

13 NYCRR Section 20.4.

Transmittal Letter and Certifications

(a) *Transmittal letter.* A transmittal letter addressed to the Department of Law that is signed and affirmed by the individual attorney who prepared the offering plan, and containing the following unqualified statements must be submitted with the plan and exhibits:

- (1) at the time the plan is submitted for filing; and
- (2) immediately prior to its acceptance for filing:

“I am the attorney who prepared the condominium offering plan for the captioned property. I affirm as follows:

Enclosed for filing pursuant to Part 20, Newly Constructed, Vacant or Non-Residential Condominiums are copies of the offering plan together with the Exhibits.

I am fully familiar with the provisions of Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20.

I prepared the attached offering plan and Exhibits based on information from the sponsor. I have read all the printed copy submitted to the Department of Law but expressly disclaim any responsibility to have made an independent inspection of the building(s) or property or investigation of the information furnished to me by sponsor.

I have no actual knowledge of any violation of Article 23-A of the General Business Law or Part 20 of the regulations promulgated by the Department of Law, nor do I have actual knowledge of any material fact omitted or any untrue statement of any material fact included in the offering plan.”

(b) *Certification by sponsor.* Include in Part II of the plan and in the exhibits a certification subscribed and sworn to by the sponsor and sponsor's principals in their capacity as principals, in the following form:

“We are the sponsor and the principals of sponsor of the condominium offering plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Department of Law in Part 20 and such other laws and regulations as may be applicable.

We have read the entire offering plan. We have investigated the facts set forth in the offering plan and the underlying facts. We have exercised due diligence to form a basis for this certification. We jointly and severally certify that the offering plan does, and that documents submitted hereafter by us which amend or supplement the offering plan will:

- (i) set forth the detailed terms of the transaction and be complete, current and accurate;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;
- (iii) not omit any material fact;
- (iv) not contain any untrue statement of a material fact;

(v) not contain any fraud, deception, concealment, suppression, false pretense or fictitious or pretended purchase or sale;

(vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) not contain any representation or statement which is false, where I/we:

(a) knew the truth;

(b) with reasonable effort could have known the truth;

(c) made no reasonable effort to ascertain the truth; or

(d) did not have knowledge concerning the representation or statement made.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.”

(c) *Certification by engineer or architect.* Include in Part II of the plan and in the exhibits the following certification subscribed and sworn to by an engineer or architect (who must either be registered as an architect or be licensed to practice as a professional engineer in the jurisdiction where the condominium is located). If the engineer or architect is a principal of the sponsor, the certification must be submitted by an independent engineer or architect. The certification and inspection report must both be dated within 90 days prior to the date of submission of the offering plan to the Department of Law. A second certification containing the language in parenthesis, below, shall be submitted with any addendum to a report.

“The sponsor of the offering plan to convert the captioned property to condominium ownership retained me/our firm to prepare a report describing the construction and/or renovation of the property (the “Report”). I/We visually inspected existing portions of the renovated property, if any, on _____, and I/we examined the building plans and specifications that were prepared by _____ dated _____ and prepared the Report dated _____. (I am/We are supplementing the report in this addendum dated _____,) a copy(ies) of which is (are) intended to be incorporated into the offering plan so that prospective Purchasers may rely on the Report (and addendum).

I am/we are a registered architect/licensed engineer in the State-state in which the property is located.

I/We understand that I am/we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to this Report (addendum).

I/We have read the entire Report (addendum) and investigated the facts set forth in the Report (addendum) and the facts underlying it with due diligence in order to form a basis for this certification. This certification is made for the benefit of all persons to whom this offer is made.

I/We certify that the Report (addendum):

(i) sets forth in narrative form the description and/or physical condition of the entire property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;

(ii) in my/our professional opinion affords potential investors, purchasers and participants an adequate basis

upon which to found their judgment concerning the description and/or physical condition of the property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;

(iii) does not omit any material fact;

(iv) does not contain any untrue statement of a material fact;

(v) does not contain any fraud, deception, concealment, or suppression;

(vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;

(vii) does not contain any representation or statement which is false, where I/we:

(a) knew the truth;

(b) with reasonable effort could have known the truth;

(c) made no reasonable effort to ascertain the truth; or

(d) did not have knowledge concerning the representation or statement made.

I/We further certify that I am/we are not owned or controlled by and have no beneficial interest in the sponsor and that my/our compensation for preparing this Report (addendum) is not contingent on the conversion of the property to a condominium or on the profitability or price of the offering. This statement is not intended as a guarantee or warranty of the physical condition of the property.”

