty insurance pursuant to an agreed amount replacement value policy or in an amount sufficient to avoid coinsurance, as reflected in schedule B. (Refer to the disclosure required by subdivision [h] of this section.)

(9) State that in the event of the dissolution or liquidation of the sponsor or the transfer of 10 or more units or 20 percent or more of the total number of units in the condominium, whichever is less, the principals of the sponsor will provide financially responsible entities or individuals who will assume the status and all of the obligations of the sponsor for those units under the offering plan, applicable laws or regulations and in the event of dissolution or liquidation, the principals of the sponsor shall guarantee the performance of such obligations.

(w) *Control by the sponsor.* Describe the extent to which sponsor will or may control the board of managers after the closing of the first unit and the consequences to purchasers of such reservation of control, subject to the following requirements:

(1) If the plan is an eviction plan, sponsor must agree not to exercise voting control of the board of managers for more than two years after the closing of the first unit or whenever the unsold units constitute less than 50 percent of the common interest, whichever is sooner. If the plan is presented as or amended to a noneviction plan, sponsor must agree not to exercise voting control of the board of managers for more than five years from the closing of the first unit, or whenever the unsold units constitute less than 50 percent of the common interests, whichever is sooner. If the bylaws of the condominium do not include a provision that, after an initial sponsor control period, a majority of the board of managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the sponsor and its principals, this fact must be disclosed as a special risk. Specify the manner and timing in which the sponsor will relinquish control of the board of managers. Sponsor shall disclose that a meeting will be held to elect new board members unrelated to the sponsor within 30 days of the expiration of the control period.

(2) Sponsor may not exercise veto power over expenses described in schedule B, or over expenses required: (i) to comply with applicable laws or regulations; or (ii) to remedy any notice of violation; or (iii) to remedy any work order by an insurer.

(3) If the plan is an eviction plan, sponsor may, if the plan so provides, exercise veto power over expenses other than those described in paragraph (2) of this subdivision for a period ending not more than three years after the closing of the first unit or whenever the unsold units constitute less than 25 percent of the common interest, whichever is sooner. If the plan is presented as or amended to a noneviction plan, sponsor may, if the plan so provides, exercise veto power over such other expenses for a period ending not more than five years after the closing of the first unit or whenever the unsold units constitute less than 25 percent of the common interest, whichever is sooner.

(x) *Board of managers.* Describe how the affairs of the condominium will be governed. Summarize the important sections of the bylaws and declaration of condominium, including the following:

(1) State the number and composition of the board of managers, the eligibility requirements, elections and when the first meeting will be held after the closing of title to the first unit. Disclose whether the bylaws include a provision that a majority of the board of managers must be owner-occupants or members of an owner-occupant's household who are unrelated to the sponsor and its principals, after the end of an initial sponsor control period. Discuss when annual meetings will be held and describe the provisions in the bylaws for calling special meetings.

(2) State the names of the present or anticipated first officers and members of the board of managers and their relationship, if any, to sponsor, sponsor's principals and sponsor's attorney.

(3) Explain any provisions for the indemnification of the board of managers. Discuss the potential personal liability of the board of managers.

(4) State whether officers and members of the board of managers serve with or without compensation. Highlight as a special risk if officers and members of the board appointed by the sponsor or sponsor's designees serve with compensation paid by the unit owners.

(5) State whether and under what circumstances officers and members of the board may be removed by the board of managers. The board may not be prohibited from removing members for cause.

(6) Discuss how unit owners' voting rights are computed.

(7) State the percentage of common interest needed to amend the condominium's bylaws and to change the declaration of condominium after it has been filed.

(y) *Rights and obligations of the unit owners and the board of managers.* Describe the rights and obligations of unit owners and the board of managers, including their rights and obligations with respect to:

(1) Sale or lease of units by unit owners.

(i) State that each unit owner has the right to sell or lease his or her unit and describe the restrictions on such right including notification to the board of managers. State whether such restrictions apply to the sponsor, its designees, or the owners of the commercial units. State whether the terms of the lease, including the rent, will be subject to State or local law. If there are any restrictions, the Department of Law may, in its discretion, require an opinion from sponsor's counsel as to the enforceability and legality of these restrictions.

