

13 NYCRR Section 24.3: Format and content

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Plans subject to this Part shall comply with the format and minimal disclosure requirements set forth in subdivisions (a) through (z) of this section, in addition to the requirements of the provisions of article 23-A of the General Business Law.

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

(1) The following statement must be printed in capital letters in boldface roman type at least as large as eight-point modern type and at least two points leaded: **CONTRACTS TO PURCHASE TIMESHARES UNDER THIS OFFERING PLAN MAY BE CANCELLED BY THE PURCHASER WITHIN SEVEN (7) BUSINESS DAYS OF EXECUTION. SEE PAGE 1.**

If the law of the jurisdiction in which the timeshare property is located requires a rescission period of longer than seven business days from the date of execution of the contract, substitute the appropriate time period in the above legend.

(2) The title in capital letters and boldface type--**TIMESHARE OFFERING PLAN**--followed by the name and location of the timesharing plan.

(3) The amount of the offering, which shall be based on the maximum aggregate price at which the timeshares are initially offered. State the number of units and the number of intervals involved in the offering. If the initial offering is for one phase of a multi-phase development, so state and indicate the anticipated maximum number of units and intervals to be offered in other phases.

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

(5) The statement: "Date of the offering plan: _____. This plan may not be used after _____ unless extended by amendment." The date of the offering plan shall not be earlier than the date the Department of Law files the plan. The term of the initial offer is 12 months commencing on the date indicated in 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 at submission to the Department of Law and completed when the plan is filed.

(6) The following statement must be printed in capital letters apart from the other print in boldface roman type at least as large as eight-point modern type and at least two points leaded: **THIS OFFERING INVOLVES A HIGH DEGREE OF RISK. SEE PAGE 2 FOR A DISCUSSION OF RISK FACTORS.**

(7) The following statement must be printed in capital letters in boldface roman type at least as large as eight-point modern type and at least two points leaded: **THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL THESE TIMESHARE INTERESTS. 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 TIMESHARE INTERESTS. FILING WITH THE DEPARTMENT OF LAW DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**

(b) *Table of contents.* The format and order set forth 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 or subheadings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk in the table of contents, and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses.

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(c) *Right of cancellation.* This section must be on a separate right-hand page immediately following the table of contents and must provide, at a minimum, that:

- (1) the purchaser may cancel his or her contract by mailing written notice of cancellation, postmarked within seven business days of the date on which the contract was executed, to the sponsor or selling agent at the address indicated on the cover of the offering plan;
- (2) the right to cancel may not be waived under any circumstances, and any instrument executed by a purchaser which purports to waive such right shall be deemed void and of no effect;
- (3) a purchaser may exercise the right to cancel at will and without explanation;
- (4) a purchaser may cancel his or her contract without penalty or obligation and all payments made by the purchaser prior to cancellation shall be refunded with 30 days after the sponsor or selling agent receives notice of cancellation;
- (5) any note or other negotiable debt instrument executed by the purchaser in connection with financing provided or arranged by the sponsor shall be returned to the purchaser within 30 days after the sponsor or selling agent receives notice of cancellation.

If the law of the jurisdiction in which the property subject to the timesharing plan is located requires a rescission period of more than seven business days from the date of execution of the contract, substitute the appropriate time period in this section of the offering plan.

(d) *Special risks.* This section must begin on a separate right-hand page immediately following the section on purchaser's right of cancellation. All features of a plan which involve significant risk or will disproportionately or unusually affect maintenance charges or obligations of timeshare owners in future years of timeshare operation must be conspicuously disclosed and highlighted in consecutively numbered paragraphs in order of decreasing significance. A brief description given in this section and a more thorough description should be given in a referenced later section. Questions highlighted in this section should be resolved in favor of inclusion. To the extent applicable, this section should include the following special risk factors in the following order:

- (1) In a right-to-use timesharing plan, state that if the sponsor or other fee owner of the timeshare property declares bankruptcy, the rights of all purchasers (even purchasers who have paid for their timeshares in full) may be terminated. State that in such event, purchasers will not be entitled to use their units or other timeshare facilities and that the sponsor may sell the timeshare property to a third party who will be under no obligation to honor the contracts of timeshare purchasers. State that timeshare purchasers may be treated as general unsecured creditors in bankruptcy and, in such event, will receive little or no refund.
- (2) In a right-to-use timesharing plan, state that all mortgages or other liens presently encumbering the timeshare property contain, and any consensual liens placed on the timeshare property in the future will contain, nondisturbance clauses to protect the possession and use rights of timeshare owners from foreclosure of such liens. State that involuntary liens filed against the property in the future (such as judgment liens or mechanic's liens filed against the property by the sponsor's creditors) will cut off the rights of timeshare owners in foreclosure.
- (3) In a campground timesharing plan, disclose the number of timeshares sold and offered for sale for each campsite in the campground or multi-site campground network, and include a reference to the discussion of the reservation policy.

State whether or not and under what conditions the sponsor may permanently or temporarily close campgrounds which are part of the timesharing plan. If the sponsor offers trailer or other equipment rentals, state that availability is limited and include a reference to a more detailed discussion of equipment rentals.

(4) If, as part of the timesharing plan, timeshare owners have the right to use and occupy property outside the immediate timeshare regime (at no additional charge or at a discount from rates charged to the general public), describe the easement of the timeshare regime over the other property and specify those mortgages and other liens, if any, to which the easement is subordinate. Discuss the possibility that such easement (and the right of timeshare owners to use and occupy the other property) may be cut off by the foreclosure of such mortgages or other liens on the other property or by the bankruptcy of the owner of the other property.

(5) If, as part of the timesharing plan, timeshare owners have the right to use and occupy property outside the immediate timeshare regime (at no additional charge or at a discount from rates charged to the general public), describe the covenant (running with the land) that such other property will be used only for the purposes set forth in the offering plan. Specify any mortgages or other liens to which the covenant is subordinate and discuss the possibility that such covenant may be cut off by the foreclosure of such mortgages or other liens on the other property and that, in such event, the use of the other property may be changed from its use at the time that the purchaser acquired his or her timeshare.

(6) State that timeshares should be purchased for personal recreational use and not for profit or investment. State that no resale market exists for timeshares and that the resale value of timeshares, if any, is uncertain. State that most real estate brokers will not list timeshares and that an owner's efforts to sell his or her timeshare will bring him or her into direct competition with the sponsor who may have a large inventory of unsold intervals. Discuss any restrictions or fees imposed on the resale of timeshares.

(7) State which resort exchange network, if any, the sponsor has joined. State, if applicable, that the exchange network is independent of the sponsor and that timeshare owners will be entitled to use this network only as long as the sponsor and the timeshare property continue as a member of the exchange company. State that the availability of exchange privileges for any timeshare owner will be contingent upon meeting the terms and conditions of the exchange company, including payment of membership and exchange fees. If applicable, state that a timeshare owner must release his or her timeshare to the exchange network in order to participate in the exchange program before being informed of the specific resorts or locations available for trade. State in capital letters that there can be no assurance that a particular interval can be exchanged, that an exchange for a particular interval or a particular resort can be arranged, that this timeshare resort will continue to qualify with the exchange company, or that this interval program or any other will continue to exist. If the timesharing plan is not affiliated with an exchange network, so state.

