

### 13 NYCRR Section 25.3.

#### Format and Content

Plans subject to this Part must comply with the format and minimum disclosure requirements set forth herein in addition to the requirements of provisions of article 23-A of the GBL.

(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: **SENIOR RESIDENTIAL COMMUNITY OFFERING PLAN** followed by the name of the residence and the address of the property, including the county.

(2) State the number of units being offered. If the number of units being offered is not firm on the date of submission of the offering, state the maximum number of units and the minimum number of units or square footage of units that the sponsor is committed to offering. Indicate if certain units are not being offered for occupancy.

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

(4) 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 12 months commencing on 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.

(5) If the plan contains a special risk section, the statement:

SEE PAGE \_\_\_\_\_ FOR SPECIAL RISKS TO RESIDENTS 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.

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

**THIS OFFERING PLAN IS THE ENTIRE OFFER TO LEASE THESE UNITS IN A SENIOR RESIDENTIAL COMMUNITY. 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 TAKING ENTRANCE FEES AND LEASING OR OFFERING TO LEASE ANY UNIT IN A SENIOR RESIDENTIAL COMMUNITY. FILING WITH THE OFFICE OF THE ATTORNEY GENERAL DOES NOT MEAN THAT THE DEPARTMENT OR ANY OTHER GOVERNMENT AGENCY HAS APPROVED THIS OFFERING.**

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

tent with the disclosures in the plan and shall conform to the requirements of this section.

TABLE OF CONTENTS		PAGE
PART I		
*SPECIAL RISKS .....	_____	
INTRODUCTION .....	_____	
DESCRIPTION OF PROPERTY AND IMPROVEMENTS .....	_____	
*LOCATION AND AREA INFORMATION .....	_____	
SCHEDULE OF UNITS AND FEES, SCHEDULE A-1 .....	_____	
*REFUND CHART, SCHEDULE A-2 .....	_____	
BUDGET FOR FIRST YEAR OF OPERATION, SCHEDULE B-1 .....	_____	
*BUDGET FOR INDIVIDUAL ENERGY COSTS, SCHEDULE B-2 .....	_____	
CHANGES IN ENTRANCE FEES, MONTHLY SERVICE FEES AND UNITS .....	_____	
*ACCOUNTANT'S CERTIFIED STATEMENTS OF OPERATION OF THE SPONSOR ..	_____	
PROCEDURE TO RESERVE UNITS AND ESTABLISH RESIDENCY .....	_____	
*FINANCING FOR QUALIFIED RESIDENTS .....	_____	
EFFECTIVENESS .....	_____	
TERMS OF RESIDENCY AGREEMENT .....	_____	
FEES AND FINANCIAL ASPECTS .....	_____	
RESIDENTIAL SERVICES AND AMENITIES .....	_____	
HEALTH CARE SERVICES .....	_____	
STAFF .....	_____	
TERMINATION OF OCCUPANCY .....	_____	
RESIDENTS' RIGHTS .....	_____	
PRE-OCCUPANCY RIGHTS AND OBLIGATIONS .....	_____	
RIGHTS AND OBLIGATIONS OF THE SPONSOR .....	_____	
UPKEEP OF UNITS AND RESTRICTIONS ON OCCUPANCY .....	_____	
TAX IMPLICATIONS .....	_____	
OPINION(S) OF COUNSEL .....	_____	
IDENTITY OF PARTIES .....	_____	
DOCUMENTS ON FILE .....	_____	
GENERAL .....	_____	
*RESERVATION OF AIR AND DEVELOPMENTAL RIGHTS .....	_____	
SPONSOR'S STATEMENT OF SPECIFICATIONS OR BUILDING .....	_____	
CONDITION .....	_____	

TABLE OF CONTENTS		PAGE
PART II		
RESIDENCY AGREEMENT .....	_____	
CONFIDENTIAL DATA STATEMENT .....	_____	
APPLICATION FORM .....	_____	
FINANCIAL DATA FORM .....	_____	
*FORM OF NOTE AND RELATED FINANCING DOCUMENTS .....	_____	
DESCRIPTION OF PROPERTY AND SPECIFICATIONS OR BUILDING CONDITION .....	_____	
*FLOOR PLANS .....	_____	
*ASBESTOS REPORT .....	_____	
HOUSE RULES .....	_____	
CERTIFICATIONS .....	_____	
SPONSOR AND PRINCIPALS .....	_____	
SPONSOR'S ENGINEER (OR ARCHITECT) .....	_____	
SPONSOR'S EXPERT CONCERNING ADEQUACY OF BUDGET .....	_____	

