

## PART 22

### NEWLY CONSTRUCTED, VACANT HOMEOWNERS ASSOCIATIONS OR NON-RESIDENTIAL PROPERTY OWNERS ASSOCIATIONS

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Section 22.1 General.

(a) Applicability. The offering statement or "offering plan" required by Section 352-e of the General Business Law (GBL) for membership in a homeowners association or other property owners association (HOA) that meets the requirements set forth below is subject to this Part, Newly Constructed, Vacant or Non-Residential Homeowners Associations. Residentially occupied HOAs are subject to the disclosure requirements concerning tenants' rights of Part 18 of this Title and the substantive disclosure requirements of this Part. Those offerings of memberships in an HOA which do not meet the requirements set forth below are subject to Part 17 of this Title if they are not subject to Part 20 or 21 of this Title. Offerings previously filed with the Department of State pursuant to article 9-A of the Real Property Law (RPL) are hereby exempted from the filing required by this Part.

(1) All homes or lots to be sold in conjunction with membership interests in the HOA are completely vacant of individuals residing in the homes or entitled to residential occupancy on the date of submission of the proposed offering plan to the Office of the Attorney General or the homes are to be newly constructed. In the case of a newly constructed out-of-state project, the homes may be partially occupied by out-of-state purchasers.

(2) The HOA and the homes or lots to be sold in conjunction with membership interests in the HOA are not organized as a timesharing arrangement.

(3) Members of the HOA will take title in fee simple to a home or lot sold in conjunction with membership interests in the HOA.

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(4) The units to be sold in conjunction with membership interests in the HOA are not part of a newly constructed, vacant or non-residential condominium (subject to Part 20 of this

Title) or a newly constructed, vacant or non-residential cooperative (subject to Part 21 of this Title).

(5) In the event that any major system, i.e., heating or electric, is so structured that one unit cannot function independently of any other unit, the provisions of the following sections of Part 20 of this Title shall apply in addition to the disclosure requirements contained in this Part unless an exemption pursuant to Section 22.1(i) has been requested and granted: section 20.2(c)(5) (exhibits required); section 20.3(a)(2) (cover to include total amount of offering based on aggregate price at which homes or lots are initially offered); section 20.3(d)(4) (pricing of homes); section 20.3(e) (description of property including description of individual homes); section 20.3(g) (Schedule A requirements concerning price and description of individual homes); section 20.3(h) (Schedule B requirements concerning budget); section 20.3(k) (changes in prices and homes); section 20.3(o) (procedure to purchase); section 20.3(q) (effectiveness provision); section 20.3(r) (terms of sale); section 20.3(s) (closing costs and adjustments); section 20.3(t) (sponsor's obligations with respect to individual homes); section 20.3(w)(6) (insurance coverage on individual homes); section 20.7 (description of the property, including description of individual homes). In making the disclosure required by these provisions of Part 20 of this Title, ignore any references to "condominium" or to article 9-B of the Real Property Law. Also include a representation that the offering prices set forth in Schedule A may be changed only 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 homes or home models, or is to be advertised, or is a price increase for an individual purchaser. Individually negotiated price decreases may be made without amendment to the plan. The transmittal letter and certifications required by section 22.4 of this Part must include a representation of compliance with the above sections.

(6) Conversions of residential rental developments to ownership of a home and membership in an HOA are subject

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to the substantive requirements of Part 18 of this Title as modified to be consistent with the disclosures required by this Part.

(b) Standard of compliance. An offering plan for an HOA 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;

(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 interests in an HOA and other cooperative interests in realty. "Sponsor"

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shall not be deemed to include a selling agent who has complied with Section 359-e of the General Business Law or an attorney or other expert retained by the sponsor solely to render professional advice or opinions in connection with the offering. "Sponsor" shall also be deemed to include offerors of at least three homes or lots which are not purchased for occupancy by the offeror or one or more members of his or her immediate family; such sponsor will be deemed, however, to be a sponsor only in relationship to the homes or lots which such offeror owns and offers for sale.

(2) Principal means each individual sponsor, each general partner of sponsor that is a partnership, each officer, director and shareholder of a corporate sponsor that is actively involved in the planning and consummation of the offering, and every other individual who both (i) owns an interest in or controls sponsor and (ii) actively participates in the planning and consummation of the offering, regardless of the form of organization of sponsor.

(3) Purchase agreement means any written agreement executed by both parties for the purchase of a home or lot associated with membership in an HOA or other cooperative interest in realty. 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.

(4) Presentation date means the date of completion of service, as defined in subdivision (d) of this section, of a copy of the plan or amendment filed with the Office of the Attorney General.

(5) 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 or by exemption granted pursuant to subdivision (i) of this section, any document required to be served by this Part shall be served on:

(i) commercial or professional tenants;

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(ii) purchasers who have executed and delivered purchase agreements to the sponsor or selling agent and whose purchase agreements are in effect;

(iii) members of the HOA;

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

(a) personal delivery; or

(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, at the alternative address. If sponsor has no information of the last 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 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 by section 22.3(w) of this Part. The completion of service shall be the latest date on which service upon all offerees is deemed or presumed complete.

(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 Office of the Attorney General, sponsor shall serve each commercial or professional tenant with a copy of the following notice:

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

"We have submitted to the Office of the Attorney General of the State of New York, Investment Protection Bureau - Real Estate Financing Section, a proposed offering plan for the conversion of (insert address and name of

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development, if any) to a commercial or professional homeowners or property owners association. The final offering plan has not yet been filed with professional homeowners or property owners the Office of the Attorney General. The law requires us to disclose all material information concerning the building and the conversion process in this proposed offering plan. A copy of the proposed offering plan is available for inspection and copying at a reasonable charge at the office of sponsor (or selling agent) located at (insert address of sponsor or selling agent) and the Office of the Attorney General. The law requires the Office of the Attorney General, within 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. No units may be sold or offered for sale and no purchase agreements may be executed unless and until the Office of the Attorney General files the final offering plan. A copy of the filed plan will then be served on each commercial or professional tenant. You may send written comments on the proposed offering plan to the Office of the Attorney General, Investment Protection Bureau - Real Estate Financing Section, 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 Office of the Attorney General within three business days following completion of service on all commercial or professional tenants.

(f) Time of review. After submission of the proposed offering plan, the Office of the Attorney General shall issue a letter to the sponsor or sponsor's attorney stating that the plan is filed, or indicating deficiencies. The Office of the Attorney General shall issue such a letter

for an offering plan no later than 30 days after its submission. The Office of the Attorney General may issue a deficiency letter whenever it appears that the proposed offering plan is deficient in one or more respects. The Office of the Attorney General may, in its discretion, deem an offering plan not submitted if the proposed offering plan

and exhibits are incomplete and therefore do not meet the requirements of section 22.2 of this Part, 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 General Business Law.

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(h) Waiver. In the interests of justice, the Office of the Attorney General may waive compliance with any provision of these regulations and can permit variation 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 final court order.

(i) Exemptions. Upon written application of the sponsor, or sponsor's attorney, the Office of the Attorney General, 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 General Business Law 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 for which the exemption is sought and the grounds for the exemption; and

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

The transmittal letter and certifications required by section 22.4 of this Part shall be in the form required by this Part, without modification, and shall be based on the assumption that any exemption sought pursuant to this section has been granted. In the event that the Office of the Attorney General denies the application for exemption, the Office of the Attorney General may issue a deficiency letter as provided in subdivision (f) of this section. No additional fee is required for an exemption application.

(j) Out-of-state homeowners associations. A sponsor of an HOA 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 membership interests in an HOA must file an offering plan with the Office of the Attorney General. To comply with this requirement, the sponsor may file a complete offering plan drafted in accordance with New York law and this Part. In the alternative, the Office of the Attorney General may, in its discretion, allow the sponsor to file the offering plan approved by or filed with the State or jurisdiction in which the HOA is located or a property report filed by the Department of Housing and Urban Development under the Interstate Land Sales Full Disclosure Act (15 USC section 1702) and an addendum with such additional information as is required by the Office of the Attorney General. Sponsor must represent that the plan complies with all applicable local laws.

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(k) Exemption from General Business Law section 359-e. An HOA whose membership interests or other securities are to be sold pursuant to an offering plan filed with the Office of the Attorney General is deemed exempted from the registration requirements of General Business Law section 359-e, provided that all offering activities are engaged in exclusively by persons duly registered under the filing requirements of General Business Law section 359-e.

(l) Effectiveness of regulations. The effective date of these regulations is the date of filing with the Secretary of State. As of such date:

(1) This Part is effective immediately for offering plans that meet the requirements of subdivision (a) of this Part.

(2) Section 22.5 of this Part is effective for amendments to plans submitted after the effective date of these regulations that meet the requirements of subdivision (a) of this section, regardless of when such plans were filed.

(3) Section 22.6 of this Part is effective for advertisements appearing on or after the effective date of these regulations, for offering plans that meet the requirements of subdivision (a) of this section, regardless of when such plans were filed.

(m) 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 Office of the Attorney General and on all commercial or professional tenants, if any, in the manner specified by paragraph (d)(1) of this section.

(2) The offering plan may be abandoned after filing if there are no outstanding purchase agreements. The sponsor need not submit an amendment but shall submit a form RS-3 to the Office of the Attorney General and serve it simultaneously on any commercial or professional tenants, in the manner specified by paragraph (d)(1) of this section. The plan may not be abandoned if sponsor has entered into purchase agreements, unless the plan provides for an escape clause or an effectiveness contingency which is highlighted as a special risk. In such case, the provisions of section 20.1(1)(2) of this Title apply, if the plan has not become effective.

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(3) If the offering plan is finally rejected by the Office of the Attorney General and there is no outstanding right to cure defects, the sponsor shall promptly serve notice of such rejection on any commercial or professional tenants in the manner specified by paragraph (d)(1) of this section.

(n) Disclaimers. The requirements set forth in section 22.3 of this Part apply to the offering plan generally and shall not be negated or contradicted by inconsistent provisions in other portions of the offering plan, or by provisions purporting to discharge liability or to terminate the continuing effect of representations in the offering plan upon an event such as the closing or the delivery of 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.

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22.2 Procedure for Submission.

(a) The proposed offering plan and the exhibits described below shall be submitted to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, 120 Broadway, 23rd Floor, New York, New York 10271.

