

**PART 20**  
**NEWLY CONSTRUCTED, VACANT OR NON-RESIDENTIAL CONDOMINIUMS**

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**Section 20.1    General.**

- (a)     *Applicability.* The offering statement or "offering plan" required by Section 352-e of the General Business Law ("GBL") for a condominium that meets the requirements set forth below is subject to this Part 20, Newly Constructed, Vacant or Non-Residential Condominiums. Except as provided in Sections 20.1(a)(4) and (5), offerings subject to this Part are not subject to any other Part.
- (1)     The building is completely vacant of individuals residing in the building or entitled to residential occupancy on the date the proposed offering plan is submitted to the Department of Law or the building is to be newly constructed. In the case of a newly constructed out-of-state condominium, the building may be partially occupied by out-of-state purchasers.
  - (2)     The condominium is not organized as a time-sharing arrangement.
  - (3)     A condominium offering for vacant or occupied commercial or professional use only is subject to this Part 20, Newly Constructed, Vacant or Non-Residential Condominiums. In the case of a mixed use building the residential units must be completely vacant of individuals residing in the building or entitled to residential occupancy on the date the proposed offering plan is submitted to the Department of Law.
  - (4)     The conversion of a newly constructed, vacant or non-residential building to two or more condominium units along with the conversion of one or more of the condominium units to a cooperative apartment corporation ("condo-coop") is also subject to Part 21, Newly Constructed, Vacant or Non-Residential Cooperatives.
  - (5)     If membership in a homeowners association or similar entity is included or is to be sold in conjunction with the offering of condominium units, the offering plan must also comply with the requirements of Part 22, Homeowners Associations.

**20.1(a)**

- (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;
  - (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; or
    - (ii) with reasonable effort could have known the truth; or
    - (iii) made no reasonable effort to ascertain the truth; or
    - (iv) did not have knowledge concerning the representation or statement made.
- (c) *Definitions.* As used in this Part,
- (1) *Sponsor* means any person, partnership, joint venture, corporation, company, trust, association or other entity which 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 investments in real estate including condominium units and other cooperative interests in realty. *Sponsor's* obligations as sponsor continue until all units are sold. *Sponsor* shall not be deemed to include a selling agent who has complied with Section 359-e of the GBL or an attorney or other expert retained by the sponsor solely to render professional advice or opinions in connection with the offering. *Sponsor* shall also be deemed to include owners of at least ten (10) units or 20% of the total number of units in the condominium, whichever is less, which are not purchased for occupancy by the owner or one or more members of his or her immediate family; such sponsor will be deemed, however, to be a sponsor with the obligations of a sponsor only in relationship to the units which such sponsor owns.

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- (2) *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) *Purchase agreement* means any executed written agreement to purchase a condominium unit. "Purchaser" means any person, partnership, joint venture, corporation, company, trust, association or other entity which executes and delivers to the sponsor or selling agent a purchase agreement. *To purchase* means to execute a purchase agreement.
- (4) *Presentation date* means the date of completion of service, as defined in Section 20.1(d), of a copy of the plan or amendment filed with the Department of Law.
- (5) *Building* means building or group of buildings.
- (6) *Consummation of the plan* means filing the declaration of condominium and the first transfer of title to a condominium unit to at least one purchaser under the plan following a declaration of effectiveness by the sponsor and acceptance of the amendment by the Department of Law confirming or declaring that the plan is effective.
- (7) *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) commercial or professional tenants,
  - (ii) purchasers who have executed and delivered purchase agreements to the sponsor or selling agent and whose purchase agreements are in effect,
  - (iii) unit owners,
  - (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 the 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 is a document required to be retained under Section 20.3(dd). The completion of service shall be the latest date on which service upon all offerees is deemed or presumed complete.

(3) Service on unit owners may be satisfied by service on the board of managers if the sponsor is no longer in control of the board of managers and the amendment is solely limited to price changes.

(e) *Notice to commercial or professional tenants and affidavit of service.* Within three business days from the date the proposed offering plan is first submitted to the Department of Law, sponsor shall serve each commercial or professional tenant with a copy of the proposed offering plan together with the following notice:

Date of Notice: \_\_\_\_\_

"We have submitted to the Department of Law of the State of New York, Real Estate Financing Bureau, a proposed offering plan for the conversion of (insert address and name of building, if any) to a commercial or professional condominium. The final offering plan has not yet been filed with the Department of Law. 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 available for inspection and copying at the office of sponsor (or selling agent) located at (insert address of sponsor or selling agent) and the Department of Law. The law requires the Department of Law, within not more than 30 days from the date of submission of the proposed offering plan, either to file the offering plan or to indicate how the offering plan is deficient.

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No condominium units may be sold or offered for sale and no purchase agreements may be executed unless and until the Department of Law files the

final offering plan. A copy of the filed plan will then be served on each commercial or professional tenant. You may send written comments on the proposed offering plan to the Department of Law, Real Estate Financing Bureau, 120 Broadway, 23rd floor, New York, New York 10271. You may also send your written comments to (insert name and address of sponsor or selling agent)." An affidavit of service of the notice must be submitted to the Department of Law within three (3) business days following completion of service on all commercial or professional tenants.

- (f) *Time of review.* After submission of the proposed offering plan for filing, the Department of Law shall issue a letter to the sponsor or sponsor's attorney stating that the plan is filed, or indicating deficiencies. The Department of Law shall issue such a letter for an offering plan subject to this Part no later than thirty (30) days after submission of the proposed offering plan. The Department of Law may issue a deficiency letter whenever it appears that the proposed offering plan is deficient in one or more respects. The Department of Law 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 20.2, Procedure for Submission.
- (g) *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 GBL, and in Article 9B of the Real Property Law ("the New York Condominium Act") or the laws regulating condominiums in the state where the property is located.
- (h) *Waiver.* In the interests of justice, the Department of Law may waive compliance with any provision of these regulations and can permit variations of regulations so long as the variation is consistent with the purpose and intent of the regulation and statute or unless prohibited from doing so by statute or by final court order.
- (i) *Exemptions.* Upon written application of the sponsor or sponsor's attorney, the Department of Law, in its discretion, may 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 GBL or to protect the investing public. 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 sponsor or the sponsor's attorney.

## **20.1(i)**

The transmittal letter and certifications required by Section 20.4 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 Department of Law denies the application for exemption, the Department of Law may issue a deficiency letter as provided in Section 20.1(f). No additional fee is required for an exemption application.

- (j) *Out-of-state condominiums.* A sponsor of a condominium located outside of New York State which makes or takes part in a public offering or sale in or from the State of New York of condominium units must file an offering plan with the Department of Law. To comply with this requirement, the sponsor of an out-of-state plan may file a complete offering plan drafted in accordance with New York law and this Part. In the alternative, the Department of Law may, in its discretion, allow the sponsor to file the offering plan approved by or filed with the state or jurisdiction in which the condominium is located and an addendum with such additional information as is required by the Department of Law. Sponsor must represent that the plan complies with all applicable local laws.
- (k) *Effectiveness of regulations.* The effective date of these regulations is the date of filing with the Secretary of State. As of such date:
  - (1) Part 20 is effective immediately for offering plans that meet the requirements of Section 20.1(a).
  - (2) Section 20.5 of these regulations is effective for amendments to plans submitted after the effective date of these regulations that meet the requirements of Section 20.1(a), regardless of when such plans were filed.
  - (3) Section 20.6 of these regulations is effective for advertisements, appearing on or after the effective date of these regulations, for offering plans that meet the requirements of Section 20.1(a), regardless of when such plans were filed.
- (l) *Withdrawals, abandonments and rejections.*
  - (1) If the offering plan is withdrawn prior to filing, written notice thereof shall be served simultaneously by the sponsor on the Department of Law and on all commercial or professional tenants, if any, in the manner specified by Section 20.1(d)(1) of this Part.

## **20.1(l)**

- (2) If the offering plan is to be abandoned after filing and the sponsor has accepted purchase agreements, the sponsor shall promptly submit an amendment to the

Department of Law together with form RS-3 as promulgated by the Department of Law. If payments under purchase agreements have been received, the amount of such funds and the manner and time when these funds will be returned to purchasers must be disclosed. The funds must be returned within five (5) days after the amendment abandoning the plan has been accepted for filing. If there are no outstanding purchase agreements the sponsor need not submit an amendment but shall submit a form RS-3 to the Department of Law which shall be served simultaneously by the sponsor on all commercial or professional tenants, if any, in the manner specified by Section 20.1(d)(1) of this Part.

(3) If the offering plan is finally rejected by the Department of Law and there is no outstanding right to cure defects, the sponsor shall promptly serve notice of such rejection on all commercial or professional tenants, if any, in the manner specified by Section 20.1(d)(1) of this Part.

(m) *Disclaimers.* The requirements set forth in Section 20.3 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 the deed. 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 these regulations.

**20.1(m)**

## **Section 20.2 Procedure for Submission.**

- (a) The proposed offering plan and the Exhibits described below shall be submitted to the Real Estate Financing Bureau, Department of Law, 120 Broadway, 23rd floor, New York, New York 10271.
- (b) The Exhibits shall accompany the proposed offering plan submitted to the Department of Law and shall be subject to the sanctions of Article 23-A of the GBL. A notation of "Orig" on the list below means that at least one document must be a duly executed, original document.
- (c) The following are to be included when submitting a proposed offering plan pursuant to this Part.
  - (1) A transmittal letter addressed to the Department of Law that is signed and affirmed by the individual attorney who prepared the plan, containing the statements required by Section 20.4(a) without qualification or alteration in substance. As specified in Section 20.2(c)(5), the transmittal letter must expressly indicate any Exhibit that is not included (apart from those noted) and set forth the reasons for the omission and list any documents submitted as Exhibit B-20. Exemption applications submitted pursuant to Section 20.1(i) must be annexed to and submitted with the transmittal letter. Omissions and additions to the table of contents must be noted and explained. The transmittal letter must note whether the offering plan is for a building or development which is newly constructed, vacant or non-residential and to what extent any existing structures are being rehabilitated. Pursuant to Section 20.3(j)(7), the transmittal letter must note any commercial units and whether they are being offered for sale. Pursuant to Section 20.3(p)(14) the transmittal letter must note financing offered to purchasers which contains any unusual risks. Pursuant to Section 20.1(j), the transmittal letter must note if the plan is an out-of-state plan. The transmittal letter must also note if there is currently an investigation pending by the Department of Law of the sponsor, a principal of the sponsor or of the property to be constructed or to be converted to condominium ownership.
  - (2) Checks (certified or uncertified) for the filing fee under GBL Section 352-e(7)(a) payable to "New York State Department of Law" and stapled or clipped to the transmittal letter, with form of receipt issued by the Department of Law. The filing fee is based on the total amount of the offering price. For out-of-state condominiums the offering price represents the total offering price of all unsold units at the date of submission to the Department of Law. To expedite processing, the sponsor should submit two checks, each in the amount of one-half of the total fee. One of the two checks will be a non-refundable deposit. One check will be returned if the Department of Law issues a final deficiency letter.

### **20.2(c)**

- (3) Signed originals of the following forms:



- (i) M-2 and M-10 forms, if new forms are submitted as Exhibits D-1 and D-2, with a check for the filing fee under GBL Section 359-e(5) attached; and
  - (ii) RI-1 forms, submitted as Exhibit D-3.
- (4) Three (3) copies of a typed or printed, bound offering plan.
- (5) Two (2) sets of exhibits. Each set is to be in binders, from which documents can be removed easily, and be indexed with tabs. The cover of each binder must be labeled with the name and the address of the condominium 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 Section 20.2(c)(1) must note the omission of any Exhibit, other than the exceptions stated below and the reason for the omission. If Exhibits A-4, B-3, B-4, B-8, B-9, B-10, B-11, B-16, B-17, B-18, B-19, B-20, B-21, B-22, B-23, B-24 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 must appear in the offering plan.
    - (A-1) Certification by the sponsor and the sponsor's principals signed by "sponsors" and "principals" as defined in Section 20.1(c) (Orig); see Section 20.4(b).
    - (A-2) Certification by the 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 (Orig); see Section 20.4(c).
    - (A-3) Certification by expert on adequacy of budget for the first year of condominium operation (Orig); see Section 20.4(d).
    - (A-4) Certification by expert on adequacy of common charges payable by the commercial unit owner(s) (Orig); see Section 20.4(e).

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- (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, if applicable, dated or updated within thirty (30) days of submission (Orig).
- (B-2) A projection from a qualified expert or local supplier of the consumption, rate and total cost for furnishing heat, hot water and other utilities. If unit owners directly pay the cost of heating their own units, include a similar projection for heat, hot water and electricity for individual units.
- (B-3) Proposed management agreement.
- (B-4) Copies of any contract which (i) will be binding on the condominium for \$2,500 or more per year, or (ii) has a term in excess of two years, or (iii) is with the sponsor, a business associate or affiliate of the sponsor, or a principal of the sponsor.
- (B-5) Copy of a letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts, and the annual premium or premiums.
- (B-6) 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 (i) so that the insured shall not be a co-insurer if the policy contains a co-insurance provision, or (ii) to cover replacement cost if the policy is for an agreed amount which waives co-insurance. If the policy represents replacement cost coverage, indicate the replacement cost per square foot.
- (B-7) Copy of a fee quotation from a certified public accountant for preparing the yearly financial statements for the condominium.
- (B-8) 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), and filing receipt.
- (B-9) For condominiums located outside New York State, copy of statutes and regulations concerning the registration and formation of condominiums. All condominiums located outside New York State must include evidence of compliance with local laws and regulations concerning the registration and formation of condominiums.
- (B-10) Copy of the form of promissory note and mortgage required by sponsor if the plan offers financing, together with any other

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document which significantly affects a purchaser's obligations for financing offered by sponsor.

- (B-11) Copy of any mortgage financing commitment letter pertaining to end loans or to building construction loans, and amendments or extensions of the commitment letter.
- (B-12) 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-13) Copy of a specimen title insurance policy, applicable to individual units, which unconditionally insures that a valid condominium has been established. At closing, the policy shall not contain an exception indicating the existence of a mortgage or other liens affecting the unit insured and any other unit.
- (B-14) Original letter from a title company stating it has reviewed the declaration, the by-laws and other relevant documents and is prepared to insure title to purchasers in accordance with Exhibit B-13 above and is prepared to insure that a valid condominium will be established upon the recording of the declaration and by-laws and the filing of the floor plans as required by the New York Condominium Act or applicable state and local law.
- (B-15) If applicable, an estimate of the assessed valuation after completion of construction or rehabilitation from the local tax assessor. If not available, an estimate of the assessed valuation after completion of construction or rehabilitation from a real estate broker, appraiser, attorney or other professional familiar with the tax assessment practices in the locality in which the property is located.
- (B-16) If applicable, copies of any documents relating to tax exemption or abatement benefits. Copy of proof of the level and duration of benefits described in plan should be included.
- (B-17) Copy of the agreements or other documents of local taxing authorities relating to the separate assessment of each condominium unit for real estate taxes, if available.
- 20.2(c)**
- (B-18) Copy of the escrow agreement between the sponsor and the board of managers relating to the payment of real estate taxes pending the separate assessment of each condominium unit for real estate taxes,

if applicable.

