

13 NYCRR Section 22.3.

Format and Content

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 General Business Law and, if applicable, the laws governing corporations which affect the creation and operation of the HOA in the State of incorporation of the HOA.

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

(1) The title in bold face type: HOMEOWNERS or PROPERTY OWNERS ASSOCIATION OFFERING PLAN followed by the name of the HOA and the address of the property, including street, city, county, and state.

(2) The amount of the offering based on the total value of the fully improved common property to be owned and maintained by the HOA, without regard to the effect of the filing of the declaration of covenants, restrictions, easements and liens on the property. If the initial amount of the offering is for common property associated with only the first phase of a multi-phase development, so state, and indicate the value of the common property associated with each subsequent phase. Indicate all possible phases. The amount for the phase or phases being offered must be documented by an appraisal by a licensed real estate broker or licensed appraiser in the area and included as Exhibit B-20. Indicate that the cost of membership in the HOA is included in the purchase price of the homes or lots.

(3) The number of homes or lots being offered. If the initial offering is for the first phase of a multi-phase development, so state. Indicate the total number of homes or lots associated with each phase. Also indicate the anticipated maximum number of homes or lots to be offered in each later phase. Indicate if certain homes or lots are not being offered for sale.

(4) The name and principal business address of the sponsor and the selling agent. Telephone numbers may also be included. The address of the sponsor may not be in care of sponsor's attorney, nor a post office box.

(5) 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 from 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 (i) the proposed plan is first submitted to the Department of Law and (ii) when the final plan is submitted to the Department of Law.

(6) 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 bold-face roman type, at least eight point modern type and at least two points leaded.

(7) The following statement in capital letters printed in bold-face roman type, at least 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 MEMBERSHIP INTERESTS IN THE HOMEOWNERS (OR PROPERTY OWNERS) ASSOCIATION. 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 MEMBERSHIP INTERESTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

Formatted: Indent: Left: 36 pt

(b) *First page.* The first page of the offering plan preceding the table of contents shall contain exclusively the follow-

ing notice in bold type:

THIS OFFERING PLAN CONTAINS THE TERMS OF THE OFFER OF SALE AND THE OBLIGATIONS OF THE SPONSOR.

PLEASE READ IT CAREFULLY.

THE PROPERTY YOU ARE PURCHASING IS PART OF A PRIVATE SELF-GOVERNING SUBDIVISION WHICH MAY INITIALLY BE CONTROLLED BY THE SPONSOR.

YOUR OBLIGATIONS AS A LOT OWNER ARE INCLUDED IN THIS PLAN. THIS PLAN IS PREPARED AND ISSUED BY THE SPONSOR OF THIS SUBDIVISION. IT HAS BEEN FILED WITH THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, DEPARTMENT OF LAW, REAL ESTATE FINANCE BUREAU, 120 BROADWAY, NEW YORK, NEW YORK 10271.

(c) Table of contents. The format and order set forth below 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. 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 on the sponsor or the board of directors, such as the purchase agreement or contract of sale, the deed to the lot, the declaration of covenants, restrictions, easements and liens, and the by-laws of the HOA shall be consistent with the disclosures in the plan and shall conform to the requirements of this section.

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(d) *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 association charges or obligations of HOA members in future years of HOA 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.

(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 22.1(d) of this Part.
- (2) Identify the sponsor and state when the sponsor acquired the property or sponsor's interest as a contract vendee.
- (3) Briefly describe the location and size of the development; specify the extent and nature of the HOA property and the type of interest that the HOA is to acquire in the property. Distinguish between property owned or to be owned exclusively by purchasers, HOA property, and property dedicated or to be dedicated to the local government.
- (4) Summarize the number and type of homes or lots being offered in this offering plan in conjunction with membership interests in the HOA. If applicable, include the minimum number and the maximum number of homes or lots that may be part of the HOA and the number of possible phases to be offered in the HOA. State the number and types of homes that have been built or may be built in conjunction with related offering plans or in related sections or phases of the HOA. Briefly describe any common parking or recreational facilities. State the maximum capacity use for each recreational facility at any given time.
- (5) Briefly summarize the functions or purposes of the HOA and describe the maintenance of any facilities. State that when an owner sells a home or lot, the purchaser automatically becomes a member of the HOA.
- (6) State that the price of the homes or lots includes the cost of membership in the HOA and that prices are set

by the sponsor alone and are not subject to review or approval by the Department of Law or any other government agency.

(7) Describe services to be provided to members of the HOA by the local government. If police, fire, water, sewer, refuse and snow removal or road maintenance services are not provided by the local government, refer to the section of the plan that describes how such services will be provided.

(8) Disclose the permitted uses of the adjoining areas or prohibitions on the use of such areas.

(9) If sponsor or any principal of sponsor owns, in whole or in part, or has an option or right to acquire in whole or in part, any adjoining 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.

(10) State that the plan as presented to prospective purchasers contains all of the detailed terms of the transaction as it relates to the HOA. State that copies of the plan and all exhibits submitted to the Department of Law will be available for inspection without charge and for copying at a reasonable charge to prospective purchasers and their attorneys at the site whenever the on-site sales office is open and at the office of the selling agent or sponsor.

(11) State any lawful limitations on who may purchase homes or lots.

(12) Include the following paragraph printed in bold-face roman type at least as large as eight point modern type and at least two points leaded:

THE PURCHASE OF A HOME ASSOCIATED WITH MANDATORY MEMBERSHIP IN A HOMEOWNERS ASSOCIATION HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A CONTRACT OF SALE.

(13) If applicable, state the minimum number of homes or lots to be sold before sponsor will commence conveying title and such contingency shall be contained in the purchase agreement. The plan must be amended to disclose when the contingency has been met. No closing may occur until such amendment is accepted for filing by the Attorney General. The contingency for closing must be highlighted as a special risk.

(f) Description of common areas and facilities to be owned or maintained by the HOA.

(1) Include a general description by sponsor of the land, buildings, lots, parking facilities, recreational facilities and amenities. Include in Part II of the plan a detailed description and outline specifications prepared by an engineer or architect that complies with the requirements set forth in section 22.7 of this Part. If the HOA property includes one or more roads, a detailed description of the makeup of the road(s) is required. There must be disclosure of whether the road(s) will be built to local government specifications capable of being dedicated to the locality or whether the construction materials or size of the road(s) is in any way inferior to such local government specifications for a public road. If the HOA property consists of sewer and/or water lines constructed in accordance with local government specifications, a detailed description of such systems is required. Sponsor must disclose whether any bonds have been posted for the completion of this work. If not, such fact must be highlighted as a special risk. For existing HOA buildings, the detailed description must include a statement of building condition.

