

PART 18

OCCUPIED COOPERATIVES

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Section 18.1 General

(a) Applicability. The offering statement or "offering plan" required by section 352-e of the General Business Law ("G.B.L.") for a cooperative that meets the requirements set forth below is subject to this Part. Except as provided in paragraph (4) of this subdivision, offerings subject to this Part are not subject to any other Part.

(1) One or more individuals reside in the building on the date the proposed offering plan is submitted to the Office of the Attorney General.

(2) The cooperative is not organized as a time-sharing arrangement.

(3) One or more of the cooperative units to be offered are used for residential purposes or for combined residential/home occupation purposes. A cooperative offering for commercial use only is not subject to this Part.

(4) The conversion of an occupied building to two or more condominium units and the conversion of one or more of the condominium units to an apartment corporation ("condo-coop") is primarily subject to this Part. In addition, the offering plan must comply with the requirements of Part 19 of this Subchapter to the extent necessary to comply with subdivision (b) of this section.

(b) Standard of compliance. An offering plan must, at a minimum:

(1) contain in detail the terms of the transaction and be complete, current and accurate;

(2) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(3) not omit any material fact;

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

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

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

(7) not contain any representation or statement which is false, where the sponsor or the person who made such representation or statement:

(i) knew the truth;

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

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

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

(c) Definitions.

(1) As used in this Part, the word sponsor(s) means any person, partnership, joint venture, corporation, company, trust, association or other entity who makes or takes part in a public offering or sale, in or from the State of New York, of securities consisting primarily of shares or participation interests or investment in real estate, including cooperative interests in realty.

(i) Sponsor shall not be deemed to include a selling agent who has complied with section 359-e of the General Business Law or an attorney or other expert retained by the sponsor solely to render professional advice or opinions in connection with the offering

(ii) Whenever under this Part references are made to the sponsor performing an act, it shall be deemed compliance with this Part if the plan states that the apartment corporation will perform the act, provided nothing herein shall be interpreted so as to relieve the sponsor of any responsibility or to impose upon the apartment corporation any financial burden it would not otherwise have if the sponsor was named in the offering plan as the party performing the act. Plans which elect to name the apartment corporation as performing the act when this Part specifically names the sponsor, shall, in the introduction, state that the acts of the apartment corporation are caused by the sponsor and shall incorporate the proviso stated above.

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(2) As used in this Part, the word principal(s) means all individual sponsors, all general partners of sponsors that are partnerships, all officers, directors and shareholders of a corporate sponsor that are actively involved in the planning or consummation of the offering, and all other individuals who both (i) own an interest in or control sponsor, and (ii) actively participate in the planning or consummation of the offering, regardless of the form of organization of sponsor.

(3) As used in this Part, the word subscription or subscription agreement means any executed written agreement to purchase shares allocated to a dwelling unit. As used in this Part, the word subscriber means any person, partnership, joint venture, corporation, company, trust, association or other entity who executes such a subscription. As used in this Part, the phrase to subscribe shall mean to execute any such subscription agreement.

(4) As used in this Part, the words presentation date shall mean the date of completion of service, as defined in subdivision (d) of this section, of a copy of the plan or amendment filed with the Office of the Attorney General.

(5) "Consummation of the plan" means transfer of title to the apartment corporation and the issuance of shares and a proprietary lease to at least one subscriber under the plan following a declaration of effectiveness by the sponsor and acceptance of the amendment by the Office of the Attorney General confirming or declaring the plan effective.

(6) "Filing" means the issuance of a letter from the Attorney General stating that an offering plan or amendment has been accepted for filing.

(d) Service.

(1) Unless otherwise provided by statute or regulation, any document required to be served by this Part shall be served on:

(i) one residential tenant per unit;

(ii) subscribers or purchasers who have executed and delivered subscription agreements or purchase agreements to the sponsor, apartment corporation or selling agent, and are not in default;

(iii) shareholders of the apartment corporation; and

(iv) any other person entitled to service pursuant to local law or regulation (collectively "offerees"), in the following manner:

(a) personal delivery; or

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b

) mailing by regular mail or registered or certified mail, with or without return receipt requested, addressed to the offeree at the last known residence of such offeree or, if offeree has provided written information of an alternative address for notices, addressed to the offeree at the alternative address. If sponsor has no information of the last known residence address, but has written information of the place of business or employment of such offeree, the mailing shall be addressed to such last business or employment address.

(2) Service by personal delivery shall be deemed complete upon delivery. Service by mailing shall be presumed complete on the fifth day after the date of mailing. An affidavit of service identifying the offerees served, stating the manner of service and the date of service, shall be a document required to be retained under section 18.3(ff) of this Part. The date of completion of service shall be the latest date on which service upon all offerees is deemed and/or presumed complete.

(e) Notice to tenants and affidavit of service.

(1) Within three business days from the date the proposed offering plan is first submitted to the Office of the Attorney General, the sponsor shall serve each offeree, as defined in subdivision (d) of this section, with a copy of the proposed offering plan, together with the following notice:

Date of Notice: _____

We have submitted to the Office of the Attorney General of the State of New York, Investment Protection Bureau - Real Estate Financing Section, a proposed offering plan, commonly known as a "red herring", for the conversion of (insert address and name of building, if any) to a cooperative. The final offering plan has not yet been filed with the Office of the Attorney General. The law requires us to disclose all material information concerning the building and the conversion process in this proposed offering plan. A copy of the proposed offering plan is enclosed for you to comment on and to retain. Additional copies of the proposed offering plan are available for inspection and copying at a reasonable charge, at the office of sponsor (or selling agent) located at (insert address of sponsor or selling agent) and the Office of the Attorney General.

The Attorney General strongly urges you to read this proposed offering plan carefully and to consult with an attorney to advise you as to the meaning and consequences of this plan.

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The law requires the Office of the Attorney General, within not less than 120 days nor more than 180 days from the date of submission of the proposed offering plan, to either file the offering plan or to indicate how the offering plan is deficient. No apartments may be sold or offered for sale, no subscription agreements may be executed, and no downpayments may be accepted unless and until the Office of the Attorney General files the final offering plan. A copy of the filed plan will then be served on each tenant. You may send written comments on the proposed offering plan to the Office of the Attorney General, Investment Protection Bureau - Real Estate Financing Section, 48th Floor, Two World Trade Center, New York, N.Y. 10047. You may also send your written comments to (insert name and address of sponsor or selling agent).

(2) If G.B.L. section 352-eee is applicable, the notice shall also state that pursuant to G.B.L. section 352-eee (2)(f), a copy of the notice will be sent to the clerk of the municipality where the building or group of buildings is located.

(3) If G. B. L. section 352-eee or 352-eeee is applicable, the notice shall also state:

Tenants or their representatives may physically inspect the premises at any time subsequent to the submission of the plan to the Office of the Attorney General, during normal business hours, upon written request made by them to the sponsor or selling agent, provided tenants' representatives are registered architects or professional engineers licensed to practice in the State of New York. After a final offering plan is filed with the Office of the Attorney General, copies of all postings required by section 352-eee or 352-eeee of the New York General Business Law, which are described in the "Rights of Existing Tenants" section on page _____ of the plan, will be made available for inspection and copying at the office of the Office of the Attorney General where the submission was made and at the office of the sponsor or selling agent.

(4) An affidavit of service together, with a copy of the notice, must be submitted to the Office of the Attorney General within three business days following completion of service on all offerees.

(f) No excessive long-term vacancies.If G.B.L. section 352-eee or 352-eeee is applicable to the offering, within three business days following completion of service on all offerees, as defined in subdivision (d) of this section, of a proposed offering plan, sponsor shall submit an affidavit stating:

(1) the number of dwelling units in the building;

(2) the number of dwelling units and the identification of the units that were not leased or occupied by bona fide tenants for more than five months prior to the date that the proposed plan was first submitted to the Office of the Attorney General;

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(3) the percentage obtained by dividing the number of units identified in paragraph (2) by the number of units identified in paragraph (1);

(4) if the percentage set forth in paragraph (3) exceeds 10 percent, the normal average vacancy rate for the building or buildings for the two years prior to the January preceding the date of first submission, and a statement that said percentage set forth in paragraph (3) does not exceed twice the said normal average vacancy rate;

(5) that, based on the information provided in paragraphs (1)-(4) of this subdivision, an excess number of long-term vacancies did not exist on the date that the offering plan was first submitted to the Office of the Attorney General; and

(6) the following information with respect to any tenant who is the sponsor, or the selling agent, or is related to the sponsor, the selling agent or any principal of the sponsor or selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner:

(i) the identity of the tenant;

(ii) the number of the unit the tenant leases;

(iii) the nature of the relationships with the sponsor or the selling agent, or any principal of the sponsor or the selling agent;

(iv) the date of the lease,

(v) the date the tenant took occupancy of the unit; and

(vi) whether or not the tenant has been counted as a bona fide tenant by the sponsor for the purposes of this affidavit.

The Office of the Attorney General, in its discretion, may require such further proof as it deems necessary to establish that there were no excessive long-term vacancies.

(g) Time of review. After submission of the proposed offering plan for filing, the Office of the Attorney General shall issue a letter to the sponsor or sponsor's attorney stating that the plan is filed, or indicating deficiencies. The Office of the Attorney General shall issue such a letter for an offering plan subject to this Part no sooner than 120 days and no later than 180 days after the date of submission of the proposed offering plan. The Office of the Attorney General may issue a deficiency letter whenever it appears: (1) that the department cannot make any finding mandated by law, or (2) that the proposed offering plan is deficient in one or more respects. The Office of the Attorney General may, in its discretion, deem an offering plan as not submitted if the proposed offering plan and exhibits are incomplete and therefore do not meet the requirements of section 18.2 of this Part, Procedure for Submission.

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(h)

Revisions.

Following submission of a proposed offering plan, revisions must be made to reflect any material change of fact or circumstances pertaining to the proposed offering, the offerors, the property involved, the condition of the premises, or the costs of ownership and operation of the property, so that the offering plan may continue to comply with subdivision (b) of this section. Such revisions shall be submitted to the attorney assigned by the Office of the Attorney General to review the proposed offering plan. The Office of the Attorney General may issue a deficiency letter and/or require resubmission of a new offering plan if the revisions reflect matters of fact or circumstances which were known or should have been known to the sponsor at the time of original submission, or substantially change the nature or terms of the offering, or if the plan as revised comes within the grounds stated in subdivision (g) of this section. After the offering plan is filed the plan must be amended periodically as required by section 18.5 of this Part.

(i) Statutory compliance. Unless expressly provided herein, nothing contained in this Part shall be construed as limiting the requirements set forth in article 23-A of the G.B.L.

(j) Out-of-state cooperatives. A sponsor of a cooperative located outside of New York, who makes or takes part in a public offering or sale in or from the State of New York of cooperative interests in realty must file an offering plan with the Office of the Attorney General that provides the full and fair disclosure required by law, including this Part. The Office of the Attorney General, in its discretion, may allow the sponsor to comply with any requirement of this Part which would require a departure from the offering plan approved by or filed with the state where the cooperative is located by employing an addendum at the end of the offering plan containing the information required.

(k) Exemptions. Upon written application of the sponsor or sponsor's attorney, the Office of the Attorney General, in its discretion, may by ruling exempt a plan from the application of any provision of this Part, where it is found that enforcement of the provision is not necessary to effectuate the purposes of the G.B.L. or to protect the public interest. The application shall:

(1) be annexed to and be submitted with the attorney's transmittal letter;

(2) set forth the provisions from which the exemption is sought and the grounds for the exemption; and

(3) be signed by the sponsor or sponsor's attorney.

The transmittal letter and certifications required by section 18.4 of this Part shall be in the form required by this Part, without modification, and shall be based on the assumption that any exemption sought pursuant to this section has been granted. In the event that the Office of the Attorney General denies the application for exemption, the

Office of the Attorney General shall issue a deficiency letter as provided in subdivision (g) of this section. No additional fee is required for an exemption application.

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(l) Exemption from G.B.L. section 359-e. An apartment corporation whose shares are to be sold pursuant to an offering plan filed with the Office of the Attorney General is deemed exempted from the registration requirements of G.B.L. section 359-e, provided that all offering activities are made exclusively by persons duly registered under the filing requirements of such section. No application for exemption need be filed by an apartment corporation exempted under this subdivision.

(m) Transition. Notwithstanding any provisions to the contrary in this Part, the following provisions apply to any proposed offering plan which:

(1) was submitted to the Office of the Attorney General after March 31, 1982 pursuant to Part 17 or proposed Part 18 of this Subchapter before June 25, 1982;

(2) had not been filed with the Office of the Attorney General before the effective date of Part 18 (June 2, 1982); and

(3) meets the requirements of subdivision (a) of this section.

(i) All such proposed offering plans ("transitional plans") shall be revised to substantially comply with this Part and shall be resubmitted to the Office of the Attorney General ("resubmitted plan"). For purposes of this section, substantial compliance shall mean that the proposed offering plan contains all information required to be disclosed by this Part, either in the bound offering plan or in the supplemental submission annexed to the plan. A transitional plan will be deemed abandoned if it is not resubmitted within six months of the effective date of this Part. Sponsor shall notify all offerees in writing within five days after the plan is deemed abandoned.

(ii) The Office of the Attorney General, in its discretion, may issue a letter to the sponsor or sponsor's attorney stating that a transitional plan is filed if the resubmitted offering plan complies with this Part and more than 120 days have elapsed from the date the proposed offering plan was first submitted to the Office of the Attorney General.

(iii) After resubmission, the Office of the Attorney General shall issue a letter to the sponsor or sponsor's attorney stating that the resubmitted plan is filed, or indicating deficiencies. The Office of the Attorney General shall issue such a letter no later than 180 days after the date of resubmission. The Office of the Attorney General may issue a deficiency letter whenever it appears: (a) that the department cannot make any finding mandated by law, or (b) that the resubmitted plan is deficient in one or more respects.

(iv) The requirement in subdivision (e) of this section that a copy of the proposed offering plan and a notice be served on offerees does not apply to a resubmitted offering plan. If the resubmitted plan contains

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any material change in the terms of the proposed offering plan as first submitted to the Office of the Attorney General, the sponsor must serve a copy of the resubmitted plan and the following notice on each offeree. The transmittal letter required by section 18.2(c)(1) of this Part must state whether and in what respects the resubmitted plan materially changes the terms of the proposed offering plan first submitted to the Office of the Attorney General. A resubmitted plan that does not materially change the terms of the proposed offering plan first submitted to the Office of the Attorney General must be made available to tenants at the office of sponsor or selling agent for inspection and copying.

NOTICE

As you know, on _____ (insert date) we submitted to the New York State Office of the Attorney General a proposed offering plan for the conversion of (insert address or name of building) to cooperative ownership. This letter is to notify you of a recent change in law that may affect the timetable of the conversion process.

The amended law requires the Office of the Attorney General, within not less than 120 days nor more than 180 days from the date of submission of the proposed offering plan, either to file the offering plan or to indicate how the proposed offering plan is deficient. The Office of the Attorney General recently issued regulations that interpret the amendment to the law for buildings currently being converted.

As applied to (insert address or name of building), the Office of the Attorney General may file the plan or indicate how it is deficient after (insert date that is 120 days after the date the proposed offering plan was first submitted to the Office of the Attorney General) and must do so before (insert date that is 181 days after the date the plan was revised and resubmitted pursuant to these regulations).

We have materially changed the proposed offering plan that you received in (insert month and year in which the plan was first served on tenants). A copy of the revised plan is enclosed for you to comment on and to retain. You will receive a copy of the filed plan if and when the plan is filed with the Office of the Attorney General.

No apartments may be sold or offered for sale, no subscription agreements may be executed, and no downpayments may be accepted unless and until the Office of the Attorney General files the offering plan. A copy of the filed plan will be served on each tenant.

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You may send written comments on the proposed offering plan to the Office of the Attorney General, Investment Protection Bureau - Real Estate Financing Section, Two World Trade Center, 48th Floor, New York, N.Y. 10047. You may also send your written comments (to insert name and address of sponsor or selling agent).

(v) Subdivision (f) of this section, concerning excessive long-term vacancies, does not apply to a transitional offering plan. However, if G.B.L. section 352-eee or 352-eeee is applicable, sponsor shall include, at Exhibit B-18 of the resubmitted plan and exhibits, proof satisfactory to the Office of the Attorney General that there were no excessive long-term vacancies on the date the proposed offering plan was first submitted to Office of the Attorney General. Proof shall include, but is not limited to, an affidavit from sponsor stating the information in subdivision (f) of this section.

(vi) The Office of the Attorney General shall credit filing fees previously paid under G.B.L. section 352-e(7)(a) to the resubmitted plan if the plan is resubmitted within six months of the effective date of this Part.

(vii) The transmittal letter required by section 18.2(c)(1) of this Part for a resubmitted plan must include the date the plan was first submitted to the Office of the Attorney General, the file number and, if possible, a copy of the receipt for the filing fee.

(viii) Section 18.3(j) of this Part concerning certified operating statements for the building need not be complied with on the date the offering plan is resubmitted to the Office of the Attorney General. The certified operating statements required by section 18.3(j) of this Part may be included in the resubmitted offering plan before it is filed with the Office of the Attorney General or, if the plan so states, included in an amendment to the resubmitted offering plan after it is filed but before the plan is declared effective.

(n) Effectiveness of regulations.

(1) This Part, as in effect on June 2, 1982, applies to offering plans that meet the requirements of subdivision (a) of this section and were submitted on or after April 1, 1982 but before July 20, 1983.

(2) This Part, as revised by revisions filed with the Secretary of State on May 24, 1983, applies to offering plans that meet the requirements of subdivision (a) of this section and are submitted on or after July 20, 1983.

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(3) Sections 18.3 and 18.5 of this Part, as revised on May 24, 1983 (excluding sections 18.3(n)(4), 18.5(e)(6)(iv) and 18.5(e)(7)(iv) of this Part, except to the extent that any of these are required by the terms of the offering plan) shall apply to amendments submitted on or after July 20, 1983 for offering plans which meet the requirements of subdivision (a) of this section regardless of when such plan was filed.

(4) Section 18.6 of this Part, as revised on May 24, 1983, is effective immediately for advertisements for offering plans that meet the requirements of subdivision (a) of this section regardless of when such plan was filed.

(5) Section 18.8 of this Part, as revised on May 24, 1983, is effective immediately for all offering plans filed by the Office of the Attorney General on or after July 21, 1982, and to all sales of units occupied by eligible senior citizens, eligible handicapped persons or eligible disabled persons or persons seeking exemptions as eligible senior citizens or eligible handicapped persons or eligible disabled persons, on or after July 21, 1982.

(6) This Part, as revised by revisions filed with the Secretary of State on March 5, 1984, applies to offering plans that meet the requirements of section 18.1(a) and are submitted on or after April 5, 1984.

(7) This Part, as revised by revisions filed with the Secretary of State on March 5, 1984, is effective immediately for all offering plans, regardless of when such plan was submitted, that:

(i) meet the requirements of section 18.1(a); and

(ii) are or become subject to G.B.L., section 352-e(2-a), prior to being declared effective.

(8) Sections 18.1(p) and 18.3(r) of this Part, as revised on March 5, 1984, are effective immediately for all offering plans, regardless of when such plan was submitted, that:

(i) meet the requirements of section 18.1(a);

(ii) are or become subject to G.B.L., section 352-eee, prior to being accepted for filing; and

(iii) were not accepted for filing prior to June 30, 1983.