(b) The exhibits shall accompany the proposed offering plan submitted to the Office of the Attorney General and shall be subject to the sanctions of Article 23-A of the General Business Law. 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 Office of the Attorney General that is signed and affirmed by the individual attorney who prepared the plan containing the statements required by section 22.4(a) of this Part without qualification or alteration in substance. As specified in paragraph (6) of this subdivision, the transmittal letter must expressly indicate any exhibit that is not included and set forth the reasons for the omission and list any documents submitted as exhibit B-24. Exemption applications submitted pursuant to section 22.1(i) of this Part must be annexed to and submitted with the transmittal letter. Omissions and additions to the table of contents must be noted and explained. Indicate if provisions of Part 20 of this Title pursuant to section 22.1(a)(5) of this Part are applicable to this offering. 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 22.3(i) of this Part the transmittal letter must note any commercial units and whether they are being offered for sale. Pursuant to section 22.3(l) of this Part the transmittal letter must note financing offered to purchasers which contains any unusual risks. Pursuant to section 22.1(j) of this Part the transmittal letter must note if it is an out-of-state plan. The transmittal letter must also note if sponsor is aware of any investigation currently pending by the Office of the Attorney General of the sponsor, a principal of the sponsor or of the property to be constructed or to be converted to HOA ownership.

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(2) Checks (certified or uncertified) for filing fees under General Business Law section 352-e(7)(a) payable to "New York State Office of the Attorney General", and stapled or clipped to the transmittal letter. The filing fee is based on the total value of the fully improved common property to be owned and maintained by the HOA. Such value will not include the effect of the filing of the declaration of covenants, restrictions, easements and liens against the property. Such valuation may be based upon construction costs or an expert's appraisal. If no property is to be owned by the association or is of minimal value, the filing fee will be the minimum fee specified in General Business Law section 352-e(7)(a). If additional phases increase the value of the common area, such additional fee associated with the increase in value must be paid when an amendment disclosing the additional phase is filed. 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. The other check will be returned if the Office of the Attorney General issues a final deficiency letter.

(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 General Business Law section 359-e(5) attached; and

(ii) R-1 forms, submitted as Exhibit D-3.

(4) Three copies of a typed or printed, bound offering plan. Loose leaf binders and rings are not acceptable.

(5) A questionnaire in a form prescribed by the Office of the Attorney General, completed and signed by the individual attorney who prepared the offering plan.

(6) Two 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 address of the HOA and the name, address and telephone number of the attorney who prepared the plan. One of the binders must be marked "Orig" and contain the original documents required below. Each binder must contain an index of the documents. The transmittal letter required by paragraph (1) of this subdivision must note the omission of any exhibit and the reason for the omission.

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(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)(A-1) Certification by the sponsor and the sponsor's principals signed by "sponsor" and "principals" as defined in section 22.1(c) of this Part (Orig); see section 22.4(b) of this Part.

(b)(A-2) If the HOA includes any common property other than (1) unimproved land, (2) landscaped areas, playgrounds, park areas or picnic areas, (3) roads constructed in accordance with local government specifications for public roads, or (4) sewers and/or water lines constructed in accordance with local government specifications, a certification by sponsor's engineer or architect concerning the description of the common property in Part II of the plan and at Exhibit C-2 (Orig); see section 22.4(c) of this Part.

(c)(A-3) Certification by expert on adequacy of budget for the first year of HOA operation (Orig); see section 22.4(d) of this Part.

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

(a)(B-1) Title company report including a report on housing or building code violations of record, if applicable, for HOA property dated or updated within 30 days of submission.

(b)(B-2) If applicable, projection from a qualified expert or local supplier of the consumption, rate and total cost for furnishing heat, hot water, electricity and other utilities to HOA property.

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(c)(B-3) Proposed management agreement.

(d)(B-4) Copies of any contracts which (1) will be binding on the Board of Directors of the HOA for \$2,500 or more per year, (2) have a term in excess of two years, or (3) are with the sponsor, a business associate or affiliate of the sponsor or a principal of the sponsor.

(e)(B-5) Copy of certificate of incorporation and receipt from Secretary of State for the HOA, if available. If the association will not be incorporated until just prior to the first closing, the receipt should be submitted to the Office of the Attorney General before any closing occurs.

(f)(B-6) If applicable, copy of a letter from an insurance company or its authorized agent, stating proposed insurance coverage and amounts and the annual premium or premiums.

(g)(B-7) If HOA property includes any buildings, 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 (1) so that the insured shall not be a co-insurer if the policy contains a co-insurance provision, or (2) 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. If there is mandatory common fire and casualty insurance coverage

required by the declaration or by the by-laws for the homes of the members of the HOA, a similar opinion regarding the adequacy of such coverage.

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(h)(B-8) Copy of a fee quotation from a certified public accountant for preparing the yearly financial statements for the HOA.

(i)(B-9) Copy of section 352-a and 352-b Designation of Secretary of State as agent for service of process (applicable only to out-of-state issuers, sponsors, principals and/or selling agents), and filing receipt.

(j)(B-10) Copy of an estimate by the local tax assessor of the assessed valuation of HOA property as fully improved in accordance with the terms of the offering plan. If not available, substitute an estimate by a real estate broker, appraiser, attorney, or other professional familiar with the tax assessment practices in the locality in which the property is located. Alternatively, an opinion by the local tax assessor or a legal opinion by sponsor's counsel that the HOA property as fully improved in accordance with the terms of the offering plan will be assessed at an amount not greater than a nominal value and that any value of the HOA property above a nominal value will be reflected in the assessed valuation of individual homes or lots. In any event, the projected tax must be reflected in the estimated budget for the first year of HOA operation.

(k)(B-11) For HOAs located outside of New York State, copy of the statutes and regulations concerning the registration and formation of HOAs, if any, and evidence of compliance with those laws or regulations.

(l)(B-12) Copy of sponsor's or present owner's recorded deed to the HOA property or a copy of the contract of sale between the owner and sponsor if sponsor is the contract vendee.

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(m)(B-13) Copy of any contract between the sponsor and the HOA and a copy of the proposed deed of HOA property from sponsor to the HOA.

(n)(B-14) Copy of the form of promissory note and mortgage required by sponsor or lender if the sponsor offers or procures any type of financing together with any other document which significantly affects a purchaser's obligations for financing offered or procured by sponsor.

(o)(B-15) Copy of any mortgage financing commitment letter pertaining to end loans or to building construction loans, and amendments or extensions of the commitment letter.

(p)(B-16) For rehabilitated projects, an affidavit by sponsor stating how the premises became vacant, that there was no harassment, and whether any units were vacated pursuant to vacate orders. If so, provide copy of vacate orders.

(q)(B-17) An affidavit by sponsor stating that no money has been taken during any market test pursuant to Cooperative Policy Statement Number 1, if applicable.

(r)(B-18) Copies of all existing and proposed professional and commercial leases and subleases, and concession agreements affecting HOA property.

(s)(B-19) Rent-roll certified by sponsor, managing agent or current owner as of a date that is within 60 days prior to submission, including the name of each commercial or professional tenant, unit number, rent, term, and termination date of lease (Orig).

(t)(B-20) An appraisal by a licensed real estate broker or licensed appraiser in the area where the property is located of the fully improved HOA property to be owned and maintained by the HOA without regard to

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the effect of the filing of the declaration of covenants, restrictions, easements and liens on the property (Orig).

(u)(B-21) Copy of the escrow agreement between the sponsor and the attorney(s) acting as escrow agent. If the model form is used, so indicate. Copy of bank forms to be used to open the account.

(v)(B-22) If applicable, copy of surety bonds or letter of credit used to secure down payments and any underlying agreement or related agreement, and any undertaking.

(w)(B-23) Documentation associated with each identified footnote to the budget.

(x)(B-24) Other material documents, each of which should be described in the transmittal letter.

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

(a)(C-1) If the HOA includes any property other than (1) unimproved land, (2) landscaped areas, playgrounds, park areas or picnic areas, (3) roads constructed in accordance with local government specifications for public roads, or (4) sewers and/or water lines constructed in accordance with local government specifications, an architect's or engineer's detailed description of the HOA property and building condition with the architect's or engineer's seal and original signature. The description must be dated within 90 days of submission to the Office of the Attorney General and conform to the requirements of section 22.7 of this Part; see Exhibit A-2. The Office of the Attorney General may in its discretion require a further inspection and report.

(b)(C-2) Asbestos report for existing HOA buildings, except in the case of newly constructed buildings, dated within 90 days of submission to the Department of

22.2(c)

Law. The report must conform to the requirements of section 22.7(v) of this Part.

(c)(C-3) If HOA property includes any buildings, 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 HOA is identical to the original use of the buildings. If no certificate of occupancy has yet been issued, so indicate and forward a copy of such certificate to the Office of the Attorney General when issued.

(d)(C-4) Copy of approved building plans for HOA property, if available, or if required by local law, any specifications required by governmental agencies having jurisdiction and copies of all required construction permits and use permits, e.g., swimming pool permit, air resources permit.

(e)(C-5) Evidence of compliance with local zoning laws and regulations, e.g., a building permit.

(f)(C-6) Copy of engineer's or architect's drawing of site plan and improvements. A survey of the site may be substituted for this item provided it clearly indicates all buildings, parking areas or other improvements. This exhibit must be easily readable and must distinguish common property from individual lots.

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

(a)(D-1) Signed M-10 form, broker-dealer statement, for the selling agent (Orig), and signed M-2 form(s), salesperson statement(s), for all individual employees who act as salespersons (Orig). Forms do not have to

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be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior offerings and a copy of the form is submitted as Exhibit D-1.

(b)(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 General Business Law section 359-e (Orig). Forms do not have to be submitted if currently valid registration forms are on file with the Office of the Attorney General from prior offerings and a copy of the form is submitted as Exhibit D-2.

(c)(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)(D-4) Sponsor's affidavit that sponsor's net worth is or will be sufficient to meet the requirements of General Business Law section 352-k and all of the unsecured obligations sponsor assumes in the offering plan including sponsor's obligations for maintenance on unsold lots or homes (Orig). If the facts sworn to in this affidavit change, sponsor shall immediately amend such affidavit and submit the amended affidavit to the Office of the Attorney General.

(e)(D-5) An affidavit from sponsor and principals of sponsor, as defined in section 22.1(c) of this Part, stating whether sponsor and/or 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 are pending or were initially offered

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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 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 or HOAs (Orig).

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

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

(1) Checks (certified or uncertified) for the balance of the filing fees, if any, pursuant to General Business Law section 352-e(7)(a) and by separate check any additional filing fees pursuant to General Business Law Section 359-e(5), payable to "New York State Office of the Attorney General".