(2) State whether the property will be improved and the homes and amenities constructed in accordance with all applicable zoning and building laws and specify the laws and regulations that apply.

(3) In newly constructed projects, state the approximate construction timetable for completion of the first home,

the remaining homes, related sections of the HOA, recreational facilities and amenities.

(4) State whether any roads to be constructed by sponsor will be dedicated to the local government. Describe access from individual lots to public roads.

(g) *Budget for first year of HOA operation (Schedule A).* The plan must describe all projected income and expenses for the first year of HOA operation in Schedule A.

(1) The budget shall be based upon a specified 12 month period to commence on the date when it can reasonably be projected that the first closing will occur. If the actual or anticipated date of commencement of HOA 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. State that if such amended projections exceed the original projections by 25 percent or more, the sponsor will 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 within a reasonable period of time to purchasers who rescind.

(2) In the case of out-of-state homeowners associations, the budget provided may be the actual budget currently in operation if such budget does not expire within six months of the filing of the offering plan in New York State.

(3) If the number of homes or lots that will be members of the HOA is not firm and there are predetermined sections or phases to be added, and assessments by the HOA may increase with the size of membership (*e.g.*, recreational facilities may be added if membership increases), include alternative budget projections showing how the income and expenses will change as the size of membership increases, or as the development progresses into subsequent sections or phases.

(4) State the estimated cost per member for association charges and the number of members upon which this estimated cost is based. If the number of homes or lots that will be members of the HOA is not firm, state the maximum cost per member for association charges. Also indicate how the charges per member will change as the size of membership increases. State how and when association charges are payable.

(5) If association charges vary for different types of homes or lots or for different classes of members in the HOA, indicate the estimated cost for association charges for each home or lot, for different types of homes or lots or for each class of member in the HOA and the basis or formula for any distinction in charges or classes.

(6) The budget for the HOA shall 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 particular HOA should be added whenever appropriate to reflect additional sources of income, expenses, costs or unique circumstances.

SCHEDULE A

Budget For First Year Of HOA Operation

Beginning _____, 19 _____

Projected Income

Maintenance charges

(\$ _____ per home per year

payable monthly/annually

based on _____ homes)..... \$ _____

* Other (explain)..... \$ _____

TOTAL..... \$ _____

Projected Expenses

* Labor..... \$ _____

* Heating..... \$ _____

* Utilities (Electricity and gas for common property)..... \$ _____

* Water charges and sewer rents..... \$ _____

* Repairs, maintenance and supplies..... \$ _____

* Road Maintenance..... \$ _____

* Service Contracts..... \$ _____

* Snow Removal..... \$ _____

* Refuse Removal..... \$ _____

* Insurance..... \$ _____

* Management Fees..... \$ _____

Legal Fees..... \$ _____

Accounting Fees..... \$ _____

Taxes..... \$ _____

* Real Estate..... \$ _____

* Franchise and Corporate..... \$ _____

Income..... \$ _____

* Sales..... \$ _____

* Reserve..... \$ _____

* Other..... \$ _____

TOTAL..... \$ _____

(7) Detailed numbered footnotes and documentation associated with each identified footnote in the form of contracts, quotations or letters from appropriate parties included as Exhibit B-23 must support and explain the projected amounts in Schedule A. The footnotes must set forth the basis of assumptions for each projection and also state the service provided for such budgeted figures. Include the following information if the expense item is applicable to the HOA.

(i) Labor costs. State the number of full and part-time staff projected for the HOA in Schedule A and whether the staff will be union members. State whether such level of staffing complies with all applicable housing and labor laws. The labor budget must include benefits required by local, state or federal law or required by contract such as worker's 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 payroll tax rates applicable for the budgeted year, and reasonably anticipated increases, or increases now mandated by contract. If applicable, state the expiration dates of all union contracts. If there is non-union labor in the development, discuss whether their wages meet minimum wage laws. In the case of an occupied nonresidential development, if the budget reflects a reduction in the existing staff, disclose what effect this will have on the existing level of services and whether such reduction is lawful.

(ii) 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 to the HOA property. State the basis for projecting the quantity of energy to be used. In the case of an occupied nonresidential development, unless it would be misleading for a particular development, 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.

(iii) Utilities (*e.g.*, 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.*, estimates based on current tariffs plus 10 percent increase. State which services will be provided by or through the board of directors and which must be obtained directly by home or lot owners. In the case of an occupied nonresidential building, unless it would be misleading for a particular development, base the projected quantity of the utilities on the average quantity of the utilities purchased for the prior three years.

(iv) Water charges and sewer rents. State the basis for the projection. If water charges or sewer rents will be separately billed by the HOA to individual lot or homeowners, the estimated individual annual charges should be stated in a separate schedule.

(v) Repairs, maintenance and supplies. Itemize the material components of the expense for repairs and maintenance that are the responsibility of the HOA such as interior repairs, roofing, exterminating, gardening, landscaping, janitor supplies, painting, and other service and maintenance items not included under "service contracts", "road maintenance", "snow removal", "refuse removal" or "other". State whether sponsor has procured or arranged actual contracts for the services described. Base the cost of the services on actual estimates, and state such basis in the footnote. In the case of an occupied nonresidential development, 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.

(vi) Road maintenance. If applicable, describe the services provided and the cost associated with maintaining the roads, including reserves set aside for repair and replacement. State the basis of the cost and indicate whether sponsor has procured or arranged actual contracts for the services described.

(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 5 years after the anticipated first closing unless it is customary in the area to enter into a long-term contract for the service rendered (*e.g.*, cable television contract).

(viii) Snow removal and refuse removal. State the services to be provided and the basis for the projected costs.

(ix) Insurance. If HOA property includes buildings or if the HOA is providing common fire insurance on homes, the budget for insurance must provide for 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 co-insurer. Discuss the adequacy of the insurance to replace the structure in the event of total loss and to avoid being a co-insurer in the event of partial loss. If the homes of the HOA members are attached and common fire insurance coverage is not required, highlight as a special risk the consequences which could result if an uninsured or underinsured unit is damaged or destroyed by fire or other casualty. (*Note:* If common fire and casualty insurance is mandatory, provision should be made in the declaration or by-laws to require mortgage holders to waive their customary right to apply insurance proceeds to the mortgage indebtedness.) Disclose the items covered, the coverage amount limits, the deductibles and the exposure insured against.

(a) If the sponsor is in control of the board the budget for insurance must provide for and the HOA must have public liability insurance at closing. If no public liability insurance is provided, and if the HOA owns or maintains property, such failure to provide this insurance must be highlighted as a special risk.