(o) Abandonments, terminations and withdrawals. If the offering plan is withdrawn or terminated prior to filing, or is abandoned after filing, the sponsor shall execute and file form RS-3 promulgated by the Attorney General within five business days

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thereafter. If subscription payments have been received, an accounting of the disposition of all funds received shall be included in form RS-3. The sponsor shall concurrently send written notice as to the withdrawal, termination, or abandonment to all offerees as defined in these regulations.

(p) Postings of subscription percentages. If G.B.L., section 352-eee or 352-eeee, is applicable, on the 30th, 60th, 88th and 90th day after the date of presentation of the offering plan and at least once every 30 days until the plan is declared effective or is abandoned, and on the 10th and 2nd day before the expiration of any exclusive purchase period provided in an amendment to the plan, the sponsor shall post before noon, in a prominent place accessible to all tenants in the building, a statement under oath listing the percentage(s) of bona fide tenants in occupancy on the filing date who have signed subscription agreements as of a specified time on the date of the statement. Such statement shall remain posted until the next statement must be posted. The percentage(s) shall be computed in the same manner as the sponsor must compute the minimum percentage(s) needed to declare the plan effective. The statement also shall be filed with the Office of the Attorney General. The Office of the Attorney General may issue model forms, which are recommended for use by sponsors, for posting statements. The statement shall include the following:

(i) The date and time of the statement.

(ii) The date the plan was filed with the Office of the Attorney General.

(iii) The date of presentation of the plan (and the current amendment).

(iv) The last day of any exclusive period(s).

(v) If an eviction plan, the last day for eligible senior citizens or eligible disabled persons to elect not to purchase pursuant to G.B.L., section 352-eeee, or the last day for eligible disabled persons to elect not to purchase pursuant to G.B.L., section 352-eee.

(vi) If the plan is subject to G.B.L., section 352-eeee, state the number of bona fide tenants in occupancy on the filing date who have signed subscription agreements as of a time specified in the statement. If the plan is a non-eviction plan subject to G.B.L., section 352-eeee, also state the number of bona fide non-tenant subscribers who have represented that they or member(s) of their immediate family intend to occupy the apartment when it becomes vacant. If the plan is an eviction plan subject to G.B.L., section 352-eee, state the number of bona fide tenants in occupancy on the filing date who have signed subscription agreements. If the plan is a non-eviction plan subject to G.B.L., section 352-eee, state the number of bona fide tenants in occupancy on the filing date and also state the number of bona fide tenants who became tenants in occupancy after the filing date who have signed subscription agreements. Any subscriber who is required to be listed under section 18.5(e)(6)(v) of

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this Part shall not be included in the count unless the sponsor has submitted proof satisfactory to the Office of the Attorney General establishing that the subscriber is a bona fide tenant, or in a noneviction plan subject to G.B.L., section 352-eeee, unless the sponsor has submitted proof satisfactory to the Office of the Attorney General

establishing that the subscriber is a bona fide purchaser who meets the requirements of section 18.5(e) of this Part.

(vii) The number of subscribers required to be listed under section 18.5(e)(6)(v) of this Part who may not be included in the count at the time of the posting, but whom sponsor seeks to include in the future.

(viii) The number of units or tenants counted in the base. If the plan is an eviction plan under G.B.L., section 352-eee or 352-eeee, also state the number of tenants or units subtracted from the base to date, and the basis in law for each subtraction.

(ix) The percentage obtained by dividing the number of subscribers to be counted towards effectiveness given in subparagraph (vi) of this paragraph by the number of tenants or units counted in the base given in subparagraph (viii) of this paragraph.

(x) If the plan is an eviction plan subject to G.B.L., section 352-eee, also give the percentage obtained by dividing:

(a) the number of subscribers to be counted towards effectiveness given in subparagraph (vi) of this paragraph by

(b) the number of tenants or units counted in the base given in subparagraph (viii) of this paragraph, plus the eligible senior citizens and eligible disabled persons who were bona fide tenants in occupancy on the filing date and had been subtracted from the base in subparagraph (viii).

(q) Disclaimers. The requirements set forth in section 18.3 of this Part apply to the offering plan generally and shall not be negated or contradicted by inconsistent provisions in other portions of the offering plan, or by provisions purporting to discharge liability or to terminate the continuing effect of representations in the offering plan upon an event such as the closing or the delivery of shares with the proprietary lease. Disclaimer provisions, either direct, or indirect through stated reliance on an expert with respect to factual matters required to be represented or set forth in the offering plan, may not be included except as and to the extent permitted in this Part.

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SECTION 18.2 Procedure for submission.

(a) The proposed offering plan and the exhibits described below shall be submitted to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, Room 48-61, Two World Trade Center, New York, N.Y. 10047.

(b) The exhibits shall accompany the proposed offering plan submitted to the Office of the Attorney General and shall be subject to the sanctions of article 23-A of the G.B.L. Whenever an exhibit document is marked "Original" ("Orig") on the list set forth below,

it means that at least one document must be a duly executed, original document. Whenever a document is marked "copy" on the list set forth below, it means that a true and complete copy of the document must be included.

(c) The following are to be included when submitting a proposed offering plan pursuant to this Part:

(1) A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed by the attorney who prepared the plan, containing the statements required by section 18.4(a) of this Part, without qualification or alteration in substance. As specified in section 18.2(c)(4) of this Part, the transmittal letter must expressly indicate any exhibit that is not included, (apart from those noted) and set forth the reasons for the omission. Exemption applications submitted pursuant to section 18.1(k) of this Part must be annexed to and submitted with the transmittal letter. Omissions and additions to the table of contents must be noted and explained. As specified in section 18.3 (m)(1)(ii) of this Part, note if any model form(s) for description of tenants' rights have been used. Pursuant to section 18.3(s) of this Part, the transmittal letter must note whether the offering plan contains or refers to a short-term mortgage, negative amortization mortgage, wraparound mortgage or other type of mortgage involving any unusual risks. Pursuant to section 18.3(t)(12) of this Part, the transmittal letter must note financing offered to purchasers which contains any unusual risks. Pursuant to section 18.3(bb)(5)(v) of this Part, the transmittal letter must note whether the offering plan contains any description of or reference to leases with sponsor or affiliates of sponsor.

(2) Staple or clip to the transmittal letter a check (certified or uncertified) for one half of the filing fee under G.B.L. section 352-e(7)(a) (a nonrefundable deposit) payable to "New York State Office of the Attorney General". (The filing fee(s) is (are) based on the maximum total of the cash amount of the offering to non-tenant purchasers and of the mortgages that will encumber the property after the closing.

(3) Three copies of a typed or printed, bound offering plan.

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(4) Two sets of exhibits. Each set is to be in binders from which documents can be removed easily, and the binders must be indexed with tabs. The cover of each binder must be labeled with the address of the cooperative and the name, address and telephone number of the attorney who prepared the plan. One of the binders must be marked "Original" and contain the original documents required below. Each binder must contain an index of the documents. The transmittal letter required by paragraph (1) of this subdivision must note the omission of any exhibit, other than the exceptions stated below, that is not included and the reason for the omission. If exhibits B-2, B-3, B-6, B-7, B-8, B-12, B-13, B-16 or B-18 are omitted solely because the exhibit is not applicable to the offering, the omission need not be noted in the transmittal letter.

(i) Part A of the exhibits (Certifications) shall consist of the following documents. Photocopies or conformed copies of the certifications shall appear in the offering plan.

(A-1) Certification by sponsor and sponsor's principals signed by "sponsors" and "principals" as defined in section 18.1(c) and (d); see section 18.4(b). (Orig)

(A-2) Certification by sponsor's engineer or architect concerning the description of the property and building condition in Part II of the plan and at Exhibit C-1; see section 18.4(c). (Orig)

(A-3) Certification by expert as to adequacy of projected income and expenses for the first year of cooperative operation; see section 18.4(d). (Orig)

(ii) Part B of the exhibits (General) shall consist of the following documents:

(B-1) Title company report, including a report on housing or building code violations of record, dated or updated within 90 days of submission. (Orig.)

(B-2) Proposed management agreement. (Orig.)

(B-3) Copies of any contract which: (a) will be binding on the apartment corporation for \$2,500 or more per year; (b) has a term in excess of two years; or (c) is with sponsor, a business affiliate of the sponsor or a principal of the sponsor.

(B-4) Copy of letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts, and the annual premium or premiums.

18.2(c)

(B-5) Copy of an opinion from an independent, licensed insurance broker, insurance appraiser or real estate appraiser representing that the fire insurance coverage budgeted in the plan is adequate (a) so that the insured shall not be a coinsurer if policy contains a coinsurance provision, or (b) to cover replacement cost if policy is for an agreed amount which waives coinsurance.

(B-6) Copy of § 352-a/§ 352-b Designation of Secretary of State as agent (applicable only to out-of-state issuers, sponsors, principals and/or selling agents).

(B-7) For cooperatives located outside of New York, New Jersey, Florida, Pennsylvania and Connecticut, copy of statutes and regulations concerning the registration and formation of cooperatives. All cooperatives located outside of New York must include evidence of compliance with local laws and regulations concerning registration and formation of cooperatives.

(B-8) Copy of the form of promissory note and mortgage on the proprietary lease, security agreement, stock power, assignment of lease and recognition agreement required

by sponsor if the plan offers financing, together with any other document which significantly affects a purchaser's obligations for financing offered by sponsor.

(B-9) Copy of certificate of incorporation and receipt from Secretary of State for the apartment corporation, if available.

(B-10) Copy of specimen stock certificate. Include any restrictions on transferring and any other endorsements.

(B-11) Copy of any mortgage and note or bond that will be a lien on the property after closing or which presently encumbers the property.

(B-12) Copy of any mortgage financing commitment letter and amendments or extensions of the commitment letter.

(B-13) Copies of present and proposed professional and commercial leases, and any concession agreements.

(B-14) Copy of contract of sale or exchange between the sponsor and the apartment corporation that conforms to the contract described in the offering plan, and copy of proposed deed to the apartment corporation.

18.2(c)

(B-15) Rent roll certified by the sponsor, managing agent or current owner, as of a date that is within 60 days prior to submission, including the name of each tenant, apartment number, rent, term and termination date of lease, and status under any rent regulatory laws.

(B-16) If the building receives tax abatement or exemption benefits, copy of proof of the level and duration of benefits described in the plan.

(B-17) Copy of sponsor's or present owner's deed to the property, and copy of contract of sale between owner and sponsor if sponsor is contract vendee.

(B-18) Copy of any other material document(s), each of which should be described in the transmittal letter, e.g., copy of regulatory agreement with a government agency.

(B-19) Copy of the Escrow Agreement between the sponsor and the attorney(s) acting as escrow agent. If the model form is not used, so indicate. Copy of bank forms to be used to open the escrow account.

(iii) Part C of the exhibits (Engineering) shall consist of the following documents:

(C-1) Architect's or engineer's detailed description of the property and building condition, with the architect's or engineer's seal and original signature. The description

must be dated within 90 days of submission to the Office of the Attorney General and conform to the requirements of section 18.7 of this Part; see Exhibit A-2.

(C-2) Copy of currently valid temporary, partial or permanent certificate of occupancy. If a certificate of occupancy is not available because the building was constructed before the municipality began to issue certificates of occupancy, include a representation from sponsor that the proposed use by the apartment corporation is identical to the present use of the building.

(iv) Part D of the exhibits (Other Information) shall consist of the following documents:

18.2(c)

(D-1) Signed M-10 form(s), broker-dealer statement, for the selling agents (Orig), and signed M-2 form(s), salesmen statement, for all individual employees who act as salesmen (Orig). Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General and a representation to that effect is stated in Exhibit D-1. (Orig)

(D-2) Signed M-10 form(s), for the sponsoring entity, which shall include all officers, directors, partners or principals who are "dealers" for purposes of G.B.L. section 359-e (Orig). Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior offerings and a representation to that effect is stated in Exhibit D-2. (Orig)

(D-3) Signed RI-1 form(s), registrant information form(s), concerning prior convictions, judgments, administrative actions, bankruptcy, employment and business affiliations for all principals of the sponsor. (Orig)

(D-4) Sponsor's affidavit that sponsor's net worth is or will be sufficient to meet the requirements of G.B.L. section 352-k and all of the unsecured obligations sponsor assumes in the offering plan, including sponsor's obligations for unsold shares. (Orig)

(D-5) An affidavit from sponsor and principals of sponsor, as defined in section 18.1(c) and (d) of this Part, stating whether sponsor and principals of sponsor have taken part in public offerings of cooperative interests in realty, including condominiums, in or from New York, which were initially offered during the preceding five years. State the addresses of the realty and approximate date the offering plan was filed, and the date of the closing for cooperatives or the date of first closing for condominiums. (Orig)

(D-6) Completed statistical information card (available from the Office of the Attorney General).

(d) Upon preliminary advice from the Office of the Attorney General that the proposed offering plan may be filed, sponsor must submit:

(1) checks (certified or uncertified) for the balance of the filing fees under G.B.L. section 352-e(7)(a) and the filing fees under G.B.L. section 359-e(5), payable to "New York State Office of the Attorney General";

(2) six copies of the typed or printed, bound offering plan; and

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(3) two copies of the rent roll as of the month the plan is to be filed, certified by the sponsor, managing agent or current owner.

(e) The plan is filed on the date indicated in the letter from the Office of the Attorney General stating that the plan is filed.

(f) Sponsor should present the plan within a reasonable time after the filing.

18.2(f)

SECTION 18.3 Format and content.

Plans subject to this Part must comply with the format and minimal disclosure requirements set forth in subdivisions (a) through (hh) of this section, in addition to the requirements of article 23-A of the G.B.L.

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

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

THIS IS AN EVICTION PLAN. SEE PAGE ____.

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

NON-PURCHASING TENANTS OTHER THAN ELIGIBLE SENIOR CITIZENS AND ELIGIBLE DISABLED PERSONS WILL BE EVICTED.

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

THIS IS A NON-EVICTION PLAN. NO NON-PURCHASING TENANT WILL BE EVICTED BY REASON OF CONVERSION TO COOPERATIVE OWNERSHIP.

(3) The title in boldface type: COOPERATIVE OFFERING PLAN followed by the address of the property.

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

(5) Amount of the mortgage(s) which shall be based on the projected unpaid balance of all mortgages encumbering the property at the time of acquisition by the apartment corporation.

(6) The total of the maximum cash amount of the offering and of the mortgage(s). The total of the minimum cash amount and of the mortgage(s) may also be included.

18.3(a)

(7) The amount of the working capital fund and/or reserve fund to be retained by the apartment corporation. The amount of reserve fund shall be in compliance with the applicable local law. If there is a working capital fund and this fund may be diminished or depleted for closing adjustments, so indicate. If there is not a working capital fund or reserve fund, indicate -o-.

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

(9) Statement: "Approximate date of first offering", which shall not be earlier than the date the Office of the Attorney General files the plan. The term of the initial offer is 12 months commencing on the date indicated in the letter from the Office of the Attorney Generals 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 Office of the Attorney General and completed when the plan is filed.

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

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

THIS IS A PROPOSED OFFERING PLAN ("RED HERRING") TO CONVERT THIS BUILDING TO A COOPERATIVE. IT HAS BEEN SUBMITTED TO THE NEW YORK STATE Office of the Attorney General, Investment Protection Bureau - Real Estate Financing Section. APARTMENTS MAY NOT BE SOLD OR OFFERED FOR SALE UNTIL THE OFFERING PLAN IS FILED WITH THE Office of the Attorney General.

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

THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL THESE COOPERATIVE APARTMENTS. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE Office of the Attorney General PRIOR TO SELLING OR OFFERING TO SELL ANY

APARTMENTS. FILING WITH THE Office of the Attorney General DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.

18.3(a)

(b)

Table of contents.

The format and order set forth below shall be followed in the table of contents. Include headings for the subjects not marked with an asterisk. In addition, a limited number of headings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk on the table of contents, and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses. Documentation listed in Part II of the table of contents shall be included in full in Part II of the plan. The texts of such documents which will be binding upon the sponsor or the apartment corporation, such as the subscription agreement, the proprietary lease, and the bylaws of the apartment corporation, shall be consistent with the disclosures in the plan and shall conform to the requirements with respect thereto set forth in this section.

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18.3(b)

(c) Special risks. This is a very important section, if applicable, and must be on a separate page following the table of contents. All features of a plan which involve significant risk, or are reasonably probable to affect disproportionately or unusually the maintenance charges or obligations of shareholders in future years of cooperative operation, must be conspicuously disclosed and highlighted. A brief description of the nature of the risk should be given in this section and a more thorough description should

be given in a referenced later section. Uncertainties as to whether a risk should be described in this section should be resolved in favor of inclusion.

(d) In an eviction plan, if G.B.L., section 352-eee, is applicable, include the eligible senior citizen and eligible disabled person forms promulgated by the Office of the Attorney General, forms SH-5 and SH-2, respectively. In an eviction plan, if G.B.L., section 352-e(2-a) or 352-eeee, is applicable, include the eligible senior citizen and eligible disabled person forms promulgated by the Office of the Attorney General, forms SH-1 and SH-2, respectively.

(e) Introduction. The introduction must:

(1) Explain that the purpose of the offering plan is to set forth all the material terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Office of the Attorney General. State that amendments will be served on all offerees, as defined in section 18.1(d) of this Part.

(2) Identify the sponsor, state when the sponsor acquired the property or sponsor's interest as a contract vendee.

(3) Describe the interest that the apartment corporation is to acquire in the land and building.

(4) Summarize the number of shares and units being offered in this offering plan, whether the units are residential or otherwise, any parking or recreational facilities, and refer to Schedule A for prices. Identify any units or property interests that are not being offered, such as commercial space, the superintendent's apartment and common areas. If applicable, note any air rights or transferable development rights benefitting or encumbering the property.

(5) Outline the basic aspects of cooperative ownership, including the following:

(i) if applicable, the apartment corporation will purchase the property at the closing and will sell shares to purchasers to raise funds:

(ii) each shareholder will enter into a proprietary lease;

(iii) each shareholder will have the right to vote for members of the board of directors;

18.3(e)

(iv) the conduct of the affairs of the apartment corporation will be in the hands of the board of directors; and

(v) each shareholder will be responsible for the payment of maintenance charges and any assessments.

(6) If applicable, state the number of apartments subject to each applicable rent regulatory law.

(7) Refer to Schedule A for price information. State the length of any exclusive period(s), that there will be no increase in prices during the exclusive period for tenant purchasers, and that sponsor will not accept subscriptions from non-tenant purchasers for occupied units during any exclusive period.

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

(9) State that the prices are not subject to approval by the Office of the Attorney General or any other government agency.

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

(11) State any lawful limitations on who may purchase units.

(12) 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 COOPERATIVE APARTMENT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A SUBSCRIPTION (OR PURCHASE) AGREEMENT.

(f) Purchase prices and share allocation (Schedule A).

18.3(f)

(1) Schedule A must appear on a separate page entitled "Schedule A and list the following information for each apartment in columnar form. Column headings may be shortened and abbreviated. Indicate that all projected charges are for a stated 12-month period, e.g., January 1, 1983 to December 31, 1983. Totals must be given for subparagraphs (iv)-(viii) of this paragraph:

- (i) unit identification;
- (ii) rent regulatory status of each unit, and which unit(s) is (are) vacant;
- (iii) number of rooms (or usable space in square feet) and bathrooms;
- (iv) share allocation;
- (v) cash purchase price for each class of purchasers;
- (vi) approximate amount of mortgage applicable to a block of shares (if applicable);
- (vii) projected maintenance charges for the first year of operation at \$_____ per share (annual and monthly);
- (viii) projected annual income tax deduction at \$_____ per share for the first year of operation (if applicable).

(2) Shares must be allocated in whole shares.

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

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

(ii) For the share allocation, explain the basis for the allocation of shares in the particular building.