(8) In a right-to-use timesharing plan, state that a timeshare purchaser acquires no recordable interest in real property. In a right-to-use or leasehold timesharing plan, state that a timeshare purchaser receives no voting rights or right to control the policies or decisions of the sponsor with regard to the use or maintenance of the timeshare property. State also that full control for the adequate operation and maintenance of the timeshare property lies with the sponsor, and that the facilities and services of the timesharing plan will be available only as long as the sponsor is able to provide them. State that no bond or other security has been provided for the sponsor's undertakings in this regard.

(9) In a fee or cooperative timesharing plan, state that the successful operation and maintenance of the timeshare property depends upon the ability of the sponsor to meet its financial obligations with respect to unsold timeshares. State that during the early years of the project, the failure of the sponsor to meet its obligations in this regard will require a small number of timeshare owners to cover the costs of operating and maintaining the entire project. State that the sponsor has provided no bond or other security for its undertaking in this regard.

(10) In a fee or cooperative timesharing plan, state that while timeshare owners do have certain voting rights, it is expected that most timeshare owners will not participate in the management of the timeshare regime since each timeshare owner has a relatively small interest in the timesharing plan and is away from the timeshare property for most of the year and it is unlikely that the many timeshare owners could be effectively organized into a voting block. State that the governing body of the timeshare regime will be controlled by the sponsor and that the daily affairs of the timeshare regime will be handled by the sponsor and managing agent.

(11) State the number of additional units that the sponsor plans to construct in subsequent phases of the project, and the number of timeshares which will be offered for sale in those units. State the sponsor's obligation to add to recreational areas and resort facilities in the event of such expansion and, if the sponsor has no such obligation, state that the recreational areas and resort facilities may be inadequate to meet the needs of all future timeshare owners.

(12) In a mixed-use project, state that the larger project of which the timesharing plan is a part includes whole ownership units and that the interests of timeshare owners and whole unit owners may conflict.

(13) State that the units and the furnishings therein will be subject to extraordinary wear and tear. State that the projected budget for the timeshare regime (set forth in schedule B) includes estimates for unit repairs and the replacement of furnishings, but that no assurances can be given that these reserves will be adequate or that they will not need to be increased in the future.

(14) In a fee timesharing plan, describe the risk of partition of a timeshare unit and its appurtenant interest in common elements under the law of the jurisdiction in which the timeshare property is located. Describe the effect that a successful partition action would have on the timeshare owners involved.

(15) In a fee timesharing plan, describe the risk that Federal and State authorities will foreclose on an entire timeshare unit and its appurtenant interest in the common elements in order to satisfy tax liens against less than all co-owners of that unit. Describe the effect that such a foreclosure would have on the timeshare owners involved.

(16) State which facilities may be used by other than timeshare owners (*e.g.*, members of the public, hotel guests), including any limitations on such use.

(e) *Introduction.* The introduction must:

(1) explain that the purpose of the offering is to set forth all the terms of the offer. Explain that the offering plan may be amended from time to time when an amendment is filed with the New York State Department of Law;

(2) identify the sponsor and state when the sponsor acquired title to the timeshare property or an interest as contract vendee in the timeshare property;

(3) describe the structure of the timesharing plan and the interests acquired by purchasers;

(4) state the number and type of units in each phase of the development and the number and type of timeshares being offered under this offering plan. Refer to the Description of Property and Improvements required by subdivision (g) of this section for a description of the land, buildings, units, grounds, parking facilities, recreational facilities and other amenities which are part of the timeshare regime;

(5) state that the prices were set by the sponsor alone and are not subject to review or approval by the Department of Law or any other government agency. State also that prices are negotiable and that different purchasers may pay different prices for identical interests;

(6) state that the plan, including all schedules and parts A, B and C of the exhibits, constitutes the entire offer of the sponsor, and that copies of the plan and parts A, B and C of the exhibits will be available for inspection by prospective purchasers without charge at the site whenever the onsite sales office is open and at the office of the selling agent or sponsor;

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

(8) outline the basic aspects of timeshare ownership under the offering plan, including the following:

(i) that each purchaser is entitled to the exclusive possession and use of a specific unit or type of unit with the non-exclusive right to use common facilities during his or her interval;

(ii) that each timeshare owner must pay maintenance fees set by the sponsor (in a right- to-use timesharing plan) or by the governing body of the timeshare regime (in a fee timesharing plan or a cooperative timesharing plan);

(iii) any restrictions on use, resale, leasing or mortgaging of timeshare interests;

(iv) the authority of the sponsor and/or the governing body of the timeshare regime to manage the timeshare property, and the timeshare owner's right to vote for members of the governing body;

(v) how each unit or interval will be assessed and taxed; and

(vi) the responsibility of the sponsor and/or the governing body of the timeshare regime for maintenance and repairs and for casualty and liability insurance; and

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

THE PURCHASE OF A TIMESHARE HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY BEFORE THE EXPIRATION OF THE SEVEN (7) BUSINESS-DAY CANCELLATION PERIOD (SEE PAGE 1).

If the law of the jurisdiction in which the property subject to the timesharing plan is located requires a rescission period of more than seven business days from the date of execution of the contract, substitute the appropriate time period in the legend above.

(f) *Definitions.* Important terms, terms that are not likely to be understood by the general public and terms that have a special meaning or are used as proper nouns should be defined and explained. Such terms include, but are not limited to, the following: timeshare interval, exchange network, condominium, association, cooperative corporation, common elements, limited common elements, maintenance charges, declaration, board of directors, board of managers, bylaws, common expenses, offering plan, unit.

(g) *Description of property and improvements.*

(1) Generally describe the type or types of units in each phase; the number and type of timeshare interests being offered; and the approximate number and type built to date. Include floor plans for each unit. A floor plan for every variation of a typical unit is not required.

(2) Generally describe the property. Include a reduced size copy of the site plan.

(3) Generally describe the facilities, amenities and buildings, both existing and to be built, which are part of the timeshare regime. Include floor plans for buildings. The Department of Law may require a detailed engineer's or architect's report for existing structures.

(4) Generally describe the parking facilities.

(5) Generally describe other facilities, amenities and buildings which are outside the timeshare regime but are available to owners at no additional charge or at a discount and which timeshare owners have a right to use. Include details of charges.

(6) Generally describe the furnishings contained within each unit, including furniture, kitchen and dining equipment,

laundry facilities, refuse disposal systems, television and television reception devices and floor coverings. Inclusion in Part II of the offering plan or in an out-of-state offering plan accepted pursuant to section 24.1(g) of this Part of an exhibit which sets forth the standard furnishings for units shall satisfy this requirement.

(7) State whether buildings, facilities, dwelling units, including kitchens and bathrooms, are accessible to the handicapped. If not fully accessible, provide details.

(8) Provide a certification pursuant to section 24.4(c)(4) of this Part.

(9) State that copies of filed plans and specifications have been furnished to the Department of Law and are available for inspection at the sales office. State also that copies of the filed plans and specifications and copies of as-built plans will be delivered to the board of whatever entity will govern the timeshare facility within 60 days after the first closing or after each phase is completed.

(10) State that the construction of all aspects of the buildings, facilities and grounds is or will be performed in accordance with the filed plans and specifications, applicable laws, codes and regulations (including environmental laws, codes and regulations) and locally accepted construction practices.

(11) 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.