(ii) If the board of managers has a right of first refusal with respect to the sale or lease of a unit or other option to acquire a unit:

(a) state that the board of managers will notify the unit owner of its intention to exercise the right within a specified number of days from the date a unit owner gives notice of intended sale or lease;

(b) state that the board of managers must exercise any right of first refusal within a specified number of days;

(c) describe the procedures to raise funds for the acquisition and maintenance of a unit by the board of managers on behalf of the unit owners, the permissible uses of such unit while so owned or leased, how such a unit may be sold or leased and how the proceeds of the disposition of the unit will be treated; and

(d) state that the board of managers may not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status or other grounds prohibited by law.

(2) Mortgaging of units by unit owners. State that each unit owner has the right to mortgage his or her unit and any restrictions on such right.

(3) Common charges and assessments.

(i) Discuss the procedures to establish common charges and assessments and to divide the charges and assessments among unit owners.

(ii) Discuss the right of the board of managers to accumulate reserves for capital expenditures or otherwise and the restrictions imposed on such rights.

(iii) Discuss how and when the liability of unit owners for common charges and assessments can be terminated.

(iv) State that under the provisions of section 339-z of the Real Property Law, the board of managers on behalf of the unit owners will have a lien on each unit for unpaid common charges assessed by the board of managers and discuss the consequences of such a lien.

(v) State that the board of managers has a lien on each unit for the replenishment of the fund to be maintained pursuant to paragraph (o)(4) of this section and discuss the consequences of such a lien.

#### (4) Repairs.

(i) Describe the obligation to repair and maintain units, limited common elements and common elements and the allocation of responsibility among the unit owners and the board of managers.

(ii) Describe any improvements, maintenance or provision of furnishings required of unit owners such as painting facades or carpeting of units.

(iii) Describe the responsibility for repairs or replacements required as the result of the negligence or abuse of a unit owner.

(iv) State the requirement, and any conditions, for unit owners to grant access to the board of managers and its designees to inspect, remove violations, make general repairs, cure defaults by the unit owner and for other purposes permitted by the bylaws.

#### (5) Additions, alterations and improvements.

(i) Describe the rights and obligations of the unit owners and the board of managers with respect to additions, alterations and improvements.

(ii) Describe the work that unit owners can do without the consent of the board of managers, what work requires consent, and the requirements which apply if a unit owner does his or her own work, at his or her own expense such as filing plans and obtaining insurance.

(iii) Describe any requirements in the bylaws regarding aesthetic controls or architectural restrictions for any additions, alterations or improvements to individual units and/or limited common elements.

#### (6) Insurance.

(i) Describe the insurance coverage provided by the board of managers for the benefit of each unit owner and a unit owner's right to obtain supplemental or additional insurance.

(ii) Indicate any coverage that is not provided by the board of managers and disclose what additional or supplemental coverage is generally available. Refer to schedule B for the details of insurance coverage.

(iii) State the conditions under which the insurance proceeds will be given to the board of managers or to an insurance trustee and how the proceeds will be allocated.

#### (7) Restrictions on occupancy and use. Describe all restrictions on occupancy and use of the unit by the unit owner, including the following:

- (i) any limitation on pets;
- (ii) any aesthetic controls;
- (iii) any limitations on business or professional use, stating whether such limitations are more restrictive than those applicable to the sponsor;
- (iv) any restrictions on occupancy of units owned by corporations, partnerships or fiduciaries;
- (v) any restrictions on illegal or offensive uses;
- (vi) any limitations on guest privileges;
- (vii) limitations on utilization of common elements and parking facilities; and
- (viii) limitations contained in the certificate of occupancy and zoning regulations.

(8) Describe any other material provisions of the declaration or bylaws, including those restrictions required by local law, which significantly affect the rights and obligations of the unit owners or the board of managers.

*(z) Real estate taxes.*

(1) State that after the units are separately assessed, each unit will be taxed as a separate tax lot for real estate tax purposes and that the unit owner will not be responsible for the payment of, nor will his or her unit be subjected to, any lien arising from the nonpayment of taxes on other units.