(iii) For the cash purchase price, explain any differences in prices to classes of purchasers.

Prior to the filing of an effectiveness amendment, plans subject to G.B.L. section 352-eee or section 352-eeee may not contain different prices for different classes of tenants in occupancy on the filing date. Refer to the portion of the plan that explains price changes. If applicable, state that prices are negotiable.

18.3(f)

(iv) For the cash purchase price, refer to the portion of the plan that explains any closing costs that a purchaser may have to pay.

(v) For the approximate amount of mortgage(s) applicable to shares, explain that although shareholders will not be personally liable to pay the mortgage(s), the apartment

corporation will be responsible, shareholders' maintenance charges include amounts to pay debt service, and a failure of a certain number of tenants to make the maintenance payments may result in a foreclosure and the loss of each individual's equity in his or her apartment. If any mortgage encumbers the property and will encumber the property after the closing, explain that the approximate amount of the mortgage applicable to shares is based on the assumption that a closing will occur on a specified date.

(vi) For the projected maintenance charges, disclose that if the purchaser obtains financing, the purchaser's debt service will be an additional expense. Disclose that projected maintenance charges do not include certain costs for which the shareholder is responsible, such as (where applicable) repairs to the interior of the unit, separately metered gas, electricity, hot water, heat, air conditioning and cable television service. If shareholders individually pay for heat and hot water costs, or for costs usually paid by a cooperative apartment corporation, refer to Schedule B-1 for individual maintenance costs; see subdivision (g)(4) of this section.

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

(viii) For the projected income tax deduction, explain that the projected tax deduction may vary in future years (where applicable) due to changes in the mortgage principle balance or in the interest rate on the existing mortgage (if any) or on a refinanced mortgage, or from changes in the allocation of constant debt service payments between interest and principal, or due to the allocation of constant debt service payments to interest and principal, or due to changes in real property taxes resulting from the expiration of real estate tax benefits, or from changes in the assessed value, the tax rate or the method of assessing real property. Explain that the projected tax deductions do not include interest paid by purchasers who finance the purchase of their units, which may also be deductible.

(ix) If the initial interest rate on any mortgage that will encumber the property after closing will be the rate prevailing at closing, state the predicted rate on which the projected maintenance charges and projected income tax deductions are based, that the actual rate at the

18.3(f)

time of closing may be higher or lower, and that the sponsor will amend the plan, as required by law, to disclose the rate prevailing at the closing.

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

(1) The budget must be based upon a specified 12-month period, to commence on the date when it can reasonably be projected that cooperative operations will begin. When

calculating the projection, include the expiration of any exclusive period and sufficient time to arrange for the closing. If the actual or anticipated date of commencement of cooperative operation is to be delayed from the budget year projected in the offering plan, the plan must be amended to include a revised budget disclosing current projections. If such amended projections exceed the original projections by 25 percent or more, the sponsor must offer all purchasers the right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right, whether or not sponsor offers to guarantee the previous budget projection. Sponsor must return any deposit or downpayment promptly to subscribers who rescind.

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

18.3(g)

SCHEDULE B

Budget For First Year of Cooperative Operation
Beginning 1, 19_____

Projected Income

Maintenance Charges

(_____ shares at \$_____ per share) \$_____

* Commercial \$_____

* Laundry \$_____

* Other (explain) \$_____

TOTAL \$_____

Projected Expenses

* Labor \$_____

Heating \$_____

Utilities (Electricity and gas) \$_____

Water charges and sewer rents \$_____

Repairs, maintenance and supplies \$_____

* Service contracts \$_____

Insurance \$_____

* Management fees \$_____

Franchise and corporate taxes \$ _____
Real estate taxes \$ _____

* Mortgage payments \$ _____

Legal fees and audit fees \$ _____
Other \$ _____

* Contingency \$ _____

TOTAL \$ _____

18.3(g)

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

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

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

(iii) Heating, cooling and hot water costs. State the type and quantity of energy projected to be used during the year and the projected total cost per gallon or other pricing unit, inclusive of sales tax, for all energy costs for providing heat, air conditioning and hot water for the building. State the basis for projecting the quantity of energy to be used.

Unless it would be misleading for a particular building, base the projected quantity of energy on the average quantity of energy purchased for the prior three years. State the quantity of energy purchased in each of the three prior years, the average cost per gallon or other pricing unit and the total cost per year. The Office of the Attorney General may, from time to time, issue pricing guidelines to reflect minimum fuel costs.

(iv) Utilities (electricity and gas). State the basis for the projected consumption and projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth, e.g., estimate based on current tariff plus a 10-percent increase. Unless it would be

18.3(g)

misleading for a particular building, base the projected quantity of the utilities on the average quantity of the utilities purchased for the prior three years.

(v) Water charges and sewer rents. State the present rents and charges and base the projection on reasonably anticipated increases for the first year of cooperative operation. If the water charges or sewer rents are metered charges, state the consumption for the prior three years.

(vi) 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.

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

(viii) Insurance. The budget for insurance must provide, and the apartment corporation must have, at closing, fire and casualty insurance under an agreed amount replacement cost policy or under a policy including at least an 80 percent coinsurance provision so that the insured shall not be a coinsurer. Discuss the adequacy of the insurance to replace the building in the event of total loss and to avoid being a coinsurer in the event of partial loss. Disclose the items covered, the coverage amount limits, the deductibles and the exposures insured against. Disclose if insurance proceeds may be applied by the mortgagee to reduce the outstanding mortgage indebtedness instead of to restoring property.

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

(b) If the following items are not included in the budget and are applicable to the offering, state that coverage for them is not included and may be available at extra cost: officers' and directors' liability; rent insurance; water damage; elevator collision; boiler and machinery; excess liability; auto liability; fidelity bond and garage keeper's liability. The plan must alert shareholders to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to unit contents, replacements, additions, upgraded fixtures and improvements; and liability coverage for occurrences within the unit.

18.3(g)

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

(x) Real estate taxes. For the projected budget year, the present year and the two years prior to submission, state the assessing authority, the assessed valuation, the tax rates and the amounts payable. Data for the projected budget year should be estimated if actual figures are not currently available. Discuss any known or tentative changes in assessed valuation or tax rate for the first year of cooperative ownership. Describe any changed circumstances such as a sale or prospective sale prior to the transfer to the apartment corporation which may have a material effect on future assessments. State whether certiorari proceedings are pending and whether they will be continued after the closing, and if so, for whose benefit and at whose expense.

(xi) Tax exemption and tax abatement benefits. If the building receives tax benefits (e.g., under section J-51 or section 421-a), describe the present benefits, the term, the level of benefits for future years of cooperative operation and the impact that termination of benefits will have on maintenance charges. If the plan represents that the cooperative may or will receive particular tax benefits, the plan must state that the sponsor will use best efforts to obtain those benefits, and must project the amount, commencement and duration of the benefits. Highlight as a special risk if the plan states that the apartment corporation may or will receive tax benefits, and the sponsor does not anticipate obtaining the benefits before the closing. Describe the effect on the budget and maintenance charges with and without the tax benefits. If full tax benefits may be available for only part of the first year of operation, the budget may either reflect:

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

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

(xii) Mortgage payments. Describe how the mortgage(s) is (are) payable during the budget year. State the dollar amount of mortgage interest and mortgage principal for the first year of cooperative operation. Explain that, in future years, principal amortization payments will increase and interest payments will decrease, if applicable. State the amount, term and interest rate of the

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mortgage(s). Refer to the "Terms of Mortgages" section for further explanation of all mortgage terms. Disclose any fixed increases in payment due under the mortgage(s) in the 10 years after closing, or the life of the mortgage, whichever is shorter.

(xiii) Other expenses. Include expenses such as employer association dues (if applicable), building telephone or switchboard, applicable license fees, registration and municipal permits, provision for corporate income taxes (if so indicated in tax opinion) and miscellaneous expenses not provided for in other lines.

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

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

(h) Changes in prices and units.

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

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

(3) State that no change will be made in the size or number of units, the share allocations, the total number of shares or in the size or quality of public areas, except by amendment to the plan.

(4) State that the sponsor must obtain a further opinion as to reasonable relationship prior to closing if any change in price, share allocation or the total number of shares is made prior to the closing.

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(5) State that unless an affected purchaser consents, no material change will be made in unit size, layout, or share allocation if a subscription agreement has been executed and delivered to the apartment corporation or sponsor for that unit and the purchaser is not in default.

(6) State that no material change will be made in the total number of shares or in the size or quality of public areas unless subscribers not in default receive a right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or downpayment promptly to subscribers who rescind.

(i) Opinion of reasonable relationship. Unless the plan states that purchasers are not expected to be entitled to deductions under Internal Revenue Code section 216, include an opinion from a licensed real estate broker, or other expert appraiser, as to whether the "reasonable relationship" test under Internal Revenue Code section 216 will be met.

(1) The opinion must state what experience, if any, the broker or appraiser has had with offering plans and with selling comparable cooperative or condominium units and other experience or knowledge predicated as the basis of expertise.

(2) Disclose whether the broker or appraiser is the selling agent or managing agent for the property. The broker or appraiser may not have any other beneficial interest in the sponsor or in the profitability of the conversion.

(3) The opinion must include consent to copy the opinion in the plan.

(4) The opinion must explain the basis for the allocation of shares in the particular building.

(5) The opinion must be signed by a duly authorized signatory or by the firm.

(j) Accountant's certified statements of operation. Include certified statements of income and expenses, for the two most recent fiscal years of operation, prepared by an independent certified public accountant. No report need be filed for a fiscal year which ends less than three months before the date the proposed offering plan is submitted to the

Office of the Attorney General. If the building has been in operation for less than two years, include a statement for the period since the building began operations. If, after the plan is filed, but before it is declared effective, a more recent fiscal year has ended and the sponsor has had three additional months after the end of the more recent fiscal year to prepare a certified statement, sponsor must amend the plan to include the certified statement for the more recent fiscal year.

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(1) The accountant's certification must:

(i) state that the examination was made in accordance with generally accepted auditing standards and include such tests of the accounting records and other accounting 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 building 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.

(3) The following income or expense items, and other such items that are not applicable to the operation of the building as a cooperative, may be excluded: depreciation, vacancy advertising, credit checking, interest income, rental commissions and painting of and repairs to individual apartments.

(k) Attorney's income tax opinion. Discuss in easily understandable language the specific requirements of Internal Revenue Code section 216 for the apartment corporation to qualify as a cooperative housing corporation, and for tenant-stockholders to be entitled to deduct a proportionate share of real estate taxes and interest. Discuss any issues in qualifying under section 216 presented by the particular plan, including problems raised by the share allocations, existing or proposed apartment uses, the legality of such uses under the certificate of occupancy, and income from sources other than tenant-stockholders.

(1) Unless highlighted as a special risk, counsel for sponsor, or for the apartment corporation or independent counsel, must render in affirmative, unqualified language the opinion that, under present law, regulations, rulings and decisional law, and based on the terms of the offering plan:

(i) the apartment corporation will qualify at closing as a cooperative housing corporation under Internal Revenue Code section 216; and

(ii) tenant-stockholders as defined in Internal Revenue Code section 216 will be entitled to deduct for income tax purposes their proportionate share of the interest and real estate taxes paid by the apartment corporation.

18.3(k)

(2) Highlight as a special risk if there are unusual features of the plan which may jeopardize the apartment corporation's qualification or the deductibility of interest and taxes by tenant-stockholders who itemize deductions in the first year of cooperative operation of thereafter. Highlight as a special risk if a corporation, partnership, trust, estate or other entity is not required to designate an individual to purchase shares of the apartment corporation.

(3) Tax counsel's opinion may not contain a general disclaimer of liability. It may, however, contain a disclaimer of liability in the event that the critical facts represented by sponsor and sponsor's experts were or prove incorrect or there are changes in the applicable law and regulations, decisional law or Internal Revenue Service rulings. It may state that it is an attorney's opinion, but not a guarantee, that the apartment corporation will qualify as a cooperative housing corporation or that deductions will be available to tenant-stockholders.

(4) Suggested language for the disclaimer of liability is set forth as follows: In our opinion, the apartment corporation will qualify as a cooperative housing corporation and tenant-stockholders will be entitled to income tax deductions. However, this opinion is not a guarantee; it is based upon existing rules of law applied to the facts and documents referred to above. No assurances can be given that the tax laws upon which counsel base this opinion will not change. In no event will the sponsor, the sponsor's counsel, the apartment corporation, counsel to the apartment corporation, the selling agent or any other person be liable if the apartment corporation ceases to meet the requirements of the Internal Revenue Code of 1954, as amended, or the New York State Tax Law, as amended, if there are changes in the facts on which counsel relied in issuing this opinion, or if there are changes in the applicable statutes, regulations, decisional law or Internal Revenue Service rulings on which counsel relied.

(1) Rights of eligible senior citizens and eligible disabled persons. If G.B.L., section 352-e(2-a), 352-eee or 352-eeee is applicable, and the plan provides that it is an eviction plan, include the following information on the rights of eligible senior citizens and eligible disabled persons:

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

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

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

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(ii) G.B.L., section 352-eee does not require that a tenant file an election form in order to qualify as an eligible senior citizen. However, it is advised and requested that a tenant who believes he or she is or will become an eligible senior citizen within 12 months from the date the plan is filed, complete the election form SH-5 promulgated by the Office of the Attorney General and included in the plan. This senior citizen election form should be completed, signed, notarized and returned to the sponsor within 60 days of presentation of the offering plan.

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

(i) is 62 years of age or older on the date that the plan is filed with the Office of the Attorney General ("filing date"); and

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

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

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

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

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the location specified in the plan. In the event that the plan becomes subject to G.B.L., section 352-e(2-a) after the plan was accepted for filing, (a) the plan must be amended immediately after the statute becomes applicable to such offering, and (b) such election may be made within 60 days of presentation of such amendment.

(iii) If the disability first occurs after acceptance of the plan for filing, then such election may be made within 60 days following the onset of such disability unless during the period subsequent to 60 days following the presentation of the plan for filing but prior to such election, the offeror accepts a written agreement to purchase the apartment from a bona fide purchaser.

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

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

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

(iii) The rentals of eligible senior citizens and eligible disabled persons who reside in dwelling units not subject to government regulation as to rentals and continued occupancy, and eligible senior citizens and eligible disabled persons who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has been accepted for filing by the Office of the Attorney General, shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy. Complaints concerning such increases may be referred to the New York State Office of the Attorney General, Bureau of Real Estate Financing, Two World Trade Center, New York, N.Y. 10047.

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

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(v) Each purchaser, including a holder of unsold shares, of the shares allocated to an apartment occupied by an eligible senior citizen or eligible disabled person, shall be bound by the provisions of the G.B.L. and the terms of the plan. Each purchaser will be required to represent in writing to the apartment corporation, at the time of acquisition, that the purchase is subject to all the rights of the eligible senior citizen or eligible

disabled person occupying the apartment, and that the purchaser, his successors and assigns shall continue to be bound as long as such occupancy continues.

(6) Sponsor may dispute the election by a tenant to be an eligible senior citizen or an eligible disabled person by applying to the Office of the Attorney General for a determination of the tenant's eligibility within 30 days of the receipt of the election form pursuant to section 18.8 of this Part. The Office of the Attorney General shall issue a determination of eligibility with 30 days thereafter.

(7) In the absence of fraud, the determination by the Office of the Attorney General is the sole method for determining a dispute as to whether a tenant is an eligible senior citizen or eligible disabled person. The determination by the Office of the Attorney General is reviewable only through a proceeding under article 78 of the Civil Practice Law and Rules, which must be commenced within 30 days after the determination becomes final.

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(8) State that an election not to purchase shall not preclude an electing senior citizen or disabled person from subsequently purchasing his or her apartment on the terms and conditions set forth in section 18.8 of this Part.

(m) Rights of existing tenants.

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

(ii) From time to time the Office of the Attorney General may promulgate model forms for the description of tenants' rights under various laws. The transmittal letter from the attorney who prepared the plan must note if the applicable model forms are used.

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(iii) Include discussions of:

(a) The exclusive period. State:

(1) All bona fide tenants in occupancy on the date the plan is accepted for filing will have the exclusive right to subscribe to purchase the shares allocated to their dwelling units for 90 days after the plan is presented.

(2) Any bona fide tenant with the right to renew a lease on the date the plan is accepted for filing has the right to subscribe as a tenant during the exclusive period.

(3) Any bona fide tenant who has the right to continued occupancy on the date the plan is accepted for filing has the right to subscribe as a tenant during the exclusive period.

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

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

(6) A residential occupant entitled to protection under article 7-C of the Multiple Dwelling Law has the right to subscribe during the exclusive period.

(7) Whether and under what conditions a corporation, partnership, trust, estate or other entity is required to designate an individual to purchase the shares allocated to its dwelling unit in order to exercise its right to subscribe.

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(b) Any protected period of occupancy before a tenant may be evicted.

(c) Any period of time during which a tenant has the right to purchase on the terms obtained by an outside purchaser.

(d) Any provisions for notice to the tenants or postings of the percentage of tenants who have purchased units, or percentage of units for which sponsor has accepted subscription agreements.

(e) Any protection against rent increases for nonpurchasing tenants. State that complaints of unconscionable rent increases prescribed by law may be referred to the New York State Office of the Attorney General, Bureau of Real Estate Financing, Two World Trade Center, New York, N.Y. 10271.

(f) The provisions to nonpurchasing tenants to all services and facilities required by law on a nondiscriminatory basis. Refer to the services described in the "Obligations of Holders of Shares of Dwelling Units Occupied by Non-Purchasing Tenants" section of the plan.

(g) Any requirement that tenants or their representatives be allowed to physically inspect the building or buildings.

(h) Any protection against interruption or discontinuance of services or harassment of tenants.

(i) The extent to which applicable law (such as G.B.L., section 352-e(2-a), 352-eee or 252-eeee) protects nonpurchasing tenants against termination or abridgement of rights acknowledged or granted in the plan in the event of expiration of or amendment to such law.

(2) State that the bylaws provide that nonpurchasing tenants will be notified of changes in ownership of shares for dwellings units they occupy, and describe the timing and manner of such notification.

(3) State where sponsor will permit the assignment or transfer of subscription agreements by tenants in occupancy, and refer to the Assignment of Subscription Agreements section of the plan; see subdivision (q) of this section.

(4) State that if, prior to the expiration of any exclusive period which begins prior to the closing, the sponsor amended the terms and conditions of the offering to be more favorable to tenant purchasers, a tenant who was in occupancy on

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the presentation date and who executed and submitted a subscription agreement before the sponsor amended the terms shall benefit from the more favorable terms and conditions.

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

(n) Obligations of holders of shares of dwelling units occupied by nonpurchasing tenants. The discussion of the obligations of holders of shares of dwelling units occupied by nonpurchasing tenants shall include:

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

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

(i) Any obligation to join any industry organization, as required by law, and whether the dwelling unit may be subject to rent control or may become so if

membership in the Rent Stabilization Association lapses or purchaser is expelled. State whether the dwelling unit is subject to the Emergency Tenant Protection Act, even if the unit is vacated.

(ii) The obligation to pay the amount due as maintenance charges for the apartment even if the amount is more than the rent received from the nonpurchasing tenant.

(iii) The obligation to provide to the nonpurchasing tenant all services required by law to the extent applicable, including the obligation to make all repairs to the apartment which are not the responsibility of the apartment corporation under the proprietary lease. These services may include, but are not limited to, painting, interior decoration, repairs to interior plumbing and wiring, and replacement of fixtures and of appliances, doors, hardware and windows.

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

(v) The obligation to give renewal leases and riders as required by law. The tenant may only be evicted on grounds permitted by law.