(2) Four copies of the typed or printed, bound offering plan, with the filing date left blank. The actual filing date shall be the date of the letter from the Office of the Attorney General accepting the plan for filing. All offering plans must be dated before being presented to offerees.

(3) A new attorney transmittal letter; see section 22.4(a) of this Part. The letter may indicate that exhibits have previously been supplied.

(4) If required by the Office of the Attorney General:

(i) a new certification by sponsor and sponsor's principals; see section 22.4(b) of this Part;

(ii) a new certification by sponsor's engineer or architect; see section 22.4(c) of this Part; and

(iii) a new certification by sponsor's expert on the adequacy of the budget; see section 22.4(d) of this Part.

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

(f) If applicable, the sponsor shall submit an affidavit of service of the plan and notice on the commercial or professional tenants within five days of such service.

22.2(f)

### Section 22.3 Format and Content.

Plans subject to this Part must comply with the format and minimum disclosure requirements set forth herein in addition to the requirements of provisions of article 23-A of the General Business Law and, if applicable, the laws governing corporations which affect the creation and operation of the HOA in the State of incorporation of the HOA.

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

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

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

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

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

(5) The statement: "Date of Acceptance for Filing: \_\_\_\_\_," which shall be the date the Office of the Attorney General files the plan. The term of the initial offer is

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12 months from the date of the letter from the Office of the Attorney General 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 Office of the Attorney General and (ii) when the final plan is submitted to the Office of the Attorney General.

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

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

**THIS OFFERING PLAN IS THE ENTIRE OFFER TO SELL MEMBERSHIP INTERESTS IN THE HOMEOWNERS (OR PROPERTY OWNERS) ASSOCIATION. NEW YORK LAW REQUIRES THE SPONSOR TO DISCLOSE ALL MATERIAL INFORMATION IN THIS PLAN AND TO FILE THIS PLAN WITH THE NEW YORK STATE Office of the Attorney General PRIOR TO SELLING OR OFFERING TO SELL ANY MEMBERSHIP INTERESTS. FILING WITH THE Office of the Attorney General DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**

(b) First page. The first page of the offering plan preceding the table of contents shall contain exclusively the following notice in bold type:

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

**PLEASE READ IT CAREFULLY.**

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



YOUR OBLIGATIONS AS A LOT OWNER ARE INCLUDED IN THIS PLAN. THIS PLAN IS PREPARED AND ISSUED BY THE SPONSOR OF THIS SUBDIVISION. IT HAS BEEN FILED WITH THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, Office of the Attorney General, Investment Protection Bureau - Real Estate Financing Section, 120 BROADWAY, NEW YORK, NEW YORK 10271.

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(c) Table of contents. The format and order set forth below must be followed in the table of contents. Include headings for the subjects not marked with an asterisk. In addition, a limited number of headings may be added to the plan. Headings for subjects that are marked with an asterisk may be omitted if the subject matter is not applicable to the offering. Omissions, other than headings marked with an asterisk in the table of contents, and additions, should be expressly noted and explained in the transmittal letter. Documentation listed in Part II of the table of contents shall be included in full in Part II of the plan. The texts of such documents which will be binding on the sponsor or the board of directors, such as the purchase agreement or contract of sale, the deed to the lot, the declaration of covenants, restrictions, easements and liens, and the by-laws of the HOA shall be consistent with the disclosures in the plan and shall conform to the requirements of this section.

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

(e) Introduction. The introduction must:

(1) Explain that the purpose of the offering plan is to set forth all the material terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Office of the Attorney General. State that amendments will be served on all offerees as defined in section 22.1(d) of this Part.

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

(3) Briefly describe the location and size of the development; specify the extent and nature of the HOA property and the type of interest that the HOA is to acquire in the property. Distinguish between property owned or to be owned exclusively by purchasers, HOA property, and property dedicated or to be dedicated to the local government.

(4) Summarize the number and type of homes or lots being offered in this offering plan in conjunction with membership interests in the HOA. If applicable, include the minimum number and the maximum number of homes or lots that may be part of the

HOA and the number of possible phases to be offered in the HOA. State the number and types of homes that have been built or may be built in conjunction with related offering plans or in related sections or phases of the HOA. Briefly describe any common parking or recreational facilities. State the maximum capacity use for each recreational facility at any given time.

(5) Briefly summarize the functions or purposes of the HOA and describe the maintenance of any facilities. State that when an owner sells a home or lot, the purchaser automatically becomes a member of the HOA.

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(6) State that the price of the homes or lots includes the cost of membership in the HOA and that prices are set by the sponsor alone and are not subject to review or approval by the Office of the Attorney General or any other government agency.

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

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

(9) If sponsor or any principal of sponsor owns, in whole or in part, or has an option or right to acquire in whole or in part, any adjoining areas which are not fully developed, disclose such facts and the present intention of sponsor and principals with respect to the development of such areas.

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

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

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

**THE PURCHASE OF A HOME ASSOCIATED WITH MANDATORY MEMBERSHIP IN A HOMEOWNERS ASSOCIATION HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES AND MAY BE ONE OF THE MOST IMPORTANT FINANCIAL TRANSACTIONS OF YOUR LIFE. THE ATTORNEY**

GENERAL STRONGLY URGES YOU TO READ THIS OFFERING PLAN CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A CONTRACT OF SALE.

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

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

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

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

(3) In newly constructed projects, state the approximate construction timetable for completion of the first home, the remaining homes, related sections of the HOA, recreational facilities and amenities.

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

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

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(1) The budget shall be based upon a specified (12) month period to commence on the date when it can reasonably be projected that the first closing will occur. If the actual or anticipated date of commencement of HOA operation is to be delayed more than six months from the budget year projected in the offering plan, the plan must be amended to include a revised budget disclosing current projections. State that if such amended projections exceed the original projections by 25 percent or more, the sponsor will offer all purchasers the right to rescind and a reasonable period of time that is not less than 15 days after the date of presentation to exercise the right, whether or not sponsor offers to guarantee the previous budget projection. Sponsor must return any deposit or downpayment within a reasonable period of time to purchasers who rescind.

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

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

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

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

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

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#### SCHEDULE A

Budget For First Year Of HOA Operation

Beginning \_\_\_\_\_ 1, 19\_\_\_\_\_

Projected Income

Maintenance charges

(\$ \_\_\_\_\_ per home per year  
payable monthly/annually  
based on \_\_\_\_\_ homes) ..... \$ \_\_\_\_\_

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

TOTAL..... \$ \_\_\_\_\_

Projected Expenses

\* Labor..... \$ \_\_\_\_\_

\* Heating..... \$ \_\_\_\_\_

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

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

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

\* Road Maintenance..... \$ \_\_\_\_\_

\* Service Contracts..... \$ \_\_\_\_\_

\* Snow Removal..... \$ \_\_\_\_\_

\* Refuse Removal..... \$ \_\_\_\_\_

\* Insurance..... \$ \_\_\_\_\_

\* Management Fees..... \$ \_\_\_\_\_

Legal Fees..... \$ \_\_\_\_\_

Accounting Fees..... \$ \_\_\_\_\_

Taxes..... \$ \_\_\_\_\_

\* Real Estate..... \$ \_\_\_\_\_

\* Franchise and Corporate..... \$ \_\_\_\_\_

\* Income..... \$ \_\_\_\_\_

\* Sales..... \$ \_\_\_\_\_

\* Reserve..... \$ \_\_\_\_\_

\* Other..... \$ \_\_\_\_\_

TOTAL..... \$ \_\_\_\_\_

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(7) Detailed numbered footnotes and documentation associated with each identified footnote in the form of contracts, quotations or letters from appropriate parties included as Exhibit B-23 must support and explain the projected amounts in Schedule A. The

footnotes must set forth the basis of assumptions for each projection and also state the service provided for such budgeted figures. Include the following information if the expense item is applicable to the HOA.

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

(ii) Heating, cooling, and hot water costs. State the type and quantity of energy projected to be used during the year and the projected cost per gallon or other pricing unit inclusive of sales tax for all energy costs for providing heat, air conditioning, and hot water to the HOA property. State the basis for projecting the quantity of energy to be used. In the case of an occupied non-residential development, unless it would be misleading for a particular development, base the projected quantity of energy on the average quantity of energy purchased for the prior three years. State the quantity of energy purchased in each of the three prior years, the average cost per

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gallon or other pricing unit and the total cost per year. The Office of the Attorney General may, from time to time, issue pricing guidelines to reflect minimum fuel costs.

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

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



(v) Repairs, maintenance and supplies. Itemize the material components of the expense for repairs and maintenance that are the responsibility of the HOA such as interior repairs, roofing, exterminating, gardening, landscaping, janitor supplies, painting, and other service and maintenance items not included under "service contracts", "road maintenance", "snow removal", "refuse removal" or "other". State whether sponsor has procured or arranged actual contracts for the services described. Base the cost of the services on actual estimates, and state such basis in the footnote. In the case of an occupied non-residential development, if the total budgeted amount is less than 80 percent of the maintenance expense indicated in the prior two years of certified financial statements, disclose and explain the reason for the projected decrease in expenses.

(vi) Road maintenance. If applicable, describe the services provided and the cost associated with maintaining the roads, including reserves set aside

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for repair and replacement. State the basis of the cost and indicate whether sponsor has procured or arranged actual contracts for the services described.

(vii) Service contracts. State the name of the contractor, the service, the annual cost and the expiration date of the contract. Highlight as a special risk any contract with an expiration date more than 5 years after the anticipated first closing unless it is customary in the area to enter into a long-term contract for the service rendered (e.g., cable television contract).

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

(ix) Insurance. If HOA property includes buildings or if the HOA is providing common fire insurance on homes, the budget for insurance must provide for fire and casualty insurance under an agreed amount replacement cost policy or under a policy including at least an 80 percent co-insurance provision so that the insured shall not be a co-insurer. Discuss the adequacy of the insurance to replace the structure in the event of total loss and to avoid being a co-insurer in the event of partial loss. If the homes of the HOA members are attached and common fire insurance coverage is not required, highlight as a special risk the consequences which could result if an uninsured or underinsured unit is damaged or destroyed by fire or other casualty. (Note: If common fire and casualty insurance is mandatory, provision should be made in the declaration or by-laws to require mortgage holders to waive their customary right to apply insurance proceeds to the mortgage indebtedness.) Disclose the items covered, the coverage amount limits, the deductibles and the exposure insured against.