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

(1) describe the location of the property and surrounding areas. If the property is not located in a major urban area, describe the transportation, shopping, recreational, medical and religious facilities available;

(2) describe the police, fire, water, sanitation, snow removal and road maintenance services. If all such services are provided by the local taxing authority, it is sufficient to refer to the services provided by it. If any such services are not provided by the local taxing authority, such fact must be conspicuously disclosed, together with the method of funding and securing such services;

(3) describe the zoning of the site and what uses are permitted as of right. If any adjoining areas are undeveloped, disclose the permitted uses of the adjoining areas;

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

(i) *Purchase prices and common interest or share allocation (schedule A).*

(1) Schedule A must appear on a separate page entitled "Schedule A" and must provide the following information, to the extent applicable, for each interval unit:

(i) unit and interval identification;

(ii) number of rooms (or usable space in square feet) and bathrooms;

(iii) allocation of shares or interests in common elements;

(iv) purchase price;

(v) projected annual maintenance charges;

(vi) annual charges (excluding fees for membership in an exchange network) for any items which are not included in annual maintenance charges;

(vii) total annual carrying charges (annual maintenance charges plus other annual charges); and

(viii) maximum amount of sponsor financing available, and the monthly payment due.

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

(i) Indicate that the projected maintenance charges are based on estimated expenses for a stated 12-month period (e.g., January 1, 20__ to December 31, 20__).

(ii) State the method of calculating the number of rooms in each unit. If the number of rooms is calculated in accordance with an industry standard, it is sufficient to refer to the industry standard employed.

(iii) State which intervals are devoted to maintenance of the units.

(iv) Explain the basis for the allocation of shares or interests in common elements.

(v) Refer to the portion of the offering plan that explains price changes. If applicable, state in capital letters that prices are negotiable and that different purchasers may pay different prices for identical interests.

(vi) Refer to the portion of the offering plan that discloses and explains any closing costs or adjustments that a purchaser may have to pay and project the approximate amount due for each timeshare purchased.

(vii) Explain that the projected maintenance charges are separate and distinct from the payments due on any financing obtained by the purchaser.

(viii) If applicable, refer to the section of the offering plan that fully explains the terms and conditions on which sponsor will extend financing for the purchase of timeshares.

(ix) Explain how the projected annual maintenance charges were derived from schedule B. If the number of units and intervals in the timesharing plan is not firm, incorporate in schedule A the maximum amount that a timeshare owner could be charged for maintenance fees. Describe fully and completely the obligation of the sponsor to pay the maintenance fees allocable to unsold intervals and describe fully and completely any sponsor guarantee of maintenance fees.

(j) *Projected budget for the timesharing plan.* The offering plan must include a current or projected budget for timesharing operation in schedule B.

(1) The budget shall be based upon a specified 12-month period and shall be either the current budget under which the timesharing plan is operating or, if timeshare operations have not yet begun, a projected budget starting on a date when it can reasonably be expected that timeshare operations will begin.

(2) If the number of units or intervals that will be included in the timesharing plan is not firm and the assessment of timeshare owners may vary with the number of units or intervals (e.g., recreational facilities may be added if membership increases), include alternative budget tables showing how the income and expenses change with the size of the membership.

(3) The budget for the timesharing plan shall be in the following format. Headings marked with an asterisk may be omit-

ted if not applicable to the offering. Additional income, expenses or cost items unique to a timesharing plan should be added whenever appropriate to reflect additional sources of income, expenses, costs or unique circumstances.

SCHEDULE B
Budget for Timeshare Operation
_____, 20__ to _____, 20__

Income

Maintenance Charges	\$ _____
*Sponsor guaranty	\$ _____
*Other (explain)	\$ _____
TOTAL	\$ _____

Expenses

Labor	\$ _____
Heating	\$ _____
Utilities (electricity and gas)	\$ _____
Water charges and sewer rents	\$ _____
Repairs, maintenance and supplies	\$ _____
*Service contracts	\$ _____
Insurance	\$ _____
Management fees	\$ _____
Legal fees and audit fees	\$ _____
Franchise and corporate taxes	\$ _____
Real estate taxes	\$ _____
Replacement reserve	\$ _____
*Association fees	\$ _____
Other	\$ _____
*Contingency	\$ _____
TOTAL	\$ _____

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

(i) Set forth the annual maintenance charges assessed against the various intervals and show how the figure in schedule B for total income from maintenance charges was calculated. State that the maintenance charges are not fixed and will rise over time as the costs of operating the resort increase.

(ii) Sponsor guaranty. Describe the sponsor's commitment to offset the expenses of the timesharing plan (in addition to the sponsor's obligation to pay maintenance fees assessed against unsold intervals) in order to keep maintenance fees low. Explain the method for calculating this subsidy in the future and disclose how long and under what conditions sponsor is obligated to subsidize timeshare expenses. If applicable, state in capital letters that no bond or other security has been provided to assure performance of the sponsor's undertaking in this regard, and that the sponsor's ability to perform will depend on its financial condition at the time.

(iii) Other. Discuss any sources of revenue other than maintenance charges or a guaranty by the sponsor, such as guest fees or fees for maid and linen service. Set forth the individual charges for such services or privileges. The cost associated with providing such services must be itemized as an expense below.

(iv) Labor costs. State the number of full- and part-time staff and whether the staff will be union members. The labor budget must include benefits required by Federal, State or local law or required by contract, such as workers' compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance and pay-

roll taxes. Specify the wages, and the cost of each applicable benefit. The budget must reflect current wage rates and reasonably anticipated increases or increases mandated by contract. If applicable, state the expiration dates of all union contracts. If there are nonunion employees, discuss whether their wages meet State minimum wage laws.

(v) Heating, cooling and hot water costs. State the type and quantity of energy estimated to be used during the budget year, and the cost per gallon or other measure, inclusive of sales tax, for all energy costs for providing heating, cooling and hot water for the timeshare property, including recreational facilities. Cost figures should be based on current rates plus a reasonably anticipated increase.

(vi) Utilities (electricity and gas). State the basis for the projected consumption and projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase.

(vii) Water and sewer. State the present rents and charges and base the projection on reasonably anticipated increases.

(viii) Repairs, maintenance and supplies. Describe the material components of the expense for repairs and maintenance, such as interior repairs, roofing, exterior repairs (including walls, foundations, windows, doors and locks), heating system (fuel burner, boiler, pipes, radiators), plumbing, electrical work, exterminating, grounds maintenance (snow removal, gardening and landscaping, where applicable), janitor supplies, painting of common areas, and such building services and maintenance items not included under "service contracts" or "other expenses."

(ix) Service contracts. State the name of the contractor, the service, the annual cost and the expiration of the contract for each contract where the cost exceeds \$5,000 per year.

(x) Insurance.

(a) The budget for insurance must provide, and the sponsor must have in place prior to the sale of any timeshares, fire and casualty insurance (covering all timeshare property, including the units, furnishings and recreational facilities) under an agreed amount replacement cost policy or under a policy including at least an 80-percent coinsurance provision so that the insured will not be a coinsurer. Discuss the adequacy of the insurance to replace the buildings in the event of a total loss. Disclose the items covered, the coverage limits, the deductibles and the hazards insured against. Disclose whether insurance proceeds may be applied by the mortgagee to reduce the outstanding mortgage indebtedness instead of restoring the property.

(b) The budget for insurance must provide, and the sponsor must have in place prior to the sale of any timeshares, public liability insurance in such amounts as are reasonable and adequate to cover any foreseeable liability arising out of operation of the timeshare property. Disclose the coverage limits.

(c) The offering plan must provide that each unit owner is an additional insured under the fire and casualty and general liability policies on the project.