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(vi) Note that Rent Stabilization and Emergency Tenant Protection Act leases may be inspected by potential purchasers, and should be inspected to ascertain the purchaser's obligations.

(3) Subscription agreements or other agreements to purchase shares of dwelling units occupied by nonpurchasing tenants and the proprietary leases for said units shall include an agreement by the subscriber or purchaser to irrevocably appoint the apartment corporation's managing agent and its successors (or the apartment corporation if no managing agent is employed by the apartment corporation) as his or her agent to provide to the nonpurchasing tenant(s) all services and facilities required by law.

(4) Except for the sponsor and holders of unsold shares, subscription agreements or other agreements to purchase shares of dwelling units occupied by nonpurchasing tenants and the proprietary leases for said units shall include an agreement by the subscriber or purchaser to deposit with the managing agent (or apartment corporation if no managing agent is to be employed) at the closing an amount not less than two months' maintenance charges to be used as working capital to furnish services required under the nonpurchasing tenant's lease and under the laws and regulations specified in paragraph (2) of this subdivision. Upon notice by the managing agent (or apartment corporation) that the deposit has been diminished, the fund shall be replenished by the shareholder within a specified period of time. The failure of the shareholder to replenish the fund in a timely fashion shall result in the apartment corporation having a lien against the shares

appurtenant to the dwelling unit. Interest, if any, earned on the fund shall be the property of the shareholder.

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

(o) Interim leases.

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

(2) If applicable, state whether a tenant is subject to the Rent Stabilization Law or Emergency Tenant Protection Act. Also state that the rent will not exceed the maximum rental that may be legally collectable, if any.

(3) Describe the status of the tenant under any applicable rent regulatory law in the event that the plan is abandoned.

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

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

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

(1) State the amount or the percentage of the deposit, which may not be less than the lower of

(i) \$1,000 per block of shares, or

(ii) 10 percent of the cash amount.

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

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

(ii) The account. 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 (5) business days after the agreement is signed by all necessary parties, in an attorney's segregated special escrow account in a bank doing business in the State of New York which account is covered by federal bank deposit insurance. Sponsor shall include as a special risk that deposits in excess of \$100,000 will not be federally insured in excess of \$100,000. An attorney shall open and maintain 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

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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 sub-account for each purchaser is acceptable. The name of the 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 the account. Funds from this account may be released only by signature of the attorney who is named as Escrow Agent. Neither the sponsor nor any principal of the sponsor may be a signatory on the account. Funds must be placed in an interest-bearing account, with all interest credited to the purchaser, unless either the purchaser defaults and the plan is consummated, or the sponsor elects to place the funds in a separate Interest-on-Lawyer's-Account ("IOLA") for each offering plan pursuant to Judiciary Law Section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of the account.

(iii) 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 subscriber or purchaser to the order of the attorney or law firm as escrow agent.

(iv) The escrow agent. The escrow agent must be an attorney admitted to practice in the State of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow agreement or a firm of such attorneys. The escrow agent shall be independent of the

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

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(v) Escrow agreement. The material terms of the escrow agreement shall be disclosed in the plan and a copy of the full agreement must be contained as an exhibit to the plan in Part II. Include, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with these regulations, any right of the escrow agent to represent the sponsor in any lawsuit, any compensation by the sponsor to the depository bank, any provision for payments by the sponsor under an indemnity in favor of the escrow agent and whether the sponsor will compensate the escrow agent for acting as such. A model form for the escrow agreement is available from the Office of the Attorney General; if such form is not used the attorney's transmittal letter should so indicate. If a different form of escrow agreement is used, all material terms of the Office of the Attorney General's model must be included in the agreement, and the agreement should be red-lined to indicate changes from or additions to the model form.

(vi) Notification to purchaser. Within ten (10) business days after tender of the deposit submitted with the subscription or purchase agreement, the escrow agent shall notify the purchaser that such funds have been deposited in the bank indicated in the offering plan, and provide the account number, and the initial interest rate. If the purchaser does not receive notice of such deposit within fifteen (15) business days after tender of the deposit, he or she may cancel the purchase and rescind within ninety (90) days after tender of the deposit, or may apply to the Attorney General for relief. Rescission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the subscriber or purchaser.

(vii) Escrow revisions. Before funds are transferred to a new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to the new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may not be substituted for the escrow account, unless a special exemption under exceptional circumstances is first requested by the sponsor and is granted by the Attorney General, following the procedures of 13 NYCRR Section 21.3(1)(4). In such event, and only after the Office of the Attorney General grants such exemption in writing, the provisions of 13 NYCRR Section 21.3(1) (5), (6) and (7) are applicable.

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

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

(b) The escrow agent shall hold the funds in escrow until otherwise directed in (i) a writing signed by both sponsor and purchaser or (ii) a determination of the Attorney General or (iii) a judgment or order of a court of competent jurisdiction, or until released pursuant to subsection (d) hereinafter.

(c) The sponsor shall not object to the release of the escrowed funds to (i) a purchaser who timely rescinds in accordance with an offer of rescission contained in the plan or an amendment to the plan or (ii) all purchasers after an amendment abandoning the plan is accepted for filing by the Office of the Attorney General.

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

(ix) Disputes.

(a) In the event of a dispute, the sponsor shall apply and the purchaser or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the deposit and any interest earned thereon. Forms for this purpose will be available from the Office of the Attorney General. The party making such application shall contemporaneously send to all other parties a copy of such application.

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

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

(d) The Attorney General shall act upon the application within thirty (30) days after its submission to the Office of the Attorney General, 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

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

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

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

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

(x) Exhibits to plan. Copies of the forms provided by the bank for opening the escrow account and the escrow agreement as proposed must be included as Exhibit B-19 of the submission. Upon first deposit, a copy of the escrow agreement as executed and a copy of the bank forms as executed must be submitted as supplements to Exhibit B-19 of the submission.

(xi) Records on file. The escrow agent shall maintain all records concerning the 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 Office of the Attorney General of such transfer.

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

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

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

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

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

(4) State that the balance of the purchase price is to be paid after written demand is made and that the purchasers will have not less than 15 days to make the payment after receipt of the demand notice. If payment is due in advance of the closing, state the maximum number of days between the scheduled closing date and the date payment is due.

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

(6) Purchasers must be given written notice of the closing date at least 30 days in advance of the closing of title on the building to the apartment corporation.

(7) Sponsor or the apartment corporation must make a written demand for payment 30 days before a forfeiture of the subscription agreement shall be declared.

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(8) State when the subscriber (purchaser) is required to sign a proprietary lease, the number of days within which the lease must be returned to the selling agent or sponsor, and the consequences if the lease is not returned.

(9) The plan shall state that:

(i) Non-tenant subscribers or purchasers are afforded either:

(a) not less than seven days after delivering an executed subscription agreement together with the required deposit to rescind the subscription agreement and have the full

deposit refunded promptly. The subscriber must either personally deliver a written notice of rescission to the sponsor or selling agent within the seven-day period or mail the notice of rescission to the sponsor or selling agent and have the mailing postmarked within the seven-day period; or

(b) not less than three business days to review the offering plan and all filed amendments prior to executing a subscription agreement.

(ii) Tenants are afforded not less than three business days to review the offering plan and all filed amendments prior to executing a subscription agreement.

(10) A complete copy of the subscription agreement must be inserted in the plan.

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

(12) 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.

(13) State that within a specified number of days after a subscriber delivers an executed subscription agreement, together with the required deposit, the apartment corporation or sponsor must either accept the subscription

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agreement and return a fully executed counterpart to the subscriber or reject the subscription agreement and refund the full deposit previously tendered. Discuss the outcome for the subscriber if the apartment corporation or sponsor takes no action within the time period specified in the plan.

(14) 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 G.B.L. The subscription agreement to be used by tenant purchasers who subscribe during the exclusive period may not be modified except by a duly filed amendment to the plan.

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

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

(2) In order for assigned or transferred subscriptions to be counted towards effectiveness:

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

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

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

(1) The plan may be declared effective by

(i) an amendment to the plan, or

(ii) by serving notice on each tenant and non-tenant purchasers (in the manner required by section 18.1(d) of this Part) that the plan is declared effective and submitting an amendment to the Office of the Attorney General within five days confirming that the plan was declared effective on a

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specified date. The amendment must conform to section 18.5(e) of this Part. State that no closing shall be held until this amendment is accepted for filing by the Office of the Attorney General.

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

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

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

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

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

(iii) if the subscriber was not afforded the protections required by paragraph (p)(9) of this section; or

(iv) with any subscriber who is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor or the selling agent or to any principal of the sponsor or the selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; except that such a subscriber other than the sponsor or a principal of the sponsor may be included to the extent permissible under section 18.5(e)(6)(vi)(c) or section 18.5(e)(6)(vii)(b)(2) of this Part, as applicable.

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

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

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

(ii) For an eviction plan, state that the plan may not be declared effective unless at least 51 percent of the bona fide tenants in occupancy of all dwelling units in the building or group of buildings on the date the offering statement or prospectus was accepted for filing shall have executed and delivered written agreements to purchase under the plan

pursuant to an offering made in good faith without fraud and with no discriminatory inducements.

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

(1) those that were both vacant and not under lease on the date the offering plan or prospectus was accepted for filing by the Office of the Attorney General ("the filing date"); and

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

(b) In computing the 51 percent requirement, the following subscriptions may be included:

(1) subscriptions by bona fide tenants in occupancy on the filing date of shares allocated to his or her dwelling unit;

(2) subscriptions by bona fide tenants in occupancy on the filing date of shares allocated to dwelling units which are both vacant and not under lease;

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) subscriptions by bona fide tenants in occupancy on the filing date of shares allocated to a dwelling unit of another bona fide tenant if the other tenant has subscribed to purchase the shares allocated to the first tenant's dwelling unit or a vacant dwelling unit;

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

(5) subscriptions for shares allocated to dwelling units leased to a corporation, partnership, trust, estate or other entity subscribed to by an individual approved by said corporation, partnership, trust, estate or other entity.

(iii) State that the plan will be deemed abandoned, void and of no effect if it does not become effective within 15 months from the date the offering plan or prospectus was accepted for filing; and, in the event of such abandonment, no new plan for conversion of such building or group of buildings or development shall be submitted to the Office of the Attorney General for at least 12 months after such abandonment. Such 15-month limit

shall not be extended although a plan is amended from an eviction plan to a noneviction plan.

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

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

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

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

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

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

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

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

(a) In computing the percentage necessary for effectiveness, the following subscriptions may be included:

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(i) subscriptions, by bona fide tenants in occupancy on the filing date, of shares allocated to his or her dwelling unit;

(ii) subscriptions, by bona fide tenants in occupancy on the filing date, of shares allocated to dwelling units which are both vacant and not under lease;

(iii) subscriptions, by bona fide tenants in occupancy on the filing date, of shares allocated to a dwelling unit of another bona fide tenant if the other tenant has subscribed to purchase the shares allocated to the first tenant's dwelling unit or a vacant dwelling unit;

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

(v) subscriptions for shares allocated to dwelling units leased to a corporation, partnership, trust, estate or other entity subscribed to by an individual approved by said corporation, partnership, trust, estate or other entity.

(vi) State that the plan will be deemed abandoned if it does not become effective within 12 months from the filing date. In the event of abandonment, no new plan for the conversion of the building may be submitted to the Office of the Attorney General for at least 15 months after the abandonment.

(8) An eviction plan may become a non-eviction plan provided that sponsor first amends the plan prior to declaring it effective to notify the tenants of the change or impending change. The amendment must grant subscribers a right of rescission and a 30-day period after presentation of such duly filed amendment to exercise the right. Sponsor must return any deposit of downpayment promptly to a purchaser who rescinds. Sponsor must honor any non-rescinded subscription agreements. Thereafter, sponsor may declare the plan effective as a non-eviction plan when sponsor accepts subscription agreements as required by law or by these regulations for a minimum percentage of tenants or units. If the amendment provides that the plan will become a non-eviction plan immediately

following the expiration of a time period, sponsor shall notify the tenants of the outcome by a notice posted and filed as provided under section 18.1 (p) of this Part.

(9) A non-eviction plan may not be amended at any time to provide that it shall be an eviction plan.

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(10) If the plan may be abandoned by sponsor, at its option, before it is declared effective, the plan must state that within a specified number of days after abandonment, all monies paid by subscribers shall be refunded to them in full, with interest earned if the plan provides for interest payable to the subscriber. Sponsor shall promptly file a notice of abandonment on form RS-3 as required by section 18.1(o) of this Part.

(11) Sponsor may not abandon the plan after the effectiveness amendment is filed for any reason other than: (i) a defect in title which cannot be cured without litigation or cannot be cured for less than a stated amount; (ii) work orders of a mortgagee or violations that cannot be cured for less than a stated amount; (iii) substantial damage or destruction of the building by fire or other casualty which cannot be cured for less than a stated amount; or (iv) the taking of any material portion of the property by condemnation or eminent domain. This section must provide that any stated amount (of money) relied upon as basis for abandonment after effectiveness must exclude any such title defects, violations, work orders, or determinations of any authority or regulatory association which exist on the date of presentation of the plan and either are known to the sponsor or are a matter of public record.

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

(13) State, where applicable, that on the closing date, title to the property will be conveyed to the apartment corporation. Certificates for the shares of the apartment corporation and the accompanying proprietary leases will be delivered promptly thereafter to each purchaser who has paid the cash purchase price and has complied with all of the purchaser's obligations under the subscription agreement.

(s) Terms of mortgages. Disclose the terms of each mortgage that will encumber the property after the closing date. Include the following information:

(1) Name and address of the current holder of the mortgage.

(2) Amount and term. State the date of the mortgage, estimated balance at anticipated date of closing, maturity date, total scheduled unpaid balance at maturity and amount per share. If any mortgage has been extended, consolidated or otherwise modified, explain the present terms of the mortgage as modified. If the mortgage is not

self-liquidating over the term, project the amount of the balance or "balloon" due on maturity, and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the term for a mortgage that is not self-liquidating is for less than

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five years from the anticipated date of closing, unless the estimated balance due at the date of closing is less than 10 percent of the minimum cash amount of the offering. In view of the potential risks to the apartment corporation in some short-term mortgages, the attorney who prepared the plan must note any short-term mortgage in the transmittal letter to the Office of the Attorney General required by section 18.2(c)(1) of this Part.

(3) Interest rate. State the annual interest rate(s) over the term of the loan. State the initial interest rate, or (if not a fixed rate) explain how it will be established. If the loan has a variable or adjustable rate, explain the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact that adjustments will have on payments and the principal balance. Highlight as a special risk if the variable or adjustable rate could increase by more than five percent within a 30-month period or if the variable or adjustable rate is not subject to a specific limit on increases. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing rate offered by the lender and the interest on the loan to the apartment corporation. If the mortgage is not self-liquidating, also disclose any limitations on the ability of the apartment corporation to refinance on the same or better terms.

(4) Payments. State the amount of each payment, when payments are due, and how payments are applied to interest and principal. For variable rate or adjustable rate mortgages, disclose the impact that interest rate changes will have on the allocation of payments to interest and principal and on itemized deductions available to shareholders. Highlight as a special risk if payments will increase in the first 10 years of operation due to a fixed amount increase.

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

(6) Insurance. The insurance coverage reflected in Schedule B must be sufficient to satisfy the requirements of the mortgagee.

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

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

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(9) Refinancing and subordinate mortgages. State whether subordinate mortgages are permitted. Describe the lien priority of subordinate mortgages. Discuss whether junior mortgages are subordinate to refinancing if prior mortgages come due first in time, and disclose any limitations on refinancing. Highlight as a special risk if a subordinate mortgage does not continue to be subordinate when it is time to refinance prior mortgages.

(10) Wraparound mortgages.

(i) If any mortgage is a "wraparound" mortgage, explain the meaning of a wraparound mortgage and explain additional risks and costs to the apartment corporation as a result of such wraparound mortgage. In view of the potential risks to the apartment corporation in some wraparound mortgages, the attorney who prepared the plan must note any wraparound mortgage in the transmittal letter to the Office of the Attorney General required by section 18.2(c)(1) of this Part.

(ii) Any wraparound mortgage which is a purchase money mortgage to be placed at or prior to the closing, or which was or will be granted to the present owner or last previous owner within the three years prior to submission, or following submission of the proposed offering plan to the Office of the Attorney General, must provide that if the holder defaults in any payment due on any underlying mortgage and the applicable grace period has expired, the wraparound mortgage shall be deemed satisfied; provided, however, if the holder of the wraparound mortgage becomes current on all past due payments, the holder(s) of the underlying mortgage(s) has (have) not commenced foreclosure proceedings or has (have) discontinued foreclosure proceedings because of default, and the holder of the wraparound mortgage pays all expenses incurred by the apartment corporation as a result of such default by the holder, including legal fees and fees paid to arrange for refinancing the underlying mortgages, the wraparound mortgage may be reinstated.

(iii) If a mortgage is, or is represented or purports to be a wraparound mortgage, it shall provide: (a) that the holder's interest in the mortgage shall stand as security for fulfillment of the described periodic payments and final payments on senior mortgages; (b) that it will be executed and acknowledged by both the mortgagee and the mortgagor; (c) that any assignee and any successor by operation of law will be bound by the wraparound mortgagee's described obligation to make such payments on senior mortgages; and (d) will contain an undertaking that any assignee as well as the assignor will execute and acknowledge the assignment instrument.

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(11) Negative amortization mortgages. If any mortgage is a "negative amortization" mortgage, highlight as a special risk and explain the meaning of a negative amortization mortgage and the additional risks and costs to the apartment corporation as a result of such negative amortization mortgage. Include a discussion of the potential increase in the principal balance over the term of the mortgage and any limitations on the increase in interest payments. In view of the potential risks to the apartment corporation in some negative amortization mortgages, the attorney who prepared the plan must note any negative amortization mortgage in the transmittal letter to the Office of the Attorney General required by section 18.2(c)(1) of this Part.

(12) If any mortgage contains unusual risks and features which are not prevalent among financial institutions in the State of New York engaged in providing real estate mortgage loans to apartment corporations, highlight as a special risk and explain the risks of such mortgage. The attorney who prepared the plan must note such a mortgage in the transmittal letter to the Office of the Attorney General required by section 18.2(c)(1) of this Part.

(13) Events of default. For each mortgage, describe the material events of default entitling the lender to accelerate the mortgage indebtedness and describe grace periods granted to the apartment corporation. Sponsor must either state affirmatively that there is not a due-on-sale clause in the mortgage or disclose the existence of such a clause, and state that the sponsor has obtained the necessary consents or that sponsor will replace or satisfy the mortgage at closing if the consents are not obtained, or give an assurance satisfactory to the Office of the Attorney General that sponsor will replace the mortgage if a default is declared. Sponsor must state that, except as discussed above, no default will exist at closing.

(14) Restrictions. Describe important restrictions on the apartment corporation's right to alter, improve, sell, occupy or mortgage the property.

(15) Sponsor must represent that it will make all payments due prior to or at closing on existing mortgages that will also encumber the property after closing.

(t) Financing for qualified purchasers. Disclose the terms of any commitment by sponsor or a lender procured by sponsor to finance the purchase of shares allocated to units. The plan must be amended to include the terms of financing if not fully described in the offering plan. The terms shall include, and are not limited to, the following:

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the cash purchase price) available for shares allocated to a unit and the minimum term of the loan. If the financing offered is not self-liquidat-

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ing over the term, state how the amount of the balance or "balloon" due on maturity will be calculated, and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the principal balance is due in less than three years. 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 which shall not constitute a discriminatory inducement to tenant purchasers.