(i) Note any anticipated delay in obtaining separate assessments by the appropriate tax assessor's office.

(ii) If the units have not been separately assessed for real estate tax purposes prior to the closing of title to the first unit, describe the procedure by which unit owners will make payments towards real estate taxes to the board of managers.

(2) For the present year and the two fiscal years prior to submission, state the assessing authority, the assessed valuation, the tax rates and the amounts payable. Discuss the method of determination of real estate tax assessments for each condominium unit, noting any restrictions or limitations under State or local law. State the basis for the amount of real estate taxes payable by unit owners in the first year of condominium operation as reflected in schedule A. State that the tax assessment for each unit may be allocated on a basis that differs from the allocation of common interests. If actual figures are not currently available, state that the data is estimated.

(3) Discuss any known or tentative changes in the assessed valuation or tax rates which will affect the condominium unit. Describe any changed circumstances such as a sale or a prospective sale prior to conversion to a condominium which may have a material effect on future assessments. If applicable, discuss the impact of section 339-y of the Real Property Law and section 581 of the Real Property Tax Law.

(4) State whether any tax certiorari proceedings are pending, and if so, for whose benefit and at whose expense. Describe the provisions in the bylaws applicable to the review of real estate tax assessments.

(5) Tax exemption and abatement benefits. If the building receives tax benefits (e.g., under section J-51 of the New York City Administrative Code or section 421-a of the Real Property Tax Law) describe the present benefits, the term, the level of benefits for future years of condominium operation, the impact that progressive decreases, if applicable, and the termination of benefits will have on real estate taxes payable by unit owners, and identify the units to which benefits are

attributable. If the offering plan represents that the unit owners may or will receive particular benefits, the plan must state that the sponsor will use best efforts to obtain those benefits, and must project the amount, commencement and duration of the benefits.

(i) Highlight as a special risk if the plan states that the unit owners may or will receive tax benefits and the sponsor does not anticipate obtaining the benefits before the closing of the first unit or if the termination of tax benefits will result in the termination of the rent regulatory status of units which are not sold.

(ii) If the tax benefits are not in place at the time the proposed offering plan is first submitted to the Department of Law, describe the effect on the projected total monthly carrying charges with and without tax benefits. If full tax benefits may be available for only part of the first year of operation, schedule A may reflect either:

(a) partial benefits, with a footnote to explain the timing of full benefits; or

(b) full benefits, with a footnote to explain that the sponsor agrees to pay all real estate taxes in excess of the schedule A figure for the first year of operation as well as an approximate projection of when full benefits will be available.

(iii) Sponsor applying for benefits must request an opinion letter from the New York City Department of Housing Preservation and Development (HPD). Such opinion letter must be obtained before the plan is declared effective.

(iv) Sponsor must represent that it will keep all records required by HPD and will make them available to HPD whenever requested to do so.

(v) Sponsor must disclose that HPD routinely conducts audits, the result of which can be either the reduction or revocation of benefits if proper documentation is not provided.

(vi) Sponsor must state:

(a) upon closing it will make all tax benefit documents available to the board of managers for inspection and copying for the life of the benefits; and

(b) it will file all applications and timely comply with all procedures required to properly process and maintain the tax benefits.

(vii) Set forth in schedule form the progressive decrease in tax benefits during the benefits period.

(viii) If by reason of the termination of real estate tax benefits, tenants will no longer be subject to rent regulation, refer to the Rights of Existing Tenants section of the offering plan.

(aa) *Opinion(s) of counsel.*

(1) Include an opinion from counsel for sponsor or independent counsel that describes the availability of tax deductions for real estate taxes and interest on a mortgage under current Federal, State and local law and the availability of any specific exemptions from real estate taxes for veterans or other purchasers.

(2) Include an opinion from counsel for sponsor or independent counsel that describes the tax status of the condominium with respect to income taxes, and the specific requirements of Internal Revenue Code, section 528 for the board of managers of the condominium to elect to be exempt from Federal income tax on certain common charges collected from unit owners. Discuss any issues in qualifying under section 528 presented by the particular plan, including problems raised by the percentage of common interest allocated among nonresidential units. Unless counsel can render an affirmative opinion that the condominium will be eligible for tax- exempt status under Internal Revenue Code, section 528 should it elect to take such exemption, schedule B of the offering plan must include a projected expense item for income taxes payable



by the condominium. If there are unusual features of the plan which may jeopardize the condominium's eligibility for tax-exempt status, this fact must be highlighted as a special risk.