(d) The offering plan must provide that the fire and casualty and general liability insurers waive their subrogation rights against timeshare owners; that no act or omission by any timeshare owner will void the fire and casualty or general liability policies; and that there will be no pro rata reduction in coverage under such policies in the event a timeshare owner has an individual policy which provides overlapping coverage.

(e) State that insurance coverage meeting the requirements set forth in this Part will be maintained at all times by the governing body of a fee or cooperative timesharing plan (during such time as the governing body is directly or indirectly controlled by the sponsor) or by the sponsor in a right-to-use or leasehold timesharing plan.

(xi) Management contract. State the basis for the projected management fee. The projected cost must include any costs required by the terms of the management agreement, such as bonding.

(xii) Real estate taxes. For the current or projected budget year, and for the two years prior to submission (if such figures

are available), state the assessing authority and its fiscal year, the assessed valuation for the timeshare property, the tax rates and the amounts payable. Data for the projected budget year should be estimated if actual figures are not currently available.

(xiii) Replacement reserve. Disclose which items of personal property this reserve fund will be used to replace. Discuss the cost and useful life of the property covered by this fund and state when, and under what circumstances, funds will be withdrawn from this reserve. State whether the fund will be adequate to replace all furnishings and other personal property in the units.

(xiv) Association fees. In the case of a condominium fee timesharing plan, expenses generated by an umbrella homeowner's association must be included as an item in the condominium budget and passed through to timeshare owners in a single maintenance charge. Include a reference to schedule C.

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

(5) In the case of a condominium fee timesharing plan, if title to property will be held in a corporation or other entity functioning as a homeowner's association, or if membership in a homeowner's association is an integral part of the offering, include a separate budget of income and expense for the homeowner's association as schedule C. If the number of units that will be members of the homeowner's association is not firm, and the assessment by the homeowner's association of unit owners may vary with the size of membership (*e.g.*, recreational facilities may be added if membership increases), include alternative budget tables showing how the income and expenses change as the size of membership increases. Detailed footnotes that are consistent with the footnotes described in this Part for schedules A and B must support and explain the information in schedule C.

(k) *Changes in prices and facilities.*

(1) The offering prices set forth in schedule A may be changed only by duly filed amendment to plan; provided, however, that the sponsor may enter into an agreement with an individual purchaser to sell one or more timeshares at prices no more than 10 percent below those set forth in schedule A (including rebates, gifts, first-day discounts and other incentives) without filing an amendment if this section of the plan includes the following legend in capital letters: THE PRICES SET FORTH IN SCHEDULE A ARE NEGOTIABLE. DIFFERENT PURCHASERS MAY PAY DIFFERENT PRICES FOR IDENTICAL INTERESTS.

(2) State that no change will be made in the size or number of units or intervals, the allocation of shares or common interests, the amount or quality of the common elements and public areas or in the size or quality of recreational facilities, except by amendment to the plan.

(3) State that no material change will be made in unit size, layout or the allocation of shares or common interest if a purchase agreement has been executed and delivered for a timeshare in that unit and the purchaser is not in default.

(4) State that no material change will be made in the size or quality of common elements if a purchaser agreement has been executed and delivered for a timeshare and the purchaser is not in default.

(l) *Accountant's certified statements of operation.* If the timesharing plan is in operation at the time the proposed offering plan is submitted to the Department of Law, include certified statements of income and expenses for the two most recent fiscal years of operation, prepared by an independent certified public accountant. If the timesharing plan has been in operation for less than two years, include a statement for the period since operations began.

(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 are generally 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 project for the periods specified in conformity with generally accepted accounting principles applied on a consistent basis; and

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

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

(m) *Procedure to purchase.* Describe the essential terms of the purchase or subscription agreement, which must comply with this Part.

(1) State the amount and/or the percentage of the minimum down payment.

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

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

(ii) Payments. All funds received from purchasers or subscribers 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 or subscriber to the order of the attorney or law firm as escrow agent.

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

(iv) The account(s): All deposits, down payments, or advances made by subscribers or purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five business days after the escrow agreement is signed by all necessary parties in an attorney's segregated special escrow account or accounts in a bank or banks doing business in the State of New York which account is insured by the Federal Deposit Insurance Corporation ("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 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 subscriber or 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(s) who is/are named as an authorized signatory or signatories. Neither the sponsor nor any principal of the sponsor may be an authorized signatory on any account. Funds must be placed in an interest-bearing account or accounts, with all interest credited to the subscriber or purchaser, unless the sponsor elects to place the funds in

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

(v) Notification to subscriber or purchaser. Within 10 business days after the escrow agreement is signed by all necessary parties, the escrow agent shall notify the subscriber or purchaser that such funds have been deposited in the bank indicated in the plan, and shall provide any account number and the initial interest rate. If the subscriber or purchaser does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the subscription or purchase and rescind within 90 days after tender of the deposit. Complaints concerning the failure to honor such cancellation requests may be made to the New York State Department of Law, Real Estate Finance Bureau, 28 Liberty Street, New York, NY 10005. 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 subscriber or 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 (m)(4) of this section.

(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 seek release of the escrowed funds of a defaulting subscriber or purchaser until after consummation of the plan. Consummation of the plan does not relieve the sponsor of its obligations pursuant to GBL section 352-h.

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

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

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

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

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

(c) If the escrowed funds are not released pursuant to subparagraph (b), above, and the escrow agent receives a request by either party to release the funds, the escrow agent must give both parties prior written notice of not fewer than 30 days before releasing said funds. If the escrow agent has not received notice of objection to the release of the funds at the expiration of the 30 day period, the funds shall be released and the escrow agent shall provide further written notice to both parties informing them of said release. If the escrow agent receives a written notice from either party objecting to the release of the escrowed funds within said 30 day period, the escrow agent shall continue to hold said funds until otherwise directed pursuant to subparagraph (b), above. However, the escrow agent shall also have the right at any time to deposit the funds contained in the escrow account with the clerk of a court in the county in which the interest offered pursuant to the plan is located and shall give written notice to both parties of such deposit.

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

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

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

(viii) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the purchaser or subscriber 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. 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 or subscriber and the escrow agent shall abide by any interim directive issued by the Attorney General.

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

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

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

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

(2) a final, non-appealable order or judgment of a court is served on the escrow agent; or

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

(ix) Exhibits to plan. Copies of the forms provided by the bank for opening any escrow account and the form of escrow agreement, if separate from the subscription or purchase agreement, must be included as Exhibit B-19 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 subscriber or 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 or subscription agreement.

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

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

(4) 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 24.2(c)(4)(b)(B-20) 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 or subscriber and shall provide for continuation of escrow of funds of any purchaser or subscriber 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.

(5) 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 or subscribers by effectuating the issuance of surety bonds to such purchasers or subscribers 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(s). 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 escrow agreement is signed by all necessary parties, in an attorney's segregated special escrow account or accounts, established pursu-

ant to and in compliance with paragraph (3) 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 or subscriber whose funds are being released.