(4) Interest rate. State the annual interest 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 adjustments will have on debt service payments and the principal balance. If sponsor structures the financial terms of the transaction in such a manner as to result in possible taxable income to a purchaser, the financial and tax implications of such structuring must be disclosed. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing interest rate and the interest rate offered to purchasers. If the 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 shareholders.

(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, organization fees, lender's or any other legal fees, processing fees, application fees, insurance and appraisal fees.

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(10) Restrictions. Describe major restrictions on a shareholder'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.

(12) If any proposed financing contains unusual risks and features which are not prevalent among financing institutions in the State of New York engaged in providing cooperative apartment loans to unit purchasers, highlight as a special risk and explain the risks of such financing. The attorney who prepared the plan must note such financing in the transmittal letter to the Office of the Attorney General required by section 18.2(c)(1) of this Part.

(u) Summary of proprietary lease. Summarize the important provisions of the proprietary lease, including the following:

(1) Discuss any restrictions on the shareholder's right to use, sell, lease or pledge the shares and proprietary lease. Describe any fees or charges imposed by the apartment corporation for purchasing, selling, leasing or pledging shares or units.

(2) State whether the apartment corporation will notify a lender of a shareholder's default under the proprietary lease.

(3) State the material events of default under the lease.

(4) Discuss the procedure to modify the terms of the proprietary lease.

(5) State whether the shareholder is responsible for interior repairs and whether the consent of the apartment corporation is needed for alterations or additions.

(6) Discuss the right to accumulate reserves for capital expenditures or otherwise and restrictions imposed on such right.

(7) Discuss the shareholder's right to cancel the proprietary lease.

(8) Discuss the procedures to establish maintenance charges and to divide the charges among shareholders.

(9) If the offering plan is, or is amended to be, a non-eviction plan for any non-purchasing tenants, or is subject to G.B.L., section 352-e(2-a), 352-eee or 352-eeee and subject to occupancy by eligible senior citizens and eligible disabled persons, the proprietary lease must state:

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(i) such non-purchasing tenants may not be evicted by the proprietary lessee for purposes of owner occupancy;

(ii) such right is intended for the benefit of non-purchasing tenants, and is not intended to abrogate any rights of the owner of the unit as against the apartment corporation;

(iii) such non-purchasing tenants who reside in dwelling units subject to government regulation as to rentals and continued occupancy shall continue to be subject thereto;

(iv) the rentals of any such non-purchasing tenants who reside in dwelling units not subject to government regulation as to rentals and continued occupancy, and any such non-purchasing tenants who reside in dwelling units with respect to which government regulation as to rentals and continued occupancy is eliminated or becomes inapplicable after the plan has become effective, shall not be subject to unconscionable increases beyond ordinary rentals for comparable apartments during the period of their occupancy;

(v) any tenant's renewal lease or renewal sublease may provide that eviction proceedings may be commenced for nonpayment of rent, illegal use or occupancy of the premises, refusal of access to the owner or a similar breach by the non-purchasing tenant of his or her obligations to the landlord; and

(vi) the sections of the lease concerning non-purchasing tenants may not be subsequently amended or deleted.

(10) State that the obligations of holders of shares of dwelling units occupied by non-purchasing tenants, as discussed in the plan, are included in the proprietary lease.

(11) Discuss any restrictions against holders of unsold shares cancelling their proprietary lease as referred to in paragraph (w)(12) of this section.

(v) Apartment corporation. Describe how the affairs of the apartment corporation will be governed. Summarize the important sections of the by-laws and the certificate of incorporation, including the following:

(1) State the statutory authority under which the apartment corporation was or may be incorporated, the date of the incorporation and the number of shares which has been authorized and issued.

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(2) State the number and composition of the board of directors, eligibility requirements, elections and when the first meeting will be held after the closing. If applicable, explain cumulative voting and any provisions for the indemnification of the board of directors.

(3) State the vote needed to amend the apartment corporation's by-laws.

(4) State the names of the present or anticipated first officers and directors and their relationship, if any, to sponsor, sponsor's principals and sponsor's or the apartment corporation's attorney.

(5) Describe the extent to which sponsor as holder of unsold shares or other holders of unsold shares will or may control the board of directors after closing, and the consequences to purchasers of such reservation of control, subject to the following requirements:

(i) If the plan is an eviction plan, sponsor and other holders must agree not to exercise voting control of the board of directors for more than two years after closing, or whenever the unsold shares constitute less than 50 percent of the shares, whichever is sooner. If the plan is presented as or amended to a non-eviction plan, sponsor and other holders of unsold shares must agree not to exercise voting control of the board of directors for more than five years from closing, or whenever the unsold shares constitute less than 50 percent of the shares, whichever is sooner.

(ii) Sponsor and other holders of unsold shares may not exercise veto power over expenses described in Schedule B or over expenses required: (a) to comply with applicable laws or regulations; (b) to remedy any notice of violation; (c) to remedy any work order by a mortgagee or an insurer; or (d) to remedy a notice of default from a mortgagee.

(iii) If the plan is an eviction plan, sponsor and other holders of unsold shares may, if the plan so provides, exercise veto power over other expenses for a period ending not more than three years after closing, or whenever the unsold shares constitute less than 25 percent of the shares, whichever is sooner. If the plan is presented as or amended to a non-eviction plan, sponsor may, if the plan so provides, exercise veto power over other expenses for a period ending not more than five years after closing, or whenever the unsold shares constitute less than 25 percent of the shares, whichever is sooner.

18.3(v)

(6) State whether officers and directors serve with or without compensation, and highlight as a special risk if officers and directors appointed by the sponsor or holders of unsold shares serve with compensation paid by the apartment corporation.

(7) State that the apartment corporation has a lien on each block of shares for payment of maintenance charges, assessments, and the replenishment of the fund to be maintained pursuant to paragraph (n)(4) of this section, and the consequences of such lien.

(8) State that a copy of the bylaws is set forth in Part II of the plan.

(9) State that all expenses of the apartment corporation accruing up to and including the closing date will be paid by the sponsor or by the apartment corporation from the proceeds of the sale of shares.

(10) State that the apartment corporation may not discriminate against any person for a reason proscribed by civil rights laws.

(w) Unsold shares.

(1) State that: unsold shares shall be any shares not subscribed to and fully paid for prior to closing. At or prior to closing, unsold shares must be acquired by the sponsor or financially responsible individuals produced by the sponsor. A holder of unsold shares is the sponsor or any individual designated to hold unsold shares by the sponsor. Such shares shall cease to be unsold shares when purchased by a purchaser for occupancy.

(2) If a holder of unsold shares or a person related by blood or marriage to the holder of unsold shares takes occupancy as a bona fide resident, the shares shall cease to be unsold shares.

(3) Sponsor must guarantee payment of all maintenance charges and assessments due from a holder of unsold shares. The apartment corporation also will have a lien upon the shares to secure performance of all obligations of sponsor and holders of unsold shares under the proprietary lease.

(4) Sponsor must represent that it has the financial resources to enable it to meet its obligations with respect to unsold shares and state the means by which it will fund its financial obligations to the cooperative. If the funding source is stated as income from projected sales, disclose other sources of funding, if any, that will be utilized if such projected sales are not made. Disclose whether any bond or other security has been furnished to secure sponsor's obligations.

18.3(w)

(5) If applicable, sponsor must state that it will transfer unsold shares to financially responsible natural persons within three years in order to avoid jeopardizing the apartment corporation's qualifications as a cooperative housing corporation or the deductibility of interest and taxes by tenant-stockholders who itemize deductions under Internal Revenue Code section 216.

(6) If applicable, state that the consideration for the unsold shares at closing will meet the reasonable relationship standard of Internal Revenue Code section 216(b)(2).

(7) State whether unsold shares will be issued only to persons who will hold for their own account, and whether a holder may pool profits or losses with other holders of unsold shares. If holders of unsold shares may pool profits or losses, discuss the tax implications in the attorney's income tax opinion, and highlight as a special risk if the pooling extends beyond the seller's qualified holding period applicable under Internal Revenue Code section 216(b)(6).

(8) Describe any special rights or obligations of a holder of unsold shares, including, but not limited to: the right to use, lease, sublet, sell, pledge or transfer unsold shares, whether the consent of the managing agent or the apartment corporation is required for transfer, whether the apartment corporation may impose fees or charges on the holder of unsold shares for transfer, whether a holder of unsold shares may use units for models or offices and whether a holder of unsold shares may make alterations or additions to a unit without the consent of the apartment corporation. All alterations and additions must be in compliance with building codes and related laws.

(9) A holder of unsold shares shall comply with the trust fund and escrow provisions of G.B.L. sections 352-h and 352-e subdivision (2-b).

(10) A holder of unsold shares must register as a broker-dealer pursuant to G.B.L. section 359-e unless he or she is already registered as a principal of the sponsor or otherwise. A holder of unsold shares must furnish to the Office of the Attorney General all information required for a principal of the sponsor by section 18.2(c)(4)(iv) of this Part.

(11) A holder of unsold shares shall amend the plan to provide current and accurate information about the offering, including the same information concerning all holders of unsold shares as is required for principals of the sponsor by paragraphs (cc)(1), (2), (7) and (8) of this section, until the shares held as unsold shares have been sold to bona fide purchasers. A holder of unsold shares also shall provide prospective purchasers with a copy of the offering plan and all filed amendments.

18.3(w)

(12) Highlight as a special risk if the following provision or a more restrictive provision is no part of the proprietary lease. "Holders of unsold shares may not cancel their proprietary leases unless: (i) shareholders owning a majority of the apartment corporation's outstanding shares (other than unsold shares) shall have given notice of intent to cancel; or (ii) all unsold shares constitute 15 percent or less of the apartment corporation's outstanding shares, at least five years have elapsed since the apartment corporation acquired title to the building and on the effective date of cancellation holders of unsold shares shall pay to the apartment corporation a sum equal to the product of the then current monthly maintenance charges payable under the proprietary lease multiplied by 24".

(x) Purchasers for investment or resale. A purchaser for investment or resale is a purchaser who purchases shares allocated to three or more apartments, which are not for occupancy by such purchaser or persons related by blood, marriage or adoption to such purchaser. In connection with the sale of such shares:

(1) A purchaser for investment or resale must register as a dealer pursuant to G.B.L. section 359-e (if not already registered).

(2) A purchaser for investment or resale shall comply with the trust fund and escrow provisions of G.B.L. sections 352-h and 352-e subdivision (2-b).

(3) A purchaser for investment or resale shall provide the following documents to a prospective purchaser at no cost to the purchaser three business days before entering a purchase agreement:

(i) copy of the most recent financial statement of the apartment corporation, if any and copy of the most recent budget of projected expenses, if any;

(ii) copy of the most recent notice from the apartment corporation of the interest and taxes deductible for income tax purposes, if any;

(iii) copies of notices from the apartment corporation concerning changes in maintenance charges, potential assessments, planned major capital improvements and proposed refinancing of the building's mortgage(s), if any;

(iv) copies of pleadings in pending lawsuits or proceedings, the outcome of which may affect the offering of the unit, the seller's capacity to perform all of its obligations under the purchase agreement or the rights of an existing tenant of the unit, if any;

18.3(x)

(v) if the unit is occupied, a copy of the tenant's lease and representation of the tenant's status under rent laws and (if applicable) as an senior citizen or eligible handicapped person or eligible senior citizen or eligible disabled person;

(vi) copies of the by-laws and proprietary lease of the apartment corporation as amended; and

(vii) copy of notice of uncured violations of record in the unit that are the responsibility of the proprietary lessee to cure, if any.

(y) Reserve fund and/or working capital fund. The offering plan must state whether the apartment corporation will have funds for working capital and/or as a reserve for capital expenditures. The offering plan must comply with any applicable law concerning reserve funds and/or working capital funds. If such funds are provided, state the amount of the funds; whether the sponsor and purchasers contribute to the funds; what restrictions there are on the use of each fund; and when the funds will be available to the apartment corporation. If a fund is called a reserve fund, it may be used only for capital expenditures, and the apartment corporation's by-laws shall contain a provision authorizing the establishment of such a fund. Discuss whether the reserve fund (if any) will be sufficient to pay for the replacement of capital items likely to be needed as disclosed in the Description of Property and Building Condition.

(1) Unless highlighted as a special risk, the plan shall provide that while the sponsor is in control of the board of directors, the reserve fund or working capital fund may not be used to reduce projected maintenance charges in the plan.

(2) If the offering plan provides for a reserve fund or a working capital fund, the plan must state that neither the Office of the Attorney General nor any other government agency has passed upon the adequacy of the funds.

(3) Closing adjustments may only be deducted from the working capital fund. If a substantial credit to the sponsor can be anticipated with reasonable probability (for example, an escrow deposit of tax accruals, an existing FHA depository fund for replacements, or other fund to be transferred to the apartment corporation at the closing) the approximate range or amounts of such adjustment item must be disclosed. Disclose how the net closing adjustments, if in favor of the sponsor, are to be paid. State whether there will be a minimum working capital fund regardless of the amount of closing adjustments.

(4) If, by reason of any substantial closing adjustment item in favor of the sponsor, the sponsor will be paid over a period of time, such as by an installment note, the budget in the plan (Schedule B) must reflect such proposed payment, as a separate line of the budget with a footnote disclosing the nature and purpose of the payments.

18.3(y)

(5) Closing costs may not be deducted from the working capital fund or the reserve fund. Closing costs may be paid by the sponsor or by the apartment corporation from the proceeds of the sale of shares. The plan may provide a separate special fund, with disclosures in the manner and format of the working capital fund, to show payment of closing costs from the proceeds of sale of shares.

(z) Contract of sale (or exchange). State the material terms of the contract of sale or exchange under which the apartment corporation will acquire the property, including the following (unless stated elsewhere in the plan):

(1) State the date of the agreement, purchase price of the property, how the purchase price may be adjusted by changes in the offering prices, and how and when the purchase price is to be paid.

(2) State that the apartment corporation will receive the property free and clear of liens, encumbrances and title exceptions other than those described in the plan. Describe any leases, mortgages, liens, encumbrances and title exceptions that will affect the property after closing. Title exceptions may include the state of facts shown on a stated survey, and any additional state of facts a subsequent accurate survey would show, provided that such additional state of facts does not render title unmarketable.

(3) State that the apartment corporation's title will be insured at closing by a title company that is authorized to do business in the state where the cooperative is located. State the amount of the coverage or how the amount will be derived. For a contract of sale or exchange, coverage may not be in an amount that is less than the aggregate of: (i) the total cash payments received under all subscription agreements less the reserve and/or working capital fund; (ii) the product of the number of unsold shares multiplied by the lowest cash payment per share offered to tenants in occupancy; and (iii) the amount of the apartment corporation's mortgage indebtedness. State that sponsor will pay for the insurance or the apartment corporation will pay for the insurance from the proceeds of the sale of shares.

(4) All personal property located on the property on the date the contract of sale is signed, that is owned by the sponsor or the owner of the property if not the sponsor, is included in the conveyance unless specifically excepted in the offering plan.

(5) Describe the types of cost, fees and charges to be paid in connection with the closing. State that the working capital fund will not be reduced by costs paid by the apartment corporation.

18.3(z)

(6) List items to be apportioned and set forth the basis for apportionment. The disclosures in this section, with respect to closing costs and closing adjustment provisions, should be consistent with the requirements in subdivision (y) of this section.

(7) Describe the type of deed. Highlight as special risk if the deed is not a full warranty deed or a bargain and sale deed with covenants against grantor's acts.

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

(9) The plan and contract of sale or exchange must provide that any conflict between the plan and the contract will be resolved in favor of the plan.

(10) State what will happen to the security deposits of purchasing and non-purchasing tenants. Set forth the obligations concerning security deposits under General Obligations Law section 7-103.

(11) State that all representations under the offering plan, all obligations pursuant to the G.B.L., and such additional obligations under the offering plan which are to be performed subsequent to closing date, will survive delivery of the deed.

(12) State that the sponsor will maintain the property until the closing in substantially the same condition and manner as on the date of presentation.

(aa) Special tax consequences of contract of exchange.

(1) For a contract of exchange, which refers to either a transfer by individual owners to a corporation controlled by them or to another type of nontaxable exchange, explain what the apartment corporation's tax basis in the property would have been (in approximate amount) on the projected date of closing under an ordinary contract of sale in comparison to the corporation's projected tax basis under the Internal Revenue Code sections making the exchange non-taxable.

(2) Discuss the impact, if any, that structuring the transaction as an exchange will have on the depreciation available to the apartment corporation, and on tax deductions available to particular tenant-stockholders (for example, self-employed persons depreciating a home office), and on the possibility of income being taxable to the apartment corporation.

(3) Discuss the apartment corporation's tax liability in the event the property is ever sold or liquidated either voluntarily or involuntarily (such as upon a mortgage foreclosure) including the possibility that the unpaid principal balance of the mortgage will exceed the apartment corporation's basis.

18.3(aa)

(4) If the transaction is structured as an exchange, sponsor shall indemnify the apartment corporation and purchasers against any liability incurred after title is transferred to the apartment corporation and before the stock certificates and proprietary leases are delivered to purchasers under the offering plan. Such indemnification shall not be required in cases where the shares are issued to purchasers simultaneously with the transfer of title to the apartment corporation. Sponsor must update the title search before the first closing to a purchaser and if there are any judgments or liens or if litigation has been commenced, sponsor must amend the plan before the first closing to a purchaser. The apartment corporation must have public liability insurance after it takes title to the property and before the first closing to a purchaser.

(bb) Management agreement, contracts and leases.

(1) Summarize the important terms of the management agreement including:

(i) the name and address of the managing agent;

(ii) the term of the management agreement and the agent's right (if any) to cancel the agreement;

(iii) all fees and other compensation for services;

(iv) the major duties and services to be performed by the managing agent, including whether bookkeeping, payroll, income tax deduction calculation and maintenance collection are provided;

(v) the obligations (if any) of the apartment corporation to reimburse the agent for expenses incurred or to indemnify the agent against liability for acts properly performed by it pursuant to the agreement;

(vi) whether the management agreement is assignable by the agent and what restrictions are imposed on assignability.

(2) Plans subject to the provisions of G.B.L. section 352-eee(3) or 352-eeee(3) shall refer to the applicable G.B.L. provision and comply with it.

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

(4) Highlight as a special risk if any contract is binding on the apartment corporation for more than five years after the anticipated closing date, unless

18.3(bb)

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

(5) Disclose the material terms of all leases with the apartment corporation other than proprietary leases, including but not limited to the following:

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

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

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

(iv) Explain the apartment corporation's rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting use to those compatible with a first-class residential building, and barring offensive uses. State whether consent of the apartment

corporation is required before the lessee can assign or sublet space, change the current uses, alter the structure, or perform work that may result in mechanics' liens.

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

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

18.3(bb)

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

(c) The terms of the lease may not jeopardize the apartment corporation's qualification under section 216 of the Internal Revenue Code, unless the possibility of dis-qualification under section 216 of the IRC is highlighted as a special risk and the cover prominently displays the legend: PERSONAL INCOME TAX DEDUCTIONS MAY NOT BE AVAILABLE TO PURCHASERS UNDER THIS PLAN. See Pg. _____. (Refer to the Tax Opinion.)

(d) Any lease that comes within subdivision (bb)(5)(v) of this section must be noted in the transmittal letter to the Office of the Attorney General required by section 18.2(c)(1).

(cc) Identity of parties.