(c) *Special risks.* This section, if applicable, must be on a separate page following the table of contents. All features of a plan which involve significant risk or are reasonably likely to affect disproportionately or unusually the monthly

charges, rights, or obligations of residents must be conspicuously disclosed and highlighted. A brief description of the nature of the risk should be given in this section and a more thorough description should be given in a referenced later section. Uncertainties as to whether a risk should be described in this section should be resolved in favor of inclusion.

(d) *Introduction.* The introduction must:

(1) Explain that the purpose of the offering plan is to set forth all the material terms of the offer. Explain that the plan may be amended from time to time when an amendment is filed with the New York State Office of the Attorney General. State that amendments will be served on all offerees as defined in section 25.1(d) of this Part.

(2) [*Reserved*]

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

(4) Summarize the number and the type of units being offered in this offering plan, any parking or recreational facilities and refer to schedule A-1 for fees. Identify any units or property interests that are not being offered to residents such as commercial space, the superintendent's apartment, and common areas. If applicable, note any air rights or transferable development rights benefitting or encumbering the property. Make reference to the section of the plan disclosing any such reservation of air or developmental rights. State the number and types of units that have been built or may be built pursuant to related offering plans or related sections of the development.

(5) Disclose the approximate number of units that will be built, and the timetable for completing the units.

(6) Outline the basic aspects of senior residential communities, including the following:

(i) that certain admissibility criteria may exist, including age, health and spousal or cohabitant restrictions;

(ii) a description of the nature of the lease agreement, including the payment of entrance fees and variable refund schedules, the payment of monthly fees, the residency agreement's lack of power to convey any ownership interest in the residence, and the sponsor's ability unilaterally to terminate the residency agreement under certain circumstances;

(iii) a description of the nature of the residence, as a retirement community that offers various services and accommodations to its residents; that it is not an assisted living community, that residents may not require continual health care services;

(iv) that various services and amenities may or may not be offered, and that some services and amenities may be included in the monthly fees, while others may be available for additional fees -- services may include food services, housekeeping, transportation and assistance with activities of daily living;

(v) a description of the general furnishings or equipment included in the entrance or monthly fees.

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

(8) State that the plan delivered to prospective residents contains all of the material terms of the transaction. State that copies of the plan, all documents referred to in the plan and all exhibits submitted to the Office of the Attorney General in connection with the filing of the plan will be available for inspection without charge and for copying at a reasonable charge to prospective residents and their attorneys at the site whenever the on site office is open and at the office of the broker or sponsor.

(9) State any lawful limitations on who may enter into residency agreements.

(10) 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:

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

(e) *Description of property and improvements.* This section should:

(1) Include a general description by sponsor of the land, building(s), units, parking facilities, recreational facilities and amenities. Include in Part II of the plan a detailed description and outline specifications prepared by an engineer or architect that complies with the requirements set forth in section 25.7 of this Part. For existing buildings, the detailed description must include a statement of building condition. Part II must also include a description of what optional extra features are available.

(2) Disclose the approximate construction timetable for completion of the residential units, recreational and parking facilities and other amenities.

(3) Disclose whether any roads are to be constructed by sponsor, and whether they will be dedicated to the local government.

(4) Disclose the furnishings, equipment and amenities provided in each unit covered by the standard monthly fee such as appliances, air conditioning, carpeting, window treatments, furniture and any special accommodations and equipment to assist the residents.

(5) Disclose whether utilities and services, including gas, electricity, heat, air conditioning, water, sewage disposal, cable and telephone are included in the monthly service fee. If not, disclose which are the residents' responsibilities and the availability of and fees for optional services not included in the standard monthly fee.

(6) Disclose the resident's right to alter and decorate the unit and any restrictions imposed.

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

(1) Describe the location of the property and surrounding areas. If the property is not located in a highly urban area, describe the transportation, shopping, recreational, medical, religious and educational facilities available. Describe the police, fire, water, sanitation, snow removal and road maintenance services. If any such services are not provided by the local taxing authorities, the cost of such services must be included in schedule B-1.