- (B-19) Copy of documentary evidence that the holder of any mortgage existing after the conveyance of the first unit will either: (a) consent to the formation of a condominium and acknowledge that its lien will be limited to unsold condominium units; or (b) subordinate the lien of its mortgage to the declaration of condominium; or (c) release its lien on the condominium unit being conveyed.
- (B-20) Copy of any other material document(s), each of which should be described in the transmittal letter.
- (B-21) For rehabilitated buildings, an affidavit by sponsor stating how the building became vacant, that there was no harassment, and whether any apartments were vacated pursuant to vacate orders. If so, provide copy of vacate order.
- (B-22) An affidavit by sponsor stating that no money has been taken during any market test pursuant to Cooperative Policy Statement No. 1, if applicable.
- (B-23) Copies of all existing and proposed professional and commercial leases and subleases, and concession agreements.
- (B-24) Rent-roll certified by sponsor, managing agent or current owner as of a date that is within sixty (60) days prior to submission, including the name of each commercial or professional tenant, unit number, rent, term, and termination date of lease (Orig).
- (B-25) 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.
- (B-26) Copy of surety bonds or letter of credit proposed to secure down payments and any underlying agreement or related agreement, and any undertaking called for in the Regulations or proposed to be furnished.

## **20.2(c)**

(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 ninety (90) days of submission to the Department of Law and conform to the requirements of Section 20.7 of these regulations; see Exhibit A-2. The Department of Law may in its discretion require a further inspection and report.

- (C-2) Asbestos report, except in the case of newly constructed buildings, dated within ninety (90) days of submission to the Department of Law. The report must conform to the requirements of Section 20.7(cc) of these regulations.
- (C-3) Copy of currently valid temporary, partial or permanent certificate of occupancy or its equivalent. If a certificate of occupancy is not available because the building was constructed before the municipality began to issue certificates of occupancy, include an affidavit from the sponsor that the proposed use by the condominium is identical to the original use of the building. If no certificate of occupancy has yet been issued, so indicate and forward to the Department of Law when issued.
- (C-4) Copy of approved building plans, if available, or if required by GBL Section 352-ee or if required by local law, any specifications required by government agencies having jurisdiction, and copies of all required construction permits from government agencies having jurisdiction.

(iv) Part D of the Exhibits (other information) shall consist of the following documents:

- (D-1) Signed M-10 form(s), broker-dealer statement, for the selling agents (Orig), unless exempted by GBL Section 359-e, and signed M-2 form(s), salespersons' statements, for all individual employees who act as salespersons (Orig), unless exempted by GBL Section 359-e. Forms do not have to be submitted if currently valid registration forms are on file with the Department of Law from prior offerings and a copy of the form is submitted as Exhibit D-1.

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- (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 GBL Section 359-e (Orig). Forms do not have to be submitted if currently valid registration forms are on file with the

Department of Law from prior offerings and a copy of the form is submitted as Exhibit D-2.

- (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 GBL Section 352-k and all of the unsecured obligations sponsor assumes in the offering plan including sponsor's obligations for unsold units (Orig).
- (D-5) An affidavit from sponsor and principals of sponsor, as defined in Section 20.1(c), stating whether sponsor and principals of sponsor have taken part in real estate syndications of securities consisting of participation interests or investments in real estate, including limited partnership interests or private or 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, the name of the syndication or partnership and whether it received an exemption and the approximate date the offering plan was filed and the date of the closing with the apartment corporation for cooperatives or the date of first unit closing for condominiums.
- (D-6) Completed statistical information card (available from the Department of Law).

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

- (1) Checks (certified or uncertified) for the balance of the filing fees, if any, pursuant to GBL Section 352-e(7)(a) and by separate check any additional filing fees pursuant to GBL Section 359-e(5), payable to "New York State Department of Law".
- (2) Four (4) copies of the typed or printed, bound offering plan, with the filing date left blank. The actual filing date shall be inserted after receipt of the letter from the Department of Law accepting the plan for filing. All offering plans must be dated before being presented to offerees.

**20.2(d)**

- (3) A new attorney transmittal letter; see Section 20.4(a). The letter may indicate that exhibits have previously been supplied.
- (4) If required by the Department of Law:

- (i) a new certification by sponsor and sponsor's principals; see Section 20.4(b);
  - (ii) a new certification by sponsor's engineer or architect; see Section 20.4(c);
  - (iii) a new certification by sponsor's expert on the adequacy of the budget; see Section 20.4(d); and
  - (iv) a new certification by sponsor's expert on the adequacy of common charges payable by the commercial unit owner(s); see Section 20.4(e).
- (e) The plan is filed on the date indicated in the letter from the Department of Law stating that the plan has been accepted for filing.
- (f) The sponsor shall commence the offering within a reasonable time after the filing and if applicable shall submit an affidavit of service of the plan and notice on the commercial or professional tenants within five (5) days of such service.

**20.2(f)**

**Section 20.3 Format and Content.**

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

located.

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

- (1) The title in bold-face type: **CONDOMINIUM OFFERING PLAN** or **COMMERCIAL CONDOMINIUM OFFERING PLAN**, whichever is applicable, followed by the name of the condominium and the address of the property, including the county.
- (2) The total amount of the offering, which shall be based on the aggregate price at which the units are initially offered. State the number of units being offered. If the number of units being offered is not firm on the date of submission of the offering, state the maximum number of units and the minimum number of units or square footage of units that the sponsor is committed to offering. Indicate if certain units are not being offered for sale.
- (3) The amount of the working capital fund and/or reserve fund, if any, to be provided by the sponsor.
- (4) The name and principal business address of the sponsor and the selling agent. Telephone numbers may also be included. The address of the sponsor must not be in care of sponsor's attorney, nor may it be a post office box.
- (5) The statement: "Date of Acceptance for Filing", which shall be the date the Department of Law files the plan. The term of the initial offer is twelve (12) months commencing on the date of the letter from the Department of Law stating that the plan is filed. The term may be extended by an amendment to the offering plan. The date of the plan should be left blank when:
  - (i) the proposed plan is first submitted to the Department of Law and
  - (ii) when the final plan is submitted to the Department of Law.
- (6) If the plan contains a special risk section, the statement:

**SEE PAGE \_\_\_\_ FOR SPECIAL RISKS TO PURCHASERS** must be printed apart from other print and be in capital letters, in bold-face roman type at least eight (8) point modern type and at least two (2) points leaded.

### **20.3(a)**

- (7) The following statement in capital letters printed in bold-face roman type at least as large as eight (8) point modern type and at least two (2) points leaded must be included on the cover of all plans filed with the Department of Law:

**THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL THESE CONDOMINIUM UNITS. NEW YORK LAW REQUIRES THE SPONSOR**



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

(b) *Table of contents.* The format and order set forth below must be followed in the table of contents. Include headings for the subjects not marked with an asterisk. In addition, a limited number of headings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk in the table of contents, and additions should be expressly noted and explained in the transmittal letter. Alternative wording for headings to meet particular facts are set forth in parentheses. Documentation listed in Part II of the table of contents shall be included in full in Part II of the plan. The texts of such documents which will be binding upon the sponsor or the board of managers, such as the purchase agreement, the power of attorney, the unit deed, the condominium declaration, and the by-laws of the condominium shall be consistent with the disclosures in the plan and shall conform to the requirements of Section 20.3.

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

in favor of inclusion.

(d) *Introduction.* The introduction must:

- (1) Explain that the purpose of the offering plan is to set forth all the material terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Department of Law. State that amendments will be served on all offerees as defined in Section 20.1(d).
- (2) State that the condominium is subject to and complies with the New York Condominium Act or the law regulating condominiums in the State where the property is located.
- (3) Identify the sponsor, and state when the sponsor acquired the property or sponsor's interest as a contract vendee.
- (4) Summarize the number and the type of units being offered in this offering plan, whether the units are residential or otherwise, any parking or recreational facilities and refer to Schedule A for prices. Identify any units or property interests that are not being offered such as commercial space, the superintendent's apartment, and common areas. If applicable, note any air rights or transferable development rights benefitting or encumbering the property. Make reference to the section of the plan disclosing any such reservation of air or developmental rights. State the number and types of units that have been built or may be built pursuant to related offering plans or related sections of the development.
- (5) If applicable, state that the sponsor must amend the plan before or when the plan is declared effective to disclose the percentages of common interest, the approximate number of units that will be built and the timetable for completing the units.
- (6) Outline the basic aspects of condominium ownership, including the following:
  - (i) that each purchaser owns his or her unit outright and is entitled to exclusive possession of that unit together with an interest in and right to use the common elements, and exclusive right to use limited common elements, if applicable;

### **20.3(d)**

- (ii) a description of the differences between space owned exclusively by a unit owner and common elements and limited common elements, where applicable;
- (iii) that each unit owner must pay common charges in accordance with the New York Condominium Act, RPL Sections 339(i) and (m), or applicable state and local law;

- (iv) that each unit owner is obligated to comply with the declaration, the by-laws, rules and regulations and any other requirements of the board of managers;
  - (v) any restrictions on use, resale, leasing or mortgaging; the Department of Law may, in its discretion, require an opinion from counsel for sponsor or independent counsel as to the legality and enforceability of these restrictions;
  - (vi) the authority of the board of managers to manage the condominium, and the unit owner's right to vote for members of the board of managers;
  - (vii) that each unit will be separately taxed and may be separately mortgaged; and
  - (viii) a unit owner's responsibility for maintenance and repairs and for casualty and liability insurance, as distinguished from the obligations of the board of managers.
- (7) Disclose and specify if any equipment or fixtures described in the plan are not included in the offering price, or if the offering price is conditioned on the equipment and fixtures selected.
- (8) State that the prices are not subject to approval by the Department of Law or any other government agency.
- (9) State that the plan delivered to prospective purchasers contains all of the material terms of the transaction. State that copies of the plan, all documents referred to in the plan and all Exhibits submitted to the Department of Law in connection with the filing of the plan will be available for inspection without charge and for copying at a reasonable charge to prospective purchasers and their attorneys at the site whenever the on site sales office is open and at the office of the selling agent or sponsor.
- (10) State any lawful limitations on who may purchase units.

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- (11) Include the following paragraph printed in bold-face roman type at least as large as eight (8) point modern type and at least two (2) points leaded:

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

- (e) *Description of property and improvements.* This section should:
- (1) Include a general description by sponsor of the land, building(s), units, parking facilities, recreational facilities and amenities. Include in Part II of the plan a detailed description and outline specifications prepared by an engineer or architect that complies with the requirements set forth in Section 20.7 of this Part. For existing buildings, the detailed description must include a statement of building condition. Part II must also include a description of what optional extra features are available and legal description of units and common elements.
  - (2) If any major fixtures or equipment such as refrigerator, stove, plumbing fixtures, kitchen cabinets or partition walls are not included in the offering price, their absence must be conspicuously disclosed, and highlighted as a special risk.
  - (3) State whether the property will be improved and the units constructed in accordance with all applicable zoning and building laws, requirements and specify the laws and regulations that apply.
  - (4) If applicable, state the approximate construction timetable for completion of the first unit, the remaining units, related sections of the condominium, recreational facilities and amenities.
  - (5) State whether any roads to be constructed by sponsor will be dedicated to the local government. Describe access from the condominium to public roads.
- (f) *Location and area information.* This section should:
- (1) Describe the location of the property and surrounding areas. If the property is not located in a highly urban area, describe the transportation, shopping, recreational, medical, religious and educational facilities available. Describe the police, fire, water, sanitation, snow removal and road maintenance services. If any such services are not provided by the local taxing authorities, the cost of such services must be included in Schedule B.

### **20.3(f)**

- (2) Describe the zoning of the site and what uses are permitted as of right, including landmark designation and any approvals required. If any adjoining areas are undeveloped, disclose the permitted uses of the adjoining areas.
- (3) If sponsor or any principals of sponsor own, in whole or part, or have an option or right to acquire, in whole or part, any adjacent areas which are not fully developed, disclose such facts and the present intention of sponsor and principals with respect to the development of such areas.

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

(1) Schedule A must appear on a separate page entitled Schedule A and list the following information for each unit in columnar form. Units identified must include all units which will be newly constructed and which will be part of the condominium pursuant to sponsor's intention to retain developmental rights. If the units are not yet being offered, the offering price for the units need not be included. Column headings may be shortened and abbreviated. Indicate that all projected charges are for a stated twelve month period, e.g., January 1, 19\_\_ to December 31, 19\_\_. Totals must be given for items (iii), (iv), (v), (viii), (ix) and (x) below.

- (i) Unit identification.
- (ii) Number of bedrooms and bathrooms (if applicable).
- (iii) Approximate total area of each unit.
- (iv) Offering price.
- (v) Percentage of common interest.
- (vi) Maximum mortgage on each unit (if financing is offered).
- (vii) Maximum monthly mortgage charge on each unit (if financing is offered).
- (viii) Projected monthly common charges for the first year of operation.
- (ix) Projected monthly and annual real estate taxes for the first year of operation.
- (x) Projected total monthly carrying charges for the first year of operation. (This is a total of items (vii),(viii) and (ix).)

**20.3(g)**

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

- (i) For the number of rooms, state the method of calculating the number of rooms or approximate total area in each unit. If rooms are calculated in accordance with an industry standard, refer to the industry standard employed. Indicate which units, if any, have the use of a limited common element. State that floor plans are included in the plan in Part II.
- (ii) For the offering price, refer to the portion of the plan that explains price

changes. If applicable, explain that prices and other terms are negotiable.

- (iii) For the offering price, refer to the portion of the plan that explains any closing costs that a purchaser may have to pay.
- (iv) For the percentage of common interest, disclose the basis for calculating the percentage of common interest including a reference to the method selected pursuant to Section 339(i) of the Real Property Law, or applicable state law.
- (v) For the projected monthly carrying charges, disclose that if sponsor is not offering or procuring mortgage financing and if the purchaser obtains financing, the purchaser's debt service will be an additional expense. Disclose that projected carrying charges do not include certain costs for which the unit owner is responsible such as (where applicable) repairs to the interior of the unit, separately metered gas, electricity, hot water, heat, air conditioning and cable television service. If unit owners individually pay for heat and hot water costs, or for costs usually included in the common charges, refer to Schedule B-1 for individual carrying charges; see Section 20.3(h)(5).
- (vi) For the projected real estate taxes, state that after the condominium is divided into individual tax lots, each unit will be taxed as a separate tax lot for real estate tax purposes and the unit owner will not be responsible for the payment of, nor will the unit be subject to, any lien arising from the non-payment of taxes on other units. Discuss the deductibility of real estate taxes for income tax purposes. State the projected assessed valuation, after completion of construction or rehabilitation, the approximate date of completion and reassessment, and the tax rate used to calculate the projected real estate taxes. If any closings are projected to occur before the post-completion assessment is given to the building,

## **20.3(g)**

sponsor may also disclose the pre-completion assessment. When tax exemption or tax abatement benefits are projected but not yet obtained, the real estate tax reflected in Schedule A may be the lower tax only if the preliminary certificate of eligibility for Real Property Law Section 421-a benefits has been obtained or if the certificate of reasonable cost has been obtained for benefits under Section 11-243 (J-51) of the New York City Administrative Code. If such certificates have not been obtained prior to acceptance for filing, Schedule A must contain two tax columns, one reflecting real estate taxes with benefits and one without benefits, whether or not the sponsor agrees to pay the taxes for the first year of condominium operation. The possibility of not obtaining real estate tax benefits should



be included in the special risk section of the plan and purchasers should be clearly advised that they are purchasing with no guarantee of obtaining tax benefits. If the condominium is an existing building being sold without rehabilitation or is undergoing minimum rehabilitation, state the present assessed valuation. Refer to the section of the plan which discusses real estate taxes; see Section 20.3(x).