(1) State the names and business addresses, backgrounds and experience of the sponsor and principals of sponsor, as defined in section 18.1(c) of this Part. If the sponsor is a contract vendee, such information shall also be provided with respect to the owner of the property to be conveyed to the cooperative and principals of the present owner, and any relationship between the owner of the property and the contract vendee shall also be disclosed. Describe: (i) any prior felony convictions of sponsor and/or any principals of sponsor; and (ii) any prior convictions, injunctions and judgments against 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 properties offered for sale by the sponsor or affiliates of the sponsor's principals as cooperatives, condominiums or planned unit development homes within the past five years, by address and the year they first became available for occupancy. If the

number of such properties or projects exceed five for the sponsor or a principal, the five most recent offerings may be listed.

(3) Identify each cooperative, condominium or homeowners association, other than the subject building(s), where the sponsor, general partner or principal of the sponsor, or the holder of unsold shares, owns 10 percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal or holder of unsold shares is

18.3(cc)

current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, payment of underlying mortgages, and payment of loans for which shares or units have been pledged as collateral or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) State the name and address of the sponsor's attorney, the apartment corporation's attorney, if any, and identify which attorney prepared the offering plan. If an attorney represents the apartment corporation, describe the scope of the attorney's responsibilities.

(5) If there is or will be a managing agent or manager for the property, include the name, address and experience of the managing agent or manager and a representative list of other properties being managed by the managing agent or manager. If the managing agent or manager has no comparable experience, so state. Describe: (i) any prior felony convictions of the managing agent or any principals of the managing agent; and (ii) any prior convictions, injunctions and judgments against the managing agent or any 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.

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

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

(8) State the relationship (if any) between the sponsor or its principals and: (i) the selling agent; (ii) the managing agent; (iii) the engineer or architect; and (iv) any person or firm who will provide service to the apartment corporation subsequent to the commencement of cooperative operation.

(9) 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.

18.3(cc)

(dd) Sponsor's profit.

(1) If sponsor, a principal or principals of sponsor have had any ownership interest in the property for three years or less prior to submission of the proposed offering plan to the Office of the Attorney General, estimate the amount of total profit the sponsor will make on the conversion.

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

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

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

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

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

(3) In estimating the sponsor's profit, assume that the sponsor will become the holder of all unsold shares and that all shares of the apartment corporation will be sold. Unless the assumption would be misleading for a particular property, assume that 100 percent of the shares allocated will be sold at the price per share in Schedule A for tenant purchasers.

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

(ee) Reports to shareholders. State that it is the obligation of the apartment corporation to give all shareholders annually:

(1) a statement of the amount deductible for income tax purposes by a specified date that shall be no later than March 15th;

(2) a financial statement prepared by a certified public accountant or public accountant by a specified date; and

(3) prior notice of the annual shareholders' meeting.

18.3(ee)

(ff) Documents on file. State that sponsor shall keep copies of the plan, all documents referred to in the plan and all exhibits submitted to the Office of the Attorney General 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.

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

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

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

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

(4) Note subscribers' rights to rescind subscriptions following adverse amendments; see section 18.5(a)(5) of this Part.

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

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

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

(2) State whether the property is offered in "as is" condition as of a specified date, subject to (i) the sponsor's obligation to maintain the property until the closing in substantially the same condition and manner as on the date of presentation,

18.3(hh)

(ii) reasonable wear and tear, and (iii) sponsor's obligation described in paragraph (3) of this subdivision, to cause violations of record to be cured. To the extent not reported in the Description of Property and Building Condition, describe any rehabilitation to be completed by sponsor and the timetable for completion.

(3) State that prior to closing or within a reasonable period of time thereafter, sponsor will cause to be cured all violations of record as of the closing date (except violations caused by acts or omissions of tenants of the building in their own units), and will eliminate all dangerous or hazardous conditions that sponsor has notice of, and comply with all work orders from mortgagees.

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

(5) Note any official inspection reports reflecting upon condition of the premises, such as notices of building code violations, or any reports required by local law, including, if applicable, the report required by C26-105.3 of the Administrative Code of the City of New York, which shall each be reproduced in Part II of the plan; and disclose the existence and availability of any inspection reports by a professional engineer or a registered architect retained by a group or association of tenants.

18.3(hh)

SECTION 18.4 Transmittal letter and certifications.

(a) Transmittal letter. A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed by the attorney who prepared the offering plan and containing the following unqualified statements, must be submitted with the plan and exhibits: (i) at the time the plan is first submitted for filing; and (ii) immediately prior to its acceptance for filing:

I/We am/are the attorney(s) who prepared the cooperative offering plan for the captioned property. I/We affirm as follows:

Enclosed for filing pursuant to 13 NYCRR Part 18, Occupied Cooperatives, are copies of the offering plan together with the exhibits.

I/We am/are fully familiar with the provisions of article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in Part 18.

I/We prepared the attached offering plan and exhibits based on information from the sponsor. I/We have read all the printed copy submitted to the Office of the Attorney General, but expressly disclaim any responsibility to have made an independent inspection of the building(s) or property or investigation of the information furnished to me/us by sponsor.

I/We have no actual knowledge of a violation of article 23-A of the General Business Law or Part 18 of the regulations promulgated by the Office of the Attorney General, nor do I/we have actual knowledge of any material fact omitted or any untrue statement of a material fact included in the offering plan.

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

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

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Office of the Attorney General in 13 NYCRR Part 18 and such other laws and regulations as may be applicable.

18.4(a)

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

(i) set forth the detailed terms of the transaction and be complete, current and accurate;

(ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment;

(iii) not omit any material fact;

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

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

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

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

(a) knew the truth;

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

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

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

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

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

18.4(c)

"The sponsor of the offering plan to convert the captioned property to cooperative ownership retained me/our firm to prepare a report disclosing the condition of the property, (the "Report"). I/We visually inspected the property on _____, and prepared the report dated _____, (I/We are supplementing the report in this addendum dated _____,) a copy(ies) of which is (are) intended to be incorporated into the offering plan so that prospective purchasers may rely on the report (and addendum).

I/We understand that I/we am/are responsible for complying with article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in 13 NYCRR Part 18 insofar as they are applicable to this report (addendum).

I/We have read the entire report (addendum) and investigated the facts set forth in the report (addendum) and the facts underlying it, and conducted the visual inspection referred to above with due diligence in order to form a basis for this certification. I/We certify that the report (addendum) and all documents prepared by me/us disclose all the

material facts (relevant to the topics of the addendum) which were then discernible from a visual inspection of the property. This certification is made for the benefit of all persons to whom this offer is made. I/We certify that the report (addendum), based on my/our visual inspection:

(i) sets forth in narrative form the physical condition of the entire property (the aspects of the property discussed in the addendum), and is current and accurate as of the date of inspection;

(ii) in my/our professional opinion, affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the physical condition of the property (the aspects of the property discussed in the addendum);

(iii) does not omit any material fact;

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

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

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

18.4(c)

(vii) does not contain any representation or statement which is false, where I/we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representations or statement made; and

(viii) it is to be understood that all aspects of the physical condition of the property cannot be determined by a visual inspection and that all statements contained in this certification are premised on and limited to such visual inspection.

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

(d) Certification by expert on adequacy of budget. Include in Part II of the plan and in the exhibits a certification subscribed and sworn to by an expert concerning the adequacy of Schedule B in the following form. The certification must be dated within 90 days prior to the date of the submission of the offering plan to the Office of the Attorney General. The expert's certification must be based on experience in the management of cooperatives or condominiums or rental properties and must disclose the approximate number of

properties managed and length of time managed, together with other relevant real estate experience, qualifications and licenses.

The sponsor of the cooperative offering plan for the captioned property retained me/our firm to review or prepare Schedule B containing projections of income and expenses for the first year of cooperative operation. My/Our experience in this field includes:

I/We understand that I/we am/are responsible for complying with article 23-A of the General Business Law and the regulations promulgated by the Office of the Attorney General in 13 NYCRR Part 18 insofar as they are applicable to Schedule B.

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

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

18.4(d)

I/We certify that the Schedule:

(i) sets forth in detail the projected income and expenses for the first year of cooperative operation;

(ii) affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the first year of cooperative operation;

(iii) does not omit any material fact;

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

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

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

(vii) does not contain any representation or statement which is false, where I/we: (a) knew the truth; (b) with reasonable effort could have known the truth; (c) made no reasonable effort to ascertain the truth; or (d) did not have knowledge concerning the representations or statement made.

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

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

18.4(d)

SECTION 18.5 Amendments.

(a) General. Documents to supplement or amend an offering plan (collectively, "amendments") shall be deemed part of the offering plan and shall meet the following requirements:

(1) If the offering plan does not comply with G.B.L. section 352-e(1)(b) or section 18.1(b) of this Part due to change of circumstances, the passage of time or any other reason, the offering plan must be amended promptly.

(2) An amendment must include a representation that all material changes of facts or circumstances affecting the property or the offering are included, unless the changes were described in prior amendment(s) submitted to but not yet filed with the Office of the Attorney General.

(3) Except as provided in subdivision (d) of this section, an amendment to an offering plan shall be filed on the date indicated in the letter issued by the Office of the Attorney General stating that the amendment has been filed, and not sooner.

(4) Amendments that have been filed with the Office of the Attorney General must be attached to the inside front cover of the offering plan before the amended plan is distributed to the public. The cover of the offering plan must be stamped: "This plan has been amended. See inside cover." Any revisions, additions or deletions of specific language in the offering plan should reprint a sufficient portion of the paragraph from the offering plan as revised, so that the revised portion of the offering plan may be understood easily. An offering plan that has been amended extensively may be rewritten to incorporate the amendments into the body of the plan, and must be rewritten if required by the Office of the Attorney General.

(5) If there is a substantial amendment to the offering plan that adversely affects the purchasers, sponsor must grant subscribers a right of rescission and a reasonable period of time, that is not less than 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or downpayment promptly to subscribers who rescind. This section shall not limit sponsor's obligation to comply with provisions in applicable laws or regulations that grant tenants broader rights.

(6) If an offering plan is substantially amended prior to the initial closing of title to shares to tenants, the exclusive right to purchase time periods shall be extended, as follows:

(i) If the presentation of the substantial amendment occurs during the initial exclusive right to purchase period, such period shall terminate at the later of 30 days after presentation of the substantial amendment or the expiration of the original exclusive right to purchase period.

18.5(a)

(ii) If the presentation of the substantial amendment occurs after the expiration of the initial exclusive right to purchase period, the substantial amendment must grant to all tenants who had the right to purchase during the initial period a new exclusive right to purchase on the terms offered in the amendment for a period of not less than 30 days from the date of presentation.

(7) For the purposes of this section, substantial amendment shall include, but not be limited to: an increase or decrease in the mortgage amount or cash purchase price, an increase or decrease in the working capital or reserve fund, agreement by the sponsor to make additional repairs or improvements, or to repurchase apartments, or the offer of new or better terms for financing the purchase price of an apartment.

(8) Amendments must be served on offerees in accordance with section 18.1(d) of this Part, unless the Office of the Attorney General consents to service on a specified class or classes of offerees.

(b) Procedure for submission of amendments. Amendments must be mailed to or submitted during business hours to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, Room 48-61, Two World Trade Center, New York, NY 10047. Include the following when submitting an amendment to the Office of the Attorney General:

(1) A transmittal letter, signed by the attorney who prepared the amendment, that:

(i) states the date the offering plan was filed and the Office of the Attorney General file number;

(ii) identifies the subject amendment in numerical order;

(iii) states whether prior amendments had been submitted to but not yet filed with the Office of the Attorney General; and

(iv) identifies, if possible, the attorney in the Office of the Attorney General who reviewed the most recent submission; and

(v) gives the current status of the offering plan:

(a) identifies it as either an eviction or a non-eviction plan; and

(b) states whether or not the plan has been declared effective or if the closing has occurred; and

(c) states if there are any outstanding exclusive purchase periods or rescission periods.

18.5(b)

(2) Three copies of the amendment to the offering plan.

(3) Check(s) (certified or uncertified) for filing fee(s) under G.B.L. section 352-e(7), payable to New York State Office of the Attorney General, stapled or clipped to the transmittal letter.

(4) One copy of the offering plan, including all filed amendments.

(5) One form RS-2. If the amendment is submitted before the closing, or if the amendment discloses the events that took place at the closing, the form must be signed by the sponsor. If the amendment is submitted after the closing, the form must be signed by one or more holders of unsold shares, and must include the sponsor or principals of sponsor if the sponsor or principals are holders or unsold shares.

(c) Amendments extending term of offering plan. Pursuant to section 18.3(a)(9) of this Part, the term of the initial offer is 12 months, commencing on the date indicated in the letter issued by the Office of the Attorney General stating that the plan is filed. Prior to the filing of a post-closing amendment pursuant to subdivision (f) of this section, an amendment other than a price change amendment extends the term of the offering for an additional six-month term from the date of filing of the amendment, unless the term is shorter under G.B.L. section 352-eee or 352-eeee which limits the aggregate offering period prior to effectiveness, or by the provisions of the amendment. After the post-closing amendment is filed pursuant to subdivision (f) of this section, any subsequent amendment other than a price change amendment extends the term of the offering for an additional 12-month term from the date of filing of the amendment. A price change amendment submitted pursuant to subdivision (d) of this section does not extend the term of the offering. In the absence of any amendments, an extension of the term must be made by amendment before the end of the then current term and must comply with the provisions of this section and the requirements set forth below.

(1) The amendment must disclose all material changes such as decreases or increases in maintenance charges or a material increase in an expense such as labor, utilities and real estate taxes.

(2) If the closing has occurred, the amendment:

(i) must state the number of unsold shares remaining and identify the appurtenant dwelling units; and

(ii) must state the extent to which the sponsor controls the board of directors.

If the sponsor is still in control, state the requirements of the offering plan regarding the relinquishment of control. If the sponsor has relinquished control, state the date when control was relinquished.

18.5(c)

(3) For all offering plans in which the sponsor or holder(s) of unsold shares owns in the aggregate more than 10 percent of the shares, the amendment must disclose:

(i) The aggregate monthly maintenance payments for the units appurtenant to the unsold shares;

(ii) The aggregate of the monthly rents currently payable from tenants of units appurtenant to unsold shares, or a reasonable approximation thereof. A current rent roll (as of a date within 60 days prior to submission) must be submitted with the amendment as a back-up document;

(iii) Financial obligations to the cooperative which will become due within 12 months from the date of the amendment (other than payment of maintenance) including, but not limited to, reserve and working capital fund payments and payments for repair and improvement obligations;

(iv) A list of all unsold shares which have been pledged as collateral for loan(s) or otherwise represent security for financing arrangements; the identity and address of the lender(s); the maturity date of the loan(s); and payment obligations under the loan(s), stated on a monthly basis where possible;

(v) The means by which any payments or obligations set forth pursuant to subparagraphs (i), (iii) and (iv) of this paragraph will be funded. If the funding source is stated as income from projected sales, disclose other sources of funding, if any, that will be utilized if such projected sales are not made;

(vi) A statement as to whether the sponsor or holder(s) of unsold shares is current on all financial obligations to the cooperative, including, but not limited to, payment of maintenance, reserve or working capital fund payments, assessments, and payments for repairs or improvements promised in the offering plan. In addition, state whether the sponsor or holder(s) of unsold shares is current on payments of underlying mortgages and all obligations under financing arrangements for which unsold shares have been pledged as collateral. If the sponsor or holder(s) of unsold shares is not current on its obligations,

state the date and amount of each delinquency and discuss the effect of such delinquency on the cooperative. Also state whether the sponsor or holder(s) of unsold shares was current on all such obligations (i.e., had satisfied the obligation by the expiration of any grace period) during the 12 months prior to the filing of the amendment, and if not, state the details of any delinquency;

18.5(c)

(vii) A list of all other cooperatives, condominiums and homeowners associations, by the Office of the Attorney General file number and address, in which the sponsor, general partner or principal of the sponsor, or holder(s) of unsold shares, as an individual or as general partner or principal of the sponsor or holder, owns more than 10 percent of the shares or units. Disclose that offering plans for these buildings are on file with the Office of the Attorney General and are available for public inspection;

(viii) A statement as to whether the sponsor and all principals of the sponsor, and all holders of unsold shares, as individuals, general partners or principals of the sponsor or holder, are current in all obligations set forth in subparagraph (vi) of this paragraph in other cooperatives, condominiums and homeowners associations in which they own more than 10 percent of the units as individuals, general partners or principals. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) An offering plan must be amended immediately if any delinquency required to be disclosed by subparagraph (3) (vi) or (viii) of this subdivision has existed for 15 days, or if there has been a material change in the financial position of the sponsor or holder of unsold shares which may jeopardize its ability to meet its obligations to the cooperative.

(d) Price change amendments. Any amendment proposing to change any offering price is subject to the requirements set forth below and must be consistent with section 18.3(h) of this Part.

(1) Notwithstanding paragraph (a)(3) of this section, if the amendment is limited solely to price changes and no prior amendment has been submitted to but not yet filed with the Office of the Attorney General, the amendment shall be deemed filed when submitted to the Office of the Attorney General.

(2) If the amendment contains price changes and supplements or amends any other part of the offering plan, the amendment shall be filed on the date indicated in the letter issued by the Office of the Attorney General stating that the amendment has been filed, and not sooner.

(3) The transmittal letter for a price change amendment must be accompanied by a completed copy of form C-11 as promulgated by the Office of the Attorney General.

(e) Amendment declaring a plan effective.

(1) The amendment to declare a plan effective must conform to the effective date section of the offering plan. If the plan was declared effective by notice, the

18.5(e)

amendment must refer to the notice and the date of the notice. No closing shall be held until this amendment is accepted for filing by the Office of the Attorney General.

(2) If the plan is presented pursuant to any law that requires that a specific percentage of bona fide tenants in occupancy subscribe before the plan may be declared effective, the amendment must state the percentage of bona fide tenants in occupancy who have subscribed and are being counted for purposes of declaring the plan effective. The amendment must also state how such percentage was calculated, including the number of units in the base, the number of tenants or units subtracted from the base, the basis in law for the subtractions, and the names of tenants subtracted from the base and their apartment numbers.

(3) If the plan is not presented pursuant to a law that requires that a specific percentage of tenants subscribe before the plan may be declared effective (including non-eviction plans pursuant to G.B.L. section 352-eeee) the amendment shall state:

(i) the percentage of units being offered for which the sponsor or apartment corporation has accepted subscription agreements;

(ii) the number of subscriptions from bona fide tenants in occupancy; and

(iii) the number of subscriptions from bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant.

(4) Subscription agreements that are conditional on obtaining financing or a financing commitment may be counted for purposes of declaring the plan effective.

(5) For the purpose of computing the percentage of bona fide tenants in occupancy of dwelling units for which subscription agreements have been executed, a fractional percentage shall be rounded off to the next lower whole number.

(6) The amendment shall include, as an exhibit, an affidavit from sponsor that shall set forth the following information:

(i) the date the plan was accepted for filing by the Office of the Attorney General;

(ii) the presentation date of the plan;

(iii) a representation that all subscribers who are counted for purposes of declaring the plan effective:

18.5(e)

(a) are bona fide purchasers;

(b) are not purchasing as an accommodation to, or for the account or benefit of the sponsor or principals of sponsor; and

(c) have duly executed subscription agreements and have paid the full down payment as required in the Procedure to Purchase Section of the offering plan;

(iv) a representation that only subscription agreements assigned or transferred in compliance with section 18.3(q) of this Part have been counted for purposes of declaring the plan effective;

(v) the following information with respect to any subscriber who is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or who is related to the sponsor or the selling agent or to any principal of the sponsor or the selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner.

(a) the identity of the subscriber;

(b) the identity of the unit to be purchased;

(c) the nature of the relationship; and

(d) if the unit is occupied, the name of the occupant.