(2) Describe the zoning of the site and what uses are permitted as of right, including landmark designation and any approvals required. If any adjoining areas are undeveloped, disclose the permitted uses of the adjoining areas.

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

(g) *Schedule of units and fees (schedule A-1).*

(1) Schedule A-1 must appear on a separate page entitled schedule A-1 and list the following information for

each unit in columnar form. Units identified must include all units which will be newly constructed and which will be part of the residence. Column headings may be shortened and abbreviated. Indicate that all projected charges are for a stated 12-month period, e.g., January 1, 20\_\_\_\_ to December 31, 20\_\_\_\_. Totals must be given for subparagraphs (iii), (iv), (v), (viii), (ix) and (x) of this paragraph.

(i) Unit identification.

(ii) Number of bedrooms and bathrooms (if applicable).

(iii) Approximate total area of each unit.

(iv) Entrance fee. If there are alternative entrance fees at the option of the prospective resident, based on the percentage of the entrance fee refundable and/or the amount of the monthly fee, schedule A-1 must include columns setting forth the fee under each available option. See sample schedule included in paragraph (g)(3) of this subdivision.

(v) Projected monthly fees for the first year of operation.

(2) Detailed footnotes must support and explain the information in schedule A-1. These footnotes must include, but are not limited to the following:

(i) For the number of rooms, state the method of calculating the number of rooms or approximate total area in each unit. If rooms are calculated in accordance with an industry standard, refer to the industry standard employed. Indicate the availability of common areas for exclusive or shared use. State that floor plans are included in the plan in Part II.

(ii) For the entrance fee, refer to the portion of the plan that explains entrance fee changes. If applicable, explain that entrance fees and other terms are negotiable.

(iii) If there are alternative entrance fees at the option of the prospective resident, based, for example, on the percentage of the entrance fee refundable and/or the amount of the monthly fee, discuss each available option and for which units such option is available.

(3) Sample chart format for schedule A-1.

NOTE--Some parts of this form are wider than one screen. To view material that exceeds the width of this screen, use the right arrow key. To return to the original screen, use the left arrow key.

SCHEDULE A-1						
Schedule of Units and Fees						
Based on Projected First Full Year of Operations						
Unit Name & Square Footage	Unit Type	# Units	Entrance	Monthly		
			Fees	Refundable	Refundable	Refundab-
			Traditional Plan (no refund)	50%	90%	le
Standard 780 ft [FN2]	1 Bd Rm/ 1 Bath	8	\$ 50,000	\$100,000	\$140,000	\$1,250
Deluxe 1,750 ft	2 Bd Rm/	16	\$125,000	\$225,000	\$300,000	\$2,300

[FN2] 2  
Bath

(Continued)

Traditional  
Plan

\$1,500

\$2,750

(4) If partial or full refunds of entrance fees are offered, present in chart format as Schedule A-2.

SCHEDULE A-2  
REFUND CHART

Amount of Entrance Fee to be Refunded After the following Terms of Occupancy							
90% Refund Option							
Unit Type	Entrance Fee	4 Months	6 Months	10 Months	12 Months*		
Standard	\$140,000	\$135,000	\$132,500	\$128,000	\$126,000		
Deluxe	\$300,000	\$290,900	\$285,000	\$275,000	\$270,000		
*After 12 months of occupancy, the refund will not be diminished beyond the amount indicated above.							
50% Refund Option							
Unit Type	Entrance Fee	4 Months	6 Months	12 Months	24 Months	36	48
Standard	\$100,000	\$ 95,000	\$ 90,000	\$ 80,000	\$ 70,000	\$ 60,000	\$ 50,000*
De-luxe	\$225,000	\$212,500	\$200,000	\$180,000	\$157,500	\$135,000	\$112,500-
**							
**After 48 months of occupancy, the refund will not be diminished beyond the amount indicated above.							
Traditional Plan (0% Refund Option)							
Unit Type	Entrance Fee	4 Months	6 Months	12 Months	24 Months	36	48
Standard	\$ 50,000	\$ 45,000	\$ 43,000	\$36,000	\$ 25,000	\$12,500	\$0**
Deluxe	\$125,000	\$115,000	\$105,000	\$80,000	\$62,500	\$31,000	\$0**

\*\*After 48 months of occupancy, the refund will not be diminished beyond the amount indicated above.

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(h) *Budget for first year of operation (schedule B-1).* The plan must describe all projected income and expenses for the first year of operation of the residence in schedule B-1.