(ii) Payments. All funds received from purchasers or subscribers 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 or subscriber 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 or subscriber 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 or subscriber-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 or shares the down payment for which is secured by such surety bond or until the secured funds of a purchaser or subscriber have been returned in full, or until the funds secured by the surety bond have been placed in any escrow account pursuant to paragraph (7) of this subdivision or until there is an undisputed purchaser or subscriber default of a final, non-reviewable determination by the Attorney General or final, non-appealable order or judgment of a court that the purchaser or subscriber 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 or subscriber-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 or subscriber 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 or subscriber-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances:

(a) timely rescission of a purchase or subscription agreement by a purchaser or subscriber 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) pursuant to terms and conditions set forth in the escrow agreement, upon closing of the individual transaction;

- (d) in a subsequent writing signed by both sponsor and subscriber or purchaser;
- (e) by a final, non-appealable order or judgment of a court; or
- (f) for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by final, non-reviewable determinations by the Attorney General pursuant to subparagraph (x) of this subdivision that rescission or the return of funds is required;
- (g) failure by the sponsor to obtain a commitment by the surety company to renew the surety bond 60 days prior to its expiration; or
- (h) direction by the sponsor upon request by the purchaser or subscriber.
- (ix) Failure by purchaser-obligee or subscriber-obligee to produce a copy of the bond. A purchaser's or subscriber's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the purchaser's or subscriber's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the purchaser-obligee or subscriber-obligee without a copy of the bond as long as the purchaser or subscriber is able to provide proof of identity as the obligee on the bond.
- (x) Disputes.
- (a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply and the purchaser or subscriber 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 or subscriber and the surety shall abide by any interim directive issued by the Attorney General.
- (c) If the Attorney General determines:
- (1) that the purchaser or subscriber is entitled to the disputed funds secured by the surety bond, the surety shall pay the Attorney General shall direct that the surety pay the funds to the subscriber or purchaser in accordance with the determination of the Attorney General.
- (2) that the purchaser or subscriber is not entitled to the disputed funds secured by the surety bond, the Attorney General shall direct either that the surety bond shall be continued in effect or that the surety bond shall 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 or subscriber 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, for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by a final, non-reviewable determination of the Attorney General or a final, non-appealable order or judgment of a court.
- (6) 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 or subscribers by effectuating the issuance of a letter of credit for the benefit of the purchasers or subscribers 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 subscription deposits or payments expected to be received from purchasers or subscribers, 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 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 (3)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of purchasers and subscribers 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 ten 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 or shares referred to in the application for alternate security pursuant to subparagraph (4)(i) of this subdivision or until the covered funds of purchasers and subscribers 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 or shares, 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 shares or until the covered funds of purchasers and subscribers have been returned in full.

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

(a) Deposits into escrow account(s). All down payments and deposits received shall be placed, within five business days after the escrow agreement is signed by all necessary parties, in an attorney's segregated special escrow account established pursuant to and in compliance with paragraph (3) 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 or subscribers 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 or subscriber 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 a fiduciary for the benefit of purchasers and subscribers 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 or subscription agreement by a purchaser or subscriber 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) pursuant to terms and conditions set forth in the escrow agreement, upon closing of the individual transaction;

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

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

(f) for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by final, non-reviewable determinations by the Attorney General pursuant to subparagraph (x) of this paragraph mandating that rescission or the return of funds is required;

(g) 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;

(h) direction by the sponsor upon request of the purchaser or subscriber;

(i) notice of 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 subparagraph (4)(i) of this subdivision or subparagraph (vi) of this paragraph.

(x) Disputes.

(a) In the event of a dispute arising in connection with a subscription or purchase agreement providing for dispute resolution by the Attorney General that was signed on or before March 1, 2013, the sponsor shall apply, and the purchaser or subscriber, 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 or subscriber, the escrow agent and the bank shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(1) that the subscriber or purchaser is entitled to the disputed funds secured by the letter of credit, the Attorney General shall direct that the issuer of the letter of credit pay the funds to the purchaser;

(2) that the subscriber or purchaser is not entitled to the disputed funds secured by the letter of credit, the Attorney General shall direct that the letter of credit shall be continued in effect or that the letter of credit shall 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 disputed funds secured by the letter of credit be paid to the purchaser or subscriber 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 final, non-appealable order or judgment of a court or, for subscription or purchase agreements providing for dispute resolution by the Attorney General that were signed on or before March 1, 2013, by a determination of the Attorney General.

(7) 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 or subscription down payments or deposits shall be held in any escrow account in accordance with paragraph (3) of this subdivision. Such amendment shall not affect the sponsor's obligation to account for funds previously released to the sponsor unless the funds representing all such down payments or deposits are restored to any escrow account.

(8) Alternate security for funds received out-of-state. Purchaser funds paid in another jurisdiction by a purchaser who is solicited within or from the State of New York in connection with the purchase of a cooperative interest in realty involving timeshare property located outside New York State shall be handled in accordance with the applicable laws and regulations of the jurisdiction in which the funds are received, provided that such jurisdiction requires funds to be held in trust or in escrow until title in the timeshare interest is conveyed to the purchaser and that interest earned, if any, on such deposit is credited to the purchaser on closing. Where not inconsistent with the law and regulations of such other jurisdiction, the sponsor may comply with the requirements set forth in paragraphs (3) through (7) of this subdivision, or may apply to the Department of Law for permission to comply with the alternate requirements set forth below. The granting of such application shall be in the discretion of the Attorney General.

(i) Sponsor shall establish any supplementary escrow account within the State of New York.

(ii) any supplementary escrow account shall be funded by the sponsor in the amount of one-tenth of one percent (.1%) of the gross offering amount of the public offering, with a minimum of \$5,000 and a maximum of \$25,000.

(iii) The escrow agent for any supplementary account shall be permitted to withdraw and pay over to the sponsor the interest earned on any supplemental escrow account provided that such withdrawal does not reduce the balance of any account below the minimum principal balance required to be held in escrow by the sponsor. Funds shall not otherwise be released from any supplemental escrow account until the sponsor has withdrawn its public offering and a closing of the sale with the last New York purchaser in New York State shall have occurred unless otherwise directed by the Department of Law. All other provisions for the handling of escrowed amounts, including dispute resolution, shall remain as set forth in paragraph (3) of this subdivision, except that the escrow agent shall be exempted from the notification requirements of subparagraph (3)(v) of this subdivision and no right of rescission shall arise as a result of failing to give notice to purchasers as required in subparagraph (3)(v) of this subdivision.

(iv) As an alternative to the funding of any supplemental escrow account, a sponsor may apply to the Attorney General to use supplemental security in the form of surety bonds or a letter of credit. The funding amount of the alternative security shall be in the same amount as required to establish any supplementary escrow account. The provisions of paragraphs (4), (5), (6) and (7) of this subdivision, including dispute resolution, shall otherwise remain fully in effect.

(v) The sponsor shall appoint an attorney licensed to practice in the State of New York who maintains an office within New York State as the supplementary escrow agent. The sponsor and the supplementary escrow agent shall enter into a written escrow agreement which shall govern the operation of any supplemental escrow account. The agreement shall conform to the requirements of subparagraph (3)(iv) of this subdivision.

(vi) The sponsor shall have a continuing obligation to maintain any supplemental escrow account or supplemental alter-

nate security at the minimum funding amount for such security, and within five business days of a payment to a New York purchaser from any supplemental escrow account or by bond or letter of credit, the sponsor shall be required to replenish the supplemental security to the full required amount. Each sponsor providing security in accordance with this paragraph shall agree that the determinations of the Attorney General with regard to the return of purchasers' moneys pursuant to dispute resolution under this subdivision shall be an obligation of the sponsor who shall cause its escrow agents holding the moneys of New York purchasers in other jurisdictions to comply with such determinations regardless of the value or amount of the supplemental security held by the supplemental escrow agent.

(9) Describe in detail the timing and manner of payment of the purchase price and refer to the section of the offering plan which sets forth the terms of any financing offered or arranged by the sponsor.