(vi) If the plan is not presented pursuant to a law that requires a specific percentage of tenants subscribe before the plan may be declared effective (including non-eviction plans pursuant to G.B.L., section 352-eeee), include in sponsor's affidavit:

(a) a list of the subscribers who are being counted to meet the minimum percentage of units that are needed under the terms of the plan to declare the plan effective. For each subscriber, indicate the identity of the unit to be purchased; the date of the subscription agreement; the amount of the deposit paid if for any reason it is less than the amount or percentage stated in the offering plan, and an explanation of the difference; the date that the deposit was paid if the date is different from the date of the subscription agreement; and whether the subscriber is a bona fide tenant in occupancy, or a bona fide purchaser who represents that he or she or one or more members of his or her

18.5(e)

immediate family intend to occupy the dwelling unit when it becomes vacant. If the unit was vacant on the filing date, state whether the subscriber has taken physical occupancy;

(b) a representation that all subscription agreements counted towards effectiveness were from either bona fide tenants in occupancy or bona fide purchasers who represent that they or one or more members of their immediate family intend to occupy the dwelling unit when it becomes vacant;

(c) a representation that no subscriber counted for purposes of declaring the plan effective is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor or the selling agent or to any principal of the sponsor or the selling agent by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner. Such a subscriber, other than the sponsor or a principal of the sponsor, may be excepted from the foregoing representation and included in the count only if the sponsor has submitted proof satisfactory to the Office of the Attorney General establishing that the subscriber is either a bona fide tenant in occupancy or a bona fide purchaser who represents that he or she or one or more members of his or her immediate family intends to occupy the dwelling unit when it becomes vacant.

(vii) If the plan is presented pursuant to any law that requires that a specific percentage of bona fide tenants in occupancy subscribe before the plan may be declared effective, include:

(a) a list of subscribers who subscribed, prior to service on the tenants of any notice declaring the plan effective, and who are being counted to meet the minimum percentage that is needed to declare the plan effective. For each subscriber, indicate the identity of the unit to be purchased; the date of the subscription agreement; the purchase price if it differs for any reason from the price stated in the offering plan, and an explanation of the difference; the status of each tenant-subscriber under any applicable rent law; the amount of the deposit paid if for any reason it is less than the amount or the percentage stated in the offering plan, and an explanation of the difference; and the date that the deposit was paid if the date is different from the date of the subscription agreement. If the subscriber's tenancy commenced within the preceding three years, state the approximate date that the tenant actually took physical occupancy;

18.5(e)

(b) a representation that the subscribers who are counted for purposes of declaring the plan effective:

(i) signed subscription agreements without fraud or duress, and with no discriminatory inducement; and

(ii) do not include any subscriber who is the sponsor or the selling agent, or is a principal of the sponsor or the selling agent, or is related to the sponsor or the selling

agent or to any principal of the sponsor or selling agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner. Such a subscriber, other than the sponsor or a principal of the sponsor, may be excepted from the foregoing representation and included in the count only if the sponsor has submitted proof satisfactory to the Office of the Attorney General establishing that the subscriber is a bona fide tenant in occupancy.

(viii) Whether sponsor has any information that any tenants have executed a "no-buy" pledge with respect to the offering.

(7) In addition to the submissions required by subdivision (b) of this section, an amendment declaring a plan effective shall be accompanied by the following:

(i) If the plan was declared effective by notice, a copy of the notice and an affidavit of service of the notice on all tenants and purchasers.

(ii) Copies of all subscription agreements of purchasers of shares of dwelling units occupied by nonpurchasing tenants which shall include an agreement by the purchaser to comply with the requirements of section 18.3(n)(3)-(4) of this Part, if applicable.

(iii) If the plan is not presented pursuant to a law that requires a specific percentage of tenants subscribe before the plan may be declared effective (including noneviction plans pursuant to G.B.L. section 352-eeee) an amendment declaring the plan effective shall be accompanied by all subscription agreements being counted towards effectiveness. Subscription agreements of non-tenant subscribers being counted towards effectiveness must include:

(a) a representation by the subscriber that he or she or one or more members of his or her immediate family intends to occupy the dwelling unit when it becomes vacant;

18.5(e)

(b) a statement identifying the individual(s) who intend(s) to occupy the dwelling until when it becomes vacant; and

(c) a listing by the subscribers of all other subscription agreements in which they made similar representations of intent to occupy.

(iv) If sponsor has granted permission to assign or transfer a subscription agreement, a copy of each assignee's notarized affidavit as described in section 18.3(q) of this Part that the assignee was not procured by the sponsor or the selling agent, and that the assignee or a specified member of the assignee's immediate family intends to personally occupy the dwelling unit.

(8) If the plan is presented pursuant to any law that requires that a specific percentage of tenants subscribe before the plan may be declared effective and subscriptions have

been received for less than 150 percent of the number of units necessary to declare the plan effective, include a copy of the first page and the signature page of each subscription agreement and any additional pages that contain any additions, deletions or modifications of the subscription agreement as it appears in the offering plan.

(9) Sponsor must submit to the Office of the Attorney General, if requested, copies of subscription agreements and any related documents, including, without limitation, any amendments to or modifications of subscription agreements and evidence of downpayments or other payments received, within five business days after the request is made.

(f) Post-closing information.

(1) Sponsor must amend the plan within a reasonable time following the closing, to include the following information. These facts need not be presented in the same amendment.

(i) The date and place of the title closing to the property.

(ii) The amount of the reserve fund, if any, and the account(s) into which the fund was deposited listing the name(s) and branch address(es) of the bank(s).

(iii) The amount of the working capital fund, if any, and the account into which the fund(s) were deposited. If the net closing adjustments are in favor of sponsor, state the amount of the closing adjustments that are in favor of sponsor and how the amount will be paid.

18.5(e)

(iv) If any mortgage encumbers the property before closing and also will encumber the property after the closing, include the amount of the mortgage on the closing date.

(v) If there is a contract of exchange for the property between the sponsor and the apartment corporation, calculate the apartment corporation's basis in the property.

(vi) A list of all the unsold shares held by the sponsor and by the individuals designated by the sponsor as holders of unsold shares, the names and addresses of such designated individuals, the dwelling units appurtenant to their shares, and such additional information as is required for principals of the sponsor by section 18.3(cc)(1), (2), (7) and (8) of this Part.

18.5(f)

SECTION 18.6 Advertisements.

(a) Except as provided in subdivision (b) of this section, all advertising in print or other media, as well as circulars, flyers, cards, letters and other literature employed to solicit interest ("advertisement") for offering plans filed pursuant to this Part, shall contain the following statement in easily readable print separated from the body of the advertisement or spoken in a distinctly audible voice.

THE COMPLETE OFFERING TERMS ARE IN AN OFFERING PLAN AVAILABLE FROM SPONSOR.

(b) Notwithstanding subdivision (a) of this section, in all classified-type advertisements not more than five inches long and not more than one column of print wide, the following statement may be used in lieu of the statement required in subdivision (a) of this section at the end of the advertisement and separated from the body of the advertisement:

SEE OFFERING PLAN FOR FULL TERMS.

(c) Any chart or diagram used in an advertisement must be consistent with the offering plan. Any room or floor plan must be to scale.

(d) No abbreviations shall be employed in advertisement unless the meaning is unmistakably clear.

(e) All advertisements in connection with an offering plan filed pursuant to this Part shall be consistent with the representations and information required to be set forth by the General Business Law and this Part. All assertions of fact in advertisements must be provably true.

(f) Anticipated maintenance charges shall be preceded by the word projected or estimated or abbreviations of those terms. In estimating maintenance charges, there shall be no subtraction or representation of specific dollar savings because of anticipated tax deductions.

(g) Advertisements of amenities or services available at a fee charged in addition to the maintenance charge, or in addition to the purchase price, must refer to the additional fee. Advertisements of amenities or services that will not be available at closing must state the approximate date of availability.

(h) Artist's rendering of a property in an advertisement must be marked as an artist's rendering and must accurately and realistically depict the dimensions, height and landscaping of the property and surrounding roads, buildings and open space.

(i) Advertisements of financing offered or procured by sponsor must include the term of the financing when the term is for less than five years.

18.6(a)

(j) Advertisements directed to non-tenant purchasers of occupied apartments shall state:

(1) Purchasers will assume all the obligations of a landlord. These expenses are not included in maintenance charges.

(2) The costs of owning the apartment may exceed the rent.

(3) In the case of a non-eviction plan: This is a non-eviction plan. Tenants may have the right to remain in occupancy indefinitely.

18.6(j)

SECTION 18.7 Description of property and building condition.

Each offering plan submitted pursuant to this Part must include a comprehensive narrative description of the building(s) and property included in the project. Emphasis should be on present condition of premises including deficiencies probably unknown to occupants, rather than description of material make-up visually obvious to each resident. The inspection of the property upon which the description is based must have taken place within 180 days prior to submission of the offering plan to the Office of the Attorney General. The Office of the Attorney General may in its discretion require a further inspection and report. The condition of all systems and materials must be fully described. Such report(s) shall disclose all defective conditions apparent upon inspection, and shall note any defective condition which is hazardous or which requires immediate repair to prevent further deterioration. Identify and describe all applicable items in the order listed below. Where an item is not specifically identifiable, it may be generally described, e.g., "two rows of deciduous trees" rather than "12 poplar and 12 maple trees in two lines." Where an item is not identifiable at all, a reason must be presented substantiating its unavailability.

(a) Location and use of property. State whether this property and proposed use will comply with all zoning and use requirements at closing. Include in discussion:

(1) address;

(2) block and lot number;

(3) zoning; and

(4) permissible use.

(b) Status of construction. State:

(1) year built;

- (2) class of construction;
- (3) certificate of occupancy, type and number;
- (4) alteration permit numbers and description of work done.

(c) Site.Discuss:

- (1) size;
- (2) number of buildings and use;
- (3) streets owned or maintained by the project:
 - (i) paving (material and condition);
18.7(a)
 - (ii) curbing (material and condition);
 - (iii) catch basins, drainage (location and condition);
 - (iv) street lighting (material, type, location and condition);
- (4) drives, sidewalks and ramps:
 - (i) paving (material and condition);
 - (ii) curbing (material and condition);
 - (iii) catch basins, drainage (location and condition);
 - (iv) street lighting (material, type, location and condition).

(d) Utilities. Identify source or provider of each utility. Specifically identify which are public utilities or regulated companies and which are solely the obligation of the apartment corporation. Indicate whether water, sewer (or septic tank), gas, electric and telephone are metered individually, collectively or by any other method of billing.

(e) Subsoil conditions. Describe (including water conditions):

- (1) whether uneven foundation movement or settling has occurred (cracking, mortar joint decay, etc.);
- (2) whether there is any evidence of moisture or seepage or ground water infiltration and, if any, indicate whether corrective action is needed;

(3) whether there is any danger from flooding, either due to water table in area or overflow from other bodies of water. Note potential for mudslides or erosion and what preventive action is appropriate.

(f) Landscaping and enclosures. Describe:

- (1) grass cover (type, location);
- (2) plantings (type, location);
- (3) trees (location);
- (4) fencing (type, location);
- (5) gates (type, location);
- (6) garden walls (type, location);
- 18.7(f)
- (7) retaining walls (type, location);
- (8) display pools and foundations (location, materials).

(g) Building size. Specify:

- (1) total height (approximate total feet from ground level to highest part of roof);
- (2) crawl spaces (floor to ceiling, height);
- (3) number of subcellars and cellars;
- (4) number of floors (actual, including penthouses--give floor-to-ceiling height if not between 7 1/2 and 8 1/2 feet);
- (5) equipment rooms (location and use);
- (6) parapet (height above roof).

(h) Structural system. Describe materials used, include type of foundation(s) and method of installation. Specify:

(1) Exterior of buildings.

(i) Walls. List materials, type of construction, method of construction. For New York City buildings, if Local Law 10 applies, state the results of the inspection. If Local Law 10 is inapplicable, so state. If such inspection is required but not performed, specify

as a violation. If insulated, describe material, type, size and insulating value where available.

(ii) Windows. Specify type and materials in all parts of the building, including sills, screens, window guards, lintels, storm sash, hardware, single or double glazing and caulking. Indicate whether lot line windows exist and describe any potential future problems.

(2) Parapets and copings. State type of materials, how firmly secured in place and whether there is any indication of problems, e.g., leakage, spalling, deterioration of mortar, cracking, etc.

(3) Chimneys and caps. Indicate number, location and material of each chimney for boilers, incinerators, compactors and fireplaces. If fireplaces are not usable for wood fires, this fact must be conspicuously disclosed.

(4) Balconies and terraces. Describe:

(i) deck finish (material);

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(ii) balustrade (type, material);

(iii) railings (material);

(iv) copings (material);

(v) soffits (material);

(vi) doors to balconies and terraces (type, material).

(5) Exterior entrances. Describe:

(i) exterior doors and frames (material, type, lock);

(ii) vestibule doors and frames (material, type, lock);

(iii) exterior stairs (material, location);

(iv) railings (material, location);

(v) mail boxes (type, location);

(vi) lighting (type, location).

(6) Service entrances. Describe:

- (i) doors and frames (material, type, lock);
 - (ii) gates (material, type, lock);
 - (iii) exterior stairs (material, location);
 - (iv) railings (materials, location).
- (7) Roof and roof structures. Describe:
- (i) type roofs for all areas:
 - (a) material;
 - (b) insulation (size, type and insulating value if available);
 - (c) surface finish;
 - (d) bond or guarantee;
 - (e) flashing materials, including counter flashing;

18.7(h)

- (ii) drains:
 - (a) location, materials and type;
 - (b) gutters and leaders (type, material);
- (iii) skylights (location, type, material);
- (iv) bulkheads:
 - (a) stairs (materials);
 - (b) elevator (materials);
 - (c) other;
- (v) metal work at roof levels:
 - (a) exterior, metal stairs (materials);
 - (b) vertical ladders, including gooseneck (material);

- (c) railings (material);
- (d) hatches to roof (type, material);
- (e) other;

(vi) rooftop facilities (describe in detail).

(8) Fire escapes. Describe at each floor and specify any unusual access situations:

- (i) location (describe how attached and supported);
- (ii) floors covered;
- (iii) drop ladder;
- (iv) type;
- (v) materials.

(9) Yard and courts. Describe each yard or court, including front, rear and interior areas, listing methods of access:

- (i) paving (material);

18.7(h)

- (ii) drainage (type and material);
- (iii) railings (material);
- (iv) stairs (material);
- (v) fencing (type and material);
- (vi) walls (type and material).

(10) Interior stairs. Describe:

- (i) number of stairs of each type;
- (ii) enclosure (construction and interior finishes);
- (iii) stair construction (steel, concrete, wood);
- (iv) stringers (material);

(v) treads (material);

(vi) risers (material);

(vii) guardrails (material);

(viii) balustrade (material).

(11) Interior doors and frames. Describe material, type and location for each and state whether fireproof or exceeds fire/safety standards:

(i) unit entrance and interior doors and frames;

(ii) corridor doors and frames;

(iii) stair hall doors and frames;

(iv) roof doors, basement doors and frames.

(12) Elevators. Describe:

(i) number of passenger and service elevators;

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(ii) manufacturer, age of each and capacity (in pounds and number of passengers);

(iii) type of operation for each elevator, by elevator number or location in building (for large numbers of elevators, describe by class--passenger/ freight);

(iv) automatic (type of controls);

(v) floors served;

(vi) type (hydraulic; gearless);

(vii) doors (sliding, swinging, manual, automatic);

(viii) location of machine rooms;

(ix) DC to motor (manufacturer);

(x) AC to motor-generator set (manufacturer);

(xi) other.

(13) Elevator cabs. Describe:

- (i) kind (manufacturer);
- (ii) floor (material);
- (iii) walls (material);
- (iv) ceiling (material);
- (v) lighting (describe);
- (vi) alarm, safety system.

(i) Auxiliary facilities.

(1) Laundry rooms. Describe.

- (i) location and number of rooms;
- (ii) clothes washers, number and type (e.g., heavy duty, coin-operated, electric, gas);

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- (iii) clothes dryer (number and type);
- (iv) room ventilation (method and final exhaust);
- (v) dryer ventilation (method and final exhaust).

(2) Refuse disposal. Describe, including:

- (i) incinerator(s) (number, location, capacity, type, manufacturer);
- (ii) compactor(s) (number, location, capacity, type, manufacturer);
- (iii) approvals by authority having jurisdiction (date of each approval);
- (iv) initial storage location (ultimate storage location);
- (v) pick-up schedule, and whether public or private provider.

(j) Plumbing and drainage.

(1) Water supply. Describe system, pumps, storage and location.

(2) Fire protection system. Describe:

- (i) standpipes (material, size, location);
- (ii) hose racks, hoses and nozzles (location);
- (iii) sprinkler heads (type system, location);
- (iv) siamese connection (type, location).

(3) Water storage tank(s) and enclosures. Describe:

- (i) number, type, location of each;
- (ii) material (interior, exterior and roof of tank);
- (iii) access to tank (e.g., vertical gooseneck ladder);
- (iv) capacity (total gallons);
- (v) capacity (fire reserve).

(4) Water pressure and how maintained.

18.7(j)

(5) Sanitary sewage system. Describe, including:

- (i) sewage piping (materials);
- (ii) sewage pumps (if any);
- (iii) sewage disposal (public/private; treatment; drain field; sewer).

(6) Permit(s) required. List and include date(s) obtained.

(7) Storm drainage system. Describe system, adequacy, method of disposal and materials including:

- (i) catch basins (location);
- (ii) yard and roof drains (location);
- (iii) piping (materials);

(iv) eject or sump pumps (describe in detail and describe conditions requiring pumps).

(k) Heating. Describe (including space heating and domestic hot water heating):

(1) describe heating and distribution of domestic hot water and whether capable of providing peak required services. Describe heating system's ability to maintain legally required conditions under anticipated weather conditions, specifying internal temperature and ambient temperature used in calculations;

(2) number of boilers and description;

(3) manufacturer and age of boiler(s) (model, capacity--alternatively give type, approximate age and approximate remaining useful life);

(4) manufacturer and age of burners (model--alternatively give type and approximate remaining useful life);

(5) type of controls;

(6) radiators, piping, insulation, valves, pumps;

(7) fuel (for oil give type and grade);

(8) location of oil tank, materials, enclosure;

(9) capacity of oil tank;

18.7(k)

(10) for gas (details on type and supply system).

(1) Gas supply. If not described above, describe:

(1) type;

(2) meters;

(3) piping.

(M) Air conditioning. Describe cooling system's adequacy to maintain comfortable conditions under anticipated weather conditions, specifying internal temperature and base ambient temperature used in calculations. Describe:

(1) type of system;

(2) central system (give manufacturer, model and capacity);

(3) cooling towers, condensers (rooftop, self-contained units, including number, location and description);

(4) individual units covered by the offer (window/sleeve--specify number, capacity, amperage and efficiency).

(n) Ventilation. Describe system in kitchens, fireplaces and all windowless areas such as corridors, garages, laundries, baths, etc.

(o) Electrical system. Specify:

(1) service from main service switchgear (amperes, voltage, phases, wire protective equipment);

(2) service to individual units (rises, etc.);

(3) compartment switchgear (location and floor of sectional meter boards and transformers supplying power to the meter boards);

(4) unit service (ratings of main fuses, circuit breakers or fuses to units and ratings);

(5) adequacy:

(i) service--average number of circuits per apartment and capacity to handle modern appliances--specifically air conditioners, dishwashers and electric dryers;

18.7(o)

(ii) lighting and fixtures;

(iii) convenience outlets, appliance outlets;

(6) intercommunication and/or door signal systems.

(p) Television reception facilities. Master antennae, cable TV, antennae by tenants, security closed-circuit TV.