- (vii) For the projected income tax deduction, explain that the projected tax deduction (where applicable) may vary in future years due to changes in the interest rate on the unit owner's mortgage (if any) or from changes in the allocation of constant debt service payments to interest and principal, or due to changes in real property taxes resulting from the expiration of real estate tax benefits, or from changes in the assessed value, the tax rate or the method of assessing real property.
- (viii) For maximum mortgage, disclose the maximum mortgage financing available pursuant to financing commitments offered or procured by sponsor, if any. If sponsor is not offering and has not procured mortgage financing on specified terms including a specific initial interest rate, Schedule A should not include columns describing potential mortgage financing or the debt service thereon and the column describing the amount of monthly carrying charges deductible for income tax purposes should not include interest on mortgage financing.
- (ix) For maximum mortgage, disclose any limitations on the availability of financing if sponsor is offering or procuring mortgage financing but is not making financing available to all purchasers. The limitation must be indicated together with a reference to the section of the plan that fully explains the method of allocation and credit standards and other criteria for eligibility.

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

- (1) The budget shall be based upon a specified twelve (12) month period to commence on the date when it can reasonably be projected that condominium operations will begin and no sooner than six (6) months after the submission of the offering plan for filing. When calculating the projection, include sufficient time to arrange for the closings. If the actual or anticipated date of commencement of condominium operation is to be delayed more than six (6) months from the budget year projected in the offering plan, the plan must be amended to include a revised budget disclosing current projections. If such

amended projections exceed the original projections by twenty-five percent (25%) or more, the sponsor must offer all purchasers the right to rescind and a reasonable period of time that is not less than fifteen (15) days after the date of presentation to exercise the right, whether or not sponsor offers to guarantee the previous budget projection. Sponsor must return any deposit or downpayment to purchasers who rescind within a reasonable period of time. Sponsor may not declare a plan effective where there are any material changes to the budget if these changes have not been disclosed by a duly filed amendment to the offering plan.

- (2) If the sponsor is reserving developmental rights and intends to add additional units which will be part of the condominium, the budget must reflect expenses associated with the operation of the space to be newly constructed, including footnotes and supporting documentation required by this Section 20.3(h).
- (3) The budget for the condominium must be in the following format. Headings marked with an asterisk may be omitted if not applicable to the offering. Additional income, expenses or cost items unique to a building or unit should be added whenever appropriate to reflect additional sources of income, expenses, costs or unique circumstances.

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*SCHEDULE B*

Budget For First Year of Condominium Operation  
 Beginning \_\_\_\_\_ 1, 19\_\_\_\_

<i>Projected Income</i>	
Common Charges . . . . .	\$ _____
*Commercial . . . . .	\$ _____
*Laundry. . . . .	\$ _____
*Other (Explain) . . . . .	\$ _____

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

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- (4) Detailed footnotes must support and explain the projected amounts in Schedule B. The footnotes must set forth the basis or assumptions for each projection.
- (i) Commercial income. Briefly describe any contracts or leases that will provide income to the condominium. State whether the condominium is required to provide heat, water, electricity, gas or insurance and describe any other specific additional costs under the contract or lease. State the name and business address of each contractor or lessee, the annual income, and the expiration date of the contract or lease. If applicable, state whether the sponsor may rent vacant non-residential space. State whether the rent to be collected could be less than the rent set forth in Schedule B for the space. Sponsor must amend the plan if any new lease or extension of any existing lease is for a term in excess of two years.
  - (ii) Labor costs. State the number of full and part time staff projected for the

condominium in Schedule B and whether the staff will be union members. State whether such level of staffing complies with all applicable housing and labor laws. The labor budget must include benefits required by local, state or federal law or required by contract such as worker's compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance and payroll taxes. Specify the wages and the cost of each applicable benefit. The budget must reflect current wage rates and payroll tax rates applicable for the budgeted year, and reasonably anticipated increases or increases now mandated by contract. If applicable, state the expiration dates of all union contracts. If there is non-union labor in the building, discuss whether their wages meet state minimum wage laws. In the case of an occupied non-residential building, if the budget reflects a reduction in the existing staff, disclose what effect this will have on the existing level of services and whether such reduction is lawful.

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

## **20.3(h)**

- (iv) Utilities (electricity and gas). State the basis for the projected consumption and projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth, e.g., estimate based on current tariffs plus ten percent (10%) increase. State which services will be provided by or through the board of managers and which must be obtained directly by unit owners. In the case of an occupied non-residential building, unless it would be misleading for a particular building, base the projected quantity of the utilities on the average quantity of the utilities purchased for the prior three years.
- (v) Water charges and sewer rents. State the basis for the projection. If water and/or sewer charges will be separately billed by local authorities or utility companies to individual unit owners, the estimated individual annual charges should be stated in a separate column in Schedule A or (if

appropriate) in Schedule B-1. In the case of an occupied non-residential building, if the water charges or sewer rents are metered charges, state the consumption for the prior three years.

- (vi) Repairs, maintenance and supplies. Itemize the material components of the expense for repairs and maintenance, such as interior repairs, roofing, exterior repairs (including walls, foundations, windows, doors and locks), heating system (fuel burner, boiler, pipes, radiators), plumbing, electrical work, exterminating, grounds maintenance (snow removal, gardening and land-scaping, where applicable), janitor supplies, painting of common areas, and such building services and maintenance items not included under "service contracts" or "other expenses". In the case of an occupied non-residential building, if the total budgeted amount is less than eighty percent (80%) of the maintenance expense indicated in the prior two years of certified financial statements, disclose and explain the reason for the projected decrease in expenses.
- (vii) Service contracts. State the name of the contractor, the service, the annual cost and the expiration date of the contract. Highlight as a special risk any contract with an expiration date more than five (5) years after the anticipated closing date unless it is customary in the area to enter into a long-term contract for the service rendered (e.g., cable television contract).

### **20.3(h)**

- (viii) Insurance. The budget for insurance must provide, and the condominium must have at closing, fire and casualty insurance under an agreed amount replacement cost policy or under a policy including at least an eighty percent (80%) co-insurance provision so that the insured shall not be a co-insurer. Discuss the adequacy of the insurance to replace the building in the event of total loss and to avoid being a co-insurer in the event of partial loss. Disclose the items covered, the coverage amount limits, the deductibles and the exposures insured against.
  - (a) The budget for insurance must provide and the condominium must have public liability insurance at closing.
  - (b) State that insurance coverage meets the requirements of any mortgage lender procured by the sponsor.
  - (c) State that the fire, casualty and general liability insurance must be

on terms that provide:

- (1) that each unit owner is an additional insured party;
  - (2) that there will be no cancellation without notice to the board of managers;
  - (3) a waiver of subrogation;
  - (4) a waiver of invalidity because of the acts of the insured and unit owners; and
  - (5) a waiver of pro-rata reduction if unit owners obtain additional coverage.
- (d) If the following items are not included in the budget and are applicable to the offering, state that coverage for them is not included and may be available at extra cost: officers' and directors' liability; rent insurance; water damage; elevator collision; boiler and machinery; excess liability; auto liability; fidelity bond; and garage keeper's liability.
- (e) The plan must alert unit owners to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to unit contents, replacements, additions, fixtures and improvements, and liability coverage for occurrences within the unit or, where applicable, on limited common elements.

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- (ix) Management contract. State the basis for the projected management fee. The projected cost must include any costs required by the terms of the management agreement, such as bonding. If the cost of a manager or the management contract is greater or substantially less than the prevailing cost for similar services, state the prevailing cost which would be charged for these services. If no manager or management contract is provided for in the budget, highlight as a special risk, state the services that unit owners will have to provide and disclose that common charges will increase if the condominium retains a managing agent in the future.
- (x) Legal fees and audit fees. If the budgeted amount for legal fees is less than \$5000, the footnote must indicate the extent to which legal services are budgeted. Audit fees must be based on and refer to a fee quotation from a certified public accountant for preparing the yearly certified financial statement for the condominium.

- (xi) Other expenses. Include expenses such as employer association dues (if applicable), building telephone or switchboard expenses, applicable license fees, registration and municipal permits, provision for income taxes and any other taxes payable by the condominium (if so indicated in the tax opinion), and miscellaneous expenses, including interest, not provided for in other lines.
  - (xii) Contingency fund. State that the contingency fund (if any) is intended to provide for any unanticipated expenses or unanticipated increases in the projected expenses. Distinguish between the contingency fund and a reserve for capital expenditures.
  - (xiii) Yearly reserve fund. Disclose whether the yearly reserve fund will be sufficient to pay for major capital repairs or replacement items likely to be needed within the first five years of condominium operation.
- (5) If unit owners must pay separately for heating and hot water costs directly to the utility, such as energy for heat pumps, baseboard, radiant or space heaters, individually fired boilers, or for integrated cooling, projections for these individual costs shall be set forth and explained in Schedule B-1 (next following). This schedule shall present in chart format applicable individual expense categories for typical units of various size and layouts, supported by detailed footnotes containing information similar to the corresponding footnotes described in this Section for Schedule B.
- (6) If membership in a homeowners association or similar entity is included or is to be sold in conjunction with the offering of condominium units, a projected schedule of income and expenses shall be set forth and explained in Schedule C in compliance with Section 22.3(e).

### **20.3(h)**

- (i) *Compliance with Real Property Law Section 339(i)*. Include an opinion from a licensed real estate broker, appraiser or other expert who does not have any beneficial interest in the sponsor or in the profitability of the project. The opinion must be signed by a duly authorized signatory or by the firm and must state:
  - (1) What experience the broker, appraiser or other expert has had with offering plans and with selling cooperative or condominium units and other relevant expertise.
  - (2) The method selected pursuant to Real Property Law Section 339(i) or applicable state law and the factual basis for calculating the percentage of common interest in the condominium under that method.
- (j) *Commercial units*. If one or more of the condominium units in a mixed-use building is to be used for commercial, professional, retail or other than residential or combined residential/home occupation purposes:
  - (1) Describe the use or proposed use of the commercial unit(s) and disclose the basis

for projecting the share of expenses attributable to the commercial unit(s).

- (2) State that the common charges payable by each commercial unit owner are sufficient to cover the expenses fairly attributable to such unit.
- (3) Highlight as a special risk if the commercial unit(s) is not restricted to its current use or if the commercial unit owner(s) has the right to subdivide the unit.
- (4) If applicable, state that the allocation of common charges attributable to the commercial unit(s) shall also reflect special or exclusive use or availability or exclusive control of particular common areas.
- (5) If applicable, state that the declaration and by-laws authorize the board of managers to specially allocate or apportion profits and expenses or specific expense items based on special or exclusive use or availability or exclusive control of particular units or common areas. State the method of resolving disputes between the commercial unit owner(s) and the board of managers concerning any special allocations.
- (6) State whether the commercial unit owner(s) has rights or obligations which differ from those of the residential unit owners. Describe any such differences and state that such rights and obligations will not have a material adverse impact upon the condominium.
- (7) The attorney who prepared the plan must note any commercial unit(s) in the transmittal letter to the Department of Law as required by Section 20.2(c)(1).

## **20.3(j)**

(k) *Changes in prices and units.*

- (1) State that the offering prices set forth in Schedule A must be changed by a duly filed amendment to the plan when the change in price is an across the board increase or decrease affecting one or more lines of units or unit models, or is to be advertised, or is a price increase for an individual purchaser. If applicable, state that prices and specified terms of sale are negotiable and the sponsor may enter into an agreement with an individual purchaser to sell one or more units at prices lower than those set forth in Schedule A without filing an amendment.
- (2) State that no change will be made in the size or number of units and/or their respective percentages of common interest, and that no material change will be made in the size or quality of common elements, except by amendment to the plan and, when applicable, to the declaration.
- (3) State that unless an affected purchaser consents, no material change will be made in unit size, layout, or percentage of common interest if a purchase agreement has



been executed and delivered to the sponsor for that unit and the purchaser is not in default.

- (4) State that unless all purchasers consent, no material change will be made in the size and no material adverse change will be made in the quality of common elements.

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

- (1) The accountant's certification must:

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

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

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

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

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

- (m) *Existing tenants.* In the case of an occupied non-residential building, state that outside purchasers of occupied units buy subject to the existing leases. All leases may be

inspected by potential purchasers at the office of the selling agent to ascertain the purchaser's obligations under the lease.

- (n) *Interim leases.*
- (1) State whether the owner of the building may rent any unit that is vacant before the closing.
  - (2) State what, if any, rental protection laws are applicable to interim lessees. If any are applicable, state that the interim lessee will continue to be subject to such applicable rent regulatory laws in the event that the plan is abandoned.
  - (3) State whether an uncured default under the purchase agreement is a default under the lease and whether an uncured default under the lease is a default under the purchase agreement. If an uncured default under the lease can result in a default under the purchase agreement, state that before the sponsor may utilize the default under the lease to declare a default under the purchase agreement, the sponsor must either obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the lessee unless the lessee has vacated the unit.
  - (4) State the length of time the interim lessee has to vacate the unit after a default under the purchase agreement or rescission of the purchase agreement by the lessee.

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- (o) *Procedure to purchase.* Describe the essential terms of the purchase agreement which must comply with this Part. State the purchase procedure, including to whom and when the purchase agreement must be returned and the deposit payment made.
- (1) State the amount or the percentage of the deposit, which may not be less than the lower of
    - (i) \$1,000 per unit or
    - (ii) 10% of the offering price. Highlight as a special risk if the deposit is more than 10% of the offering price, excluding increases in the deposit for special work ordered by the purchaser and itemized in the purchase agreement.
  - (2) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of GBL Sections 352-e(2-b) and 352-h and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and

regulations.

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

(i) The account. All deposits, down payments, or advances made by purchasers prior to closing of each individual transaction, whether received before or after the date of consummation of the plan, must be placed within five business days after the 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 the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal account 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

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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 of 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.

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

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

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

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

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

Department of Law approves in writing the use of such alternate form of security, pursuant to the provisions of paragraph (4) of this subdivision.

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

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

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

(1) a writing signed by both sponsor and purchaser; or

(2) a determination of the Attorney General pursuant to subparagraph (viii) of this paragraph; or

(3) a judgment or order of a court of competent jurisdiction, or until released pursuant to clause (d) of this subparagraph.

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

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

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

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

(viii) Disputes.

- (a) In the event of a dispute, the sponsor shall apply and the purchaser or the escrow agent holding the down payments in escrow may apply to the Attorney General for a determination on the disposition of the down payment and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying shall contemporaneously send to all other parties a copy of such application.
- (b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the purchaser and the escrow agent shall abide by any interim directive issued by the Attorney General.
- (c) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.
- (d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

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- (e) If the application seeking release of funds is denied, the escrow agent shall continue to hold the deposit and any interest earned thereon until:
  - (1) both the sponsor and purchaser direct payment to a specified party in accordance with a written direction signed by both the sponsor and purchaser; or
  - (2) a judgment or order of a court of competent jurisdiction is served on the escrow agent; or
  - (3) the escrow agent deposits the disputed amount into court.
- (f) In no event shall the escrow agent release funds in dispute, other than a payment of such funds into court, until such dispute is finally resolved either by determination of the Attorney General or by order or judgment of a court of competent jurisdiction or by written agreement of the sponsor and the purchaser.