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

(c) State that if there is common fire, casualty and general liability insurance, it must be on terms that provide:

- (1) that each homeowner is an additional insured party if casualty insurance covers the individual homes;
- (2) that there will be no cancellation without notice to the board of directors;
- (3) a waiver of subrogation;
- (4) a waiver of invalidity because of the acts of the insured and homeowners; and
- (5) a waiver of pro rata reduction if homeowners 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 homeowners to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to contents of the home, and liability coverage for occurrences within the home.

(x) Management fees. 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. Highlight as a special risk if the cost of the management contract is greater or substantially less than the prevailing cost for similar services, and 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, state the services that homeowners will have to provide and disclose that maintenance charges will increase if the HOA retains a managing agent in the future.

(xi) Legal fees and audit fees. If the budgeted amount for legal fees is less than \$5,000, the footnote must indi-

cate 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 certified financial statement for the HOA.

(xii) Real estate taxes. State the assessing authority, the projected assessed valuation and the basis for such valuation, the tax rate and the projected amounts to be paid. If the assessing authority or legal counsel renders an opinion that the assessed valuation of the HOA property will be reflected in the assessed valuation of the individual lots or homes, real estate taxes may be budgeted at zero (\$0). If no opinion is available, include an expert's projection of assessed valuation at Exhibit B-10, and budget for real estate taxes based on the projected assessed valuation.

(xiii) Franchise or corporate taxes, income taxes and sales taxes. Include in the budget if taxes are payable by the HOA pursuant to state or local law, or under federal income tax law, or furnish proof, by opinion of counsel or confirmation from taxing authorities, that the HOA is not subject to such taxes pursuant to such laws.

(xiv) Reserve. Some HOAs will be responsible for replacing roofs, repainting unit exteriors, resurfacing parking areas and roadways. These items will require special assessments unless reserves are built into the annual budget taking into account the life of the items. A reserve should be set aside for this purpose, or the probability of incurring substantial special assessments in the future indicating the replacement cost of the items should be highlighted as a special risk. The footnote must indicate the expected life of the item, the projected replacement cost and the calculation of the amounts to be placed in reserve each year.

(xv) Note: Roadways and sewers. The budget does not have to include road maintenance if roads are dedicated to the local government. The cost of sewage disposal does not have to be included if it is part of a local government sewer system. If the roads have not been dedicated when the plan is submitted or if the local government is not operating the sewer system when the plan is submitted, sponsor must state approximately when the local government will assume responsibility, whether there are any conditions precedent, and whether any completion bonds have been posted. If the local government will not assume responsibility until after the first closing, sponsor must either budget maintenance costs or agree to bear the cost of maintenance and operation until the local government assumes responsibility and indicate whether security has been posted to guarantee performance of this financial obligation.

(xvi) Other expenses. Include additional expenses such as association dues, HOA telephone expenses, license fees, registrations, permits, contingencies and miscellaneous expenses, including interest.

(h) *Accountant's certified statements of operation.* In the case of an occupied non-residential premises or an operating HOA located out-of-state, include certified statements of income and expense, 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 development has been in operation for less than two years, include a statement for the period since the development 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 months after that 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.

(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 A.

(3) The following income or expense items and other such items that are not applicable to the operation of the project as an HOA may be excluded: depreciation; vacancy advertising; credit checking; interest income; rental commissions; and painting of and repairs to improvements on individual lots.

(i) *Existing commercial or professional tenants.* In the case of an occupied nonresidential premises, state that outside purchasers of occupied units buy subject to the existing leases. State that all leases may be inspected by potential purchasers at the office of the selling agent to ascertain the purchaser's obligations under the lease.

(j) *Interim leases.*

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

(2) 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.

(3) 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.

(k) *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) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of [General Business Law 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.

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

(i) The account(s). All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction must be placed within five business days after the 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 is insured by the Federal Deposit Insurance Company ("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 account for each deposit, down payment, or advance. Include as a special risk, where applicable, 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 maintained 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 any account may be released only by signature of the attorney who is named as escrow agent. Neither the sponsor nor any principal of the sponsor may be a signatory on any account. Funds must be placed in an interest-bearing account or accounts, with all interest credited to the purchaser, unless either the purchaser defaults and the plan is consummated, or

the sponsor elects to place the funds in a separate Interest-On-Lawyer's-Account (IOLA) for each offering 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 the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of any account.

(ii) 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.

(iii) The escrow agent. The escrow agent must be an attorney 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 agreement or a firm of such attorneys. The escrow agent shall be independent of the sponsor. Attorneys admitted or practicing in the State of New York must comply with the Appellate Division rules for the preservation of client funds of the Judicial Department having jurisdiction over the attorney. A law firm which has a member who is a principal of the sponsor, shall not be the escrow agent, but one or more members of the firm other than the principal may act as escrow agent. Only an attorney 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.

(iv) Escrow agreement. The material terms of the escrow agreement shall be disclosed in the plan and a copy of the full agreement must be contained as an exhibit to the plan in Part II. Include, 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. A model form for the escrow agreement is available from the Department of Law; if such form is not used the attorney's transmittal letter should so indicate. If a different form of escrow agreement is used, all material terms of the Department of Law's model must be included in the agreement, and the agreement should be red-lined to indicate changes from or additions to the model form.

(v) Notification to purchaser. Within 10 business days after tender of the deposit submitted with the purchase agreement, the escrow agent shall notify the purchaser that such funds have been deposited in the bank indicated in the offering plan, and shall 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, or may apply to the Attorney General for relief. 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.

(vi) 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 be substituted for any escrow account only after the Department of Law approves in writing the use of such alternate form of security, pursuant to the provisions of paragraph (4) of this subdivision *et seq.*

(vii) 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 apply for 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 [General Business Law section 352-h](#).

(b) The escrow agent shall hold the funds in escrow until otherwise directed in:

- (1) a writing signed by both sponsor and purchaser;
- (2) a determination of the Attorney General pursuant to subparagraph (vii) of this paragraph;
- (3) a judgment or order of a court of competent jurisdiction, or until released pursuant to clause (d) of this subparagraph.

(c) 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.

(d) If there is no written agreement between the parties to release the escrowed funds, the escrow agent shall not pay the funds to the sponsor until the escrow agent has given the purchaser written notice of not fewer than 10 business days. Thereafter, the funds may be paid to the sponsor unless the purchaser has already made application to the Department of Law pursuant to the dispute resolution provisions contained in these regulations and has so notified the escrow agent in accordance with such provisions.

(viii) Disputes.