(3) If the real estate tax benefits are not in place at the time the proposed offering plan is first submitted to the Department of Law, include an opinion from sponsor's counsel or independent counsel that supports the statements and representations in the offering plan regarding real estate tax benefits.

(4) If required, in the discretion of the Department of Law, include an opinion from counsel for sponsor or independent counsel as to the legality and enforceability of restrictions on the use, resale, leasing or mortgaging of the condominium units.

(5) Include an opinion from counsel for sponsor or independent counsel as to compliance with Real Property Law, section 339(i) in assigning the percentage of common interest to each unit. Indicate which method was used and whether this opinion is based on other expert factual determinations as required by subdivision (i) of this section.

(6) These opinions may be contained in one letter from counsel or each opinion may be rendered by different counsel.

(7) Counsels' opinions may not contain a general disclaimer of liability. They may, however, contain disclaimers of liability in the event that the critical facts presented by sponsor and sponsor's experts were or prove incorrect or there are changes in the applicable law and regulations, decisional law or Internal Revenue Service rulings. They may state that they are attorney's opinions, but not guarantees, that the condominium will be eligible for tax-exempt status or that the deductions will be available to unit owners (or that unit owners will be eligible for real estate tax benefits).

(8) Suggested language for the disclaimer of liability is set forth as follows:

In our opinion, the condominium will be eligible for tax-exempt status, if it elects such status, and unit owners will be entitled to income tax deductions (or the unit owners will be eligible for the real estate tax benefits described in the preceding paragraphs). However, this opinion is not a guarantee; it is based on existing rules of law applied to the facts and documents referred to in said paragraphs. No assurances can be given that the tax laws upon which counsel base this opinion will not change. In no event will the sponsor, the sponsor's counsel, the board of managers of the condominium, the selling agent or any other person be liable if there are changes in the facts on which counsel relied in issuing this opinion or if there are changes in the applicable statutes, regulations, decisional law or Internal Revenue Service rulings on which counsel relied which cause the condominium to cease to meet the requirements of section 528 of the Internal Revenue Code of 1986, as amended or the New York State Tax Law, as amended and unit owners not to be entitled to income tax deductions (or which cause unit owners not to be or to cease to be entitled to the benefits or the level or duration of benefits described in the preceding paragraphs).

(ab) *Financing for qualified purchasers.* Disclose the terms of any commitment by sponsor or a lender procured by sponsor to finance the purchase of units. The terms shall include and are not limited to the following:

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the offering price) available for a unit and the minimum term of the mortgage. If the financing offered is not self-liquidating over the term, state how the amount of the balance or "balloon" due on maturity will be calculated and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the principal balance is due in less than five years. If the sponsor is providing the financing, state whether the sponsor will refinance or extend the mortgage at maturity. State the maximum amount of financing available to purchasers generally through a bulk commitment.

(3) Availability. Sponsor must discuss whether financing is available to all purchasers. If not, discuss the method of allocation of such financing which shall not constitute a discriminatory inducement to tenant purchasers.

(4) Interest rate. State the annual interest rate over the term of the mortgage. If the mortgage has a variable or adjustable

rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact that adjustments will have on debt service payments and the principal balance. If the sponsor structures the financial terms of the transaction in such a manner as to result in possible taxable income to a purchaser, the financial and tax implications of such structuring must be disclosed. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing interest rate and the interest rate offered to purchasers. If the mortgage is not self-liquidating, also disclose any limitation on the ability of the purchasers to refinance on the same or better terms.

(5) Payments. State when payments are due, and how payments are applied to interest and principal. For variable rate mortgages, adjustable rate mortgages or negative amortization mortgages, disclose how initial payments are allocated to interest and principal, disclose the impact that interest rate changes will have on the allocation of payments to interest and principal and on itemized deductions available to unit owners. If any mortgage is a “negative amortization” mortgage, highlight as a special risk and explain the meaning of a “negative amortization” mortgage and the additional risks and costs to the unit owner.