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

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

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

(1) that each homeowner is an additional insured party if casualty insurance covers the individual homes;

(2) that there will be no cancellation without notice to the board of directors;

(3) a waiver of subrogation;

(4) a waiver of invalidity because of the acts of the insured and homeowners; and

(5) a waiver of pro-rata reduction if homeowners obtain additional coverage.

(d) If the following items are not included in the budget and are applicable to the offering, state that coverage for them is not included and may

be available at extra cost: officers' and directors' liability; rent insurance; water damage; elevator collision; boiler and machinery; excess liability; auto liability; fidelity bond; and garage keeper's liability.

(e) The plan must alert homeowners to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to contents of the home, and liability coverage for occurrences within the home.

(x) Management Fees. State the basis for the projected management fee. The projected cost must include any costs required by the terms of the management agreement, such as bonding. Highlight as a special risk if the cost of the management contract is greater or substantially less than the prevailing

cost for similar services, and state the prevailing cost which would be charged for these services. If no manager or management contract is provided for in the budget, highlight as a special risk, state

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the services that homeowners will have to provide and disclose that maintenance charges will increase if the HOA retains a managing agent in the future.

(xi) Legal fees and audit fees. If the budgeted amount for legal fees is less than \$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 HOA.

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

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

(xiv) Reserve. Some HOAs will be responsible for replacing roofs, repainting unit exteriors, resurfacing parking areas and roadways. These items will require special assessments unless reserves are built into the annual budget taking into account the life of the items. A reserve should be set aside for this purpose, or the probability of incurring substantial special assessments in the future indicating the replacement cost of the items should be highlighted

as a special risk. The footnote must indicate the expected life of the item, the projected replacement cost and the calculation of the amounts to be placed in reserve each year.

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

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

(h) Accountant's certified statements of operation. In the case of an occupied non-residential premises or an operating HOA located out-of-state, include certified statements of income and expense, prepared on an annual basis, for the two most recent

fiscal years of operation prepared by an independent certified public accountant. No report need be filed for a fiscal year which ends less than three months prior to the date the proposed offering plan is submitted to the Office of the Attorney General. If the development has been in operation for less than two years, include a statement for the period since the development began operations. If, after the plan is filed but before it is declared effective, a more recent fiscal year has ended and the sponsor has had three months after that to prepare a certified statement, sponsor must amend the plan to include the certified statement for the more recent fiscal year.

(1) The accountant's certification must:

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

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

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

firm.

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

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

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

(j) Interim leases.

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

(2) State whether an uncured default under the purchase agreement is a default under the lease and whether an uncured default under the lease is a default under the purchase agreement.

If an uncured default under the lease can result in a default under the purchase agreement, state that before the sponsor may utilize the default under the lease to declare a default under the purchase agreement, the sponsor must either obtain an order of eviction or other judgment or order from a court or agency of competent jurisdiction against the lessee unless the lessee has vacated the unit.

(3) State the length of time the interim lessee has to vacate the unit after a default under the purchase agreement or rescission of the purchase agreement by the lessee.

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

(1) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of General Business

### 22.3(k)

Law sections 352-e(2-b) and 352-h and these regulations, and all funds paid by purchasers shall be handled in accordance with these statutes and regulations.

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

(i) The account. All deposits, downpayments, or advances made by purchasers prior to closing of each individual transaction must be placed within five business days after the agreement is signed by all necessary parties, in an attorney's segregated special escrow account 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, where applicable, 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 accounts or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a sub-account for each purchaser is acceptable. The name of the account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of the account. Funds from this account may be released only by signature of the attorney who is named as escrow agent. Neither the sponsor nor any principal of the sponsor may be a signatory on the account. Funds must be placed in an interest-bearing account, with all interest credited to the purchaser, unless either the purchaser defaults and the plan is consummated, or the sponsor elects to place the funds in a separate Interest-On-Lawyer's-Account (IOLA) for each offering plan pursuant to Judiciary Law Section 497. The plan shall indicate whether the interest rate to be earned will be the prevailing rate for such accounts. State the current prevailing rate and when interest will begin to accrue. No fees

of any kind may be deducted from the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of the account.

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(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 Office of the Attorney General; if such form is not used the attorney's transmittal letter should so indicate. If a different form of escrow agreement is used, all material terms of the Office of the Attorney General's model must be included in the agreement, and the agreement should be red-lined to indicate changes from or additions to the model form.

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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 Office of the Attorney General approves in writing the use of such alternate form of security, pursuant to the provisions of paragraph (4) of this subdivision et seq.

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

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

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

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

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

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

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

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

(2) all purchasers after an amendment abandoning the plan is accepted for filing by the Office of the Attorney General.

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

these regulations and has so notified the escrow agent in accordance with such provisions.

(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 Office of the Attorney General. A copy of such form shall be annexed as an exhibit in Part II of the plan. The party applying shall contemporaneously send to all other parties a copy of such application.

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

(c) If the application permitting release of funds is granted, the deposit and any interest earned thereon shall be disposed of in

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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 Office of the Attorney General, by either making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

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

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

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

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

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



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

(x) Records on file. The escrow agent shall maintain all records concerning 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

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shall make appropriate arrangements for the maintenance of these records by one of them or by the successor firm and shall notify the Office of the Attorney General of such transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Term and continuation. Each surety bond and any accompanying agreement shall provide that it will continue in effect or that it will be renewed periodically until consummation and closing of the

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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 (6) of this subdivision or until there is an undisputed purchaser default or a determination by the Attorney General or order or judgment of a court of competent jurisdiction that the purchaser has defaulted and that the sponsor is entitled to the secured funds.

(vii) Delivery of the surety bond. The sponsor shall cause the surety to mail or personally deliver the surety bond to the purchaser-obligee before the funds are released to the sponsor from 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 Office of the Attorney General of an amendment abandoning the plan;

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

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

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

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(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 Office of the Attorney General. The party applying shall contemporaneously send to all other parties a copy of such application.

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

(c) If the Attorney General determines:

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

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

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

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making a determination or notifying the parties that an extension of time in which to do so is necessary for stated reasons.

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

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

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

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

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

(iv) Authority to draw. The letter of credit must provide that the beneficiary shall have sole power to draw upon the letter of credit without the consent or despite the objection of the sponsor or

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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 the application for alternate security to be approved by the Attorney General the applicant must show that the issuer bank has surplus funds and net worth of at least 10 times the amount of the letter of credit, and must have a current rating with

respect to its debt securities that is within "investment grade" by one of the generally accepted national reporting services regularly rating the debt securities of banking institutions and that the provisions of the letter of credit include the right of the beneficiary to draw down the letter of credit in conformity with these regulations.

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

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

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

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

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

(a) Deposits into escrow account. 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 (2) of this subdivision. The escrow agent shall release such funds to the sponsor provided that the escrow agent has documentation showing that the letter of credit or a renewal or replacement letter of credit has been issued and is in effect. Such escrow agent shall no longer release funds from escrow if the escrow agent receives notice or information warranting draw down of the letter of credit under subparagraph (ix) of this paragraph.

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

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

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 Office of the Attorney General 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 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 paragraph (3) or subparagraph (5)(vi) of this subdivision.

(x) Disputes.

(a) In the event of a dispute, the sponsor shall apply, and the purchaser, the escrow agent or the bank issuing the letter of credit may apply to the Attorney General for a determination on the disposition of funds secured by the letter of credit, the deposit and any interest earned thereon. Forms for this purpose shall be available from the Office of the Attorney General. 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.

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

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

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

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

(8) Highlight as a special risk any provision allowing sums in excess of 10 percent of the purchase price to be retained as liquidated damages, other than the actual cost incurred for any special work ordered by the purchaser. Disclose under what circumstances sponsor may retain additional moneys paid for special work ordered by the purchaser. Highlight as a special risk if sponsor may seek specific performance of the purchase agreement.

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

(10) State when sponsor expects the first closing of a home or lot to occur which should correspond to the first year of

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operation projected in Schedule A. State that if a date set for closing is delayed by the sponsor 12 months or more, purchaser will be offered rescission.

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



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

(i) not fewer than seven days after delivering an executed purchase agreement together with the required deposit to rescind the purchase agreement and have the full deposit refunded promptly. The purchaser must either personally deliver a written notice of rescission to the sponsor or selling agent within the seven day period or mail the notice of rescission to the sponsor or selling agent and have the mailing post marked within the seven day period; or

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

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

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

(15) Highlight as a special risk if the purchaser's obligation to purchase is not contingent on obtaining financing. If purchaser's obligation is contingent upon obtaining a commitment for financing or actually obtaining financing, explain the terms of the contingency. State the time within which the purchaser must notify sponsor of any inability to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may expire or that the terms of the commitment may change prior to actual closing. If a purchaser's

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obligations are contingent on obtaining a financing commitment and the financing commitment lapses or expires prior to closing, and the purchaser has made a good faith effort to extend the commitment, sponsor must grant to such purchaser a right of rescission and a reasonable period of time to exercise the right.

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

(17) State that within a specified number of days after a purchaser delivers an executed contract of sale together with the required deposit, the sponsor must either accept the contract and return a fully executed counterpart to the purchaser or reject the contract and refund the full deposit previously tendered. Discuss the outcome for the purchaser if the sponsor takes no action within the time period specified in the plan.

(18) The purchase agreement and plan may not contain, or be modified to contain, a provision waiving purchaser's rights or abrogating sponsor's obligations under article 23-A of the General Business Law.

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

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

(1) Name and address of lender.

(2) Amount and term. State the maximum amount (which may be expressed as a percentage of the offering price) available for a home or lot and the minimum term of the mortgage. If the financing offered is not self-liquidating over the term, state how the amount of the balance or "balloon" due on maturity will be calculated and explain the risk that refinancing may not be available on the same or better terms. Highlight as a special risk if the principal balance is due in less than five years. If the sponsor is providing the financing, state whether the sponsor will refinance or extend the

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mortgage at maturity. State the maximum amount of financing available to purchasers generally through a bulk commitment.

(3) Availability. Sponsor must discuss whether financing is available to all purchasers. If not, discuss the method of allocation of such. If sponsor procures financing with an institutional lender, it is sufficient to refer to the institution's credit standards.