(a) In the event of a dispute, 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 down payment and any interest earned thereon. Forms for this purpose will be available from the Department of Law. A copy of such form shall be annexed as an exhibit in Part II of the plan. The party applying 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 the determination of the Attorney General, subject to any court action in which preliminary relief is granted.

(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;
- (2) a judgment or order of a court of competent jurisdiction is served on the escrow agent; 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

such dispute is finally resolved either by determination of the Attorney General, by order or judgment of a court of competent jurisdiction or by written agreement of the sponsor and the purchaser.

(ix) Exhibits to plan. Copies of the forms provided by the bank for opening any escrow account and the escrow agreement as proposed must be included as Exhibit B-21 of the submission. Upon first deposit, a copy of the escrow agreement as executed and a copy of the bank forms as executed must be submitted as supplements to Exhibit B-21 of the submission.

(x) 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.

(xi) 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.

(xii) 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.

(xiii) Trust obligation of sponsor. Nothing contained herein shall diminish or impair the sponsor's statutory obligation to each purchaser pursuant to [General Business Law 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. Consummation of the plan does not relieve sponsor of its obligations pursuant to [General Business Law section 352-h](#). Funds from ~~the any~~ escrow account remain the property of the purchaser until employed in connection with the consummation of the transaction. Such funds shall not be a part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.

(3) Alternatives to escrow account. A sponsor may apply to the Attorney General to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds for use in newly constructed or gut rehabilitated developments upon showing of adequate insurance of such funds to the satisfaction of the Attorney General.

(i) Application for alternate security. Sponsor must submit an affidavit which contains full information as to the proposed usage of such funds, the sponsor's financing of construction or rehabilitation work, expected completion date, the terms and conditions of the proposed surety bonds or letter of credit, and required undertakings and covenants.

(ii) Documentation. The proposed form of surety bond or letter of credit, any underlying agreement or related agreement, and any undertaking or covenant required hereunder, shall be appended to the application and also filed as exhibits to the plan in Exhibits Part B section 22.2(c)(6)(ii)(v) (B-22) of this Part or as exhibits to an amendment to the plan.

(iii) Change from escrow account. Where surety bonds are or a letter of credit is to be provided under an amendment to the plan calling for release of funds already deposited in escrow, the amendment shall provide for, and annex a form for, the written consent of each affected purchaser and shall provide for continuation of escrow of funds of any purchaser who does not execute and deliver such written consent to the sponsor.

(iv) Disclosure. If an application for alternate security is approved, the terms of such alternate security shall be disclosed in the plan or in an amendment to the plan promptly submitted.

(4) Surety bonds. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to purchasers by a licensed insurance company which agrees to act as surety for the amount of such down payments or deposits.

(i) Deposits into escrow account. All down payments and deposits, received after the Attorney General's approval of the use of surety bonds as alternate security, shall be placed, within five business days after the purchase agreement is signed by all necessary parties, in an attorney's segregated special escrow account or accounts, established pursuant to and in compliance with paragraph (2) of this subdivision. Such funds shall be released by the escrow agent to the sponsor upon receipt by the escrow agent of a copy of the surety bond issued to the purchaser whose funds are being released.

(ii) 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.

(iii) Requirements to act as surety. The surety company must be licensed to write insurance in the State of New York by the New York State Department of Financial Services, whether or not the property which is the subject of the plan is located in the State of New York unless the law of the state where the property is located requires otherwise. If the property is located outside New York State and the sponsor claims that the law of such state conflicts and is controlling, the sponsor's application must specify the conflicting law. In order for the application for alternate security to be approved by the Attorney General, the applicant must show that the surety company with which the sponsor proposes to contract has a current rating for debt securities no lower than the third highest grade conferred by at least two of the national reporting services regularly evaluating insurance companies.

(iv) Agreement between sponsor and surety. The plan must fully disclose the material terms of the agreement between the insurance company as surety and the sponsor, including the premium to be paid by the sponsor, any agreement by which sponsor provides collateral to secure its obligations to the surety and any agreement by the sponsor indemnifying the surety. The agreement must provide that the surety will abide by directives in conformity with these regulations.

(v) Provisions of the bond. The surety bond must specify the name and address of the sponsor as principal; the name and address of the surety company to which claims for payment may be made; provision for the name and address of the purchaser as obligee on the bond; provision for the amount of the down payment or deposit secured and the rate of interest, if any, to accrue on such funds; the term of the bond, and, if the bond is for a finite period, a guarantee by the surety that it will pay the amount secured to the purchaser-obligee prior to expiration of the bond or a guarantee by the sponsor that the bond will be renewed before expiration.

(vi) Term and continuation. Each surety bond and any accompanying agreement shall provide that it will continue in effect or that it will be renewed periodically until consummation and closing of the sale of the respective unit the down payment for which is secured by such surety bond or until the secured funds of a purchaser have been returned in full, or until the funds secured by the surety bond have been placed in any escrow account pursuant to paragraph (6) of this subdivision or until there is an undisputed purchaser default or a determination by the Attorney General or order or judgment of a court of competent jurisdiction that the purchaser has defaulted and that the sponsor is entitled to the secured funds.

(vii) Delivery of the surety bond. The sponsor shall cause the surety to mail or personally deliver the surety bond to the purchaser-obligee before the funds are released to the sponsor from any escrow account. The sponsor, the escrow agent and the surety company shall each retain a copy of the surety bond.

(viii) Invoking the bond. The purchaser-obligee shall have the right to demand payment of the amount secured by the surety bond directly from the surety, without first requesting payment from the sponsor. The surety shall be obligated to pay the amount secured by the bond to the purchaser-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances:

(a) timely rescission of a purchase agreement by a purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

(c) determination by the Attorney General pursuant to subparagraph (x) of this paragraph that rescission or the return of funds is required;

(d) failure by the sponsor to obtain a commitment by the surety company to renew the surety bond 60 days prior to its expiration;

(e) direction by the sponsor upon request by the purchaser.

(ix) Failure by purchaser-obligee to produce a copy of the bond. A purchaser's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the purchaser's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the purchaser-obligee without a copy of the bond as long as the purchaser is able to provide proof of identity as the obligee on the bond.

(x) Disputes.

(a) In the event of a dispute, the sponsor shall apply and the purchaser or the surety issuing the bond may apply to the Attorney General for a determination on the disposition of the down payment secured by the bond and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying 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 surety shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(1) that the purchaser is entitled to the disputed funds secured by the surety bond, the surety shall pay the funds to the purchaser in accordance with the determination of the Attorney General;

(2) that the purchaser is not entitled to the disputed funds secured by the surety bond, such determination may provide either that the surety bond shall be continued in effect or that the surety bond may be cancelled.