(10) State (in capital letters) that a purchaser may cancel his or her contract within seven business days (or longer if required by the law of the jurisdiction in which the timeshare property is located), and receive a full refund of moneys paid in connection with the timeshare purchase. Refer readers to page one of the offering plan for a detailed discussion of this cancellation right.

(11) If the sponsor is offering financing, describe any existing arrangements or future plans for the pledge, hypothecation, sale or other negotiation of notes executed by timeshare purchasers. Discuss the applicability and effect of the "holder-in-due-course" doctrine, including appropriate references to Federal Trade Commission rules (16 CFR part 433) on this subject.

(12) State that no document executed by a purchaser will contain a cognovit or confession- of-judgment clause.

(13) State that the funds of a purchaser who is not in default under the purchase agreement (including payments made by the purchaser directly to the sponsor or funds received by the sponsor upon the negotiation of notes executed by the purchaser) will be disbursed from escrow to the sponsor only when the following conditions have been met:

(i) At least five days have passed following the expiration of the purchaser's cancellation period.

(ii) Bona fide purchasers for value have executed purchase agreements (which are no longer subject to rescission by the purchasers) for 15 percent of the total number of timeshares offered in those phases of the project in which any purchase agreements have been executed.

(iii) In a fee timesharing plan, title to the timeshare has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the purchaser or to a trust and is not subject to attachment, garnishment, foreclosure, levy or other legal seizure by the creditors or bankruptcy trustee of the sponsor, the selling agent, the owner of the timeshare property, or the principals of any of them.

(iv) In a fee cooperative timesharing plan, title to the timeshare property has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the cooperative corporation and the shares allocated to the timeshare have been transferred to the purchaser.

(v) In a leasehold cooperative timesharing plan, the leasehold estate in the timeshare property has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the cooperative corporation and the shares allocated to the timeshare have been transferred to the purchaser.

(vi) Any real or personal property to be held by an owner's association under the timesharing plan has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the association.

(vii) In a timesharing plan with fixed units, construction of the purchaser's unit and the common facilities (including property and facilities outside the immediate timeshare regime which timeshare owners have the right to use and occupy as part of the timesharing plan at no additional charge or at a discount from rates charged to the general public) has been completed (and a permanent or temporary certificate of occupancy has been issued, if required), and the unit and com-

mon facilities have been furnished as set forth in the offering plan, or a bond or other security has been provided in an amount and form satisfactory to the Department of Law.

(viii) In a timesharing plan with floating units, construction of the common facilities has been completed (and a permanent or temporary certificate of occupancy has been issued, if required), and the total number of timeshare purchasers is less than the number of intervals available in those units on which construction has been completed (and a permanent or temporary certificate of occupancy has been issued, if required), and said units and common facilities have been furnished as set forth in the offering plan, or a bond or other security has been provided in an amount and form satisfactory to the Department of Law.

(ix) If, as part of the timesharing plan, timeshare owners have the right to use and occupy property outside the immediate timeshare regime (at no additional charge or at a discount from rates charged to the general public), an easement establishing this right has been recorded against the servient estate in accordance with the recording act of the jurisdiction in which the servient estate is located.

(x) If, as part of the timesharing plan, timeshare owners have the right to use and occupy property outside the immediate timeshare regime (at no additional charge or at a discount from rates charged to the general public), a covenant (running with the land) that such property will be used only for the purposes set forth in the offering plan has been recorded against the other property in accordance with the recording act of the jurisdiction in which the other property is located.

(xi) In a leasehold timesharing plan, the leasehold estate in the timeshare unit has been conveyed (and recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located) to the purchaser.

(14) Describe what happens in the event a purchaser defaults on his or her obligations under the purchase or subscription agreement or purchase-money note. Include a discussion of any applicable grace period and notice requirements. Discuss acceleration of indebtedness and liquidated damages.

(15) A complete copy of the subscription or purchase agreement and financing documentation (if sponsor is offering or has arranged for financing) must be included in part II of the offering plan.

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

(17) The subscription 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.

(18) The following legend must appear in capital letters just above the signature line in the purchase or subscription agreement: **YOU MAY CANCEL THIS CONTRACT AT WILL AND WITHOUT EXPLANATION WITHIN SEVEN (7) BUSINESS DAYS AFTER YOU SIGN IT, IN WHICH EVENT YOU WILL RECEIVE A FULL REFUND. SEE PAGE 1 OF THE OFFERING PLAN.** (If the law of the jurisdiction in which the timeshare property is located requires a rescission period of more than seven business days from the date of execution of the contract, substitute the appropriate time period in the above legend.)

(19) If the sponsor requires a purchaser to sign or initial an acknowledgment form, such form must include a separate item (to be initialled by the purchaser) informing the purchaser that he or she may cancel the purchase agreement within seven business days of the date of execution (or longer if required by the law of the jurisdiction in which the timeshare property is located) and receive a full refund.

(n) *Financing offered (arranged) by sponsor.* Disclose the terms of any commitment by the sponsor or a lender procured by the sponsor to finance the purchase of timeshares. The following information should be included in this discussion:

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the purchase price) available for a timeshare and the minimum term of the loan. 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. If the sponsor is providing the financing, state whether the sponsor will refinance or extend the loan at maturity. State the maximum amount of financing available to purchasers generally through a bulk commitment.

(3) Availability. Sponsor must discuss whether financing is available to all purchasers. If not, discuss the method of allocation of such financing.

(4) Interest rate. State the annual percentage rate over the term of the loan. If the loan 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 procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing interest rate and the interest rate offered to purchasers. If the loan is not self-liquidating, also disclose any limitation on the ability of the purchasers to refinance on the same or better terms.

(5) Payments. State when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate loans, 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 timeshare owners.

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

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

(9) 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.

(10) Restrictions. Describe major restrictions on a timeshare owner's right to alter, improve, sell, sublease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a unit.

(11) Events of default. Describe the material events of default entitling the lender to accelerate the principal indebtedness, and describe grace periods granted to purchasers.

(o) *State of title.*

(1) Describe in detail the present state of title to the timeshare property and property outside the immediate timeshare regime which timeshare owners have the right to use and occupy as part of the timesharing plan (at no additional charge or at a discount from rates charged to the general public).

(2) In a fee cooperative timesharing plan:

(i) State that the timeshare property will be conveyed to the cooperative corporation free and clear of liens, encumbrances and title exceptions other than those described in the offering plan. Describe any mortgages or other liens, encumbrances and title exceptions which will affect the property after closing. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, pro-

vided that such additional state of facts does not render title unmarketable.

(ii) State that the shares allocated to the purchaser's timeshare will be transferred to the purchaser free and clear of all liens and encumbrances.

(iii) State that the holders of all mortgages and other liens which will encumber the timeshare property after closing have agreed not to disturb the rights of timeshare owners to use and occupy the timeshare property, and that an instrument incorporating such agreement will be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located prior to or at the closing of title to the cooperative corporation.

(iv) State that, after closing of title to the cooperative corporation, the sponsor will not place or cause to be placed on the timeshare property a mortgage or other consensual lien unless and until the lienholder agrees (in a recorded instrument) not to disturb the rights of timeshare owners to use and occupy the timeshare property.

(3) In a leasehold cooperative timesharing plan:

(i) State that the leasehold interest in the timeshare property will be conveyed to the cooperative corporation free and clear of liens, encumbrances and title exceptions, other than those described in the offering plan. Describe any mortgages or other liens, encumbrances and title exceptions which will affect either the leasehold estate or the underlying fee-simple estate. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that such additional state of facts does not render title unmarketable.