(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 residence's operations will begin. When calculating the projection, include sufficient time for plan acceptance and completion of construction. If the actual or anticipated date of occupancy 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. If such amended projections exceed the original projections by 25 percent or more, the sponsor must offer all residents under contract 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. Sponsor must return any deposit on the entry fee to residents who rescind within 15 days.

(2) If the sponsor is reserving developmental rights and intends to add additional units which will be part of the residence, the budget must reflect expenses associated with the operation of the space to be newly constructed, including footnotes and supporting documentation required by this subdivision.

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

SCHEDULE B-1

Budget For First Year of Operation  
Beginning \_\_\_\_\_, 20\_\_

Projected Income	
Monthly Fees .....	\$ _____
Entrance Fees .....	\$ _____
*Commercial.....	\$ _____
*Laundry .....	\$ _____
*Other (Explain) .....	\$ _____
TOTAL .....	\$ _____
Projected Expenses	
Salaries and Benefits .....	\$ _____
Heating .....	\$ _____
Utilities (electricity and gas).....	\$ _____
Water charges and sewer rents .....	\$ _____
Repairs, maintenance and supplies .....	\$ _____
Housekeeping and Laundry .....	\$ _____
Food Services .....	\$ _____
*Service contracts .....	\$ _____
Insurance .....	\$ _____
Management fees .....	\$ _____
Administrative costs .....	\$ _____
Real Estate Taxes .....	\$ _____
Debt Service .....	\$ _____
Legal fees and audit fees .....	\$ _____
*Other .....	\$ _____
*Contingency .....	\$ _____

*Homeowners association dues.....	\$ _____
*Yearly reserve fund .....	\$ _____
TOTAL .....	\$ _____

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

(i) Commercial income. Briefly describe any contracts or leases that will provide income to the sponsor. State whether the sponsor is required to provide heat, water, electricity, gas or insurance and describe any other specific additional costs under the contract or lease. State the name and business address of each contractor or lessee, the annual income, and the expiration date of the contract or lease. If applicable, state whether the sponsor may rent vacant non-residential space. State whether the rent to be collected could be less than the rent set forth in schedule B-1 for the space.

(ii) Salaries and benefits. State the number of full and part time staff projected for the residence in schedule B-1 and whether the staff will be union members. State whether such level of staffing complies with all applicable housing and labor laws. This item must include benefits required by local, ~~S~~state or ~~F~~federal law or required by contract such as workers' compensation, disability insurance, welfare and pension contributions by employers, unemployment insurance and payroll taxes. Specify the wages and the cost of each applicable benefit. The budget must reflect current wage rates and payroll tax rates applicable for the budgeted year, and reasonably anticipated increases or increases now mandated by contract. If applicable, state the expiration dates of all union contracts. If there is non-union labor in the building, discuss whether their wages meet state minimum wage laws.

(iii) Heating, cooling and hot water costs. State the type and quantity of energy projected to be used during the year and the projected cost per gallon or other pricing unit inclusive of sales tax for all energy costs for providing heat, air conditioning and hot water for the building. State the basis for projecting the quantity of energy to be used. The Office of the Attorney General may, from time to time, issue pricing guidelines to reflect minimum fuel costs.

(iv) Utilities (electricity and gas). State the basis for the projected consumption and projected unit cost for utilities. Unit cost should be based on the current tariff plus a reasonably anticipated increase which should be set forth, *e.g.*, estimate based on current tariffs plus 10 percent increase. State which services will be provided by or through the sponsor and which must be obtained directly by residents.

(v) Water charges and sewer rents. State the basis for the projection. If water and/or sewer charges will be separately billed by local authorities or utility companies to individual residents, the estimated individual annual charges should be stated in a separate column in schedule A-1 or (if appropriate) in schedule B-2.

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

(vii) Housekeeping and laundry. Itemize the material components of the expense for housekeeping and laundry, such as linens, cleaning supplies and the cost of any personnel not included in other budget items.

(viii) Food services. If the food services are not being provided by a contractor, itemize the costs of the components of food service including cost of food and preparation.

(ix) Service contracts. State the name of the contractor, the service, the annual cost and the expiration date of the contract. Highlight as a special risk any contract with an expiration date more than five years after

the anticipated commencement of occupancy unless it is customary in the area to enter into a long-term contract for the service rendered (e.g., cable television contract).