- (ix) Exhibits to plan. Copies of the forms provided by the bank for opening

the escrow account and the escrow agreement as proposed must be included as Exhibit B-25 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-25 of the submission.

- (x) 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 the successor firm and shall notify the Department of Law of such transfer.
- (xi) Review and audit. The Department of Law may perform random reviews and audits of any records involving escrow accounts to determine compliance with statute and regulation.
- (xii) Waiver void. Any provision of any contract or agreement, whether oral or in writing, by which a purchaser purports to waive or indemnify any obligation of the escrow agent holding trust funds is absolutely void. The provisions of this section of the regulations shall prevail over any conflicting or inconsistent provision in the offering plan or in a purchase agreement.

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- (xiii) Trust obligation of sponsor. Nothing contained herein shall diminish or impair the sponsor's statutory obligation to each purchaser 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. 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 a part of the estate of the sponsor or the escrow agent upon any bankruptcy, incapacity or death.
  - (xiv) Transition. All funds required to be held pursuant to GBL Sections 352-e(2-b) and 352-h on the effective date of this section shall be transferred into the escrow account in compliance with this regulation within 60 days thereafter.
- (4) Alternatives to escrow account. A sponsor may apply to the Attorney General to use security in the form of surety bonds or a letter of credit in lieu of escrow of such funds for use in newly constructed or gut rehabilitated developments upon showing of adequate insurance of such funds to the satisfaction of the Attorney

General.

- (i) Application for alternate security. Sponsor must submit an affidavit which contains full information as to the proposed usage of such funds, the sponsor's financing of construction or rehabilitation work, expected completion date, the terms and condition of the proposed surety bonds or letter of credit, and required undertakings and covenants.
- (ii) Documentation. The proposed form of surety bond or letter of credit, any underlying agreement or related agreement, and any undertaking or covenants required hereunder, shall be appended to the application and also filed as Exhibits to the plan in Exhibits Part B subdivision 20.2(c)(5)(ii)(B-26) or as exhibits to an amendment to the plan.
- (iii) Change from escrow account. When surety bonds are or a letter of credit is to be provided under an amendment to the plan calling for release of funds already deposited in escrow, the amendment shall provide for, and annex a form for, the written consent of each affected purchaser and shall provided for continuation of escrow of funds of any purchaser who does not execute and deliver such written consent to the sponsor.
- (iv) Disclosure. If an application for alternate security is approved, the terms of such alternate security shall be disclosed in the plan or in an amendment to the plan promptly submitted.

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- (5) Surety bonds. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to purchasers by effectuating the issuance of surety bonds to such purchasers by a licensed insurance company which agrees to act as surety for the amount of such down payments or deposits.
  - (i) Deposits into escrow account. All down payments and deposits received after the Attorney General's approval of the use of surety bonds as alternate security, shall be placed within five business days after the purchase agreement is signed by all necessary parties, in an attorney's segregated special escrow account, established pursuant to and in compliance with paragraph (3) of this subdivision. Such funds shall be released by the escrow agent to the sponsor upon receipt by the escrow agent of a copy of the surety bond issued to the purchaser whose funds are being released.
  - (ii) Payments. All funds received from purchasers whether in the form of checks, drafts, money orders, wire transfers, or other instruments which identify the payor, shall be made payable to or endorsed by the purchaser to the order of the attorney or law firm as escrow agent.



- (iii) Requirements to act as surety. The surety company must be licensed to write insurance in the State of New York by the New York State Department of Insurance, whether or not the property which is the subject of the plan is located in the State of New York unless the law of the State where the property is located requires otherwise. If the property is located outside New York State and the sponsor claims that the law of such state conflicts and is controlling, the sponsor's application must specify the conflicting law. In order for the application for alternate security to be approved by the Attorney General, the applicant must show that the surety company with which the sponsor proposes to contract has a current rating for debt securities no lower than the third highest grade conferred by at least two of the national reporting services regularly evaluating insurance companies.
- (iv) Agreements between sponsor and surety. The plan must fully disclose the material terms of the agreement between the insurance company as surety and the sponsor, including the premium to be paid by the sponsor, any agreement by which sponsor provides collateral to secure its obligations to the surety and any agreement by the sponsor indemnifying the surety. The agreement must provide that the surety will abide by directives in conformity with these regulations.

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- (v) Provisions of the bond. The surety bond must specify the name and address of the sponsor as principal; the name and address of the surety company to which claims for payment may be made; provision for the name and address of the purchaser as obligee on the bond; provision for the amount of the down payment or deposit secured and the rate of interest, if any, to accrue on such funds; the term of the bond, and, if the bond is for a finite period, a guarantee by the surety that it will pay the amount secured to the purchaser-obligee prior to expiration of the bond or a guarantee by the sponsor that the bond will be renewed before expiration.
- (vi) Term and continuation. Each surety bond and any accompanying agreement shall provide that it will continue in effect or that it will be renewed periodically until consummation and closing of the sale of the respective unit the down payment for which is secured by such surety bond or until the secured funds of a purchaser have been returned in full, or until the funds secured by the surety bond have been placed in the escrow account pursuant to paragraph (7) of this subdivision or until there is an undisputed purchaser default or a determination by the Attorney General or order or judgment of a court of competent jurisdiction that the purchaser has defaulted and that the sponsor is entitled to the secured funds.

- (vii) Delivery of the surety bond. The sponsor shall cause the surety to mail or personally deliver the surety bond to the purchaser-obligee before the funds are released to the sponsor from the escrow account. The sponsor, the escrow agent and the surety company shall each retain a copy of the surety bond.
- (viii) Invoking the bond. The purchaser-obligee shall have the right to demand payment of the amount secured by the surety bond directly from the surety, without first requesting payment from the sponsor. The surety shall be obligated to pay the amount secured by the bond to the purchaser-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances;
  - (a) timely rescission of a purchase agreement by a purchaser pursuant to an offer of rescission contained in the plan or an amendment to the plan;
  - (b) acceptance for filing by the Department of Law of an amendment abandoning the plan;

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- (c) determinations by the Attorney General pursuant to subparagraph (x) of this paragraph that rescission or the return of funds is required;
  - (d) failure by the sponsor to obtain a commitment by the surety company to renew the surety bond 60 days prior to its expiration;
  - (e) direction by the sponsor upon request by the purchaser.
- (ix) Failure by purchaser-obligee to produce a copy of the bond. A purchaser's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the purchaser's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the purchaser-obligee without a copy of the bond as long as the purchaser is able to provide proof of identity as the obligee on the bond.
  - (x) Disputes.
    - (a) In the event of a dispute, the sponsor shall apply and the purchaser or the surety issuing the bond may apply to the Attorney General for a determination on the disposition of the down payment secured by the bond and any interest earned thereon. Forms for this purpose will be available from the Department of Law. The party applying shall contemporaneously send to all other parties a copy

of such application.

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

(c) If the Attorney General determines:

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

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

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

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

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

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

- (ii) Irrevocability. The letter of credit must be irrevocable during the stated term and any renewal term.
- (iii) Beneficiary. The beneficiary must be an attorney, or firm of attorneys, acting as or qualified under paragraph (3)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of purchasers under the plan.
- (iv) Authority to draw. The letter of credit must provide that the beneficiary shall have sole power to draw upon the letter of credit without the consent or despite the objection of the sponsor or of any provider of underlying credit, at such times or upon such events as are set forth in subparagraph (ix) of this paragraph.
- (v) Issuer. The issuer must be a bank authorized to act as a commercial bank or savings institution under supervision of the New York State Banking Department or a federally supervised banking institution located in the State of New York, unless the property is located in another state and the letter of credit is issued by a bank located within such state. In order for

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the application for alternate security to be approved by the Attorney General the application must show that the issuer bank has surplus funds and net worth of at least 10 times the amount of the letter of credit, and must have a current rating with respect to its debt securities that is within "investment grade" by one of the generally accepted national reporting services regularly rating the debt securities of banking institutions and that the provisions of the letter of credit include the right of the beneficiary to draw down the letter of credit in conformity with these regulations.

- (vi) Term and continuation. The letter of credit and related agreement and any accompanying undertaking shall provide that it will continue in effect or that it shall be periodically renewed until consummation and closings of sales of all units referred to in the application for alternate security pursuant to subparagraph (4)(i) of this subdivision or until the covered funds of purchasers have been returned to them in full.
- (vii) Undertaking. If the letter of credit will expire prior to the latest date of closings of sales of all such units, provision for renewal of the letter of credit without loss of irrevocability and without any change of terms shall be afforded by:
  - (a) an "evergreen" or automatic renewal clause, if obtainable; and
  - (b) the irrevocable undertaking and covenant of the sponsor and by any other provider of underlying credit to provide successive renewals thereof until consummation and closings of sales of all units or

until the covered funds of purchasers have been returned in full.

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

(a) Deposits into escrow account. All down payments and deposits received shall be placed, within five business days after the purchase agreement is signed by all necessary parties, in an attorney's segregated special escrow account established pursuant to and in compliance with paragraph (3) of this subdivision. The escrow agent shall release such funds to the sponsor provided that the escrow agent has documentation showing that the letter of credit or renewal or replacement letter of credit has been issued and is in effect. Such escrow agent shall no longer release funds from escrow if the escrow agent receives notice or information warranting draw down of the letter of credit under subparagraph (6)(ix) of this subdivision.

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

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

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

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

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

(d) failure by the sponsor to obtain a renewal or replacement letter of

credit no later than 60 days prior to the expiration of the existing letter of credit;

- (e) direction by the sponsor upon request of the purchaser;
- (f) notice of impending cancellation of the letter of credit has been given or received, or the issuer has filed a bankruptcy or insolvency petition or has been taken over by a federal or state authority, and no proper replacement of the letter of credit has been furnished although continuation of the same in effect is required under subparagraph (4)(i) of this subdivision or subparagraph (vi) of this paragraph.

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- (x) Disputes.
  - (a) In the event of a dispute, the sponsor shall apply, and the purchaser, the escrow agent or the bank issuing the letter of credit may apply to the Attorney General for a determination on the disposition of funds secured by the letter of credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Department of Law. The party making such application shall contemporaneously send to the other three parties a copy of such application.
  - (b) Pending the determination of the Attorney General to grant or deny the application, the sponsor, the purchaser, the escrow agent and the bank shall abide by any interim directive issued by the Attorney General.
  - (c) If the application permitting release of funds is granted, such funds secured by the letter of credit, and any interest earned thereon shall be disposed of in accordance with the determination of the Attorney General, subject to any court action in which preliminary relief is granted.
  - (d) The Attorney General shall act upon the application within 30 days after its submission to the Department of Law, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.
  - (e) In no event shall the disputed funds secured by the letter of credit be paid to the purchaser nor shall the letter of credit be terminated

until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

- (7) Change to escrow account. Where alternate security as provided under a filed offering plan is no longer needed by the sponsor, or new or additional alternate security cannot be obtained by a sponsor or its successor, sponsor shall submit an amendment for filing which provides that any future purchaser deposits or down payments shall be held in the escrow account in accordance with paragraph (3) of this subdivision. Such amendment shall not affect the sponsor's obligation to account for funds previously released to the sponsor unless the funds representing all such deposits or down payments are restored to the escrow account.

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- (8) If the plan provides for the construction of residential condominium units, the purchase agreement and the plan must comply with and explain Section 71-a(3) of the Lien Law and any other applicable provisions of law.
- (9) Highlight as a special risk any provision allowing sums in excess of 10% of the purchase price to be retained as liquidated damages, other than the actual cost incurred for any special work ordered by the purchaser. Disclose under what circumstances sponsor may retain additional monies paid for special work ordered by the purchaser. Highlight as a special risk if sponsor may seek specific performance of the purchase agreement.
- (10) Any "time is of the essence" provision concerning purchasers' obligations must be explained in easily understandable terms and must be highlighted as a special risk.
- (11) State that after the plan has been declared effective the sponsor will fix dates for closing title to all units for which purchase agreements have been executed by serving notice on each purchaser stating the date of the first closing and setting such purchaser's closing date. Such notice will be served in compliance with Section 20.1(d)(1) of this Part no less than thirty (30) days before the date set for the closing of the units. Sponsor may permit purchasers to waive this thirty (30) day provision by including such waiver in the plan or in an amendment thereto.
- (12) State when sponsor expects the first closing of a unit to occur which should correspond to the first year of operation projected in Schedule B. State that if such date is delayed twelve (12) months or more, purchasers will be offered rescission.
- (13) Sponsor must make a written demand for payment after default at least thirty (30) days before forfeiture of the deposit may be declared.

- (14) State whether and when the purchaser is required to sign a power of attorney to the board of managers of the condominium, the number of days within which the power of attorney must be returned to the selling agent or sponsor, and the consequences of not returning the power of attorney.
- (15) The plan shall state that at sponsor's option purchasers will be afforded:
- (i) not fewer than seven (7) days after delivering an executed purchase agreement together with the required deposit to rescind the purchase agreement and have the full deposit refunded promptly. The purchaser must either personally deliver a written notice of rescission to the sponsor or selling agent within the seven (7) day period or mail the notice of rescission to the sponsor or selling agent and have the mailing post-marked within the seven (7) day period; or
  - (ii) not fewer than three (3) business days to review the offering plan and all filed amendments prior to executing a purchase agreement.
- (16) Disclose whether the risk of loss from fire or other casualty remains with the sponsor unless and until a purchaser takes actual possession of a unit pursuant to an interim lease (or written agreement with the sponsor) or legal title to the unit has been conveyed to the purchaser. Highlight as a special risk if the risk of loss passes to the purchaser before closing, and explain the need for insurance.
- (17) A complete copy of the purchase agreement must be included in the plan.
- (18) Highlight as a special risk if the purchaser's obligation to purchase is not contingent on obtaining financing. If purchaser's obligation is contingent upon obtaining a commitment for financing or actually obtaining financing, explain the terms of the contingency. State the time within which the purchaser must notify sponsor of any inability to obtain financing. Include the purchaser's time to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may change prior to actual closing. If a purchaser's obligations are contingent on obtaining a financing commitment and the financing commitment lapses or expires prior to closing, and the purchaser has made a good faith effort to extend the commitment, sponsor must grant to such purchaser a right of rescission and a reasonable period of time to exercise the right.
- (19) The plan and purchase agreement must provide that any conflict between the plan and the purchase agreement will be resolved according to the terms of the plan.
- (20) State that within a specified number of days after a purchaser delivers an executed purchase agreement together with the required deposit, the sponsor must either accept the purchase agreement and return a fully executed counterpart to the purchaser or reject the purchase agreement and refund the full deposit previously tendered. Discuss the outcome for the purchaser if the sponsor takes no action

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within the time period specified in the plan.

- (21) The purchase agreement and plan may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under Article 23-A of the GBL.
- (22) State whether sponsor will permit the assignment or transfer of purchase agreements.