(ii) State that the shares allocated to the purchaser's timeshare will be transferred to the purchaser free and clear of all liens and encumbrances.

(iii) State that the holders of all mortgages and other liens which will encumber the leasehold estate after conveyance to the cooperative corporation have agreed not to disturb the rights of timeshare owners to use and occupy the timeshare property, and that an instrument incorporating such agreement will be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located prior to or at the conveyance of the leasehold estate to the cooperative corporation.

(iv) State that the holders of all mortgages and other liens which encumber the underlying fee-simple estate in the timeshare property (at the time that the leasehold estate is conveyed to the cooperative corporation) have agreed either to subordinate their lien to the leasehold estate or not to disturb the rights of timeshare owners to use and occupy the timeshare property. State also that an instrument incorporating such agreement will be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located prior to or at the conveyance of the leasehold estate to the cooperative corporation.

(v) State that the leasehold estate of the cooperative corporation will not be subordinated to any future mortgage or other lien recorded against the underlying fee-simple estate in the timeshare property.

(vi) State that, after the conveyance of the leasehold estate to the cooperative corporation, the sponsor will not place or cause to be placed on the leasehold estate a mortgage or other consensual lien unless and until the lienholder agrees (in a recorded instrument) not to disturb the rights of timeshare owners to use and occupy the timeshare property.

(4) In a leasehold timesharing plan:

(i) State that the leasehold interest in the unit and any appurtenant interest in common elements will be conveyed to the purchaser free and clear of encumbrances and title exceptions other than those described in the offering plan. Describe any encumbrances and title exceptions which will affect the timeshare after closing. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey

would show, provided that such additional state of facts does not render title unmarketable. Prior to or at the conveyance of the leasehold interest to the purchaser, a discharge or partial release of all mortgages and other liens on the leasehold interest must be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located.

(ii) State that the holders of all mortgages and other liens which encumber the underlying fee-simple estate in the timeshare property (at the time that the leasehold interest is conveyed to the purchaser) have agreed either to subordinate their lien to the leasehold interest or not to disturb the rights of timeshare owners to use and occupy the timeshare property. State also that an instrument incorporating such agreement will be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located prior to or at the conveyance of the leasehold interest to the purchaser.

(5) In a fee timesharing plan, state that the purchaser will receive title to his or her timeshare (including any appurtenant undivided common interest) free and clear of encumbrances and title exceptions other than those described in the offering plan. Describe any encumbrances and title exceptions which will affect the timeshare after closing. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that such additional state of facts does not render title unmarketable. Prior to or at closing of title to the purchaser, a discharge or partial release of all mortgages and other liens affecting the timeshare or its appurtenant common interest must be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located.

(6) State that any timeshare property to be held by an owner's association will be conveyed to the association free and clear of encumbrances and title exceptions, other than those described in the offering plan. Describe any encumbrances and title exceptions which will affect association property after closing. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that such additional state of facts does not render title unmarketable. Prior to or at closing of title to the owner's association, a discharge or partial release of all mortgages and other liens encumbering association property must be recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located.

(7) In a right-to-use timesharing plan, state that the holders of all mortgages or other liens encumbering the timeshare property have agreed not to disturb the rights of timeshare owners to use and occupy the timeshare property, and that an instrument incorporating such agreement has been recorded in accordance with the recording act of the jurisdiction in which the timeshare property is located. State that the sponsor will not place or cause to be placed on the timeshare property a mortgage or other consensual lien unless and until the lienholder agrees (in a recorded instrument) not to disturb the rights of timeshare owners to use and occupy the timeshare property.

(p) *Closing of title.* Describe what *closing* means, when closing can take place and what prior notice is required. In a fee or cooperative timesharing plan, state what type of deed the sponsor will deliver. State that the sponsor is responsible for the proper recordation of all deeds, leases, easements, mortgages or other instruments of land conveyance.

(q) *Acquisition costs.* Describe fully all estimated costs, fees and charges to be paid or apportioned in connection with acquiring a timeshare, and specify whether they will be paid by purchaser or sponsor. Include fee and mortgage title insurance charges, State and local transfer taxes, mortgage recording taxes, recording fees for the deed and any mortgage, power of attorney and any other documents, apportionment of taxes, water and sewer charges, and all other costs or adjustments. For all items to be apportioned, set forth the basis for apportionment.

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

(1) For timesharing plans involving new construction or rehabilitation, state the sponsor's obligation to build and complete the timeshare units and common facilities in accordance with the building plans and specifications identified in the plan, and the sponsor's right to substitute equipment or materials and make modifications of layout or design; provided, however, that the sponsor may not:

- (i) substitute equipment or materials of lesser quality or design; or
 - (ii) change the size or location of buildings, units, common facilities or other improvements, if such changes have a substantial and adverse effect on the interest of any timeshare owner or contract vendee under a timeshare purchase agreement.
- (2) State whether the sponsor agrees to warrant the materials or workmanship of the units and common facilities. Fully disclose the terms of the warranties.
- (3) State that the sponsor agrees to pay for the authorized and proper work involved in the construction of the timeshare units and common facilities, and that the sponsor will cause all mechanic's liens with respect to such construction to be promptly discharged or bonded.
- (4) State whether the sponsor has an obligation to defend any suits or proceedings arising out of the sponsor's acts or omissions, and to indemnify the board of managers, board of directors, or timeshare owners.
- (5) In a fee or cooperative timesharing plan involving new construction or rehabilitation, the sponsor must agree to deliver a set of "as-built" plans to the board of managers or board of directors.
- (6) The sponsor must disclose whether any bond or other security, other than those required by this Part, has been furnished to secure the sponsor's obligations, including the sponsor's obligations to complete construction of timeshare property.
- (7) The sponsor must agree to pay all common charges and special assessments with respect to unsold timeshares. Describe any guarantee or subsidy of maintenance charges by the sponsor.
- (8) The sponsor must agree to initially procure, and the budget must reflect, fire and casualty insurance pursuant to an agreed amount replacement value policy or in an amount sufficient to avoid coinsurance. In addition, the sponsor must agree to initially procure, and the budget must reflect, public liability insurance in such amounts as are reasonable and adequate to cover any foreseeable liability arising out of operation of the timeshare property. In a right-to-use or leasehold timesharing plan, sponsor must further agree to maintain insurance coverage at this level.
- (9) The sponsor must agree to keep copies of the offering plan, amendments, exhibits and documents referred to in the plan, on file at a specified location for six years from the date the offering plan was accepted for filing.
- (10) Disclose when the sponsor can dissolve or liquidate, and whether dissolution or liquidation will have an effect on the sponsor's obligations under the plan.
- (11) If the sponsor has a right of access in order to complete construction, describe the sponsor's obligation to repair damages and the extent to which sponsor can interfere with the timeshare owners' use.
- (12) State that the sponsor will not voluntarily convey the timeshare property or property outside the immediate timeshare regime, which timeshare owners have the right to use and occupy as part of the timesharing plan (at no additional charge or at a discount from rates charged to the general public), or any portion of it, to a third party unless and until the third party agrees in writing to assume all obligations of the sponsor under the timesharing plan.
- (13) In a fee or cooperative timesharing plan, 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 closing, will survive delivery of the deed.
- (14) State that the terms of the offering plan will govern in the event of a conflict between the offering plan and any other document or advertisement used in connection with the timeshare offering.