(6) Prepayment. State whether and when the unpaid principal balance may be prepaid in whole or in part, the number of days of prior notice that must be given, and any charges for prepayment. Disclose any restrictions on the ability of a purchaser to prepay the entire unpaid principal at any time.

(7) Insurance. State the amount and type of insurance required to be carried for the benefit of the sponsor or any mortgage lender procured by the sponsor.

(8) Escrow and reserve requirements. Describe the requirements for escrow and reserve deposits, including those for taxes, water and sewer charges, capital reserves or otherwise and whether and how such requirements may be modified.

(9) Term of commitment. State when the financing commitment expires.

(10) Late charges. Describe the amount of late charges and how they are assessed.

(11) Additional financing costs. Disclose the amount of additional costs or charges to purchasers in connection with such financing including, for example, points, origination fees, lender's or any other legal fees, processing fees, application fees, insurance and appraisal fees.

(12) Restrictions. Describe major restrictions on a unit owners' right to alter, improve, sell, lease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a unit.

(13) Events of default. Describe the material events of default entitling the lender to accelerate the principal indebtedness and describe grace periods granted to unit owners.

(14) If any proposed financing contains unusual risks and features which are not prevalent among financing institutions in the State of New York engaged in providing condominium mortgages to unit purchasers, highlight as a special risk and explain the risks of such financing. The attorney who prepared the plan must note such financing in the transmittal letter to the Department of Law required by section 23.2(c)(1) of this Part.

(ac) *Reserve fund and/or working capital fund.* The offering plan must state in two separate sections of the plan whether the condominium will have funds for working capital and/or as a reserve for capital expenditures. The offering plan must comply with any applicable law concerning reserve funds and/or working capital funds. If such funds are provided, state the amount of the funds; whether the sponsor and purchasers contribute to the funds; what restrictions there are on the use of each fund; when the funds will be available to the condominium; and which capital replacements and repairs are to be credited against sponsor's contribution to the reserve fund. If a fund is called a reserve fund, it may be used only for capital expenditures, and the condominium's bylaws shall contain a provision authorizing the establishment of such a fund. Discuss whether the reserve fund (if any) will be sufficient to pay for the replacement of capital items likely to be needed as disclosed in the description of property and building condition.

- (1) Unless highlighted as a special risk, the plan shall provide that while the sponsor is in control of the board of managers, the reserve fund or working capital fund may not be used to reduce projected common charges in the plan.
- (2) If the offering plan provides for a reserve fund or a working capital fund, the plan must state that neither the Department of Law nor any other government agency has passed upon the adequacy of the funds.
- (3) Closing adjustments between the sponsor and the board of managers may be deducted only from the working capital fund. If a substantial credit to the sponsor can be anticipated with reasonable probability, the approximate range or amounts of such adjustment item must be disclosed. Disclose how the net closing adjustments, if in favor of the sponsor, are to be paid. State whether there will be a minimum working capital fund regardless of the amount of closing adjustments.
- (4) If, by reason of any substantial closing adjustment item in favor of the sponsor, the sponsor will be paid over a period of time, such as by an installment note, the budget in the plan (schedule B) must reflect such proposed payments, including interest, as a separate line of the budget with a footnote disclosing the nature and purpose of the payments.
- (5) Discuss the condominium's available means and options to finance needed capital expenditures such as renewal or replacement of building components or systems or to remedy major building defects.
- (6) Highlight as a special risk if it appears that the reserve fund (if any) plus any budgeted capital expenditures may not be sufficient to provide for needed expenditures within five years following the first closing under the plan.