(4) Interest rate. State the annual interest rate over the term of the mortgage. If the mortgage has a variable or adjustable rate, indicate the initial interest rate or (if not a fixed rate) explain how it will be established, the method of calculating adjustments, any limits on increases or decreases, when adjustments may be made, and the impact that adjustments will have on debt service payments and the principal balance. If the sponsor structures the financial terms of the transaction in such a manner as to result in possible taxable income to a purchaser, the financial and tax implications of such structuring must be disclosed. If the sponsor procures financing at an interest rate that is below the prevailing rate offered by the lender, disclose the prevailing interest rate and the interest rate offered to purchasers.

(5) Payments. State when payments are due, and how payments are applied to interest and principal. For variable rate mortgages, adjustable rate mortgages or negative amortization mortgages, disclose how initial payments are allocated to interest and principal, disclose the impact that interest rate changes will have on the allocation of payments to interest and principal and on itemized deductions available to home or lot

owners. If any mortgage is a "negative amortization" mortgage, highlight as a special risk and explain the meaning and the additional risks and costs to the home or lot owner.

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

(7) Insurance. State the amount and type of insurance required to be carried for the benefit of the sponsor or any mortgage lender procured by the sponsor.

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

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

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

(11) Additional financing costs. Disclose the amount of additional costs or charges to purchasers in connection with such financing including, for example, points, origination fees, lender's or any other legal fees, processing fees, application fees, insurance and appraisal fees.

(12) Restrictions. Describe major restrictions on a home or lot owners's right to alter, improve, sell, lease, purchase, own, occupy, finance or otherwise acquire, use or dispose of a home or lot.

(13) Events of default. Describe the material events of default entitling the lender to accelerate the principal indebtedness and describe grace periods granted to home or lot owners.

(14) If any proposed financing contains unusual risks and features which are not prevalent among financing institutions in the State of New York engaged in providing mortgages to home or lot purchasers, highlight as a special risk and explain the risks of such financing.

The attorney who prepared the plan must note such financing in the transmittal letter to the Office of the Attorney General required by section 22.2(c)(1) of this Part.

(m) Terms of sale.

(1) Describe the type of deed, if any, given to the HOA. Highlight as a special risk if the deed is not a full warranty deed or a bargain and sale deed with covenants against

grantor's acts. State that the form of HOA property deed is contained in Part II of the Plan.

(2) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause to the HOA facilities that occurs before the transfer of the property to the HOA.

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(3) For offering plans that are not subject to the provisions of General Business Law section 352-ee, state that a closing will be taking place only concurrently with the issuance of a temporary or permanent certificate of occupancy for the entire project or, issuance of a partial, temporary or permanent certificate of occupancy for the home closed or building in which the home is located, if applicable.

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

(5) State that the declaration of covenants, restrictions easements and liens and such other documents as required by law will be recorded or filed prior to the first conveyance of title to a home or lot in accordance with the disclosure contained in the offering plan; and state the place of recording.

(6) State that, if applicable, prior to any closing, the sponsor will procure the real property transfer gains tax tentative assessment and return (or statement of no tax due) and will at closing, pay all real property transfer gains tax and all other transfer taxes due and comply with the requirements of the New York State Department of Taxation and Finance. If any transfer tax is to be paid by the purchaser, highlight this fact as a special risk and disclose an approximate amount which must be paid by the purchaser.

(n) Rights and obligations of the sponsor. Describe the rights and obligations of sponsor under the plan and applicable law with respect to the offering including, but not limited to, the following elements:

(1) Disclose sponsor's obligation to defend any suits or proceedings arising out of sponsor's acts or omissions and to indemnify the board of directors and the home or lot owners.

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(2) State that all representations under the offering plan, all obligations pursuant to the General Business Law, and such additional obligations under the offering plan which are to be performed subsequent to the closing date will survive delivery of the deed.

(3) Disclaimers or limitations of liability on the part of the sponsor or its principals for failure to perform any obligation imposed by applicable statute or regulation may not be included. The plan may not include any financial limitation on sponsor's liability for failure to perform its obligations under the offering plan.

(4) If applicable, state the minimum number of homes that the sponsor is obligated to build and describe what HOA property the sponsor is obligated to improve or construct. Describe any additional HOA property that the sponsor is obligated to improve or construct if more than the minimum number of homes is built. State the projected date(s) by which sponsor will decide whether to construct homes in each related offering plan or in related sections or phases. Project the approximate completion date of all sections or phases to be sold in conjunction with membership interests in the HOA. Disclose the construction timetable for the HOA property, related sections or phases, and additional HOA property, including the timetable for landscaping.

(5) For offering plans involving construction or rehabilitation of HOA property, state whether construction financing is firmly committed at the time of submission of the offering plan to the Office of the Attorney General. Disclose any conditions placed on the availability of the construction financing, and highlight as a special risk if the sponsor may not be able to complete construction of the HOA property. Project the timetable for procuring a firm commitment for construction financing.

(6) State the sponsor's obligation for offering plans involving construction or rehabilitation of HOA property to build and complete the HOA property in accordance with the building plans and specifications identified in the plan and sponsor's right to substitute equipment or materials of lesser quality or design.

(7) State that the sponsor agrees to pay for the authorized and proper work involved in the construction, establishment and sale of all HOA property that sponsor

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is obligated to complete under the plan and will cause all mechanics' liens with respect to such construction to be promptly discharged or bonded.

(8) State that the sponsor will file the declaration and will convey HOA property to the HOA in a particular phase or section prior to closing title to the first home or lot in that phase or section. If applicable, state that the HOA property will be released from the provisions of any land or construction loan mortgages prior to closing title to the first home or lot. If applicable, state that sponsor will complete construction of all streets, sidewalks and parking facilities serving a home or the building in which the home is located and any other facilities that are vital to the health and safety of the owners prior to

closing title to the first home. If the municipality permits occupancy and the sponsor escrows funds for completion, closing may occur if such facilities are not vital to the health and safety of the owners.

(9) For offering plans involving any construction or rehabilitation, state that the sponsor agrees to deliver a set of "as-built" plans of common property improvements to the board of directors, including specifications of roads, sewers and/or water lines and a representation that the plans or specifications are in substantial compliance with the disclosure in the offering plan. If the plans or specifications, as built, are not in substantial compliance with the disclosure in the offering plan, the plan must be amended and rescission must be offered to all purchasers and members.

(10) Sponsor must disclose whether any bond or other security other than those required by this Part has been furnished to secure sponsor's obligations including sponsor's obligation to complete construction of HOA property. If no security is furnished, highlight as a special risk.

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

(12) State that in the event of the dissolution or liquidation of the sponsor or the transfer of three or more homes or

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

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

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

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

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

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

(18) State sponsor's obligation with respect to common charges and assessments on unsold lots or homes in conformity with paragraph (p)(3) of this section. Sponsor must represent that it has the financial resources to meet its

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obligations with respect to unsold lots or homes and state the means by which it will fund these financial obligations. If the funding source is stated as income from projected sales, disclose whether other sources of funding will be utilized if such projected sales are not made.

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

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

(1) Highlight as a special risk if sponsor exercises voting control of the board of directors for more than five years after the closing of the first home or lot or after 50 percent of the minimum number of lots or homes have closed, whichever is sooner. Specify the manner and timing in which the sponsor will relinquish control of the board of directors. Sponsor shall disclose that a meeting will be held to elect new board members unrelated to the sponsor within 30 days of the expiration of the control period.

(2) Sponsor may not exercise veto power over expenses described in Schedule A, or over expenses required:

(i) to comply with applicable laws or regulations;

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(ii) to remedy any notice of violation; or

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

(3) Highlight as a special risk if sponsor may exercise veto power over expenses other than those described in paragraph (2) of this subdivision, if the plan so provides, for a period ending more than five years after the closing of the

first home or lot or whenever the unsold homes or lots constitute less than 25 percent of the minimum number of homes or lots, whichever is sooner.

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

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

(p) The association.

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

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

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

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

(iv) Describe any restrictions on who may become a member of the HOA; restrictions on exterior architectural changes, design, color, landscaping or appearance; restrictions on occupancy density; restrictions on the kind, number or use of vehicles; restrictions against renting, mortgaging



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or conveying property; restrictions on commercial activity; or any other restrictions. If there are any occupancy restrictions based on age, or family composition, these must be highlighted as a special risk and a counsel's opinion with regard to the legality of such restriction pursuant to Federal and state law must be included in the plan.

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

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

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

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

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

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

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

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

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

(v) State when association charges will first be levied against owners, how the charges can be increased or decreased, how charges and delinquent charges will be collected, whether unpaid charges bear interest and the rate, whether unpaid charges will be a lien on a member's property, whether members will be assessed with late charges and/or attorney fees for collecting unpaid charges, whether the lien for unpaid charges will be

subordinate to a first mortgage, whether a member with unpaid charges can use HOA property other than property for ingress and egress from his or her home. Highlight as a special risk if voting rights may be suspended for non-payment of assessments. State whether fines or other penalties will be levied for violation of rules and regulations promulgated from time to time by the HOA.

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

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

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

(q) Opinions of Counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Highlight as a special risk if it appears that the reserve fund, if any, plus any budgeted yearly reserve fund may not be sufficient to provide for needed capital expenditures within five years following the first closing under the plan.

(t) Management agreement, contracts and leases.

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

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

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

(iii) all fees and other compensation for services;

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(iv) the major duties and services to be performed by the managing agent including whether bookkeeping, payroll and collection of association charges are provided;

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

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

(vii) the right of the board of directors to cancel the agreement with or without cause.

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

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

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

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

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

(iii) Highlight as a special risk if:

(a) any lease has a term exceeding ten years;

(b) the lease generates or is expected to generate less income than the pro-rata share of expenses attributable to the leased space; or

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(c) the ratio of income generated by the lease to the share of expenses fairly attributable to the leased space may decline in the future. Describe the potential burden to the HOA of these risks. Disclose the basis for projecting the share of expenses attributable to the leased space, and estimate the income and expenses for the lease term.

(iv) Explain the board of director's rights and obligations under the lease with regard to making ordinary or structural repairs, rebuilding after a casualty, retaining insurance or condemnation proceeds, limiting uses to those compatible with the character of the development, and barring offensive uses. State whether consent of the board of directors is required before a lessee can assign or sublet space, change the current uses, alter the structure, or perform work that may result in mechanics' liens.

(u) Identity of parties.