(15) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing, and the rights and obligations of purchasers of timeshares in damaged units.

(s) *Rights and obligations of timeshare owners.* Describe the rights and obligations of timeshare owners, including (but not necessarily limited to) the following:

(1) The sale and lease of timeshares, including restrictions and limitations in the declaration of condominium, bylaws, proprietary lease, house rules or other relevant document or law, and the right of the board of directors, sponsor or others to impose further or different restrictions or limitations in the future.

(2) Whether and under what conditions a timeshare owner may use the timeshare property and facilities at times other than his or her designated interval.

(3) Restrictions and limitations on occupancy and use, including (but not necessarily limited to): rules regarding pets or children; aesthetic controls; limitations on business or professional uses; restrictions on occupancy of units owned by corporations, partnerships or fiduciaries; restrictions on illegal or offensive uses; limitations on guest privileges; limitations on utilization of common elements and parking facilities; and limitations or restrictions on use and enjoyment of areas and facilities owned or controlled by any related homeowner's association.

(4) The obligation to pay maintenance charges, including how maintenance charges are determined; when and how they will be billed and collected; and the right of the sponsor, board of managers or board of directors to place liens against timeshares for unpaid maintenance charges or to prohibit the use of the timeshare and facilities by a timeshare owner who has not paid the maintenance fee. Refer to schedule B and schedule C and the accompanying footnotes for more detail.

(5) The obligation to pay for individual goods or services not included in the annual maintenance fee, such as telephone calls, guest fees, maid and linen service, or damage to units.

(6) State that the timeshare owner is not permitted to alter the unit in any way under any circumstances.

(7) Explain the insurance coverage provided by the board of managers for the benefit of each timeshare owner, and a timeshare owner's right to obtain supplemental or additional insurance.

(8) The obligation to grant access to the managing entity to make emergency repairs.

(9) The obligation to comply with the declaration of condominium, declaration of covenants and restrictions, bylaws, house rules, and any other authorized requirements of the board of directors, board of managers or sponsor, and the remedies for noncompliance.

(t) *Rights and obligations of the board of managers (board of directors).* Describe how the affairs of a fee or cooperative timesharing plan will be governed, and summarize the important provisions of the declaration of condominium, declaration of covenants and restrictions, certificate of incorporation and bylaws. Include a discussion of the following topics:

(1) the composition of the board of managers or board of directors, eligibility requirements, elections and removal of members;

(2) the powers, duties and liability of the board of managers or board of directors;

(3) the powers, duties and liability of officers;

(4) repairs, replacement and maintenance of units and common facilities;

(5) repair or restoration after fire or other casualty, and whether insurance proceeds are dedicated to repair and reno-

tion and, if not, under what circumstances they may be used for other purposes;

- (6) insurance provided and maintained by the board of directors or board of managers;
- (7) the liability of board members;
- (8) the extent to which the sponsor will or may control the board of directors or board of managers;
- (9) reports to unit owners, including notice of meetings and availability of books and records; and
- (10) amendments to condominium, cooperative or homeowner's association documents.

State that copies of the declaration of condominium, declaration of covenants and restrictions, and bylaws are included in part II of the offering plan.

(u) *Resort exchange program.*

(1) If the timesharing plan is not a member of an exchange network, so state, and explain that a purchaser will be unable therefore to trade his or her timeshare for a timeshare at another resort. Explain why the timesharing plan is not a member of an exchange network.

(2) State which exchange network, if any, the timesharing plan has joined, and describe its operation in detail. Include a discussion of fees and exchange requests. If applicable, state that a timeshare owner must release his or her timeshare to the exchange network, in order to participate in the exchange program, before being informed of the specific resorts or locations available for trade.

(3) State, if applicable, that the exchange network is independent of the sponsor, and that timeshare owners will be entitled to use this network only as long as the sponsor and the timeshare property continue as a member of the exchange company. State that the availability of exchange privileges for any timeshare owner will be contingent upon meeting the terms and conditions of the exchange company, including payment of membership and exchange fees. State in capital letters that there can be no assurance that a particular interval can be exchanged, that an exchange for a particular interval or a particular resort can be arranged, that this timeshare resort will continue to qualify with the exchange company, or that this interval exchange program or any other will continue to exist.

(v) *Management.* Summarize the important terms of any management agreement, including (but not necessarily limited to) the following:

- (1) the name and address of the managing agent;
- (2) the term of the management agreement and the right, if any, of the agent or timeshare regime to cancel the agreement;
- (3) all fees and other compensation for services;
- (4) the major duties and services to be performed by the managing agent, including whether bookkeeping, payroll, income tax deduction calculation and maintenance collection are provided;
- (5) the obligations (if any) of the timeshare regime to reimburse the agent for expenses incurred or to indemnify the agent against liability for acts properly performed by it pursuant to the agreement; and
- (6) whether the management agreement is assignable by the agent, and what restrictions are imposed on assignability.

(w) *Reservation and check-in/check-out procedures.*

(1) In a timesharing plan which “floats” as to unit or interval or both, describe in detail the procedure for reserving the use of an interval or unit.

(2) Describe in detail the check-in and check-out procedures.

(x) *Identity of parties.*

(1) State the names, business addresses, backgrounds and experience of the sponsor, and principals of the sponsor as defined in section 24.1(c) of this Part. If the sponsor is a contract vendee, such information must also be provided with respect to the owner of the timeshare property and principals of the present owner, and any relationship between the owner of the property and the contract vendee must also be disclosed. Describe: (i) all prior felony convictions of the sponsor and/or any principals of the sponsor; and (ii) all prior convictions, injunctions and judgments against the sponsor and/or any principals of sponsor that may be material to the offering plan or an offering of securities generally, and that occurred within the 15 years prior to the submission of the proposed offering plan.

(2) List all cooperatives, condominiums, planned unit development homes, subdivided vacant land, or timesharing plans offered for sale by the sponsor or affiliates of the sponsor's principals within the past five years by address and the year they first became available. If the number of such properties or projects exceeds five for the sponsor or a principal, the five most recent offerings may be listed.

(3) State the name and address of the sponsor's attorney, and identify which attorney prepared the offering plan. Also, disclose any relationship or affiliation between the sponsor and its attorney other than that of attorney/client.

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

(5) State the name, address and experience of the selling agent. Describe: (i) all prior felony convictions of the selling agent, or any principals of the selling agent; and (ii) all 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 the 15 years prior to the submission of the proposed offering plan.

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

(7) State the relationships (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 any services to the timeshare regime subsequent to the commencement of timeshare operation.

(8) If applicable, state that the Secretary of State is designated to receive service of process for an out-of-state sponsor, or for out-of-state principals of the sponsor, or for an out-of-state selling agent and its principals.

(y) *Documents on file.* State that the 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 closing.

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

- (1) Disclose whether there are any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, the sponsor's capacity to perform all of its obligations under the plan, or the operation of the timesharing plan.
- (2) Disclose whether the property was the subject of any prior public offerings. Disclose whether any preliminary binding agreements have been entered into or whether money has been collected from prospective purchasers.
- (3) Represent that the sponsor, its agents and sponsor as holder of unsold timeshares will not discriminate against any person on any basis prohibited by civil rights laws.
- (4) Disclose any circumstances which may affect use or enjoyment of the property and appurtenances, such as reciprocal covenants or easements, impending adjacent construction, any usage restriction imposed by statute, ordinance or zoning resolution unless disclosed elsewhere in the plan.