(q) Public area lighting. Describe and state adequacy (entrances, halls and stairs, corridors, basements, courts and yards).

(r) Garages and parking areas. Describe:

(1) location of garages (description of facility);

(2) location of parking areas (number of spaces in each);

(3) surfaces (materials used, lighting, fencing, etc.);

(4) parking (attended or not attended);

(5) garage ventilation (method and equipment);

(6) garage fire protection (method and equipment);

(7) drainage.

(s) Swimming pool(s). Describe in detail:

(1) type (concrete, material composition) and location on property;

(2) size, including length, width, depth and approximate number of bathers permitted at any time;

(3) enclosure (material including roof);

(4) pumping and filter system (describe material);

(5) water heating equipment or usage of building's hot water (feed or heat exchangers);

(6) if on building roof, specify structural support system.

18.7(s)

(t) Tennis courts, playgrounds and recreation facilities.

(1) Tennis courts. Describe:

(i) type (clay, macadam, turf);

(ii) number and size;

(iii) lighting (number and type);

(iv) fencing or enclosure (including distance between fence or enclosure and all sides of court);

(2) Playgrounds. Describe location and size(s) of playground(s), fencing (if any), equipment types and sand bed or safety padding.

(3) Other recreation facilities. Describe any beach or lake front, boating facilities, golf course(s), handball, basketball or other game courts.

(u) Permits and certificates. List all applicable permits which must be obtained and inspections which are to be done. List type of inspection, authority inspecting and duration of approval once obtained, include all compactors, incinerators, boilers, oil storage tanks, elevators, etc. In New York City include Department of Air Resources, Elevator Safety, Boiler Safety, Fire Department and Buildings Department permits.

(v) Violations. List all violations outstanding as the date of this report and the agency imposing the violation, the condition involved, the date violation issued and work required by violation notice to cure. If no violations are outstanding, so state.

(w) Unit information. Specify the number of units inspected. Specify the unit designations for each typical unit or line of units, including the number and type of rooms. Give criteria for calculations. For lofts give useable residential space in square feet. Describe (include foyers, living rooms, dining areas, kitchen, bedrooms, bathrooms, etc.):

(1) Type and grade of finish material used in each type of unit and the number of coverings given. Include paint, wall and floor coverings, as well as specifying the type of flooring, walls and ceiling used.

(2) Describe presence, type and condition of all bathroom fixtures.

(3) Describe presence, type and condition of kitchen and laundry equipment.

(i) If data is substantially the same for all units, a single narrative may be substituted for this schedule.

18.7(w)

(ii) If any equipment or fixtures described are not included in the offering price, or the offering price is conditioned on the equipment and fixtures selected, such fact must be conspicuously noted in the body of the plan.

(x) Finish schedule of spaces other than units. The following is a form of schedule to be given for each floor:

Room Floor Walls Ceiling Remarks

Show all common rooms and spaces, including but not limited to: sub-subcellar, subcellar, basement, first floor, penthouse floor, public and service halls, corridors, lobbies.

(y) Safety and warning devices. Describe any fire or smoke safety devices installed in units and common areas. State what devices are required by law, and whether any required devices have not been installed.

(z) Additional information required. Include the following in the Description of Property section of the plan:

(1) a site plan showing roads, the outside dimensions of the building and clearly designated common areas, including recreation and refuse disposal areas if more than one building is being offered; and

(2) an area map showing the location of the cooperative with respect to its surroundings, if the cooperative is not located in a highly urban area.

(aa) Asbestos.

(1) State whether asbestos-containing material (ACM) is present in insulating or fireproofing material anywhere in the building(s). Sponsor shall perform such tests as are necessary to make such determination. In the event that ACM is present, sponsor shall have a person who is qualified to render an opinion on asbestos prepare a report on the asbestos in the building(s) (the "asbestos report"). Such asbestos report shall contain at least the following information:

(i) the qualifications of the person preparing the report;

(ii) a detailed inventory of the asbestos in each apartment and in all other areas of the property, including the location, amount of ACM, type and concentration of asbestos in the ACM, and condition. State whether the presence of any of the ACM poses an immediate health or safety hazard. State which apartments, if any, were not examined and describe efforts made to gain access to any such apartments;

18.7(aa)

(iii) recommendations for handling each and every item of the asbestos inventory, i.e., removal, enclosure, encapsulation, or leaving undisturbed;

(iv) how the recommendations should be implemented. Include, if applicable, whether apartments must be vacated or whether use of certain rooms will be limited and the projected duration thereof. State whether the work must be performed in compliance with New York City Local Law 76 of 1985 or any other applicable laws; and

(v) a recommended protocol for the future handling and maintenance of asbestos which will remain in the building, whether encapsulated, enclosed or left undisturbed.

In addition, the offering plan must state that the recommendations of the asbestos report will be expeditiously carried out by the sponsor if the closing has not occurred, or the apartment corporation if the closing has occurred but the sponsor is in control, and that it will be the responsibility of the apartment corporation to monitor and, whenever

necessary, to treat or remove ACM which remains in the building(s) after the conversion to a cooperative.

(2) The provisions of this subdivision shall take effect on August 8, 1986.

(i) Proposed offering plans submitted to the Office of the Attorney General on or after February 8, 1987 shall contain a statement as to whether ACM is present in the building(s) and, if so, shall contain an asbestos report.

(ii) Offering plans submitted and/or accepted for filing between August 8, 1986 and February 8, 1987 shall be revised or amended no later than May 8, 1987 to include a statement as to whether ACM is present in the building(s) and, if so, shall be revised or amended to include an asbestos report no later than May 8, 1987. Such plans shall not be declared effective until 30 days after such statement and report are incorporated in an amendment and presented to tenants and subscribers.

(iii) Offering plans accepted for filing prior to August 8, 1986 in which any units remain unsold shall be amended no later than May 8, 1987 to include a statement as to whether ACM is present in the building(s) and, if so, shall be revised or amended to include an asbestos report no later than May 8, 1987. If before such an amendment is accepted for filing the sponsor seeks to declare the plan effective, close, or sell unsold shares, the sponsor shall amend the offering plan to inform tenants and prospective purchasers that such statement and asbestos report are forthcoming. Such amendment shall give purchasers the opportunity to

18.7(aa)

delay closing until 30 days after the amendment containing such statement and asbestos report have been distributed to them. If any closings take place prior to the completion of asbestos removal and treatment work, sponsor shall place in escrow a sum of money sufficient to pay for said work, the amount to be determined by a person qualified to render an opinion on asbestos, but in any event no less than \$2,500 per unit.

18.7(aa)

SECTION 18.8 Eligible senior citizens and eligible disabled persons.

(a) Election. A tenant may elect not to purchase as an eligible senior citizen or eligible disabled person as defined in G.B.L., section 352-e(2-a) or 352-eeee, or as an eligible disabled person as defined in G.B.L., section 352-eee, within 60 days from the presentation date by completing the applicable form, SH-1 or SH-2, prescribed by the Office of the Attorney General and included in the offering plan immediately preceding the introduction page, signing the election form and having the signature notarized, and personally delivering it to the named sponsor or selling agent at a location specified by the sponsor in the plan or by mailing it by certified or registered mail, return receipt requested, to the named sponsor or selling agent at an address specified by the sponsor in the plan. G.B.L., section 352-eee does not require that a tenant file an election form in

order to qualify as an eligible senior citizen. However, it is advised and requested that a tenant, who believes he or she is or will become an eligible senior citizen within 12 months from the date the plan is filed, complete the election form SH-5 promulgated by the Office of the Attorney General and included in the plan. This senior citizen election form should be completed, signed, notarized and returned to the sponsor within 60 days of presentation of the offering plan. In the event that the plan becomes subject to G.B.L., section 352-e(2-a) after the plan was accepted for filing, the plan must be amended immediately after the statute becomes applicable to such offering, and such election may be made within 60 days of presentation of such amendment.

(1) An SH-1 or SH-2 election form is timely if it is personally delivered or postmarked before midnight of the 60th day after the presentation date, subject to statutory rules of construction. An SH-5 election form may be delivered at any time.

(2) The sponsor or selling agent shall acknowledge receipt of the election form and promptly return an acknowledged copy to the nonpurchasing tenant.

(b) Determination of disputed elections. A sponsor who disputes the election by a non-purchasing tenant to be an eligible senior citizen or an eligible disabled person must apply to the Office of the Attorney General for a determination of the person's eligibility within 30 days following receipt of the election form.

(1) The application is timely if it is personally delivered to the Office of the Attorney General, Investment Protection Bureau - Real Estate Financing Section,

Two World Trade Center, Room 48-61, New York, N.Y. 10047, during business hours or postmarked before midnight of the 30th day following receipt by the sponsor or agent of the election form.

(2) An untimely application will not be entertained, in which case the tenant whose eligibility is disputed will be deemed eligible under the statute.

18.8(a)

(3) The application shall include the following:

(i) one copy of the election form;

(ii) one original and one copy of an affidavit, sworn to by a person having knowledge of the facts, setting forth the following:

(a) that the application is timely in accordance with this Part;

(b) the specific ground(s) for disputing the election; and

(c) the basis for the affiant's statement that the tenant is not an eligible senior citizen or eligible disabled person;

(iii) two copies of all supporting information or documentation in the possession of the sponsor or the affiant bearing on eligibility.

(4) The application must be complete at submission. The Office of the Attorney General need not consider any additional or supplemental information subsequently submitted by sponsor.

(5) The Office of the Attorney General shall notify the person that the sponsor disputes the person's election to be an eligible senior citizen or eligible disabled person; and shall request the person to submit an answer to the application on a form prescribed by the Office of the Attorney General and support the answer with information or documentation bearing on the specific grounds raised by sponsor to dispute the election. The answer and supporting documentation must be submitted to the Office of the Attorney General within 10 days of the date of the notice from the Office of the Attorney General. Failure to submit an answer shall not preclude the Office of the Attorney General from issuing a determination.

(6) The Office of the Attorney General may, in its discretion, require the attendance and giving of testimony by witnesses and the production of papers, documents, books and other evidence concerning the issues raised. A witness shall be notified that he or she may be represented by counsel.

(7) On the basis of the evidence received, the Office of the Attorney General shall issue a written determination of eligibility.

(c) Sale of units or shares allocated to units occupied by eligible senior citizens and eligible disabled persons.

(1) A unit or shares allocated to a unit occupied by an eligible senior citizen or eligible disabled person, or a person seeking exemption as an eligible senior citizen or eligible disabled person, may not be offered to a third party during

18.8(c)

any exclusive purchase period granted to bona fide tenants in occupancy unless the sponsor, in writing, waives any right to dispute the eligibility of the occupant of the unit.

(2) Where the sponsor has disputed the eligibility of a person seeking an exemption, the unit or shares allocated thereto may not be offered to a third party for 30 days after the Office of the Attorney General has made its determination of eligibility. If a proceeding to review such determination is commenced under article 78 of the Civil Practice Law and Rules in a court of competent jurisdiction, the unit or shares allocated thereto may not be offered to a third party for 30 days after notice of entry of the final

order in such proceeding. If such final determination or order finds that the person seeking the exemption is not an eligible senior citizen or eligible disabled person, such person may purchase the unit or shares allocated thereto, within 30 days thereafter, on the most favorable terms offered to tenants in occupancy at any time prior thereto; provided, however, that if such final determination or order includes a finding that the exemption was sought fraudulently or in bad faith, such person may purchase the unit or shares allocated thereto as provided in paragraph (3) of this subdivision.

(3) Notwithstanding an election not to purchase, an eligible senior citizen, or eligible disabled person may purchase the unit or shares allocated thereto on the terms then offered to tenants in occupancy.

18.8(c)

SECTION 18.9 Issuance of no-action letter.

(a) Applicability. Upon application made in accordance with the requirements of this section, the Office of the Attorney General may, in its discretion, issue a "no-action letter" stating that it will not take any enforcement action because the transaction described in the application occurs without the filing of an offering plan in compliance with section 352-e of the G.B.L.

(1) A no-action letter may be issued where the Office of the Attorney General determines that:

(i) the relationship between the offeror(s) and all the offerees is of such a nature that the offerees do not require the protection of an offering plan;

(ii) the relationship between all offerees and the cooperative interests being offered is such that all the offerees are aware of the condition of the property which is the subject of the offering; or

(iii) the filing of an offering plan pursuant to G.B.L., section 352-e, is not necessary to effectuate the purpose of G.B.L., article 23-A, or to protect the public interest.

(2) Following are examples of transactions which may qualify for a no-action letter:

(i) the offering and sale by an apartment corporation established either prior to the enactment of G.B.L., section 352-e, or pursuant to an offering made in compliance with the G.B.L., of shares allocated to space that was not sold under the original offering. Such space may include, but shall not be limited to, space formerly used as a superintendent's apartment, maids' rooms, commercial space or professional offices;

(ii) the offering and sale of shares allocated to units in property which is already owned and occupied solely by the offerors as tenants-in-common, sole shareholders of the corporate owner or sole partners in a partnership holding title to the property, where

title to the property was acquired by such offerors in one of the above forms at least two years prior to submission of the application for a no-action letter and the total number of dwelling units in the building does not exceed 10; and

(iii) the offering and sale of shares allocated to units in property proposed to be acquired by all tenants of a building under a tenant-sponsored or

18.9(a)

promoted proposal, where the total number of dwelling units in the building does not exceed 10 and all tenants join in the application for a no-action letter.

(3) A no-action letter shall not be issued where the offering involves more than 10 residential units or the property was acquired by all the offerees as tenants in common, sole shareholders of the corporate owner or sole partners in a partnership holding title to the property less than two years prior to submission of the application.

(b) Application procedure.

(1) An application for a no-action letter shall be submitted to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, Two World Trade Center, Room 48-61, New York, N.Y. 10047.

(2) An application for a no-action letter shall consist of the following:

(i) an affidavit signed and sworn to by the offeror(s) which shall state:

(a) The name, residence and business address and legal status (corporation, partnership, individual, etc.) of each offeror and its principals, and the relationship of the offeror(s) to the property which is the subject of the offering. If the offerors are rental tenants at the property, state how long each tenant has been in occupancy at the property.

(b) The specific unit or units being offered, the total number of units being offered and the total number of units in the building. If any vacant units are being offered, describe how such vacancies occurred.

(c) The name, residence and business address and legal status of each proposed offeree known to the offeror(s). State whether the offering is limited to the offerees so identified. If the offering is limited to known offerees, describe the nature and length of any relationship between the offeror(s) and each offeree. If the offering is not limited to known offerees, describe to whom and how the offering will be made.

(d) A description of the proposed transaction.

(e) If payment will be made for the shares, that the offeror(s) will comply with G.B.L., section 352-e (2-b) and section 352-h, and hold all down payments for the purchase of shares in trust for the

18.9(b)

benefit of the purchasers and that such funds shall not be commingled with the moneys of the offeror(s) until actually employed in connection with the consummation of the transaction.

(f) That the offeror(s) will provide to each offeree the following information:

(1) the purchase price;

(2) the estimated maintenance and the current or proposed budget;

(3) a copy of any mortgage or ground lease on the property;

(4) a copy of the most recent financial statement of income and expenses for the operation of the property, if applicable;

(5) information known to the offeror(s) which may result in extraordinary expenses for shareholders or for the apartment corporation including, but not limited to, assessments, liabilities, dangerous or hazardous conditions, pending litigation and administrative proceedings;

(6) a copy of the offering plan and all amendments if one was previously filed with the Office of the Attorney General and is available;

(7) a copy of the certificate of occupancy for the building; and

(8) such other information as the Office of the Attorney General may require to be presented to each offeree.

(g) That the offeror(s) agrees to furnish a complete copy of the application for a no-action letter and a copy of the no-action letter to each offeree prior to accepting any downpayment.

(h) That the offeror(s) agrees to furnish within five days, after a request by the Office of the Attorney General, copies of executed offeree affidavits required pursuant to clause (k) of this subparagraph.

(i) That the use for which the unit(s) and property are being offered will comply with the property's certificate of occupancy, zoning,

18.9(b)

building and housing laws, rules and regulations, or, if the proposed use will not comply with the legally permissible use, discuss what steps must be taken to comply with or to change the legally permissible use and identify which party will assume responsibility to take such steps.

(j) Whether the offeror(s) or its principals, within the preceding five years, have participated in any other applications for a no-action letter or have made any other offerings which were not pursuant to an offering plan filed with the Office of the Attorney General and the address of the property/properties which were the subject of such application(s) or offering(s).

(k) That an affidavit will be obtained from each proposed offeree prior to the closing on a unit that is subject to this application which will contain the following representations:

(1) the name, residence and business address and legal status (corporation, partnership, individual, etc.) of each offeree;

(2) that the offeree has read the affidavit of the offeror(s) submitted as part of the application for a no-action letter;

(3) that the offeree understands that no offering literature other than as required by the no-action letter will be provided. If the offeree is a tenant in occupancy of a dwelling unit at the subject property, the offeree must state that he/she acknowledges that he/she has been informed that if this transaction constituted a public offering within the meaning of G.B.L., article 23-A, he/she would be entitled to certain rights and protections pursuant to such article;

(4) that the offeree has inspected the subject property; and

(5) that the offeree is purchasing the unit(s) for personal occupancy and does not have the intention of reselling the unit(s) within two years from the later of the closing or the date the no-action letter is issued by the Office of the Attorney General. This statement is not required if the application involves the type of transaction described in subparagraph (a)(2)(ii) of this section;

(ii) A transmittal letter addressed to the Office of the Attorney General that is signed by the attorney who prepared the application which states:

18.9(b)

(a) The reasons why the transaction described in the application meets the standards set forth in paragraph (a)(1) of this section.

(b) That the attorney has no actual knowledge of any omission or untrue statements of a material fact included in the application.

(c) That the attorney has prepared or has reviewed all legal documents necessary to form an apartment corporation and, in the attorney's opinion, the apartment corporation is duly organized, validly existing and in good standing. If the apartment corporation is not in existence at the time the application is submitted, state that counsel will cause the apartment corporation to be formed in conformity with applicable law.

(iii) A check in the amount required by G.B.L., section 352-e(7)(a) made payable to the Office of the Attorney General.

(iv) If requested by the Office of the Attorney General, the offeror(s) must submit a Broker-Dealer Statement (form M-10) for the offerors and such other documents and information as the Office of the Attorney General may specify.

(v) If requested by the Office of the Attorney General, a certified copy of the minutes of a duly held shareholders meeting at which shareholders of the apartment corporation were informed of the proposed transaction and the impact such transaction would have on the allowance of deductions to tenant-stockholders under Internal Revenue Code, section 216. The minutes shall reflect that the shareholders, after being informed of the foregoing, approved by not less than a two-thirds vote, the consummation of the proposed transaction.

(c) Conditions to the granting of a no-action letter.

(1) The granting of a no-action letter may be on such terms and conditions as the Office of the Attorney General may impose, in its discretion, in order to protect the public interest.

(2) A no-action letter shall not be granted if the Office of the Attorney General determines that such act may contravene the rights under G.B.L., article 23-A, of any tenant who is not an offeror.

(3) The issuance of a no-action letter is based solely on the information provided in the application. Any material misstatement or omission of a material fact required by this Part may render the no-action letter void ab initio.

18.9(c)

(4) The issuance of a no-action letter shall not be construed to be a waiver of or a limitation on the Attorney General's authority to take enforcement action pursuant to article 23-A of the G.B.L. and other applicable provisions of law, except as expressly stated in such letter.

(5) The issuance of a no-action letter by the Office of the Attorney General shall have no value as precedent and may not be relied upon in the submission of any other application for such letter.

18.9(c)