(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) In no event shall the funds secured by the bond be paid to the purchaser nor shall the surety bond be discharged until any dispute is finally resolved either by written agreement of the parties directing payment of the funds or discharge of the surety bond, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

(5) Letters of credit. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to purchasers by effectuating the issuance of a letter of credit for the benefit of the purchasers by an issuer qualifying hereunder.

(i) Amount. The amount of the letter of credit shall be at least 125 percent of the aggregate of all down payments or payments expected to be received from purchasers, and not retained in escrow, during such period of time as the letter of credit will be needed, as estimated by the sponsor in the application to the Department of Law. The amount of the letter of credit may be reduced or increased as warranted by circumstances and pursuant to a filed amendment to the offering plan.

(ii) Irrevocability. The letter of credit must be irrevocable during the stated term and any renewal term.

(iii) Beneficiary. The beneficiary must be an attorney, or firm of attorneys, acting as or qualified under subparagraph (2)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of purchasers under the plan.

(iv) Authority to draw. The letter of credit must provide that the beneficiary shall have sole power to draw upon the letter of credit without the consent or despite the objection of the sponsor or of any provider of underlying credit, at such times or upon such events as are set forth in subparagraph (ix) of this paragraph.

(v) Issuer. The issuer must be a bank authorized to act as a commercial bank or savings institution under supervision of the New York State Department of Financial Services or a federally supervised banking institution located in the State of New York, unless the property is located in another state and the letter of credit is issued by a bank located within such state. In order for the application for alternate security to be approved by the Attorney General the applicant must show that the issuer bank has surplus funds and net worth of at least 10 times the amount of the letter of credit, and must have a current rating with respect to its debt securities that is within "investment grade" by one of the generally accepted national reporting services regularly rating the debt securities of banking institutions and that the provisions of the letter of credit include the right of the beneficiary to draw down the letter of credit in conformity with these regulations.

(vi) Term and continuation. The letter of credit and related agreement and any accompanying undertaking shall provide that it will continue in effect or that it shall be periodically renewed until consummation and closings of sales of all units referred to in the application for alternate security pursuant to paragraph (3)(i) of this subdivision or until the covered funds of purchasers have been returned to them in full.

(vii) Undertaking. If the letter of credit will expire prior to the latest date of closings of sales of all such units, provision for renewal of the letter of credit without loss of irrevocability and without any change of terms shall be afforded by:

(a) an "evergreen" or automatic renewal clause, if obtainable; and

(b) the irrevocable undertaking and covenant of the sponsor and by any other provider of underlying credit to provide successive renewals thereof until consummation and closings of sales of all units or until the covered funds of purchasers have been returned in full.

(vii) Operative provisions. Upon approval of a sponsor's application for use of a letter of credit as alternate security:

(a) Deposits into escrow account. All down payments and deposits received shall be placed, within five business days after the purchase agreement is signed by all necessary parties, in an attorney's segregated special escrow account or accounts established pursuant to and in compliance with paragraph (2) of this subdivision. The escrow agent shall release such funds to the sponsor provided that the escrow agent has documentation showing that the letter of credit or a renewal or replacement letter of credit has been issued and is in effect. Such escrow agent shall no longer release funds from escrow if the escrow agent receives notice or information warranting draw down of the letter of credit under subparagraph (ix) of this paragraph.

(b) 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.

(ix) Right to draw upon letter of credit. The escrow agent as the beneficiary of the letter of credit, acting as

fiduciary for the benefit of purchasers under the plan whose funds were released from escrow by reason of the grant of sponsor's application, shall have the duty and the right to draw upon and collect the proceeds of the letter of credit, 10 business days after notice to the sponsor and sponsor's failure or refusal to restore such funds to the escrow agent, without the consent or despite the objection of the sponsor or the provider of the credit, upon the following events or circumstances:

(a) timely rescission of a purchase agreement by a purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;

(b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

(c) determinations by the Attorney General pursuant to subparagraph (x) of this paragraph that rescission or the return of funds is required;

(d) failure by the sponsor to obtain a renewal or replacement letter of credit no later than 60 days prior to the expiration of the existing letter of credit;

(e) direction by the sponsor upon request of the purchaser;

(f) notice if impending cancellation of the letter of credit has been given or received, or the issuer has filed a bankruptcy or insolvency petition or has been taken over by a federal or state authority, and no proper replacement of the letter of credit has been furnished although continuation of the same in effect is required under paragraph (3) or subparagraph (5)(vi) of this subdivision.

(x) Disputes.

(a) In the event of a dispute, the sponsor shall apply, and the purchaser, the escrow agent or the bank issuing the letter of credit may apply to the Attorney General for a determination on the disposition of funds secured by the letter of credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Department of Law. The party making such application shall contemporaneously send to the other three parties a copy of such application.

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

(c) If the application permitting release of funds is granted, such funds secured by the letter of credit, and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.

(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) In no event shall the disputed funds secured by the letter of credit be paid to the purchaser nor shall the letter of credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

(6) Change to escrow account. Where alternate security as provided under a filed offering plan is no longer needed by the sponsor, or new or additional alternate security cannot be obtained by a sponsor or its successor, sponsor shall submit an amendment for filing which provides that any future purchase deposits or down payments shall be held in any escrow account in accordance with paragraph (2) of this subdivision. Such amendment shall not affect the spon-

sor's obligation to account for funds previously released to the sponsor unless the funds representing all such deposits or down payments are restored to any escrow account.

(7) If the plan provides for the construction of residential homes, the purchase agreement and the plan must comply with and explain [section 71-a\(3\) of the Lien Law](#) and any other applicable provisions of law.

(8) 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. Disclose under what circumstances sponsor may retain additional moneys paid for special work ordered by the purchaser. Highlight as a special risk if sponsor may seek specific performance of the purchase agreement.

(9) Any "time is of the essence" provision concerning purchasers' obligations must be explained in easily understandable terms and must be highlighted as a special risk.

(10) State when sponsor expects the first closing of a home or lot to occur which should correspond to the first year of operation projected in Schedule A. State that if a date set for closing is delayed by the sponsor 12 months or more, purchaser will be offered rescission.

(11) Sponsor must make a written demand for payment after default at least 30 days before forfeiture of the deposit may be declared.

(12) The plan shall state that at sponsor's option purchasers who have received the plan and all filed amendments will be afforded:

(i) 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 post marked within the seven day period; or

(ii) not fewer than three business days to review the offering plan and all filed amendments prior to executing a purchase agreement.