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

### **20.3(p)**

- (1) Name and address of lender.
- (2) Amount and term. State the maximum amount (which may be expressed as a percentage of the offering price) available for a unit and the minimum term of the mortgage. If the financing offered is not self-liquidating over the term, state how the amount of the balance or "balloon" due on maturity will be calculated and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the principal balance is due in less than five years. If the sponsor is providing the financing, state whether the sponsor will refinance or extend the mortgage at maturity. State the maximum amount of financing available to purchasers generally through a bulk commitment.
- (3) Availability. Sponsor must discuss whether financing is available to all purchasers. If not, discuss the method of allocation of such. If sponsor procures financing with an institutional lender, it is sufficient to refer to the institution's credit standards.
- (4) Interest rate. State the annual interest rate over the term of the mortgage. If the mortgage has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact that adjustments will have on debt service payments and the principal balance. If the sponsor structures the financial terms of the transaction in such a manner as to result in possible taxable income to a purchaser, the financial and tax implications of such structuring must be disclosed. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing interest rate and the interest rate offered to purchasers.
- (5) Payments. State when payments are due, and how payments are applied to interest and principal. For variable rate mortgages, adjustable rate mortgages or negative amortization mortgages, disclose how initial payments are allocated to

interest and principal, disclose the impact that interest rate changes will have on the allocation of payments to interest and principal and on itemized deductions available to unit owners. If any mortgage is a "negative amortization" mortgage, highlight as a special risk and explain the meaning of a "negative amortization" mortgage and the additional risks and costs to the unit owner.

- (6) Prepayment. State whether and when the unpaid principal balance may be prepaid in whole or in part, the number of days of prior notice that must be given, and any charges for prepayment. Disclose any restrictions on the ability of a purchaser to prepay the entire unpaid principal at any time.
- (7) Insurance. State the amount and type of insurance required to be carried for the benefit of the sponsor or any mortgage lender procured by the sponsor.
- (8) Escrow and reserve requirements. Describe the requirements for escrow and reserve deposits, including those for taxes, water and sewer charges, capital reserves or otherwise and whether and how such requirements may be modified.
- (9) Term of commitment. State when the financing commitment expires.
- (10) Late charges. Describe the amount of late charges and how they are assessed.
- (11) Additional financing costs. Disclose the amount of additional costs or charges to purchasers in connection with such financing including, for example, points, origination fees, lender's or any other legal fees, processing fees, application fees, insurance and appraisal fees.
- (12) Restrictions. Describe major restrictions on a unit owner's right to alter, improve, sell, lease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a unit.
- (13) Events of default. Describe the material events of default entitling the lender to accelerate the principal indebtedness and describe grace periods granted to unit owners.
- (14) If any proposed financing contains unusual risks and features which are not prevalent among financing institutions in the State of New York engaged in providing condominium mortgages to unit purchasers, highlight as a special risk and explain the risks of such financing.

The attorney who prepared the plan must note such financing in the transmittal letter to the Department of Law required by Section 20.2(c)(1).

- (q) *Effective date.* The plan must explain that the offer to sell is contingent upon the plan's 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) For offerings of more than five units, the plan may be declared effective by (i) an amendment to the plan or (ii) by personal service of notice on every purchaser or by commencement of service by mail in the manner required by Section 20.1(d) of this Part stating that the plan is declared effective and submitting an amendment to the Department of Law within (5) days confirming that the plan was declared effective on a specified date. The amendment must conform to Section 20.5(e). State that the closing of the first unit shall not occur until the plan is declared effective and the effectiveness amendment is accepted for filing by the Department of Law.

### **20.3(q)**

- (2) For offerings of five or fewer units, the plan shall be declared effective by personal service of a notice on each purchaser or by commencement of service by mail in the manner required by Section 20.1(d) of this Part stating that the plan was declared effective on a particular date, the percentage used to declare the plan effective and a list of the units being counted to meet the minimum percentage under the terms of the plan to declare it effective. A closing may occur without the sponsor's submitting an amendment to the Department of Law to declare the plan effective; however, the sponsor must comply with the requirements of Section 20.5(e) of this Part when submitting a post-closing amendment pursuant to Section 20.5(f).
- (3) State that the plan may not be declared effective unless bona fide purchasers, including investors, have signed purchase agreements for at least fifteen percent (15%) of the units offered under the plan. Units of a primarily ancillary nature such as garage spaces, boat slips or cabanas, may not be counted toward effectiveness. Such units may be excluded from the base in calculating the percentage needed to become effective.
- (4) State that the plan will not be declared effective based on purchase agreements:
  - (i) signed by purchasers who have been granted a right of rescission that has not yet expired or been waived; or
  - (ii) if the purchaser was not afforded the protections required by Section 20.3(o)(10) of this Part; or
  - (iii) with any purchaser who is the sponsor, the selling agent, or the managing agent or is a principal of the sponsor, the selling agent or the managing agent or is related to the sponsor, the selling agent or the managing agent or to any principal of the sponsor or the selling agent or the managing agent by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; except that such a purchaser

other than the sponsor or a principal of the sponsor may be included if the sponsor has submitted proof satisfactory to the Department of Law establishing that the purchaser is bona fide.

- (5) The plan must be declared effective when purchase agreements have been accepted by sponsor for eighty percent (80%) or more of the units offered under the plan.
- (6) If the plan may be abandoned by sponsor, at its option, before it is declared effective, the plan must state that within a specified number of days after abandonment, all monies paid by purchasers shall be refunded to them in full, with interest earned, if any. Sponsor shall promptly file an amendment together with form RS-3 as required by Section 20.1(1)(2).

### **20.3(q)**

- (7) Sponsor may not abandon the plan after effectiveness for any reason other than:
  - (i) a defect in title which cannot be cured without litigation or cannot be cured for less than a stated amount which shall not be less than one-half of one percent of the total offering amount, or
  - (ii) substantial damage or destruction of the building by fire or other casualty which cannot be cured for less than a stated amount which shall not be less than one-half of one percent of the total offering amount, or
  - (iii) the taking of any material portion of the property by condemnation or eminent domain. Sponsor must provide that any stated dollar amount relied upon as basis for abandonment after effectiveness must exclude any attorneys fees or any such title defects or determinations of any authority or regulatory association which exist on the date of presentation of the plan and are either known to the sponsor or are a matter of public record.

### (r) *Terms of sale.*

- (1) Describe the type of deed given to unit owners. Highlight as a special risk if the deed is not a full warranty deed or a bargain and sale deed with covenants against grantor's acts. State that a form of unit deed is contained in Part II of the Plan.
- (2) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing of a purchaser's unit and the rights and obligations of purchasers of damaged units.
- (3) For offering plans that are not subject to the provisions of GBL §352-ee, state that a closing will take place only concurrently with the issuance of a temporary or permanent certificate of occupancy for the entire project or, issuance of a partial, temporary or permanent certificate of occupancy for the unit closed or the building in which the unit is located.

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

**20.3(r)**

- (5) State that all personal property located within the unit on the date the purchase agreement is signed or located within the common elements on the date the declaration is filed, that is owned by the sponsor or the owner of the property, is included in the conveyance unless specifically excepted in the offering plan.
- (6) State that the declaration, by-laws and floor plans for the condominium and such other documents, as required by law, will be recorded or filed prior to the first conveyance of title to a unit in accordance with the New York Condominium Act or applicable state and local law; and state the place of recording or filing.
- (7) State that if applicable, prior to closing, the sponsor will procure the Real Property Transfer Gains Tax Tentative Assessment and Return (or Statement of No Tax Due) and will, at closing, pay all Real Property Transfer Gains Tax and all other transfer taxes due and comply with the requirements of the New York State Department of Taxation and Finance.
- (8) If existing mortgages or construction loans will not be satisfied at or prior to the closing of the first unit, state that at the time of conveyance of the first unit, each mortgagee will either:
- (i) consent to the formation of a condominium and acknowledge that its lien will be limited to unsold condominium units;
  - (ii) subordinate the lien of its mortgage to the declaration of condominium; or
  - (iii) release its lien on the condominium unit being conveyed and its interest in the common elements.

(s) *Unit closing costs and adjustments.*

- (1) Describe all estimated costs, fees, and charges to be paid or apportioned in connection with closings and specify whether they will be paid by purchaser or sponsor. If the sponsor is imposing any cost, fee or charge on the purchaser which by statute is an obligation of a seller, in the first instance, the offering plan must

special risk such imposition, include the cost in the footnotes to Schedule A and disclose that the sponsor is transferring a statutory obligation to the purchasers. Include fee and mortgage title insurance charges, state and local transfer taxes, mortgage recording taxes, recording fees for the deed and any mortgage, power of attorney and any other documents, apportionment of taxes, water and sewer charges, and all other closing costs or adjustments.

- (i) For all items to be apportioned, set forth the basis for apportionment.
- (ii) Provide a numerical example of all closing costs for a typical unit.

### **20.3(s)**

- (2) In the event that the plan requires a purchaser to reimburse the sponsor if any mortgage tax credit is allowed with respect to the unit being sold, note such obligation.
  - (3) If there are closing costs in connection with financing for qualified purchasers, this section should refer to the disclosure required by Section 20.3(p) of this Part.
  - (4) State whether a purchaser is required to pay any portion of the fee of sponsor's attorney or the fee of the lender's attorneys, and estimate such fees.
  - (5) If units have not been separately assessed for real estate tax purposes prior to the closing of title to the first unit, sponsor may place in escrow, in the name of the board of managers, an amount equal to the unpaid real estate taxes which will be levied against the parcel for the six month period following the first closing. Alternatively, the sponsor may place in escrow, in the name of the board of managers, an amount equal to the real estate taxes attributable to the unsold units for such six month period and may collect at each unit closing the estimated amount of taxes attributable to such unit for the balance of the six month period. The board of managers will pay the real estate taxes from the escrow account when taxes are due and payable and the funder of the escrow account will be entitled to reimbursement from unit owners to the extent of the actual assessment. No escrow will be required if the condominium by-laws include as part of the common expenses, real estate taxes on the property until the units are separately assessed and after assessment unit owners will be reimbursed for any overpayment of taxes or assessed for an underpayment.
- (t) *Rights and obligations of the sponsor.* Describe the rights and obligations of sponsor under the plan and applicable law with respect to the offering including, but not limited to, the following elements:
- (1) Disclose sponsor's obligation to defend any suits or proceedings arising out of sponsor's acts or omissions and to indemnify the board of managers and the unit owners.

- (2) State that all representations under the offering plan, all obligations pursuant to the GBL, and such additional obligations under the offering plan which are to be performed subsequent to the closing date will survive delivery of the deed.
- (3) Disclaimers or limitations of liability on the part of the sponsor or its principals for failure to perform any obligation imposed by applicable statute or regulation may not be included. The plan may not include any financial limitation on sponsor's liability for failure to perform its obligations under the offering plan.

### **20.3(t)**

- (4) State that sponsor agrees to pay all common charges, special assessments and real estate taxes with respect to unsold units. Sponsor must represent that it has the financial resources to meet its obligations with respect to unsold units and state the means by which it will fund its financial obligations to the condominium. If the funding source is stated as 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. If no bond or other security has been posted to secure sponsor's obligations, highlight as a special risk.
- (5) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the closing of a purchaser's unit and the rights and obligations of purchasers of damaged units.
- (6) State that the sponsor shall procure fire and casualty insurance pursuant to an agreed amount replacement value policy or in an amount sufficient to avoid co-insurance, as reflected in Schedule B.
- (7) State that in the event of the dissolution or liquidation of the sponsor or the transfer of ten (10) or more units or twenty percent (20%) or more of the total number of units in the condominium, whichever is less, the principals of the sponsor will provide financially responsible entities or individuals who will assume the status and all of the obligations of the sponsor for those units under the offering plan, applicable laws or regulations.
- (8) The sponsor must state whether construction financing is firmly committed at the time of submission of the offering plan to the Department of Law. Disclose any conditions placed on the availability of the construction financing and highlight as a special risk if the sponsor may not be able to complete construction of the units offered. Project the timetable for procuring a firm commitment for construction financing.
- (9) State the sponsor's obligation to build and complete the condominium in accordance with the building plans and specifications identified in the plan and

sponsor's right to substitute equipment or materials and make modifications of layout or design, provided however, that sponsor may not:

- (i) substitute equipment or materials of lesser quality or design; or
- (ii) change the size, location of buildings or units other improvements or common elements if such changes affect the percentage of common interests or adversely affect the value of any unit to which title has closed or for which a purchase agreement has been executed and is in effect unless all affected unit owners and contract vendees consent in writing to such change.

### **20.3(t)**

- (10) Except as provided in paragraph (11) below or by exemption granted by the Department of Law pursuant to Section 20.1(i) of this Part, prior to closing the first unit, sponsor must obtain a permanent certificate of occupancy for the property or, alternatively, obtain a temporary or partial certificate of occupancy for the unit or the building in which the unit to be closed is located. The sponsor and its principals must obtain a permanent certificate of occupancy for the property within a projected timetable after closing the first unit. Sponsor must obtain the permanent certificate of occupancy before the partial or temporary certificate of occupancy expires, unless extended. Highlight as a special risk if the sponsor does not anticipate obtaining a permanent certificate of occupancy two years or more after the closing of the first unit.
- (11) Notwithstanding paragraph (10) above, if the offering plan is subject to the provisions of GBL Section 352-ee, sponsor must state what alterations and improvements to the common areas and public portions of the building will be completed before the closing of the first unit.
- (12) If the first closing may take place prior to the issuance of a permanent certificate of occupancy for the property:
  - (i) Sponsor is required to maintain all deposits and funds in the special escrow account required by GBL Section 352-e(2-b) unless the sponsor's engineer, architect or other qualified expert certifies that a lesser amount will be reasonably necessary to complete the work needed to obtain a permanent certificate of occupancy, in which case the sum exceeding the amount so certified by the sponsor's engineer, architect or other qualified expert may be released from the special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit, post a surety bond in the amount so certified, or provide other collateral acceptable to the Department of Law.
  - (ii) Notwithstanding subparagraph (i) above, if the offering plan is subject to the provisions of GBL Section 352-ee, sponsor is required to maintain all deposits and funds in the special escrow account required by GBL Section 352-e(2-b) unless the sponsor's engineer or architect certifies that a lesser



amount will be reasonably necessary to complete all alterations and improvements to the public portions and common areas of the building. In such case the sum exceeding the amount so certified by the sponsor's engineer or architect may be released from the special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit, post a surety bond in the amount so certified, or provide other collateral acceptable to the Department of Law.

### **20.3(t)**

- (13) State whether the sponsor agrees to warrant the materials or workmanship of each unit (and limited common elements) or common elements. Fully disclose the terms of the warranties. State whether the Housing Merchant Implied Warranty Law (GBL Article 36-B) or other comparable law for property located outside New York State applies to the offering. If so, describe the law, include a copy of the statute in Part II of the plan, disclose any limitation of the implied warranty and highlight as a special risk any such limitation.
  - (14) State that at or prior to the closing of the unit, sponsor must assign any manufacturer's warranties with respect to equipment and appliances installed in the unit to the unit owner and assign any warranties with respect to equipment and appliances installed in the common elements to the board of managers.
  - (15) State that the sponsor agrees to pay for the authorized and proper work involved in the construction and establishment and sale of the condominium that sponsor is obligated to complete under the plan and will cause all mechanics liens with respect to such construction to be promptly discharged or bonded.
  - (16) State that the sponsor agrees to deliver a set of "as-built" plans to the board of managers.
  - (17) Sponsor must disclose whether any bond or other security other than those required by this Part has been furnished to secure sponsor's obligations including sponsor's obligations to complete construction of the condominium. If no security is furnished, highlight as a special risk.
  - (18) If sponsor has a right of access to complete construction of the condominium, describe sponsor's obligation to repair damages and the extent to which sponsor can interfere with the unit owners' use.
- (u) *Control by the sponsor.* Describe the extent to which sponsor will or may control the board of managers after the closing of the first unit and the consequences to purchasers of such reservation of control, subject to the following requirements:
- (1) Highlight as a special risk if sponsor exercises voting control of the board of managers for more than two (2) years after the closing of the first unit or

whenever the unsold units constitute less than fifty percent (50%) of the common interests, whichever is sooner. Specify the manner and timing in which the sponsor will relinquish control of the board of managers. Sponsor shall disclose that a meeting will be held to elect new board members unrelated to the sponsor within thirty(30) days of the expiration of the control period.