(1) State the names, business addresses, backgrounds and experience of sponsor, and principals of sponsor as defined in section 22.1(c) of this Part. If the sponsor is a contract vendee, the names and business addresses of the contract vendor and the principals of the present owner shall be provided. Any relationship between the owner of the property and the contract vendee shall also be disclosed. Describe (i) any prior felony convictions of the sponsor and/or any principals of sponsor; and (ii) any prior bankruptcies, convictions, injunctions and judgments against the sponsor, any principals of the sponsor, and/or entities in which principals of the sponsor were principals, that may be material to the offering plan or to an offering of securities generally and that occurred within the 15 years prior to the submission of the proposed offering plan. Also state the above information for all individuals who own or control a 10 percent or more equity interest in the sponsor.

(2) List all properties offered for sale by sponsor, sponsor's principals, or any affiliates of sponsor or sponsor's principals, as cooperatives, condominiums, planned unit development homes, or time shares which were first offered within the past five years. Describe these properties by address and the year they were first filed. If the number of such properties or projects exceeds five for the sponsor or a principal, the five most recent offerings may be listed.

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(3) Identify each cooperative, condominium or homeowners association, other than the subject building(s), where the sponsor, general partner or principal of the sponsor, or the holder of unsold shares, owns 10 percent or more of the unsold shares or units as an individual, general partner or principal, and state whether the sponsor, general partner, principal or holder of unsold shares is current in its financial obligations, including, but not limited to, payment of maintenance or common charges, taxes, reserve or working capital fund payments, assessments, payments for repairs and improvements promised in the plan, and payments of underlying mortgages and loans for which shares or units have been pledged or mortgaged. If not current, state the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

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

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

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

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

22.3(u)

(8) State the relationship, if any, between the sponsor or its principals and (i) the selling agent, (ii) the managing agent, (iii) the engineer or architect, and (iv) any person or firm who will provide services to the HOA subsequent to the commencement of HOA operation.

(9) If applicable, state that the Secretary of State has been designated to receive service of process for an out-of-state sponsor or selling agent or for any principals of the sponsor or of the selling agent who reside outside of New York.

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

(1) a financial statement of the HOA prepared by a certified public accountant or public accountant by a specified date; such statement shall be certified while the sponsor is in control of the board of directors;

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

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

(w) Documents on file. State that sponsor shall keep copies of the plan, all documents referred to in the plan and all exhibits submitted to the Office of the Attorney General in connection with the filing of the plan, on file and available for inspection without charge and copying at a reasonable charge at a specified location for six years from the date of first closing. State that the sponsor shall deliver to the board of directors a copy of all documents filed with the appropriate recording office at the time of the closing of the first home or lot.

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

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

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

(3) Represent that the sponsor and its agents will not discriminate against any person on the basis of race, creed, color, national origin, sex, age, disability, marital status or other grounds prohibited by law.

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

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

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

(1) Sponsor must adopt the description of property and specifications or building condition set forth in Part II of the plan, and represent that sponsor has no knowledge of any material defects or need for major repairs to the HOA property except as set forth in the description of property and building condition.

(2) If not included in the description of property and building condition, describe any rehabilitation to be 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 homes or lots offered is identical to the number of homes or lots stated in the approved site plan, and whether the proposed use of the buildings constructed on HOA property is the same as the use indicated in the Certificate of Occupancy for the HOA property.

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(4) Note any official inspection reports reflecting upon the condition of the premises, such as notices of building code violations, or any reports required by local law, including, if applicable, the report required by C26-105.3 of the Administrative Code of the City of New York, which shall be reproduced in Part II of the plan.

(5) If applicable, disclose the existence and availability, at the offices of the sponsor and the selling agent, of any inspection reports by a professional engineer or a registered architect retained by a group or association of tenants. The Office of the Attorney General, in its discretion, may require such inspection report(s) to be reproduced in Part II of the offering plan. The reproduction of such reports shall be for informational purposes only, shall not be part of the sponsor's description of property and building condition, and shall not be deemed to be encompassed or covered by the respective certifications of (i) the sponsor and sponsor's principals, and (ii) sponsor's professional engineer or registered architect.

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Section 22.4 Transmittal Letter and Certifications.

(a) Transmittal letter. A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed under penalty of perjury 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 homeowners association plan for the captioned property. I affirm as follows:

Enclosed for filing pursuant to Part 22, Newly Constructed, Vacant or Non-Residential Homeowners Association, are three (3) copies of the offering plan together with two (2) sets of Exhibits.

I am fully familiar with the provisions of Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22.

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

I have no actual knowledge of any violation of Article 23-A of the General Business Law or Part 22 of the regulations promulgated by the Office of the Attorney General, nor do I have actual knowledge of any material fact omitted or any untrue statement of a material fact included in the offering plan."

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

"We are the sponsor and the principals of the sponsor of the homeowners association offering plan for the captioned property.

We understand that we have primary responsibility for compliance with the provisions of Article 23-A of the General Business Law, the regulations promulgated by the Office of the Attorney General in Part 22, and such other laws and regulations as may be applicable.

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

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

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

(iii) not omit any material fact;

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(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 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."

Sponsor's certification must include the additional paragraph below if the HOA property is to be newly constructed and is limited to roads and/or sewers and/or water lines constructed in accordance with local government specifications (for public roads):

"We certify that the roads and/or sewers, and/or water lines, when constructed, will be in accordance with local government specifications (for public roads). After completion of such amenities and before conveyance of the common property to the HOA, the plan will be amended to include a certification by an engineer or architect (who must be registered as an architect or be licensed to practice as a professional engineer in the jurisdiction where the HOA is located) stating that the roads and/or sewers, and/or water lines have, in fact, been constructed in accordance with local government specifications (for public roads) and indicating the date of completion. In the alternative, and/or if the construction of the roads and/or sewers and/or water lines has not been completed prior to conveyance to the HOA, a bond will be posted, funds will be escrowed, or other adequate security will be provided in an amount to be determined by an engineer licensed to practice as a professional engineer in the jurisdiction where the HOA is located which amount shall not be less than the amount required to complete such construction to the required specifications."

(c) Certification by engineer or architect. If the HOA includes any common property other than (1) unimproved land, (2) landscaped areas, park areas or picnic areas, (3) roads constructed in accordance with local government specifications for public roads or (4) sewers and/or water lines constructed in accordance with local government

specifications, include in Part II of the plan and in the exhibits a certification subscribed and sworn to by an engineer or architect (who must be registered as an architect or be licensed to practice as a professional engineer in the jurisdiction where the HOA is located). If the engineer or architect is a principal of the sponsor, the certification must be submitted by an independent engineer or architect. The second certification containing the language in parenthesis, below, shall be submitted with any addendum to a report.

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"The sponsor of the offering plan to convert the captioned property to HOA 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 of which is 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 where 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 Office of the Attorney General in Part 22 insofar as they are applicable to this Report (addendum).

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

I/We certify that the Report (addendum):

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

(ii) in my/our professional opinion affords potential investors, purchasers and participants an adequate basis upon which to found their judgment concerning the description and/or physical condition of the property (the aspects of the property discussed in the addendum) as it will exist upon completion of renovation and/or construction, provided that renovation and/or construction is in accordance with the plans and specifications that I/we examined;

(iii) does not omit any material fact;

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

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

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

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

I/We further certify that I am/we are not owned or controlled by and have no beneficial interest in the sponsor and that my/our compensation for preparing this Report (addendum) is not contingent on the conversion of the property to an HOA 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."

22.4(c)

(d) Certification by expert on adequacy of budget (or revised or updated budget). Include in Part II of plan and in the exhibits a certification subscribed and sworn to by an expert concerning the adequacy of Schedule A in the following form. The certification must be dated within 90 days prior to the date of the submission of the offering plan to the Office of the Attorney General. The expert's certification must be based on experience in the management of homeowner association property, cooperatives, condominiums or rental properties and must disclose the approximate number of properties managed and the length of time managed together with other relevant real estate experience, qualifications and licenses.

"The sponsor of the homeowners association offering plan for the captioned property retained me/our firm to review or prepare Schedule A containing projections of income and expenses for the first year of operation as a homeowners association. 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 Office of the Attorney General in Part 22 insofar as they are applicable to Schedule A.

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

I/We certify that the projections in Schedule A 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 operation as a homeowners association.

I/We certify that the Schedule:

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

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

(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.

22.4(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 operation as a homeowners association.

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) Sworn statement. Certifications by the sponsor and sponsor's principals, by the engineer or architect and by the expert concerning the adequacy of the budget, as required by this section, must be dated and sworn to before a notary public.

22.4(e)

Section 22.5 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 ceases to comply with General Business Law Section 352-e(1)(b) or section 22.1(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.

(3) An amendment to an offering plan shall be filed on the date indicated in the letter issued by the Office of the Attorney General stating that the amendment is filed and not sooner.

(4) Amendments that have been filed with the Office of the Attorney General must be attached to the inside front cover of the offering plan before the amended plan is distributed to the public. The cover of the offering plan must contain the legend: "This plan has been amended. See inside front 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 Office of the Attorney General.

(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 15 days after the date of presentation to exercise the right. Sponsor must return any deposit or downpayment to purchasers who rescind. Sponsor may condition return of the deposit to interim lessees upon their vacating the premises. Notwithstanding the provisions of subdivision (e)(3) of this section, sponsor may return any deposit or downpayment to purchasers who request rescission.

22.5(a)

(6) Amendments must be served on offerees in accordance with section 22.1(d) of this Part unless the Office of the Attorney General grants an exemption pursuant to section 22.1(i) of this Part and consents to service on a specified class of offerees.

(7) Amendments served on offerees must be dated with the date of the letter from the Office of the Attorney General accepting the amendment for filing. Proposed amendments shall be submitted undated.

(8) Amendments filed by the Office of the Attorney General must be served in accordance with section 22.1(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 normal business hours to the Investment Protection Bureau - Real Estate Financing Section, Office of the Attorney General, 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 Office of the Attorney General file number;

(ii) identifies the subject amendment in numerical order;

(iii) states that no prior amendments have been submitted to but not yet filed with the Office of the Attorney General;

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

(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 home or lot has occurred; and

(b) states if there are any outstanding rescission periods.

22.5(b)

(vi) notes if sponsor is aware of any investigation currently pending by the Office of the Attorney General of the sponsor, a principal of the sponsor, or of the proposed HOA property.

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

(3) Check(s) (certified or uncertified) for filing fee(s) pursuant to General Business Law section 352-e(7) payable to New York State Office of the Attorney General stapled or clipped to the transmittal letter, including fee(s) for additional phases being offered in the current amendment unless such fee has been prepaid and a copy of the cancelled check is provided.