(x) Insurance. The budget for insurance must disclose whether the sponsor will have at commencement of occupancy, 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 building in the event of total loss and to avoid being a co-insurer in the event of partial loss. Disclose the items covered, the coverage amount limits, the deductibles and the exposures insured against.

(a) Disclose whether the budget for insurance will provide and the sponsor will have public liability insurance at commencement of occupancy.

(b) Disclose whether the insurance coverage meets the requirements of any mortgagee who holds a mortgage on the property.

(c) Disclose whether the fire, casualty and general liability insurance are on terms that provide:

(1) that each resident is an additional insured party;

(2) that there will be no cancellation without notice to each resident;

(3) a waiver of subrogation;

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

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

(d) The plan must alert residents to the desirability of obtaining additional insurance at their own cost to cover such risks as fire and casualty losses to their own personal property, replacements, additions, fixtures and improvements, and liability coverage for occurrences within the unit or, where applicable, in common areas.

(xi) Management contract. State the basis for the projected management fee. The projected cost must include any costs required by the terms of the management agreement, such as bonding. If the cost of a manager or the management contract is greater or substantially less than the prevailing cost for similar services, state the prevailing cost in the industry which would be charged for these services.

(xii) Administrative costs. Itemize costs of administration such as rental of office space, telephone and electricity expenses, office equipment and supplies, travel expenses, employer association dues (if applicable), applicable license fees, registration and municipal permits, and miscellaneous expenses, including interest, not provided for in other lines.

(xiii) Real estate taxes. State the projected assessed valuation after completion of construction and the projected tax rate used to calculate the budget item. Include the present assessed valuation if the residence is an existing building being sold without rehabilitation or is undergoing minimum rehabilitation.

(xiv) Debt service. Disclose the terms of any construction loan including principal amount, interest rate, duration of the loan, required monthly payments, how the mortgage is paid during the budget year and the allocation of payments to interest and principal. Disclose any other sponsor debts for which the residence serves as collateral or for payment of which sponsor uses proceeds of fees paid by residents. If sponsor does not have construction financing at the time the plan is submitted, the plan must be amended to disclose this information as soon as financing is obtained.

(xv) Legal fees and audit fees. If the budgeted amount for legal fees is less than \$5,000, 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 residence.

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

(xvii) Reserve fund. Disclose whether a reserve fund will be created and if so whether it will be sufficient to pay for major capital repairs or replacement items likely to be needed within the first five years of operation.

(5) If residents must pay separately for heating and hot water costs directly to the utility, such as energy for heat pumps, baseboard, radiant or space heaters, individually fired boilers, or for integrated cooling, projections for these individual costs shall be set forth and explained in schedule B-2 (next following). This schedule shall present in chart format applicable individual expense categories for typical units of various size and layouts, supported by detailed footnotes containing information similar to the corresponding footnotes described in this section for schedule B-1.

(6) If membership in a homeowners' association or similar entity is included in conjunction with the offer of occupancy in the residence, a projected schedule of income and expenses shall be set forth and explained in schedule C in compliance with section 22.3(e) of this Title.

(i) *Commercial units.* If the residence is going to include commercial, professional, retail or other than residential units:

(1) Describe the use or proposed use of the commercial unit(s). Highlight as a special risk if the commercial unit(s) is not restricted to its current use and describe the permissible range of uses under applicable zoning requirements.

(2) If applicable, disclose whether commercial units will have any special or exclusive use of particular common areas.

(3) Disclose any rights or obligations of commercial unit occupants which will have a material adverse impact on the residence and highlight as a special risk.

(4) The attorney who prepared the plan must note any commercial unit(s) in the transmittal letter to the Office of the Attorney General as required by section 25.2(c)(1) of this Part.

(j) *Changes in entrance fees, monthly service fees and units.*

(1) State that the fees set forth in schedule A-1 must be changed by a duly filed amendment to the plan when the change in fees is an across the board increase or decrease affecting one or more lines of units or unit models, or is to be advertised, or is a fee increase for an individual resident. Existing facilities, which have plans previously accepted for filing with the Department of Law, need not submit a new offering plan, but must comply with the requirements of section 25.5 of this Part when amending the plan. If applicable, state that fees and specified terms of residency are negotiable and the sponsor may enter into an agreement with an individual resident to permit occupancy of one or more units at fees lower than those set forth in schedule A-1 without filing an amendment.