(ad) *Management agreement, contracts and leases.*

- (1) Summarize the important terms of the management agreement including:
  - (i) the name and address of the managing agent;
  - (ii) the term of the management agreement and the agent's right (if any) to cancel the agreement;
  - (iii) all fees and other compensation for services;
  - (iv) the major duties and services to be performed by the managing agent including whether bookkeeping, payroll and collection of common charges are provided;
  - (v) the obligation (if any) of the board of managers of the condominium to reimburse the agent for expenses incurred or to indemnify the agent against liability for acts properly performed by it pursuant to the agreement;
  - (vi) whether the management agreement is assignable by the agent and what restrictions are imposed on assignability;
  - (vii) the right of the board of managers to cancel the agreement for cause.
- (2) Plans subject to the provisions of GBL, section 352-eee(3) or 352- eeee(3) shall refer to the applicable GBL provision and state its requirements.
- (3) If not described in detail in the footnotes to the budget, summarize all agreements or leases that will be binding on the condominium, including the name of the contractor or lessee, the services rendered or received, the annual income or cost and the expiration date of the contract or lease.
- (4) Highlight as a special risk if any contract is binding on the condominium for more than five years after the antici-

pated closing date unless it is customary in the area to enter a long- term contract for the service rendered, e.g., a cable television contract. Note whether the contract is with a business associate or affiliate of the sponsor or its principals.

(5) Disclose the material terms of all leases with the condominium, including but not limited to the following:

(i) State the date and term of each lease, the space leased, the identity of the lessee and sublessee(s), if any, the rent and any additional rent payable thereunder, and the present and permitted use for the space.

(ii) State whether the present and future rent payable by the lessee is sufficient to cover the expenses fairly attributable to the leased space.

(iii) Highlight as a special risk if: (a) any lease has a term exceeding 10 years; (b) if the lease generates or is expected to generate less income than the pro rata share of expenses attributable to the leased space now or in the future; or (c) if the ratio of income generated by the lease to the share of expenses fairly attributable to the leased space may decline in the future. Describe the potential burden to the condominium of these risks. Disclose the basis for projecting the share of expenses attributable to the leased space, and estimate the income and expenses for the lease term.

(iv) Explain the board of managers' rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting uses to those compatible with the residential character of the building, and barring offensive uses. State whether consent of the board of managers is required before the lessee can assign or sublet space, change the current uses, alter the structure, or perform work that may result in mechanics' liens.

(v) When the lessee or sublessee is the sponsor, the selling agent or the managing agent; or is a principal of the sponsor, the selling agent or the managing agent, or is related to the sponsor, the selling agent, the managing agent; or any principal of the sponsor, the selling agent or the managing agent, by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; the following provisions shall apply:

(a) The lease may not contain any unconscionable terms, including but not limited to any provisions pursuant to which the rent payable may be less than expenses fairly attributable to the leased space.

(b) The lease must contain escalator clauses which ensure that the rent payable by the lease for the term of the lease will be sufficient to cover the expenses fairly attributable to the leased space, such as expenses for real estate taxes, labor, insurance, heating and utilities.

(c) Any lease that comes within this subparagraph must be noted in the transmittal letter to the Department of Law required by section 23.2(c)(1) of this Part.

(d) Discuss the applicability of the Condominium and Cooperative Abuse Relief Act (15 USC 3601 et seq.).

(ae) *Identity of parties.*

(1) State the names, business addresses, backgrounds and experience of sponsor, and principals of sponsor as defined in section 23.1(c) of this Part. If the sponsor is a contract vendee, such information shall also be provided with respect to the contract vendor and the principals of the present owner and any relationship between the owner of the property and the contract vendee shall also be disclosed. Describe (i) any prior felony convictions of sponsor and/or any principals of sponsor, and (ii) any prior convictions, injunctions and judgments against sponsor and/or any principals of sponsor that may be material to the offering plan or an offering of securities generally and that occurred within the 15 years prior to the submission of the proposed offering plan. Also state the above information for all individuals who own or control a 10 percent or more equity interest in the sponsor.

(2) List all properties offered for sale by sponsor, sponsor's principals, or any affiliates of sponsor or sponsor's principals,

as cooperatives, condominiums, planned unit development homes, or time shares which were first offered within the past five years. Describe these properties by address and the year they were first filed. If the number of such properties or projects exceeds five for the sponsor or a principal, the five most recent offerings may be listed.

(3) State the name and address of sponsor's attorney, and identify which attorney prepared the offering plan.