## **20.3(t)**

- (2) Sponsor may not exercise veto power over expenses described in Schedule B, or over expenses required:
  - (i) to comply with applicable laws or regulations; or
  - (ii) to remedy any notice of violation; or
  - (iii) to remedy any work order by an insurer.
- (3) Sponsor may exercise veto power over expenses other than those described in subsection (2) above, if the plan so provides, for a period ending not more than five (5) years after the closing of the first unit or whenever the unsold units constitute less than twenty-five per cent (25%) of the common interest, whichever is sooner.

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

- (1) State the number and composition of the board of managers, the eligibility requirements, elections and when the first meeting will be held after the closing of title to the first unit. Discuss when annual meetings will be held and describe the provisions in the by-laws for calling special meetings.
- (2) State the names of the present or anticipated first officers and members of the board of managers and their relationship, if any, to sponsor, sponsor's principals and sponsor's attorney.
- (3) Explain any provisions for the indemnification of the board of managers. Discuss the potential personal liability of the board of managers.
- (4) State whether officers and members of the board of managers serve with or without compensation. Highlight as a special risk if officers and members of the board appointed by the sponsor or sponsor's designees serve with compensation paid by the unit owners.
- (5) State whether and under what circumstances officers and members of the board

may be removed by the board of managers. The board may not be prohibited from removing members for cause.

- (6) Discuss how unit owners' voting rights are computed.
- (7) State the percentage of common interest needed to amend the condominium's by-laws and to change the declaration of condominium after it has been filed.

### **20.3(v)**

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

- (1) Sale or lease of units by unit owners.
  - (i) State that each unit owner has the right to sell or lease his or her unit and describe the restrictions on such right including notification to the board of managers. State whether such restrictions apply to the sponsor, its designees, or the owners of the commercial units. State whether the terms of the lease, including the rent, will be subject to state or local law. If there are any restrictions, the Department of Law may, in its discretion, require an opinion from sponsor's counsel as to the enforceability and legality of these restrictions.
  - (ii) If the board of managers has a right of first refusal with respect to the sale or lease of a unit or other option to acquire a unit:
    - (a) State that the board of managers will notify the unit owner of its intention to exercise the right within a specified number of days from the date a unit owner gives notice of intended sale or lease.
    - (b) State that the board of managers must exercise any right of first refusal within a specified number of days.
    - (c) Describe the procedures to raise funds for the acquisition and maintenance of a unit by the board of managers on behalf of the unit owners, the permissible uses of such unit while so owned or leased, how such a unit may be sold or leased and how the proceeds of the disposition of the unit will be treated.
    - (d) State that the board of managers may not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status or other grounds prohibited by law.
- (2) Mortgaging of units by unit owners. State that each unit owner has the right to mortgage his or her unit and any restrictions on such right.

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

**20.3(w)**

- (ii) Discuss the right of the board of managers to accumulate reserves for capital expenditures or otherwise and the restrictions imposed on such rights.
  - (iii) Discuss how and when the liability of unit owners for common charges and assessments can be terminated.
  - (iv) State that pursuant to Section 339-z of the Real Property Law, the board of managers on behalf of the unit owners will have a lien on each unit for unpaid common charges assessed by the board of managers. Discuss the consequences of such a lien and the procedures for making the lien effective pursuant to Section 339-aa of the Real Property Law.
  - (v) State that the sponsor will cause the board of managers to file a lien as provided for in Section 339-aa of the Real Property Law on units in which sponsor is more than 30 days in arrears of common charges while it is in control of the board of managers.
- (4) Repairs.
  - (i) Describe the obligation to repair and maintain units, limited common elements and common elements, and the allocation of responsibility among the unit owners and the board of managers.
  - (ii) Describe any improvements, maintenance or provision of furnishings required of unit owners, such as painting facades or carpeting of units.
  - (iii) Describe the responsibility for repairs or replacements required as the result of the negligence or abuse of a unit owner.
  - (iv) State the requirement, and any conditions, for unit owners to grant access to the board of managers and its designees to inspect, remove violations, make general repairs, cure defaults by the unit owner and for other purposes permitted by the by-laws.
- (5) Additions, alterations and improvements.
  - (i) Describe the rights and obligations of the unit owners and the board of managers with respect to additions, alterations and improvements.

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

**20.3(w)**

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

(6) Insurance.

- (i) Describe the insurance coverage provided by the board of managers for the benefit of each unit owner and a unit owner's right to obtain supplemental or additional insurance.
- (ii) Indicate any coverage that is not provided by the board of managers and disclose what additional or supplemental coverage is generally available. Refer to Schedule B for the details of insurance coverage.
- (iii) State the conditions under which the insurance proceeds will be given to the board of managers or to an insurance trustee and how the proceeds will be allocated.

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

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

(8) Describe any other material provisions of the declaration or by-laws, including

those restrictions required by local law, which significantly affect the rights and obligations of the unit owners or the board of managers.

## **20.3(w)**

(x) *Real estate taxes.*

- (1) State that after the units are separately assessed, each unit will be taxed as a separate tax lot for real estate tax purposes and that the unit owner will not be responsible for the payment of, nor will the unit be subjected to, any lien arising from the non-payment of taxes on other units.
  - (i) Note any anticipated delay in obtaining separate assessments by the appropriate tax assessor's office.
  - (ii) If the units have not been separately assessed for real estate tax purposes prior to the closing of title to the first unit, describe the procedure by which unit owners will make payments towards real estate taxes to the board of managers.
- (2) State the assessing authority, the assessed valuation, the tax rates and the amounts payable. Discuss the method of determination of real estate tax assessments for each condominium unit, noting any restrictions or limitations under state or local law. State the basis for calculating the amount of real estate taxes payable by unit owners in the first year of condominium operation in Schedule A. State that the tax assessment for each unit may be allocated on a basis that differs from the allocation of common interests. If actual amounts are not currently available, state that the figures are estimates.
- (3) State the projected amount and date of assessed valuation after the completion of construction. Include the present assessed valuation if the condominium is an existing building being sold without rehabilitation or is undergoing minimum rehabilitation.
- (4) Discuss any known or tentative changes in the assessed valuation or tax rates which will affect the condominium unit. If applicable, discuss the impact of Section 339-y of the Real Property Law and Section 58l of the Real Property Tax Law.
- (5) State whether any tax certiorari proceedings are pending, and if so, for whose benefit and at whose expense.
- (6) Describe the provisions in the by-laws applicable to the review of real estate tax assessments.

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- (7) Tax exemption and abatement benefits. If the offering plan represents that the unit owners may or will receive particular tax benefits (e.g. Section 11-243 (J-51) of the New York City Administrative Code or Section 421-a of the Real Property Tax Law), the plan must state that the sponsor will use its best efforts to obtain those benefits, and must project the amount, commencement and duration of the benefits.
- (i) Highlight as a special risk if the plan states that the unit owners may or will receive tax benefits and the sponsor does not anticipate obtaining the benefits before the closing of the first unit.
  - (ii) If the tax benefits are not in place at the time the proposed offering plan is first submitted to the Department of Law, describe the effect on the projected total monthly carrying charges with and without tax benefits.
  - (iii) If tax benefits may be available but sponsor is not applying for such benefits, highlight as a special risk and state that sponsor will cooperate with the board of managers to obtain the benefits and will keep and make available all records required in order to obtain the benefits.
  - (iv) State that a sponsor applying for J-51 benefits must request an opinion letter from the New York City Department of Housing Preservation and Development ("HPD") and that such opinion letter must be obtained before the plan is declared effective.
  - (v) Sponsor must represent that it will keep all records required by HPD and will make them available to HPD whenever requested to do so.
  - (vi) Sponsor must disclose that HPD routinely conducts audits, which can result in the reduction or revocation of benefits if proper documentation is not provided.
  - (vii) Sponsor must state:
    - (a) Upon closing it will make all tax benefit documents available to the board of managers for inspection and copying for the life of the benefits; and
    - (b) It will file all applications and timely comply with all procedures required to properly process and maintain the tax benefits.
  - (viii) Set forth in schedule form any progressive decrease in tax benefits during the benefits period.

## 20.3(x)

(y)

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

- (1) Include an opinion from counsel for sponsor (or independent counsel if the attorney is a principal of the sponsor) that describes the availability of tax deductions for real estate taxes and interest on a mortgage under current federal, state and city law and the availability of any specific exemptions from real estate taxes for veterans or other purchasers.
- (2) Include an opinion from counsel for sponsor (or independent counsel if the attorney is a principal of the sponsor) that describes the tax status of the condominium with respect to income taxes, and the specific requirements of Internal Revenue Code Section 528 for the board of managers of the condominium to elect to be exempt from federal income tax on certain common charges collected from unit owners. Discuss any issues in qualifying under Section 528 presented by the particular plan, including problems raised by the percentage of common interest allocated among non-residential units. Unless counsel can render an affirmative opinion that the condominium will be eligible for tax-exempt status under Internal Revenue Code Section 528 should it elect to take such exemption, Schedule B of the offering plan must include a projected expense item for income taxes payable by the condominium. If there are unusual features of the plan which may jeopardize the condominium's eligibility for tax-exempt status, this fact must be highlighted as a special risk.
- (3) If the real estate tax benefits are not in place at the time the proposed offering plan is first submitted to the Department of Law, include an opinion from sponsor's counsel or independent counsel that supports the statements and representations in the offering plan regarding real estate tax benefits.
- (4) If required, in the discretion of the Department of Law, include an opinion from counsel for sponsor or independent counsel as to the legality and enforceability of restrictions on the use, resale, leasing or mortgaging of the condominium units.
- (5) Include an opinion from counsel for sponsor or independent counsel as to compliance with Real Property Law Section 339(i) in assigning the percentage of common interest to each unit. Indicate which method was used and state that this opinion is based on other expert factual determinations as required by Section 20.3(i) of this Part.
- (6) These opinions may be contained in one letter from counsel or in separate letters from one or different counsel. If counsel for the sponsor is also a principal of the sponsor, the opinions must be from independent counsel.



**20.3(y)**

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

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

In our opinion, the condominium will be eligible for tax-exempt status, if it elects such status, and unit owners will be entitled to income tax deductions (or the unit owners will be eligible for the real estate tax benefits described above). However, this opinion is not a guarantee; it is based on 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 board of managers of the condominium, the selling agent or any other person be liable if there are changes in the facts on which counsel relied in issuing this opinion or if there are changes in the applicable statutes, regulations, decisional law or Internal Revenue Service rulings on which counsel relied which cause the condominium to cease to meet the requirements of Section 528 of the Internal Revenue Code of 1986, as amended, or the New York State tax law, as amended, and cause the unit owners not to be entitled to income tax deductions (or which cause unit owners not to be or to cease to be entitled to the benefits or the level or duration of benefits described above).

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

**20.3(y)**

- (1) Unless highlighted as a special risk, the plan shall provide that while the sponsor is in control of the board of managers, the reserve fund or working capital fund may not be used to reduce projected common charges in the plan.
- (2) If the offering plan provides for a reserve fund or a working capital fund, the plan must state that neither the Department of Law nor any other government agency has passed upon the adequacy of the fund.
- (3) Adjustments for prepaid expenses between the sponsor and the board of managers may be deducted only from the working capital fund. If a substantial credit to the sponsor can be anticipated with reasonable probability, the approximate range or amounts of such adjustment item must be disclosed. Disclose how the net adjustments for prepaid expenses, 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 adjustments.
- (4) If, by reason of any substantial adjustment item in favor of the sponsor, the sponsor will be paid over a period of time, such as by an installment note, the budget in the plan (Schedule B) must reflect such proposed payments for which there is no item already budgeted, including interest, as a separate line of the budget with a footnote disclosing the nature and purpose of the payments.
- (5) Discuss the condominium's available means and options to finance needed capital expenditures such as renewal or replacement of building components or systems or to remedy major building defects.
- (6) Highlight as a special risk if it appears that the reserve fund, if any, plus any budgeted yearly reserve fund may not be sufficient to provide for needed capital expenditures within five years following the first closing under the plan.

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

- (1) Summarize the important terms of the management agreement including:
  - (i) the name and address of the managing agent;
  - (ii) the term of the management agreement and the agent's right, if any, to cancel the agreement;
  - (iii) all fees and other compensation for services;
  - (iv) the major duties and services to be performed by the managing agent including whether bookkeeping, payroll and collection of common charges are provided;
  - (v) the obligation, if any, of the board of managers of the condominium to

**20.3(aa)**

reimburse the agent for expenses incurred or to indemnify the agent against liability for acts properly performed by it pursuant to the agreement;

- (vi) whether the management agreement is assignable by the agent and what restrictions are imposed on assignability;
  - (vii) the right of the board of managers to cancel the agreement with or without cause.
- (2) If not described in detail in the footnotes to the budget, summarize all agreements that will be binding on the condominium, including the names of the contractor, the services rendered or received, the annual income or cost and the expiration date of the contract or lease.
- (3) Highlight as a special risk if any contract is binding on the condominium for more than five (5) years after the anticipated closing date, unless it is customary in the area to enter into a long-term contract for the service rendered, e.g., a cable television contract. Note whether the contract is with a business associate or affiliate of the sponsor or its principals.
- (4) Disclose the material terms of all leases with the condominium, including but not limited to the following:
- (i) The date and term of each lease, the space leased, the identity of the lessee and sublessee(s), if any, the rent and any additional rent payable thereunder, and the present and permitted use for the space.
  - (ii) Whether the present and future rent payable by the lessee is sufficient to cover the expenses fairly attributable to the leased space.
  - (iii) Highlight as a special risk if:
    - (a) any lease has a term exceeding ten 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

### 20.3(aa)

future. Describe the potential burden to the condominium of these risks. Disclose the basis for projecting the share of expenses attributable to the leased space, and estimate the income and expenses for the lease term.

- (iv) Explain the board of manager's rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting uses to those compatible with the residential character of the building, and barring offensive uses. State whether consent of the board of managers is required before the lessee can assign or sublet space, change the current uses, alter the structure, or perform work that may result in mechanics' liens.
- (v) When the lessee or sublessee is the sponsor, the selling agent or the managing agent; or is a principal of the sponsor, the selling agent or the managing agent; or is related to the sponsor, the selling agent, the managing agent; or any principal of the sponsor, the selling agent or the managing agent, by blood, marriage or adoption or as a business associate, an employee, a shareholder or a limited partner; the following provisions shall apply:
  - (a) The lease may not contain any unconscionable terms, including but not limited to any provisions pursuant to which the rent payable may be less than expenses fairly attributable to the leased space.
  - (b) The lease must contain escalator clauses which ensure that the rent payable by the lease for the term of the lease will be sufficient to cover the expenses fairly attributable to the leased space, such as expenses for real estate taxes, labor, insurance, heating and utilities.
  - (c) Any lease that comes within this Section 20.3(aa)(4)(v) must be noted in the transmittal letter to the Department of Law required by Section 20.2(c)(1).