(13) Disclose whether the risk of loss from fire or other casualty remains with the sponsor unless and until a purchaser takes actual possession of a home pursuant to an interim lease (or written agreement with the sponsor) or legal title to the home has been conveyed to the purchaser. Highlight as a special risk if the risk of loss passes to the purchaser before closing, and explain the need for insurance.

(14) A complete copy of the contract of sale must be included in the plan.

(15) 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 or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may expire or that the terms of the commitment may change prior to actual closing. If a purchaser's 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.

(16) The plan and contract of sale must provide that any conflict between the plan and the contract of sale will be resolved according to the terms of the plan.

(17) State that within a specified number of days after a purchaser delivers an executed contract of sale together with

the required deposit, the sponsor must either accept the contract and return a fully executed counterpart to the purchaser or reject the contract 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.

(18) 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 General Business Law.

(19) State whether sponsor will permit the assignment or transfer of purchase agreements.

(l) *Financing for qualified purchasers.* Disclose the terms of any commitment by sponsor or a lender designated or procured by sponsor to finance the purchase of homes or lots. 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 home or lot 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. If sponsor procures financing with an institutional lender, it is sufficient to refer to the institution's credit standards.

(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.

(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 home or lot owners. If any mortgage is a "negative amortization" mortgage, highlight as a special risk and explain the meaning and the additional risks and costs to the home or lot 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 of 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 home or lot owner's right to alter, improve, sell, lease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a home or lot.
- (13) Events of default. Describe the material events of default entitling the lender to accelerate the principal indebtedness and describe grace periods granted to home or lot 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 mortgages to home or lot 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 22.2(c)(1) of this Part.

(m) *Terms of sale.*

- (1) Describe the type of deed, if any, given to the HOA. 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 the form of HOA property 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 to the HOA facilities that occurs before the transfer of the property to the HOA.
- (3) For offering plans that are not subject to the provisions of [General Business Law section 352-ee](#), state that a closing will be taking place only concurrently with the issuance of a temporary or permanent certificate of occupancy for the entire project or, issuance of a partial, temporary or permanent certificate of occupancy for the home closed or building in which the home is located, if applicable.
- (4) State that title to the HOA property will be conveyed to the HOA at the closing free and clear of all liens, encumbrances and title exceptions other than those described in the plan and the proposed HOA deed. Describe all leases, mortgages, liens, encumbrances and title exceptions that will affect the HOA 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.
- (5) State that the declaration of covenants, restrictions, easements and liens and such other documents as required by law will be recorded or filed prior to the first conveyance of title to a home or lot in accordance with the disclosure contained in the offering plan; and state the place of recording.
- (6) State that, if applicable, prior to any 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 real property transfer gains tax and all other transfer taxes due and comply with the requirements of the New York State Department of Taxation and Finance. If any transfer tax is to be paid by the purchaser, highlight this fact as a special risk and disclose an approximate amount which must be paid by the purchaser.

(n) *Rights and obligations of the sponsor.* Describe the rights and obligations of sponsor under the plan and ap-

applicable law with respect to the offering including, but not limited to, the following elements:

- (1) Disclose sponsor's obligation to defend any suits or proceedings arising out of sponsor's acts or omissions and to indemnify the board of directors and the home or lot owners.
- (2) 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.
- (3) 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 may not be included. The plan may not include any financial limitation on sponsor's liability for failure to perform its obligations under the offering plan.
- (4) If applicable, state the minimum number of homes that the sponsor is obligated to build and describe what HOA property the sponsor is obligated to improve or construct. Describe any additional HOA property that the sponsor is obligated to improve or construct if more than the minimum number of homes is built. State the projected date(s) by which sponsor will decide whether to construct homes in each related offering plan or in related sections or phases. Project the approximate completion date of all sections or phases to be sold in conjunction with membership interests in the HOA. Disclose the construction timetable for the HOA property, related sections or phases, and additional HOA property, including the timetable for landscaping.
- (5) For offering plans involving construction or rehabilitation of HOA property, state whether construction financing is firmly committed at the time of submission of the offering plan to the Department of Law. Disclose any conditions placed on the availability of the construction financing, and highlight as a special risk if the sponsor may not be able to complete construction of the HOA property. Project the timetable for procuring a firm commitment for construction financing.
- (6) State the sponsor's obligation for offering plans involving construction or rehabilitation of HOA property to build and complete the HOA property in accordance with the building plans and specifications identified in the plan and sponsor's right to substitute equipment or materials of lesser quality or design.
- (7) State that the sponsor agrees to pay for the authorized and proper work involved in the construction, establishment and sale of all HOA property that sponsor is obligated to complete under the plan and will cause all mechanics' liens with respect to such construction to be promptly discharged or bonded.
- (8) State that the sponsor will file the declaration and will convey HOA property to the HOA in a particular phase or section prior to closing title to the first home or lot in that phase or section. If applicable, state that the HOA property will be released from the provisions of any land or construction loan mortgages prior to closing title to the first home or lot. If applicable, state that sponsor will complete construction of all streets, sidewalks and parking facilities serving a home or the building in which the home is located and any other facilities that are vital to the health and safety of the owners prior to closing title to the first home. If the municipality permits occupancy and the sponsor escrows funds for completion, closing may occur if such facilities are not vital to the health and safety of the owners.
- (9) For offering plans involving any construction or rehabilitation, state that the sponsor agrees to deliver a set of "as-built" plans of common property improvements to the board of directors, including specifications of roads, sewers and/or water lines and a representation that the plans or specifications are in substantial compliance with the disclosure in the offering plan. If the plans or specifications, as built, are not in substantial compliance with the disclosure in the offering plan, the plan must be amended and rescission must be offered to all purchasers and members.
- (10) Sponsor must disclose whether any bond or other security other than those required by this Part has been furnished to secure sponsor's obligations including sponsor's obligation to complete construction of HOA property. If no security is furnished, highlight as a special risk.

(11) State that if the sponsor is in control of the board the sponsor shall procure fire and casualty insurance for the HOA property pursuant to an agreed amount replacement cost policy or in an amount sufficient to avoid co-insurance, as reflected in Schedule A.

(12) State that in the event of the dissolution or liquidation of the sponsor or the transfer of three or more homes or lots to a purchaser who is not purchasing for occupancy by the purchaser or one or more members of his or her immediate family, the principals of the sponsor will provide financially responsible entities or individuals who at the time of engaging in sales activity will assume the status and all of the obligations of the sponsor for those transferred homes or lots under the offering plan, applicable laws or regulations. State that if the original sponsor is dissolved or liquidated, the principals of the original sponsor will guarantee the obligations of the new sponsor.