(4) If there is or will be a managing agent or manager for the property, include the name, address and experience of the managing agent or manager and a representative list of other properties being managed by the managing agent or manager. If the managing agent or manager has no comparable experience, so state. Describe (i) any prior felony convictions of the managing agent or any principals of the managing agent; and (ii) any prior convictions, injunctions and judgments against the managing agent or any principal of the managing agent that may be material to the offering plan or an offering of securities generally, that occurred within 15 years prior to the submission of the proposed offering plan.

(5) State the name, address and experience of the selling agent. Describe (i) any prior felony convictions of the selling agent, or any principals of the selling agent; and (ii) any prior convictions, injunctions and judgments against the selling agent, or any principals of the selling agent that may be material to the offering plan or an offering of securities generally, that occurred within 15 years prior to the submission of the proposed offering plan.

(6) State the name, address and experience of the sponsor's professional engineer or registered architect.

(7) State the relationship (if any) between the sponsor or its principals and (i) the selling agent, (ii) the managing agent, (iii) the engineer or architect, and (iv) any person or firm who will provide services to the condominium subsequent to the commencement of condominium operation.

(8) If applicable, state that the Secretary of State has been designated to receive service of process for an out-of-state sponsor or selling agent or for any principals of the sponsor or of the selling agent who reside outside of New York.

(9) Identify each cooperative, condominium or homeowners association, other than the subject building(s), where the sponsor, general partner or principal of the sponsor, or the owner of unsold units, owns 10 percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal or owner of unsold units is current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, and payments of underlying mortgages, and payment of loans for which shares or units have been pledged or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(af) *Sponsor's profit.*

(1) If sponsor, a principal or principals of sponsor have not had any ownership interest in the property for three years or more prior to submission of the proposed offering plan to the Department of Law, estimate the amount of total profit the sponsor will make on the conversion.

(2) Include the following information in describing the profit:

(i) the date that the sponsor acquired or will acquire an ownership interest;

(ii) the purchase price of the ownership interest (and when the purchase price is payable if not yet paid), the amount of any purchase money mortgage(s) on the property and the amount of any mortgage(s) that the sponsor assumed or took subject to;

(iii) the approximate cost of capital expenditures undertaken or to be undertaken by sponsor;

(iv) the costs associated with acquisition and ownership of the property, including financing costs; and

(v) the aggregate amount for costs incurred in connection with the conversion such as sales commissions, attorneys' and engineers' fees, printing, advertising, government filing fees and transfer taxes.

(3) In estimating the sponsor's profit, assume that all units of the condominium will be sold. Unless the assumption would be misleading for a particular property, assume that 100 percent of the units will be sold at the price in schedule A for tenant purchasers.

(4) If sponsor, a principal or principals of sponsor have had an ownership interest in the property for more than three years prior to the submission of the proposed offering plan to the Department of Law, state whether the sponsor expects to make a profit on the conversion.

(ag) *Reports to unit owners.* State that it is the obligation of the board of managers of the condominium to give all unit owners annually:

(1) A financial statement of the condominium prepared by a certified public accountant or public accountant by a specified date; such statement shall be certified while the sponsor is in control of the board of managers.

(2) Prior notice of the annual unit owner's meeting.

(3) A copy of the proposed annual budget of the condominium by a specified number of days prior to the date set for adoption thereof by the board of managers.

(ah) *Documents on file.* State that sponsor shall keep copies of the plan, all documents referred to in the plan and all exhibits submitted to the Department of Law in connection with the filing of the plan, on file and available for inspection without charge and copying at a reasonable charge at a specified location for six years from the date of first closing. State that the sponsor shall deliver to the board of managers a copy of all documents filed with the appropriate recording office at the time of the closing of the first unit.

(ai) *General.* Describe any other material facts concerning the sponsor, the selling agent, the managing agent, any of their principals, the property, the offering, and prospective purchasers' rights and obligations including the following:

(1) Disclose whether there are any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, the rights of existing tenants, sponsor's capacity to perform all of its obligations under the plan, the condominium or the operation of the condominium.

(2) Disclose whether the property was the subject of any prior cooperative or condominium offerings. Disclose whether any preliminary binding agreements have been entered or whether money has been collected from prospective purchasers.

(3) Represent that the sponsor and its agents will not discriminate against any person on any basis prohibited by civil rights laws.