(bb) *Identity of parties.*

- (1) State the names, business addresses, backgrounds and experience of sponsor, and principals of sponsor as defined in Section 20.1(c). If the sponsor is a contract vendee, the names and business addresses of the contract vendor and the principals of the present owner shall be provided. Any relationship between the owner of the property and the contract vendee shall also be disclosed. Describe:

**20.3(bb)**

- (i) any prior felony convictions of sponsor and/or any principals of sponsor; and

- (ii) any prior bankruptcies, convictions, injunctions and judgments against the sponsor, any principals of the sponsor, and/or entities in which principals of the sponsor were principals, that may be material to the offering plan or to an offering of securities generally and that occurred within the fifteen (15) years prior to the submission of the proposed offering plan.

Also state the above information for all individuals who own or control a ten percent (10%) or more equity interest in the sponsor.

- (2) List all properties offered for sale by sponsor, sponsor's principals, or any affiliates of sponsor or sponsor's principals, as cooperatives, condominiums, planned unit development homes, or time shares which were first offered within the past five years. Describe these properties by address and the year they were first filed. If the number of such properties or projects exceeds five (5) for the sponsor or a principal, the five (5) 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 ten percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal or holder of unsold shares is current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, and payments of underlying mortgages and loans for which shares or units have been pledged or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.
- (4) State the name and address of sponsor's attorney, and identify which attorney prepared the offering plan.
- (5) If there is or will be a managing agent or manager for the property, include the name, address and experience of the managing agent or manager and a representative list of other properties being managed by the managing agent or manager. If the managing agent or manager has no comparable experience, so state. Describe:
  - (i) any prior felony convictions of the managing agent or any principals of the managing agent; and

### **20.3(bb)**

- (ii) any prior convictions, injunctions and judgments against the managing agent or any principal of the managing agent that may be material to the offering plan or an offering of securities generally, that occurred within fifteen (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 fifteen (15) years prior to the submission of the proposed offering plan.
- (7) State the name, address and experience of the sponsor's professional engineer or registered architect.
- (8) State the relationship, if any, between the sponsor or its principals and (i) the selling agent, (ii) the managing agent, (iii) the engineer or architect, and (iv) any person or firm who will provide services to the condominium subsequent to the commencement of condominium operation.
- (9) If applicable, state that the Secretary of State has been designated to receive service of process for an out-of-state sponsor or selling agent or for any principals of the sponsor or of the selling agent who reside outside of New York.

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

- (1) a financial statement of the condominium prepared by a certified public accountant or public accountant by a specified date; such statement shall be certified while the sponsor is in control of the board of managers.
- (2) prior notice of the annual unit owners' meeting; and
- (3) a copy of the proposed annual budget of the condominium by a specified number of days prior to the date set for adoption thereof by the board of managers; while the sponsor is in control of the board of managers such budget shall be certified in compliance with Section 20.4(d) of this Part.

**20.3(cc)**

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

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

- (1) Disclose whether there are any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, sponsor's capacity to perform all of its obligations under the plan, the condominium or the operation of the condominium.
- (2) Disclose whether the property was the subject of any prior cooperative or condominium offerings. Disclose whether any preliminary binding agreements have been entered into or whether money has been collected from prospective purchasers. Disclose any market test pursuant to Cooperative Policy Statement No. 1.
- (3) Represent that the sponsor and its agents will not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status or other grounds prohibited by law.
- (4) Note purchasers' right to rescind purchase agreements following material adverse amendments; see Section 20.5(a)(5).
- (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.

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

- (1) If a sponsor is reserving the right to transfer air or developmental rights to other buildings or if the prior or current owner of the building or buildings previously has conveyed, transferred or reserved air or developmental rights for use in other buildings:
  - (i) Disclose that the building(s) undergoing construction or conversion cannot be expanded or may be limited;

### **20.3(ff)**

- (ii) Disclose the maximum amount of space or the maximum number of stories that may be added to adjoining properties from the sale of air rights from this property. State that additional space or stories may be added from the transfer of air rights from other properties.
- (2) A sponsor who is reserving the right to add to the existing building(s) must provide the following information:

- (i) A comprehensive narrative description of the additional space to be built in compliance with Section 20.7(bb).
  - (ii) Approved building plans and specifications must be obtained prior to acceptance for filing.
  - (iii) Schedule A, prices of units, must include all information required by Section 20.3(g) for the new, as well as for the existing, units if the new units will be part of the condominium.
  - (iv) Schedule B, Budget for First Year of Condominium Operation, must reflect expenses associated with the operation of the additional space to be newly constructed, including footnotes and supporting documentation required by Section 20.3(h). If construction will not be completed before the end of the first year of operation of the condominium, the budget may reflect the condominium as it was originally for the first year of operation but sponsor must also prepare a budget showing income and expense when the additional construction is completed. In no event will the foregoing relieve the sponsor from its obligation of paying common charges in compliance with law.
- (3) A sponsor who is reserving the right to add to the existing building(s) must submit a statement from a professional engineer or a registered architect concerning the impact of the renovation or additional construction on essential services. This must include:
- (i) the hours when construction will occur;
  - (ii) security to be furnished during construction period;
  - (iii) handling of construction debris;
  - (iv) insurance and liability during the construction period; and
  - (v) access to the building.

**20.3(ff)**

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

(gg) *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) If not included in the Description of Property and Building Condition, describe any rehabilitation to be completed by sponsor and the timetable for completion.
- (3) If not stated in the Description of Property and Building Condition, state whether the number of units offered is identical to the number of units stated in the Certificate of Occupancy, whether the proposed use of the units is the same as the use indicated in the Certificate of Occupancy and whether property interests that are offered, such as basement facilities, are provided for in the Certificate of Occupancy.
- (4) Note any official inspection reports reflecting upon condition of the premises, such as notices of building code violations, or any reports required by local law, including, if applicable, the report required by C26-105.3 of the Administrative Code of the City of New York, which shall be reproduced in Part II of the plan.
- (5) If applicable, disclose the existence and availability, at the offices of the sponsor and the selling agent, of any inspection reports by a professional engineer or a registered architect retained by a group or association of tenants. The Department of Law, in its discretion, may require such inspection report(s) to be reproduced in Part II of the offering plan. The reproduction of such reports shall be for informational purposes only, shall not be part of the sponsor's Description of Property and Building Condition, and shall not be deemed to be encompassed or covered by the respective certifications of (i) the sponsor and sponsor's principals, and (ii) the sponsor's professional engineer or registered architect.
- (6) Disclose the existence of any applicable federal, state or local laws concerning lead-based paint and whether the sponsor will comply with such laws and regulations promulgated thereunder.

## **20.3(gg)**

### **Section 20.4 Transmittal Letter and Certifications.**

- (a) *Transmittal letter.* A transmittal letter addressed to the Department of Law that is signed and affirmed by the individual attorney who prepared the offering plan, and containing the following unqualified statements must be submitted with the plan and Exhibits (i) at the time the plan is submitted for filing, and (ii) immediately prior to its acceptance for filing:

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

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

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

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

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

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

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

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

**20.4(b)**

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

or fictitious or pretended purchase or sale;

- (vi) not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) not contain any representation or statement which is false, where I/we:
  - (a) knew the truth;
  - (b) with reasonable effort could have known the truth;
  - (c) made no reasonable effort to ascertain the truth; or
  - (d) did not have knowledge concerning the representation or statement made.

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

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

## 20.4(c)

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

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

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

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

I/We certify that the Report (addendum):

- (i) sets forth in narrative form the description and/or physical condition of the entire property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;
- (ii) in my/our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;
- (iii) does not omit any material fact;
- (iv) does not contain any untrue statement of a material fact;

**20.4(c)**

- (v) does not contain any fraud, deception, concealment, or suppression;
- (vi) does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) does not contain any representation or statement which is false, where I/we:
  - (a) knew the truth;
  - (b) with reasonable effort could have known the truth;

- (c) made no reasonable effort to ascertain the truth; or
- (d) did not have knowledge concerning the representation or statement made.

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

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

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

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

#### **20.4(d)**

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

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

I/We certify that the Schedule(s):

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

**20.4(d)**

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

I/We understand that violations are subject to the civil and criminal penalties of the General Business Law and Penal Law."

- (e) *Certification by expert on adequacy of common charges payable by the commercial unit owner(s).* Include in Part II of the plan and in the Exhibits a certification subscribed and sworn to by an expert concerning the adequacy of common charges payable by the

commercial unit owner(s) in the following form. The certification must be dated within ninety (90) days prior to the date of the submission of the offering plan to the Department of Law. The expert's certification must be based on experience in the management of cooperatives or condominiums or rental properties, including buildings with commercial space, and must disclose the approximate number of properties managed and length of time managed together with other relevant real estate experience, qualifications and licenses.

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

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

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

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

#### **20.4(e)**

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

- (i) set forth in detail the projected common charges for the commercial unit(s) for the first year of condominium operation;
- (ii) afford potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the common charges payable by the owners of the commercial units(s);
- (iii) do not omit any material fact;
- (iv) do not contain any untrue statement of a material fact;

- (v) do not contain any fraud, deception, concealment, or suppression;
- (vi) do not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances;
- (vii) do not contain any representation or statement which is false, where I/we:
  - (a) knew the truth;
  - (b) with reasonable effort could have known the truth;
  - (c) made no reasonable effort to ascertain the truth; or
  - (d) did not have knowledge concerning the representation or statement made.

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

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

## 20.4(e)

### Section 20.5 Amendments.

- (a) *General.* Documents to supplement or amend an offering plan (collectively, "amendment(s)") shall be deemed part of the offering plan and shall meet the following requirements:
  - (1) If the offering plan does not comply with GBL Section 352-e(1)(b) or Section 20.1(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 Department of Law.



- (3) Except as provided in Section 20.5(d), an amendment to an offering plan shall be filed on the date indicated in the letter issued by the Department of Law stating that the amendment has been filed and not sooner.
- (4) Amendments that have been filed with the Department of Law 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 restated to incorporate the amendments into the body of the plan, and must be restated if required by the Department of Law.
- (5) If there is a material amendment to the offering plan that adversely affects the purchasers, sponsor must grant purchasers a right of rescission and a reasonable period of time that is not less than fifteen (15) days after the date of presentation to exercise the right. Sponsor must return any deposit or down payment to purchasers who rescind. Sponsor may condition return of deposit to interim lessees upon their vacating the apartment. Notwithstanding the provisions of Section 20.5(g)(3) of this Part, sponsor may return any deposit or down payment to purchasers who request rescission.
- (6) Amendments must be served on offerees in accordance with Section 20.1(d) of this Part, unless the Department of Law consents to service on a specified class or classes of offerees.
- (7) Amendments served on offerees must be dated on the date of the letter of the Department of Law accepting the amendment for filing. Proposed amendments shall be submitted undated.

## **20.5(a)**

- (8) Amendments filed by the Department of Law must be served in accordance with Section 20.1(d) of this Part by personal delivery or mailing no later than five days after receipt of the letter accepting the amendment for filing.
- (b) *Procedure for submission of amendments.* Amendments must be mailed to or submitted during business hours to the Real Estate Financing Bureau, Department of Law, 120 Broadway, 23rd Floor, New York, New York 10271. Include the following when submitting an amendment:
- (1) A transmittal letter, signed by the individual attorney who prepared the amendment, that:
    - (i) states the date the offering plan was filed and the Department of Law file number;

- (ii) identifies the subject amendment in numerical order;
  - (iii) states whether prior amendments have been submitted to but not yet filed by the Department of Law;
  - (iv) identifies, if possible, the attorney in the Department of Law who reviewed the most recent submission; and
  - (v) gives the current status of the offering plan:
    - (a) states whether or not the plan has been declared effective or the closing of the first unit has occurred; and
    - (b) states if there are any outstanding rescission periods.
  - (vi) notes if there is currently an investigation pending by the Department of Law of the sponsor, a principal of sponsor, or of the proposed condominium property.
- (2) Three (3) copies of the amendment to the offering plan.
  - (3) Check(s) (certified or uncertified) for filing fee(s) pursuant to GBL §352-e(7) payable to New York State Department of Law stapled or clipped to the transmittal letter.
  - (4) One (1) copy of the offering plan including all filed amendments.
  - (5) One (1) form CD-2, signed by the sponsor.

### **20.5(c)**

- (c) *Amendments extending the term of the offering plan.* Pursuant to Section 20.3(a)(5), the term of the initial offer is twelve (12) months commencing on the date indicated in the letter issued by the Department of Law stating that the plan is filed.

Prior to the closing of the first unit, an amendment other than a price change amendment extends the term of the offering for an additional six (6) month term, unless the term is shorter by the provisions of the amendment. After the filing of the amendment disclosing post-closing information, any subsequent amendment other than a price change amendment extends the term of the offering for an additional twelve (12) month term from the date of filing of the amendment. A price change amendment submitted pursuant to Section 20.5(d) does not extend the term of the offering. An amendment extending the term of the offer must be submitted before the end of the then current term if sales activity is continuing and must comply with the provisions of Section 20.5 and the requirements set forth below.

- (1) The amendment must disclose all material changes including, but not limited to,

material decreases or increases in common charges or individual expenses; an updated budget, if adopted by the board of managers and certified if the sponsor is still in control of the board; the most recent financial statement, certified if the sponsor is still in control of the board which shall be filed in an amendment within three (3) months of the end of recent fiscal year; and any lawsuits, administrative proceedings or other proceedings the outcome of which may materially affect the offering, the property, the rights of unit owners, sponsor's capacity to perform all of its obligations under the plan, the condominium or the operation of the condominium.

- (2) In addition, all amendments submitted after the closing of the first unit has occurred must state:
  - (i) the number and identification of unsold units remaining; and
  - (ii) the extent to which the sponsor controls the board of managers. 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.
- (3) In addition, for all offering plans in which the sponsor owns in the aggregate more than ten percent of the units, the amendment must disclose:
  - (i) the aggregate monthly common charge payments for units held by the sponsor;
  - (ii) the aggregate monthly real estate taxes payable for units held by the sponsor;

## **20.5(c)**

- (iii) the number of units owned by the sponsor which are occupied by tenants, if any, and the aggregate of the monthly rents currently payable from tenants of such units, or a reasonable approximation thereof;
- (iv) financial obligations to the condominium which will become due within twelve (12) months from the date of the amendment (other than payment of common charges) including, but not limited to, reserve and working capital fund payments and payments for repair and improvement obligations;
- (v) a list of all unsold units which are subject to mortgages or otherwise represent security for financing arrangements; the identity and address of the lender(s); the amount of the loan(s); the maturity date of the loan(s); and payment obligations under the loan(s), stated on a monthly basis where possible;

- (vi) the means by which any payments or obligations set forth pursuant to subparagraphs (i), (ii), (iv) and (v) above 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;
- (vii) a statement as to whether the sponsor is current on all financial obligations relating to the condominium, including, but not limited to, payment of common charges, taxes, reserve or working capital fund payments, assessments, and payments for repairs or improvements promised in the offering plan. In addition, state whether the sponsor is current on all payment obligations under mortgages or other financing arrangements relating to unsold units. If the sponsor is not current on its obligations, state the date and amount of each delinquency and discuss the effect of such delinquency on the condominium. Also state whether the sponsor was current on all such obligations (i.e., had satisfied the obligation by the expiration of any grace period) during the twelve (12) months prior to the filing of the amendment, and if not, state the details of any delinquency;
- (viii) a list of all other cooperatives, condominiums and homeowners associations, by the Department of Law file number and address, in which the sponsor, general partner or principal of the sponsor, as an individual or as general partner or principal of the sponsor or holder of unsold shares, owns more than ten percent of the shares or units. Disclose that offering plans for these buildings are on file with the Department of Law and are available for public inspection;

**20.5(c)**

- (ix) a statement as to whether the sponsor and all principals of the sponsor, as individuals, general partners or principals of the sponsor or holders of unsold shares, are current in all obligations set forth in subparagraph (vii) above in other cooperatives, condominiums or homeowners association in which they own more than ten 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 Sections 20.5(c)(3)(vii) or (ix) has existed for fifteen (15) days, or if there has been a material change in the financial position of the sponsor which may jeopardize its ability to meet its obligations to the condominium.