(13) As long as sponsor has unsold homes or lots which are offered for sale pursuant to the offering plan, sponsor shall amend the plan whenever there is a change in the budget or when one year has passed since the budget was last updated. The prior year's certified financial statements for the HOA must be included even if sponsor assumes responsibility for all HOA operating expenses. The financial statements shall comply with subdivision (h) of this section and be submitted within three months of the end of the latest fiscal year of operation of the HOA.

(14) State that at or prior to the transfer of the HOA property to the HOA, sponsor will assign any manufacturer's warranties with respect to equipment and appliances installed in the HOA property to the board of directors.

(15) If sponsor has a right of access to complete construction of the HOA property or homes to be built in conjunction with the HOA, describe sponsor's obligation to repair damages and the extent to which sponsor can interfere with the members' use.

(16) State that title to HOA property will be insured at closing by a title company that is authorized to do business in the state where the HOA is located. State the amount of coverage or how the amount will be derived.

(17) State that any mortgages or liens which remain on the property after closing on the first home or lot shall be subordinate to the declaration.

(18) State sponsor's obligation with respect to common charges and assessments on unsold lots or homes in conformity with paragraph (p)(3) of this section. Sponsor must represent that it has the financial resources to meet its obligations with respect to unsold lots or homes and state the means by which it will fund these financial obligations. If the funding source is stated as income from projected sales, disclose whether other sources of funding will be utilized if such projected sales are not made.

(19) If roads and/or sewer, and/or water lines are to be constructed in accordance with local government specifications (for public roads), state that sponsor will amend the plan after completion of such amenities, but prior to conveyance of the common property to the HOA, to include a certification by an engineer or architect (who must be registered as an architect or be licensed to practice as a professional engineer in the jurisdiction where the HOA is located) stating that the roads, and/or sewers, and/or water lines have, in fact, been constructed in accordance with such local government specification, and indicating the date of completion. In the alternative, and/or if the construction of the roads and/or sewers, and/or water lines has not been completed prior to conveyance to the HOA, sponsor must post a bond or escrow funds or provide other adequate security in an amount to be determined by a licensed engineer which amount shall not be less than the amount required to complete such construction to the required specifications.

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

(1) Highlight as a special risk if sponsor exercises voting control of the board of directors for more than five years after the closing of the first home or lot or after 50 percent of the minimum number of lots or homes have closed, whichever is sooner. Specify the manner and timing in which the sponsor will relinquish control of the board of directors. 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 A, or over expenses required:

(i) to comply with applicable laws or regulations;

(ii) to remedy any notice of violation; or

(iii) to remedy any work order by an insurer.

(3) Highlight as a special risk if sponsor may exercise veto power over expenses other than those described in paragraph (2) of this subdivision, if the plan so provides, for a period ending more than five years after the closing of the first home or lot or whenever the unsold homes or lots constitute less than 25 percent of the minimum number of homes or lots, whichever is sooner.

(4) State that while sponsor is in control of the board of directors, no mortgage liens will be placed on the HOA property without the consent of at least 51 percent of the home or lot owners, excluding sponsor or sponsor's nominees.

(5) State that while sponsor is in control of the board of directors, certified financial statements will be provided each year to members.

(p) *The association.*

(1) Summarize the important provisions of the declaration of covenants, restrictions, easements and liens including the following:

(i) Sponsor must record and file the declaration prior to closing title to any home or lot.

(ii) Describe the purpose of the HOA, and the easements created by the declaration. State that membership in the HOA is mandatory for home or lot owners. State the minimum number of homes or lots that will be part of the HOA and the maximum number of homes or lots that may be part of the HOA, and any time limits within which the sponsor has the option to include additional homes.

(iii) State the expiration date of the covenants and restrictions and whether the provisions of such covenants and restrictions will be extended thereafter.

(iv) Describe any restrictions on who may become a member of the HOA; restrictions on exterior architectural changes, design, color, landscaping or appearance; restrictions on occupancy density; restrictions on the kind, number or use of vehicles; restrictions against renting, mortgaging or conveying property; restrictions on commercial activity; or any other restrictions. If there are any occupancy restrictions based on age, or family composition, these must be highlighted as a special risk and a counsel's opinion with regard to the legality of such restriction pursuant to federal and state law must be included in the plan.

(v) State that any land or construction loan mortgage on any part of the planned development will be subordinate to the declaration, or include a covenant which insures the HOA's and/or the home or lot owner's undisturbed use of the premises for the purposes described in the plan even in the event of foreclosure.

(vi) Describe any requirement of members to maintain fire or other insurance on homes and the consequences if a member does not do so.

(vii) State whether the declaration allows the sponsor to annex other real estate, and describe the effect of further annexation.

(viii) Describe any provisions that do not apply to the sponsor or to a mortgagee who takes title by deed in lieu of foreclosure or by foreclosure.

(2) Describe the management, operation and membership of the HOA.

(i) State the date or projected date and statutory authority under which the HOA was or will be incorporated.

(ii) State the number and composition of the board of directors, eligibility requirements, elections and when the first meeting will be held. Highlight as a special risk if the first meeting of the board of directors will not be held within six months of the first closing. State whether and under what circumstances officers and directors may be removed.

(iii) Describe voting procedure, the vote needed to amend the HOA's declaration or bylaws and the vote needed for extraordinary items such as capital improvements.

(iv) State the names and business addresses of the existing officers and directors of the HOA and their relationship, if any, to sponsor, sponsor's principals or sponsor's attorney.

(v) State when association charges will first be levied against owners, how the charges can be increased or decreased, how charges and delinquent charges will be collected, whether unpaid charges bear interest and the rate, whether unpaid charges will be a lien on a member's property, whether members will be assessed with late charges and/or attorney fees for collecting unpaid charges, whether the lien for unpaid charges will be subordinate to a first mortgage, whether a member with unpaid charges can use HOA property other than property for ingress and egress from his or her home. Highlight as a special risk if voting rights may be suspended for nonpayment of assessments. State whether fines or other penalties will be levied for violation of rules and regulations promulgated from time to time by the HOA.

(3) After the first closing has occurred, sponsor's obligation for association charges for unsold homes or lots shall be not less than an amount calculated in accordance with one of the following provisions:

(i) sponsor will be obligated for association charges including supplemental charges on all unsold homes or lots; or

(ii) sponsor will be obligated for the difference between the actual Association expenses including reserves applicable to completed improvements as provided for in the association's budget, and the association charges levied on owners who have closed title to their homes or lots as projected in Schedule A of the offering plan which shall be paid to the association on a monthly basis.