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

(5) One form RS-2, signed by the sponsor.

(c) Amendments extending the term of the offering plan. Pursuant to section 22.3(a)(5) of this Part, the term of the initial offering is 12 months commencing on the date indicated in the letter issued by the Office of the Attorney General stating that the plan is filed. Prior to the closing of the first home or lot an amendment extends the term of the offering for an additional six month term, unless the term is shorter by the provisions of the amendment. The filing of the amendment disclosing the recording of the declaration and the first closing, will extend the term of the offer for six months. Any subsequent amendment extends the term of the offering for an additional 12 month term from the date of filing of the amendment. An amendment extending the term of the offer must be filed before the end of the term and must comply with the provisions of this section and the requirements set forth below.

(1) The amendment must disclose all material changes including, but not limited to, material decreases or increases in association charges; an updated budget, if adopted by the board of directors 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 months of the end of the most 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 home or lot owners, sponsor's capacity to perform all its obligations under the plan, the homeowners association or the operation of the homeowners association.

#### 22.5(c)

(2) In addition, all amendments submitted after closing of the first home or lot has occurred must state:

(i) the number and identification of unsold homes or lots remaining; and

(ii) the extent to which the sponsor controls the board of directors of the HOA. 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, after the closing of the first unit, and annually thereafter, for all offering plans in which the sponsor owns in the aggregate more than 10 percent of the lots or homes, the amendment must disclose:

(i) the aggregate monthly association charges for all homes or lots held by the sponsor;

(ii) the aggregate monthly real estate taxes payable for homes or lots owned by the sponsor;



(iii) the number of homes or lots 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 HOA which will become due within 12 months from the date of the amendment (other than payment of association 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 homes or lots 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 the 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) of this paragraph will be funded. If the funding source is stated as income from projected

22.5(c)

sales, disclose any other sources of funding 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 HOA, including, but not limited to, payment of association charges, 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 homes or lots. 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 HOA. 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 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 Office of the Attorney General file number and address, in which the sponsor, general partner or principal of the sponsor, or holder(s) of unsold shares, as 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 Office of the Attorney General and are available for public inspection;

(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) of this paragraph in other cooperatives, condominiums or homeowners associations in which they own more than 10 percent of the units as individuals, general partners or principals. If not current, state

the identity of the property and the date and amount of each delinquency, together with any additional relevant facts.

(4) An offering plan must be amended immediately if any delinquency required to be disclosed by subparagraph (3)(vii) or (ix) of this subdivision has existed for 15 days, or if there has been a material change in the

22.5(c)

financial position of the sponsor which may jeopardize its ability to meet its obligations to the HOA. Submission of such amendment does not relieve sponsor of its obligation to cease all sales until all material facts have been disclosed in a duly filed amendment.

(d) Post-closing amendment. The amendment which discloses recording of the declaration and the first closing extends the term of the offering for six months. Sponsor must amend the plan within 45 days following the closing of the first home or lot, 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 home or lot.

(2) If applicable, the date the temporary or permanent certificate of occupancy was issued for HOA property. If the permanent certificate of occupancy has not yet been issued, indicate the projected timetable 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 for HOA property.

(3) The date of recording of the declaration of covenants, restrictions, easements and liens.

(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, listing the name(s) and branch address(es) of the bank(s).

(6) A list of all unsold homes or lots held by the sponsor.

(7) The names of the members of the board of directors 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 home or lot owners.

(e) 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. If the plan has no

22.5(d)

effectiveness requirement or specific abandonment contingencies which are highlighted as a special risk, and contracts are not contingent on the plan's becoming effective, a plan may not be abandoned unless all contract vendees consent to cancel their contracts.

(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. No purchaser may be compelled to accept a cancellation of his or her contract unless in conformity with the disclosures in the offering plan.

(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 Office of the Attorney General.

(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 Office of the Attorney General.

22.5(e)

Section 22.6 Advertisements.

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

THE COMPLETE OFFERING TERMS ARE IN AN OFFERING  
PLAN AVAILABLE FROM SPONSOR.  
FILE NO. H- \_\_\_\_\_.

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

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

(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 association or other carrying charges shall be preceded by the word "projected" or "estimated" or abbreviations of those terms. In estimating association charges, including real estate taxes and, if applicable, individual unit mortgages, there shall be no subtraction or representation of specific dollar savings because of anticipated tax deductions, unless all assumptions are disclosed.

(g) Advertisements of amenities or services available at a fee charged in addition to association assessments or other charges or in addition to the purchase price must refer to the

22.6(a)

additional fee. Advertisements of amenities or services that will not be available at closing must state the approximate date of availability.

(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 years.

22.6(i)

Section 22.7 Description of HOA 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 owned or maintained by the HOA. 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 Office of

the Attorney General. The Office of the Attorney General 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.

(a) Describe the location of the property.

(b) Site. Discuss:

(1) size (acreage);

(2) number of buildings and use;

(3) streets owned or maintained by the HOA:

(i) paving (materials, thickness, width and condition);

(ii) curbing (material and condition);

(iii) catch basins, drainage (location and condition);

(iv) street and sidewalk lighting (material, type,

location and condition);

(v) whether streets will be built according to applicable governmental standards for public streets and/or will be dedicated to the local governing authority;

(4) Drives, sidewalks and ramps:

(i) paving (materials, thickness, width and condition);

22.7(a)

(ii) curbing (material and condition);

(iii) catch basins, drainage (location and condition).

(c) Sub-soil conditions. Describe (including water conditions):

(1) whether load-bearing capacity and porosity is sufficient to support buildings;

(2) whether there is any moisture or seepage and indicate whether corrective action is needed;

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

(d) Landscaping and enclosures. Generally describe the following. 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".

- (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 foundations (location, materials).

(e) 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 HOA.

(f) Sewers.

(1) Sanitary sewage system. Describe, including:

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

drainfield, sewer).

22.7(f)

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

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

- (i) catch basins (number, location);

(ii) yard and roof drains (number, location);

(iii) piping (materials);

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

(g) Refuse disposal. Describe, including:

(1) incinerator(s) (number, location, capacity, type, manufacturer);

(2) compactor(s) (number, location, capacity, type, manufacturer);

(3) approvals by authority having jurisdiction (date of each approval);

(4) initial storage location (ultimate storage location);

(5) pick-up schedule and whether public or private provider.

(h) Garages and parking areas. Describe, where applicable:

(1) location of garages (description of facility);

(2) location of parking areas (number of spaces in each);

(3) surfaces (materials used, lighting, fencing, etc.);

(4) parking (attended or not attended);

(5) garage ventilation (method and equipment);

(6) garage fire protection (method and equipment);

(7) drainage.

Specify all applicable items in subdivisions (i) through (q) of this section below for each building:

(i) Building size. Specify:

(1) use, e.g., clubhouse, gymnasium, sauna, pool filtration, etc.;

22.7(i)

(2) total height (approximate total feet from ground level to highest part of roof);

(3) crawl spaces (floor to ceiling height);

(4) number of cellars and sub-cellars;

(5) number of floors (actual);

(6) equipment rooms (location and use);

(7) parapet (height above roof).

(j) 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.

(k) Structural system. Describe materials used. Include details of foundation(s).

(l) Exterior of buildings:

(1) Walls: List materials type of construction, method of construction. For New York City buildings, if Local Law 10 applies, state the results of the inspection. If Local Law 10 is inapplicable, so state. If insulated, specify "R" factor and material.

(2) 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.

(3) Parapets and copings: State type of materials and how secured in place.

(4) Chimneys and caps: Indicate number, location and material of each chimney for boilers, incinerators and fireplaces. If fireplaces are not usable for wood fires, disclose this fact conspicuously.

22.7(l)



(5) Balconies and terraces. Describe:

- (i) deck finish (material);
- (ii) balustrade (type, material);
- (iii) railings (material);
- (iv) coping (material);
- (v) soffits (material);
- (vi) doors to balconies and terraces (type, material).

(6) 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).

(7) Service entrances. Describe:

- (i) doors and frames (material, type, lock);
- (ii) gates (material, type, lock);
- (iii) exterior stairs (material, location);
- (iv) railings (materials, location).

(8) Roof and roof structures. Describe:

- (i) type roofs for all areas:
  - (a) materials;
  - (b) insulation ("R" Factor);

(c) surface finish;

22.7(l)

(d) bond or guarantee, provide details;

(e) flashing materials including counter flashing.

(ii) drains:

(a) number;

(b) material and type;

(c) gutters and leaders (type, material).

(iii) skylights (location, type, material).

(iv) bulkheads:

(a) stairs (materials);

(b) elevator (materials);

(c) other.

(v) metal work at roof levels:

(a) exterior, metal stairs (materials);

(b) vertical ladders, including gooseneck (material);

(c) railings (material);

(d) hatches to roof (type, material);

(e) other.

(vi) rooftop facilities (describe in detail).

(9) Fire escapes. Specify whether sufficient to meet or exceed local codes (describe at each floor):

(i) location (describe how attached and supported);

(ii) floors covered;

(iii) drop ladder;

(iv) type;

(v) materials.

22.7(l)

(10) 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).

(m) Interiors of building(s).

(1) Interior stairs. Describe:

(i) number of stairs of each type;

(ii) enclosure (construction and interior finishes);

(iii) stair construction (steel, concrete, wood);

(iv) stringers (material);

(v) treads (material);

(vi) risers (material);

(vii) guard rails (material);

(viii) balustrade (material).

(2) Interior doors and frames. Describe material, type,

location for each and state whether fireproof or whether they exceed fire/safety standard:

(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.

22.7(m)

(3) Elevators. Describe:

(i) number of passenger and service elevators;

(ii) manufacturer, age of each and capacity;

(iii) type of operation for each elevator by elevator number;

(iv) automatic (type of controls);

(v) floors served;

(vi) type (hydraulic, gearless);

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

(viii) location of machine rooms;

(ix) DC to motor (manufacturer);

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

(xi) other.

(4) Elevator cabs. Describe:

(i) kind (manufacturer);

(ii) floor (material);

(iii) walls (material);

(iv) ceiling (material);

(v) lighting.

(n) 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);

22.7(n)

(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.