(4) Note purchasers' right to rescind purchase agreements following material adverse amendments, see section 23.5(a)(5) of this Part and purchasers' right to a new exclusive purchase period following substantial amendments, see section 23.5(a)(6) of this Part.

(5) Disclose any circumstances which may affect use or enjoyment of the property and appurtenances, such as reciprocal covenants or easements, impending adjacent high-rise construction, any usage restriction by statute, ordinance or zoning resolution such as specified occupancy percentage by certified artists, or historic district or landmark designation, unless disclosed elsewhere in the plan.

(aj) *Reservation of air and developmental rights.*

(1) A sponsor who is reserving the right to transfer air or developmental rights to other buildings or where the prior or current owner of the building or buildings previously has conveyed, transferred or reserved air or developmental rights for use in other buildings must comply with the following requirements:

(i) Disclose that the building(s) undergoing conversion cannot be expanded or may be limited.

(ii) Disclose the maximum amount of space or the maximum number of stories that may be added to adjoining properties from the sale of air rights from this property. State that additional space or stories may be added from the transfer of air rights from other properties.

(2) A sponsor who is reserving the right to add to the existing building(s) must provide the following information:

(i) a comprehensive narrative description of the additional space to be built in compliance with section 20.7 of this Title and section 23.7(aa) of this Part;

(ii) approved building plans and specifications must be obtained prior to acceptance for filing;

(iii) schedule A, prices of units, must include all information required by section 20.3(h) of this Title and subdivision (g) of this section for the new, as well as for the existing, units if the new units will be part of the condominium; and

(iv) schedule B, budget for first year of condominium operation, must reflect expenses associated with the operation of the space to be newly constructed, including footnotes and supporting documentation required by section 20.3(i) of this Title. If construction will not be completed before the end of the first year of operation of the condominium, the budget may reflect the condominium as it was originally for the first year of operation but sponsor must also prepare a budget showing income and expense when construction is completed. In no event will the foregoing relieve the sponsor from its obligation of paying common charges in compliance with law.

(3) A sponsor who is reserving the right to add to the existing building(s) must submit a statement from a professional engineer or a registered architect concerning the impact of the renovation or construction on essential services. This must include:

(i) the hours when construction will occur;

(ii) security to be furnished during the construction period;

(iii) handling of construction debris;

(iv) insurance and liability during the construction period; and

(v) access to the building.

(4) A sponsor who is reserving air or developmental rights must include this fact in the section entitled "Special Risks."

(ak) *Sponsor's statement of building condition.* Include the following provisions:

(1) Sponsor must adopt the Description of Property and Building Condition set forth in Part II of the plan, and represent that sponsor has no knowledge of any material defects or need for major repairs to the property except as set forth in the Description of Property and Building Condition.

(2) To the extent not reported in the Description of Property and Building Condition, describe any rehabilitation to be

completed by sponsor and the timetable for completion.

(3) If not stated in the Description of Property and Building Condition, state whether the number of units offered is identical to the number of units stated in the certificate of occupancy, whether the proposed use of the units is the same as the use indicated in the certificate of occupancy and whether property interests that are offered, such as basement facilities, are provided for in the certificate of occupancy.

(4) Note any official inspection reports reflecting upon condition of the premises, such as notices of building code violations, or any reports required by local law, including, if applicable, the report required by C26-105.3 of the Administrative Code of the City of New York, which shall be reproduced in Part II of the plan.

(5) If applicable, disclose the existence and availability, at the offices of the sponsor and the selling agent, of any inspection reports by a professional engineer or a registered architect retained by a group or association of tenants. The Department of Law, in its discretion, may require such inspection report(s) to be reproduced in Part II of the offering plan. The reproduction of such reports shall be for informational purposes only, shall not be part of the sponsor's Description of Property and Building Condition, and shall not be deemed to be encompassed or covered by the respective certifications of (i) the sponsor and sponsor's principals, and (ii) the sponsor's professional engineer or registered architect.

(6) Disclose the existence of any applicable Federal, State or local laws concerning lead-based paint and whether the sponsor will comply with such laws and the regulations promulgated thereunder.