(d) *Certification by expert on adequacy of budget (or revised or updated budget)*. Include in Part II of the plan and in the Exhibits a certification subscribed and sworn to by an expert concerning the adequacy of Schedule(s) B, B-1 and C, if applicable, in the following form. The certification must be dated within 90 days prior to the date of the submission of the offering plan to the Department of Law. The expert's certification must be based on experience in the management of cooperatives or condominiums or rental properties and must disclose the approximate number of properties managed and length of time managed together with other relevant real estate experience, qualifications and licenses.

“The sponsor of the condominium offering plan for the captioned property retained me/our firm to review or prepare Schedule(s) B, B-1 and C, containing projections of income and expenses for the first year of condominium operation. My/our experience in this field includes:

I/We understand that I am/we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to Schedule(s) B, B-1 and C.

I/We have reviewed the Schedule(s) and investigated the facts set forth in the Schedule(s) and the facts underlying it with due diligence in order to form a basis for this certification. I/We also have relied on my/our experience in managing residential buildings.

I/We certify that the projections in Schedule(s) B, B-1 and C appear reasonable and adequate under existing circumstances, and the projected income appears to be sufficient to meet the anticipated operating expenses for the projected first year of condominium operation.

I/We certify that the Schedule(s):

- (i) sets forth in detail the projected income and expenses for the first year of condominium operation;
- (ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of condominium operation;
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;
- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where I/we:
 - (a) knew the truth;
 - (b) with reasonable effort could have known the truth;
 - (c) made no reasonable effort to ascertain the truth; or
 - (d) did not have knowledge concerning the representation or statement made.

I/We further certify that I am/we are not owned or controlled by the sponsor. I/We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the income and expenses for the first year of condominium operation.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I/We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.”

(e) *Certification by expert on adequacy of common charges payable by the commercial unit owner(s).* Include in Part II of the plan and in the Exhibits a certification subscribed and sworn to by an expert concerning the adequacy of common charges payable by the commercial unit owner(s) in the following form. The certification must be dated within 90 days prior to the date of the submission of the offering plan to the Department of Law. The expert's certification must be based on experience in the management of cooperatives or condominiums or rental properties, including buildings with commercial space, and must disclose the approximate number of properties managed and length of time managed together with other relevant real estate experience, qualifications and licenses.

“The sponsor of the condominium offering plan for the captioned property retained me/our firm to review or prepare Schedule B which includes projections of common charges payable by the owners of the commercial unit(s). My/Our experience in this field includes:

I/We understand that I am/we are responsible for complying with Article 23-A of the General Business Law and the regulations promulgated by the Department of Law in Part 20 insofar as they are applicable to the commercial unit(s) listed in Schedule B.

I/We have reviewed the Schedule as it impacts upon the commercial unit(s) and investigated the facts underlying it with due diligence in order to form a basis for this certification. I/We also have relied on my/our experience in man-

aging residential buildings.

I/We certify that the projections in Schedule B for common charges payable by the owners of commercial unit(s) appear reasonable and adequate under existing circumstances to meet the anticipated operating expenses fairly attributable to such commercial unit(s) for the projected first year of condominium operation, and that the allocation of common charges attributable to the commercial unit(s) also reflects special or exclusive use or availability or exclusive control of particular common areas.

I/We certify that the estimates in Schedule B for the common charges payable by the owners of the commercial unit(s):

- (i) set forth in detail the projected common charges for the commercial unit(s) for the first year of condominium operation;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the common charges payable by the owners of the commercial units(s);
- (iii) do not omit any material fact;
- (iv) do not contain any untrue statement of a material fact;
- (v) do not contain any fraud, deception, concealment, or suppression;
- (vi) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) do not contain any representation or statement which is false, where I/we:
 - (a) knew the truth;
 - (b) with reasonable effort could have known the truth;
 - (c) made no reasonable effort to ascertain the truth; or
 - (d) did not have knowledge concerning the representation or statement made.

I/We further certify that I am/we are not owned or controlled by the sponsor. I/We understand that a copy of this certification is intended to be incorporated into the offering plan. This statement is not intended as a guarantee or warranty of the common charges fairly attributable to the commercial unit(s) for the first year of condominium operation.

This certification is made under penalty of perjury for the benefit of all persons to whom this offer is made. I/We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law.”