(o) Heating. Describe:

(1) capacity for heating and distributing domestic hot water in terms of gallons, usage and recovery rates. Describe heating system's adequacy to maintain comfortable conditions under anticipated weather conditions, specifying internal temperature and ambient temperature used in calculations;

(2) number of boilers or heating units and description;

(3) manufacturer and age of boiler(s) or heating units (model,

capacity);

(4) manufacturer and age of burners (model);

(5) type of controls;

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

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

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

(9) capacity of oil or gas tank.

(p) 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. Include (or specify):

22.7(o)

(1) type of system;

(2) central system (give manufacturer, model and capacity);

(3) cooling towers, condensers (roof top, self-contained units, including number, location and description);

(4) individual units (window/sleeve - specify number, capacity, special electrical requirements).

(q) Electrical system. Specify:

(1) service entrances to main service switchgear (amperes, voltage, phases, wire protective equipment);

(2) compartment switch gear (location and floor of sectional meter boards and transformers supplying power to the meter boards);

(3) intercommunication and/or door signal systems;

(4) whether wiring is copper, aluminum, or both; if it is both, provide details.

(r) Television reception facilities. (Master antennae, cable TV, antennae by tenants, security closed circuit TV.)

(s) Recreation facilities where not already described above as part of building. (If on roof, specify support system.)

(1) Swimming pools (material, size, including length, width, depth and maximum capacity):

(i) enclosure or fencing (material, including roof);

(ii) pumping and filter system (describe material);

(iii) approval by local authority;

(iv) decking (material, size, finish);

(v) diving boards.

(2) Tennis courts:

(i) type (clay, macadam, turf);

(ii) number and size;

22.7(s)

(iii) lighting (number and type);

(iv) fencing or enclosure (including distance between fence or enclosure and all sides of court).

(3) Other (e.g., golf courses, boating facilities, etc.).

(t) General information. Describe any fire or smoke safety devices installed.

(u) Additional information required. Include the following in Part II of the plan. Maps and plans must be easily readable. Fold out maps or plans should be used when needed.

(1) A site plan showing all roads, the outside dimension of all buildings and clearly designated common areas including parking, recreation and refuse disposal areas. Differentiate sections or phases of the HOA.

(2) An area map showing the location of the homeowners association property with respect to its surroundings.

(3) If individual homes or lots cannot be easily identified from the site plan, include a plot plan.

(4) For all buildings described, include floor plans which show dimensions of rooms.

(5) State whether site plan and/or subdivision map have been approved by the local governmental agencies whose approvals are required; list special conditions, if any, which are part of said approvals.

(v) Asbestos. With respect to structures or buildings on common areas which are not newly constructed, state whether asbestos containing material (ACM) is present in the insulation or fireproofing material anywhere in the building(s). Sponsor shall perform such tests as are necessary to make such determination.

In the event that ACM is present, sponsor shall have a person who is qualified to render an opinion on asbestos prepare a report on the asbestos in the building(s) (the asbestos report). Such asbestos report shall contain at least the following information:

22.7(v)

(1) The qualification of the person preparing the report.

(2) A detailed inventory of the asbestos in each building or structure and in all other areas of the property, including the location, amount of ACM, type and concentration of asbestos in the ACM, and condition. State whether the presence of any of the ACM poses an immediate health or safety hazard.

(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 use of certain rooms or structures will be limited and the projected duration thereof. State whether the work must be performed in compliance with applicable laws.

(5) A recommendation protocol for the future handling and maintenance of asbestos which will remain in the building, whether encapsulated, enclosed or left undisturbed.

22.7(v)

Section 22.8 Applications for No-Action Letters.

(a) Applicability. Upon application made in accordance with the requirements of this section, the Office of the Attorney General may, in its discretion, issue a "no-action letter" stating that it will not take any enforcement action because the transaction described in the application does not require the filing of an offering plan in compliance with section 352-e of the General Business Law. A no-action letter may be issued where the Office of the Attorney General determines that the filing of an offering plan pursuant



to General Business Law section 352-e is not necessary to effectuate the purposes of General Business Law article 23-A or to protect the public interest.

(b) Application Procedure

(1) An application for a no-action letter shall be submitted to the Investment Protection Bureau - Real Estate Financing Section, New York State Office of the Attorney General.

(2) Such application shall include the following:

(i) An affidavit signed and sworn to by the offeror(s) which states:

(a) The name, residence and business address and legal status (corporation, partnership, individual, etc.) of each offeror and its principals, and the relationship of the offeror(s) to the property which is the subject of the offering.

(b) A description of the property which is to be cooperatively owned or maintained by the HOA.

(c) A description of the proposed transaction, including the number of homes or lots being offered in conjunction with membership in the HOA.

(d) That the offeror(s) will comply with the escrow and trust fund provisions of General Business Law section 352-e (2-b) and section 352-h and the regulations adopted by the Attorney General pursuant thereto, and hold down payments for the purchase of the property

22.8(a)

in trust for the benefit of the purchasers and that such funds will not be commingled with the moneys of the offeror(s) until actually employed in connection with the consummation of the transaction.

(e) That the offeror(s) will provide to each offeree the following information:

(1) a statement that the purchase price of the home(s) or lot(s) includes the cost of membership in the HOA;

(2) a copy of any mortgage or ground lease that will remain on HOA property after transfer to the association;

(3) a copy of any contract between the sponsor and the HOA;

(4) a copy of the proposed deed of HOA property from sponsor to the HOA;

(5) a copy of the recorded deed to the HOA property by which sponsor derived title or a copy of the contract of sale between the owner and sponsor if sponsor is the contract vendee;

(6) a copy of the most recent financial statement of income and expenses for the operation of the property, if applicable;

(7) information known to the offeror(s) which may result in extraordinary expenses for members or for the HOA including but not limited to, assessments, liabilities, dangerous or hazardous conditions , pending litigation and administrative proceedings;

(8) evidence of compliance with local zoning laws and regulations, e.g., construction permits, zoning resolutions, use permits, a certificate of occupancy if HOA property includes any buildings;

22.8(b)

(9) disclosure of escrow account as required by section 22.3(k)(2) of this part including the form for dispute resolution by the Attorney General; and

(10) such other information as the Office of the Attorney General may require to be presented to each offeree.

(f) That the offeror(s) agrees to furnish a complete copy of the application for a no-action letter and a copy of the no-action letter to each offeree prior to accepting any down payment.

(g) That the offeror(s) agrees to furnish, within five days after a request by the Office of the Attorney General, copies of executed offeree affidavits required pursuant to clause (j) of this subparagraph.

(h) That the use for which the unit(s) and property are being offered will comply with the property's certificate of occupancy, zoning, building and housing laws, rules and regulations. If the proposed use will not comply with the legally permissible use, a discussion of what steps must be taken to comply with or to change the legally permissible use and identification of which party will assume responsibility for taking such steps.

(i) Whether the offeror(s) or its principals, have, within the preceding five years, participated in any other applications for a no-action letter or have made any other offerings which were not pursuant to an offering plan filed with the Office of the Attorney General. If so, the address of any property which was the subject of such application or offering.

(j) That an affidavit will be obtained from each proposed offeree prior to the closing on a unit that is subject to this application which will contain the following representations:

22.8(b)

(1) the offeree's name, residence and business address and legal status (corporation, partnership, individual, etc.);

(2) that the offeree has read the affidavit of the offeror(s) submitted as part of the application for a no-action letter;

(3) that the offeree understands that no offering literature other than as required by the no-action letter will be provided;

(4) that the offeree has inspected the subject property.

(ii) A site plan indicating the property which is to be commonly owned or maintained by the HOA.

(iii) Declaration of covenants, restrictions, easements and liens or a road maintenance agreement.

(iv) The estimated monthly or annual assessment and the current or proposed budget.

(v) Certification by an expert as to the adequacy of projected income and expenses for the first year of operation or back-up documentation substantiating each line item of the budget.

(vi) Transmittal letter. A transmittal letter addressed to the Office of the Attorney General that is signed and affirmed under penalty of perjury by the individual attorney who prepared the no-action application, and containing the following unqualified statements must be submitted with the application at the time the application is submitted:

"I am the attorney who prepared the no-action application for the captioned property. I affirm as follows:

Enclosed for filing pursuant to Section 22.8 of 13 NYCRR Part 22 is an application for a no-action letter for the captioned property.

I am fully familiar with the provisions of Article 23-A of the General Business Law and the regulations promulgated by the Attorney General in Part 22.

22.8(b)

I prepared (or reviewed) all legal documents necessary to form an HOA and, in my opinion, the HOA is duly organized, validly existing and in good standing. [If the HOA is not in existence at the time the application is submitted, state that counsel will cause the HOA to be formed in conformity with applicable law.] I have prepared the application based on information from the sponsor. I expressly disclaim any responsibility to have made an independent inspection of the 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 22 of the regulations promulgated by the Office of the Attorney General, nor do I have actual knowledge of any material fact omitted or any untrue statement of a material fact included in the application."

(vii) A check in the amount required by General Business Law section 352-e(7)(a) made payable to the Office of the Attorney General.

(viii) A Broker-Dealer Statement (Form M-10) for the offerors accompanied by a check in the amount required by General Business Law section 359-e(5).

(ix) A statistical record card available from the Office of the Attorney General.

(x) Where the roads are subject to an offer of dedication to the locality, a copy of the dedication agreement and documentation establishing that the sponsor has substantially complied with conditions for dedication.

(xi) Such other documents and information as the Office of the Attorney General may specify.

(c) Criteria for the Granting of a No-Action Letter.

(1) The granting of a no-action letter will be on such terms and conditions as the Office of the Attorney General may impose in order to protect the public interest. A no-action letter shall not be granted if the Office of the Attorney General determines that such act may contravene the rights of any purchaser under General Business Law article 23-A.

(2) An HOA may qualify for a no-action letter if the total annual charge assessed for membership can be demonstrated by documentation satisfactory to the Office of the Attorney General to be minimal. However, if the HOA property includes private roads the Office of the Attorney General will not issue a no-action letter regardless of the annual charge assessed for membership unless the number of homes or lots which use such private roads is four or fewer.

22.8(c)

(3) The issuance of a no-action letter is based solely on the information provided in the application. Any material misstatement or omission of material fact required by this Part may render the no-action letter void abinitio.

(4) The issuance of a no-action letter shall not be construed to be a waiver of or limitation on the Attorney General's authority to take enforcement action pursuant to article 23-A of the General Business Law and other applicable provisions of law except as expressly stated in such letter.

(5) The issuance of a no-action letter by the Office of the Attorney General shall have no value as precedent and may not be relied upon in the submission of any other application for such letter.

22.8(c)