- (d) *Price change amendments.* An amendment proposing to change any offering price is subject to the requirements set forth below and must be consistent with Section 20.3(k).

- (1) Notwithstanding Section 20.5(a)(3), if the amendment is solely limited to price changes, and no prior amendment has been submitted to but not yet filed by the Department of Law, the amendment shall be deemed filed when submitted to the Department of Law.
- (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 Department of Law 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 CD-II as promulgated by the Department of Law.

(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 amendment must refer to the notice and the date of the notice, and must be submitted to the Department of Law within five (5) days of such notice. No closing shall occur until this amendment is accepted for filing by the Department of Law unless the condominium development consists of five or fewer units. It may then conform to Section 20.3(q)(2) of this Part.
- (2) The amendment shall state the percentage of units being offered for which sponsor has accepted purchase agreements from bona fide purchasers. Units of a primarily ancillary nature such as garage spaces, boat slips or cabanas, may not be counted toward effectiveness. Such units may be excluded from the base in calculating the percentage needed to become effective.

**20.5(e)**

- (3) Purchase agreements that are conditional on obtaining financing or a financing commitment may be counted for purposes of declaring the plan effective.
- (4) For the purpose of computing the percentage of bona fide purchasers of units for which purchase agreements have been executed, a fractional percentage shall be rounded off to the next lower whole number.
- (5) 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 Department of Law;
  - (ii) a representation that all purchasers who are counted for purposes of declaring the plan effective:
    - (a) are bona fide purchasers; and
    - (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 purchase agreements and have paid the down payment as required in the offering plan or an amendment thereto;
- (iii) a representation that there are no material changes to the budget for the first year's operation which have not been disclosed in a duly filed amendment to the offering plan;
- (iv) The following information with respect to any purchaser who is the sponsor, the selling agent, or the managing agent or is a principal of the sponsor, the selling agent, or the managing agent or who is related to the sponsor, the selling agent or the managing agent or to any principal of the sponsor, the selling agent or the managing agent by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner:
  - (a) the identity of the purchaser;
  - (b) the identity of the unit to be purchased;
  - (c) the nature of the relationship;
  - (d) **20.5(e)** a representation that no purchaser counted for purposes of declaring the plan effective is the sponsor, the selling agent or the managing agent, or is a principal of the sponsor, the selling agent, or the managing agent or is related to the sponsor, the selling agent or the managing agent or any principal of the sponsor, the selling agent or the managing agent by blood, marriage, or adoption, or as a business associate, an employee, a shareholder, or a limited partner. Such a purchaser, 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 Department of Law establishing that the purchaser is a bona fide purchaser.
- (v) a list of the units which are being counted to meet the minimum percentage that are needed under the terms of the plan to declare the plan effective. For each unit state the date of the purchase agreement.
- (6) In addition to the submissions required by Section 20.5(b), an amendment declaring a plan effective shall be accompanied by:

- (i) a copy of the notice and an affidavit of service of the notice on all purchasers if the plan was declared effective by notice; and
  - (ii) an affidavit of the sponsor stating the identity of the unit purchased; the purchase price; the date of the purchase 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 purchase agreement; and a list of the purchasers counted to meet the minimum percentage of units sold that are needed under the terms of the plan to declare the plan effective.
- (7) Sponsor must submit to the Department of Law, if requested, copies of purchase agreements and any related documents, including without limitation, any amendments to or modifications of purchase agreements and evidence of downpayments or other payments received, within five (5) business days after the request is made.
- (f) *Post-closing amendment.* This amendment extends the term of the offering for six months. Sponsor must amend the plan within forty-five (45) days following the closing of the first unit, to include the following information. These facts need not be presented in the same amendment.
- (1) The date and place of the title closing to the first unit.

**20.5(f)**

- (2) The date the temporary or permanent certificate of occupancy was issued. If the permanent certificate of occupancy has not yet been issued, indicate the projected time table when such certificate will be obtained and the amount of the security posted to guarantee sponsor's obligation to obtain the permanent certificate of occupancy.
- (3) The date of filing of the declaration and the date separate real estate tax assessments were made.
- (4) 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).
- (5) The amount of the working capital fund, if any, and the account into which the fund was 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.
- (6) A list of all the unsold units held by the sponsor.
- (7) The names of the members of the board of managers and their relationship to the sponsor, and the names and the business addresses of the president, secretary and

treasurer.

(8) The date of the first meeting of the unit owners.

(g) *Amendment abandoning the plan.*

(1) The amendment abandoning the plan must conform with representations disclosed in the offering plan concerning how and when a plan may be abandoned.

(2) If payments under purchase agreements have been received sponsor must disclose the amount of such funds and the manner and time when these funds will be returned to purchasers.

(3) Funds may be returned to purchasers together with interest earned, if any, only after the amendment abandoning the plan has been accepted for filing by the Department of Law.

(4) The transmittal letter for an amendment abandoning the plan must be accompanied by a completed copy of form RS-3 as promulgated by the Department of Law.

## 20.5(g)

### Section 20.6 Advertisements.

(a) Except as provided in subparagraph (b), 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.  
FILE NO. CD-\_\_\_\_\_.**

(b) Notwithstanding subparagraph (a), 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 subparagraph (a) at the end of the advertisement and separated from the body of the advertisement:

**SEE OFFERING PLAN FOR FULL TERMS. FILE  
NO. CD-\_\_\_\_\_.**



- (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 advertisements 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 demonstrably true.
- (f) Anticipated common or other carrying charges shall be preceded by the word "projected" or "estimated" or abbreviations of those terms. In estimating carrying charges, including real estate taxes and, if applicable, individual unit mortgages, there shall be no subtraction or representation of specific dollar saving because of anticipated tax deductions, unless all assumptions are disclosed.
- (g) Advertisements of amenities or services available at a fee charged in addition to the common charges 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.

## **20.6(g)**

- (h) An 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 (5) years.

## 20.6(i)

### **Section 20.7 Description of Property and Specifications or 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. For newly constructed buildings, the condition of all items is presumed to be new and need not be stated; if the condition is other than new, so state. For existing buildings, emphasis should be on present condition of premises including deficiencies probably unknown to commercial occupants, rather than the description of material make-up visually obvious. 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 Department of Law. The Department of Law may in its discretion require a further inspection and report. For existing buildings, 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;

**20.7(c)**

- (3) Streets owned or maintained by the project:
  - (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);
  - (v) State whether these items are in conformity with local fire district, town or municipal building codes.
- (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);

(v) State whether these items are in conformity with local fire district, town or municipal building codes.

(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 board of managers of the condominium. Indicate whether water, sewer (or septic tank), gas, electric and telephone are metered individually, collectively or by any other method of billing.

(e) *Sub-soil 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 so, 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 preventative action is appropriate.

**20.7(e)**

(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);
- (7) Retaining walls (type, location);
- (8) Display pools and fountains (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 sub-cellars and cellars;
  - (4) Number of floors (actual including penthouses);
  - (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, include the entire report 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.

**20.7(h)**

- (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.
  - (iii) Landmark status: State whether building has landmark status and discuss consequences.
- (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);
    - (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).

**20.7(h)**

(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.
- (ii) Drains:
  - (a) Location, material and type;

- (b) Gutters and leaders (type, material).
- (iii) Skylights (location, type, material).
- (iv) Bulkheads:
  - (a) Stairs (material);
  - (b) Elevator (material);
  - (c) Other.
- (v) Metal work at roof levels:
  - (a) Exterior, metal stairs (material);

## 20.7(h)

- (b) Vertical ladders, including gooseneck (material);
    - (c) Railings (material);
    - (d) Hatches to roof (type, material);
    - (e) Other.
  - (vi) Rooftop facilities.
- (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);

- (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);

**20.7(h)**

- (iii) Stair construction (steel, concrete, wood);
- (iv) Stringers (material);
- (v) Treads (material);
- (vi) Risers (material);
- (vii) Guard rails (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;
- (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;

## **20.7(h)**

- (ix) DC motor (manufacturer);
- (x) AC motor-generator set (manufacturer);
- (xi) Other.

### 13. Elevator cabs. Describe:

- (i) Kind (manufacturer);
- (ii) Floor (material);
- (iii) Walls (material);
- (iv) Ceiling (material);
- (v) Lighting;
- (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);

- (iii) Clothes dryers (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);

**20.7(i)**

- (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.

- (5) Sanitary sewage system. Describe, including:
  - (i) Sewage piping (materials);
  - (ii) Sewage pumps (if any);
  - (iii) Sewage disposal (public/private; treatment; drainfield; 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);

**20.7(j)**

- (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) 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 (if oil give type and grade; if gas give type and supply system);
- (8) Location of oil tank, materials, enclosure;
- (9) Capacity of oil tank.

- (l) *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:

**20.7(m)**

- (1) Type of system;
  - (2) Central system (manufacturer, model and capacity);
  - (3) Cooling towers, condensers (roof top, 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 (risers, etc.);
  - (3) Compartment switch gear (location and floor of sectional meter boards and transformers supplying power to the meter boards);
  - (4) Unit service (ratings of fuses and circuit breakers); adequacy of electrical system to handle modern usage and appliances such as air conditioners, dishwashers and dryers;
  - (5) Adequacy:
    - (i) Service - average number of circuits per apartment and capacity to handle modern appliances - specifically air conditioners, dishwashers and electric dryers;

- (ii) Lighting and fixtures;
  - (iii) Convenience outlets, appliance outlets.
- (p) *Intercommunication and/or door signal systems, security closed circuit TV.* Specify mode of operation and condition. Describe television reception facilities (master antennae, cable TV, antennae by tenants).
- (q) *Public area lighting.* Describe and state adequacy (entrances, halls and stairs, corridors, basements, courts and yards).

## **20.7(q)**

- (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 unattended);
  - (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.
- (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).

**20.7(t)**

- (2) Playgrounds. Describe location and size(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 of 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 of the number of rooms. 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) Presence, type and condition of all bathroom fixtures.
  - (3) 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.
    - (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.

<i>Room</i>	<i>Floor</i>	<i>Walls</i>	<i>Ceiling</i>	<i>Remarks</i>
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Describe all common rooms and spaces including but not limited to: sub-sub cellar, sub-cellar, basement, cellar, first floor, penthouse floor, public and service halls, corridors, lobbies.

**20.7(x)**

- (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 and Building Condition section of the plan:

- (1) A site plan showing landscape features, roads, the outside dimensions of the building(s) and designated common areas, including recreation and refuse disposal areas, and all privately owned access roads. The site plan may be omitted if the building covers the entire lot.
- (2) An area map showing the location of the condominium with respect to its surroundings, if the condominium is not located in a highly urban area.
- (3) Floor plan for each line or type of unit drawn to scale, indicating room dimensions and unit boundaries.
- (4) Floor to ceiling heights of units.
- (5) Approximate total area of each unit.
- (6) A master floor plan showing unit boundaries and the relationship of units to each other. The master floor plan may be omitted if the site plan clearly shows unit boundaries and appropriate unit designations.

- (aa) In the event that certain conditions in the building(s) cannot be adequately evaluated by a visual examination, the Department of Law may, in its discretion, direct that an independent engineer or testing laboratory be retained to perform such tests or monitoring as may be necessary in order to make adequate disclosure. Conditions which may require additional testing or monitoring include, but are not limited to: settlement, masonry cracks, rusting of structural steel, adequacy of concrete cover, firestopping, etc. Test results must be reported in the offering plan or in an amendment thereto.

- (bb) *Further development.* If the sponsor intends to add additional units to the building,

either above the existing roof, outside the existing building development, or by altering space within the building, it must make disclosure about the new units to conform to 13 NYCRR Section 20.7. In addition:

- (1) If additional units are to be added, sponsor must submit plans and specifications approved by all necessary local governmental agencies before the offering plan may be accepted for filing.
- (2) If additional units will be on top of an existing structure, state:

**20.7(bb)**

- (i) Whether the existing structure has sufficient capacity to support the additional load, and, if not, what steps are being taken to support the increased load.
  - (ii) What the resulting building height will be.
- (3) Describe the components which will be removed, relocated, or extended, *e.g.*, parapet, bulkheads, roof, tanks, elevators, service rooms, landscaping, etc.
- (4) Describe the effect the additional structure will have on existing systems and state the adequacy of all existing systems which will be affected by the addition, including heat and hot water, water pressure, sewage, elevators, electricity, air conditioning, parking and sprinklers.
- (5) Include a list of facilities that will be shared by the existing and new structures, *e.g.*, laundry room, intercom, garage, etc.
- (6) State the effect that the renovation or construction will have on tenants in occupancy. Specifically:
  - (i) The manner in which construction debris will be handled and its effect on common areas used by tenants.
  - (ii) The schedule for renovation and construction work, *e.g.*, Monday-Friday, 8:00 a.m. to 5:00 p.m., except holidays.
  - (iii) Any measures that will be taken to protect the security of the building during the construction or renovation process. Include a statement of the manner in which tenants and construction workers will gain access to the building.
  - (iv) Whether there will be any interruption of services during construction or renovation and, if so, provide details. This includes water, electricity, elevator service, and laundry rooms.



- (v) Whether new piping will be added to existing piping and whether such work may cause breaks in existing piping. If so, state whether precautions will be taken to minimize damage and state who will be responsible for any such damage.
- (vi) Whether the sponsor and/or contractors will have liability insurance in effect during construction.

## **20.7(bb)**

- (cc) *Asbestos.* State whether Asbestos Containing Material (ACM) is present in insulating or fireproofing material anywhere in the building. 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 (the "asbestos report"). Such asbestos report shall contain at least the following information:
  - (1) The qualifications of the person preparing the report.
  - (2) A detailed inventory of the asbestos in each unit and in all other areas of the property, including the location, amount of ACM, type and concentration of asbestos in ACM, and condition. At least 10% of all units must be inspected in an initial inspection. If ACM is found in any of these units, a second inspection, with notice to tenants, must be performed in all remaining accessible units. List units inspected.
  - (3) Recommendations for handling each and every item of the asbestos inventory, *i.e.*, removal, enclosure, encapsulation, or leaving undisturbed.
  - (4) How the recommendations should be implemented. Include, if applicable, whether units 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.
  - (5) A recommended protocol (operations and maintenance program) for the future handling and maintenance of asbestos which will remain in the building, whether encapsulated, enclosed or left undisturbed.
- (dd) *Lead-based paint.* Include records, reports, violations and any other information known or available to the sponsor or its agents concerning the presence of lead-based paint and/or lead-based paint hazards.

**20.7(dd)**

**PART 20**

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# **Part 20 of Title 13 NYCRR**

## **Regulations Governing**

**Newly Constructed, Vacant or**

**Non-Residential Condominiums**

**Effective July 31, 1991**

**As Amended Through June 1997**

**Attorney General Eliot Spitzer**

**New York State Department of Law  
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