(q) *Opinions of counsel.*

(1) Counsel for sponsor or independent counsel must render an unqualified signed opinion on firm letterhead as to whether under present law, regulations, rulings and decisional law and based on the terms of the offering plan:

(i) The declaration of covenants, restrictions, easements and liens when recorded will be legal and valid, including specific reference to age restrictions, if any.

(ii) Members of the HOA will or will not be entitled to deduct any portion of Association charges for federal or state income tax purposes.

(iii) The HOA will qualify as a tax-exempt organization under [Internal Revenue Code section 528](#). If applicable, describe the extent of the exemption from income taxes for an HOA that elects to be treated as a tax exempt organization under [section 528 of the Internal Revenue Code](#). If applicable, discuss [Internal Revenue Code section 277](#).

(iv) The HOA property and homes sold in conjunction with the HOA, if built in accordance with the plans and specifications, will conform to applicable zoning ordinances and statutes. This opinion may be included by amendment to the plan before the first closing occurs.

(v) The HOA will be liable for sales, corporate or franchise taxes pursuant to state or local law.

(2) Tax counsel's opinion may not contain a general disclaimer of liability. It may limit liability if the facts represented by sponsor were not true or if there are changes in the applicable law and regulations, decisional law or Internal Revenue Service rulings. It may state that it is an opinion, not a guarantee of outcome.

(3) Suggested language for the disclaimer of liability is set forth below:

This opinion is based solely on the facts and documents referred to above. No warranties are made that the tax laws upon which counsel bases this opinion will not change. In no event will the sponsor, the sponsor's counsel, the counsel to the HOA, the selling agent or any other person be liable if by reason of future changes in fact or applicable law, regulation, decisional law or Internal Revenue Service rulings, the tax status should cease to meet the requirements contained in this opinion.

(r) *Local government approval.* If applicable, state when the local government approved any zoning changes or plans and drawings. Furnish a preliminary subdivision map or a legal opinion as to why a subdivision map is not necessary. Represent that sponsor will furnish a filed subdivision map when received. If use or ownership of waterways, wetlands or other environmentally sensitive areas are involved, fully disclose government jurisdiction, permits required, and restrictions on use, if applicable.

(s) *Reserve fund and/or working capital fund.* The offering plan shall state in two separate sections of the plan whether the HOA will have funds for working capital and/or as a reserve for capital expenditures. The offering plan shall 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; any restrictions on the use of each fund; and when the funds will be available to the HOA. If a fund is called a reserve fund, it may be used only for capital expenditures, and the HOA's by-laws 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 within the first five years of HOA operation.

(1) The plan shall provide that while the sponsor is in control of the board of directors, the reserve fund or working capital fund may not be used to reduce projected maintenance charges, or sponsor's obligation to pay a deficit. Disclose for what purposes the working capital fund, if any, can be used.

(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 fund.

(3) Discuss the HOA's available means and options to finance needed capital expenditures such as renewal or replacement of HOA property components or systems or to remedy major building defects.

(4) Highlight as a special risk if it appears that the reserve fund, if any, plus any budgeted yearly reserve fund

may not be sufficient to provide for needed capital expenditures within five years following the first closing under the plan.

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

(1) Summarize the important terms of the management agreement, if any, 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 association charges are provided;
- (v) the obligation, if any, of the HOA 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 directors to cancel the agreement with or without cause.

(2) If not described in detail in the footnotes to the budget, summarize all agreements that will be binding on the HOA including the name of the contractor, the services rendered or received, the annual income or cost and the expiration date of the contract.

(3) Highlight as a special risk if any contract is binding on the HOA for more than five years after the anticipated closing date for the first home or lot unless it is customary to enter into a long-term contract for the service rendered. Note whether the contract is with a business affiliate or principal of the sponsor.

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

- (i) The date and term of each lease, the space leased, the identity of the lessee and sublessee, if any, the rent and any additional rent payable thereunder, and the present and permitted use for the space.
- (ii) 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) the lease generates or is expected to generate less income than the pro rata share of expenses attributable to the leased space; or
 - (c) 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 HOA 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 director's 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 character of the development, and barring offensive uses. State whether consent of the board of directors is required before a lessee can assign or sublet space, change the current uses, alter the structure, or perform work that may result in mechanics' liens.

(u) *Identity of parties.*

(1) State the names, business addresses, backgrounds and experience of sponsor, and principals of sponsor as defined in section 22.1(c) of this Part. If the sponsor is a contract vendee, the names and business addresses of the contract vendor and the principals of the present owner shall be provided. Any relationship between the owner of the property and the contract vendee shall also be disclosed. Describe (i) any prior felony convictions of the sponsor and/or any principals of sponsor; and (ii) any prior bankruptcies, convictions, injunctions and judgments against the sponsor, any principals of the sponsor, and/or entities in which principals of the sponsor were principals, that may be material to the offering plan or to 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) 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 holder of unsold shares, 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 holder of unsold shares 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 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.

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

(5) 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.

(6) 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.

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

(8) 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 HOA subsequent to the commencement of HOA operation.

(9) 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.

(v) *Reports to members.* State that it is the obligation of the board of directors of the HOA to give all HOA members annually:

(1) a financial statement of the HOA 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 directors;

(2) prior notice of the annual home or lot owners' meeting; and

(3) a copy of the proposed annual budget of the HOA by a specified number of days prior to the date set for adoption thereof by the board of directors; while the sponsor is in control of the board of directors such budget shall be certified in compliance with section 22.4(d) of this Part.

(w) *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 directors a copy of all documents filed with the appropriate recording office at the time of the closing of the first home or lot.

(x) *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, sponsor's capacity to perform all of its obligations under the plan, the HOA or the operation of the HOA.

(2) Disclose whether the property was the subject of any prior cooperative, condominium or HOA offerings. Disclose whether any preliminary binding agreements have been entered into or whether money has been collected from prospective purchasers. Disclose any market test pursuant to Cooperative Policy Statement No. 1.

(3) Represent that the sponsor and its agents will 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.

(4) Note purchasers' right to rescind purchase agreements following material adverse amendments; see section 22.5(a)(5) 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.

(y) *Sponsor's statement of specifications or building condition.* If applicable, include the following provisions:

(1) Sponsor must adopt the description of property and specifications or 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 HOA property except as set forth in the description of property and building condition.

(2) If not included in the description of property and building condition, describe any rehabilitation to be com-

pleted by sponsor and the timetable for completion.

(3) If not stated in the description of property and building condition, state whether the number of home or lots offered is identical to the number of homes or lots stated in the approved site plan, and whether the proposed use of the buildings constructed on HOA property is the same as the use indicated in the certificate of occupancy for the HOA property.

(4) Note any official inspection reports reflecting upon the 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) 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 regulations promulgated thereunder.