(2) State that no change will be made in the size or number of units, and that no material change will be made in the size or quality of common areas, except by amendment to the plan.

(3) State that unless an affected resident under contract consents, no material change will be made in unit size or

layout if a residency agreement has been executed or an entrance fee or deposit has been delivered to the sponsor for that unit and the resident is not in default.

(k) *Accountant's certified statements of operation of the sponsor.* Include certified statements of income and expense of sponsor, 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 sponsor has been in operation for less than two years, include a statement for the period during which sponsor has been in existence. If, after the plan is filed but before it is declared effective, a more recent fiscal year has ended and the sponsor has had three additional months after the end of the more recent fiscal year to prepare a certified statement, sponsor must amend the plan to include the certified statement for the more recent fiscal year.

(1) The accountant's certification must:

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

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

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

(1) *Procedure to reserve units and take occupancy.* State the procedure to be followed in reserving a unit and taking occupancy, including any application procedure and steps required if the application is accepted.

(1) Highlight as a special risk if the deposit is more than 10 percent of the entrance fee.

(2) Statutory requirement. The sponsor shall comply with the escrow and trust fund requirements of [GBL sections 352-e\(2-b\)](#) and [352-h](#) and this Part, and all deposits paid by prospective residents shall be handled in accordance with these statutes and regulations.

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

(i) The account(s). All deposits or advances made by prospective residents prior to the right to occupancy of their units must be placed within five business days after the application and deposit are received by the sponsor, in an attorney's segregated special escrow account in a bank doing business in the State of New York which account is insured by the Federal Deposit Insurance Corporation ("FDIC"). Sponsor shall state the applicable FDIC insurance limits, whether and to what extent the deposits, down payments, or advances are insured, and whether sponsor may utilize more than one segregated special account for each deposit, down payment, or advance. Include as a special risk that deposits in excess of said limits will not be federally insured. An attorney shall open and maintain any such account in his or her own name, or in the name of a firm of attorneys of which he or she is a member, or in the name of the attorney or firm of attorneys by whom he or she is employed, separate from such attorney's personal account or from any accounts in which assets belonging to the firm are deposited, and separate from any accounts maintained in the capacity of executor, guardian, trustee or receiver. A master escrow account with a sub-account for each prospective resident is acceptable. The name of any account, the bank, and the bank address must be stated in the plan. The word "escrow" must be included as part of the name of any account. Funds from any account may be released only by signature of the attorney who is named as escrow agent. Neither the sponsor nor any principal of the sponsor may be a signatory on any account. Funds must be placed in an interest-bearing account, with all interest credited to the prospective resident, unless either the prospective resident 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 of such accounts. State the current prevailing rate and when interest will begin to accrue. No fees of any kind may be deducted from the account principal or any interest earned thereon. Sponsor shall bear any administrative cost for maintenance of any account.

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

(iii) The escrow agent. The escrow agent must be an attorney admitted to practice in the State of New York or an attorney admitted in a foreign jurisdiction who submits to the jurisdiction of the State of New York for any cause of action arising out of the escrow agreement or a firm of such attorneys. The escrow agent shall be independent of the sponsor. Attorneys admitted or practicing in the State of New York must comply with the Appellate Division rules for the preservation of client funds of the Judicial Department having jurisdiction over the attorney. A law firm which has a member who is a principal of the sponsor, shall not be the escrow agent, but one or more members of the firm other than the principal may act as escrow agent. Only an attorney acting as escrow agent shall be a signatory on any account and only such attorney shall be authorized to release funds. The name, address and telephone number of the escrow agent and of each attorney who is a signatory must be stated in the plan.

(iv) Escrow agreement. The material terms of the escrow agreement shall be disclosed in the plan and a copy of the full agreement must be contained as an exhibit to the plan in Part II. Include, without limitation, any indemnity by the sponsor in favor of the escrow agent, provision for discharge of the escrow agent's obligations by the sponsor upon payment of the deposit and interest in accordance with this Part, 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.

(v) Notification to prospective resident. Within 10 business days after tender of the deposit submitted with the application or residency agreement, the escrow agent shall notify the prospective resident that such funds have been deposited in the bank indicated in the offering plan, and shall provide any account number and the initial interest rate. If the prospective resident does not receive notice of such deposit within 15 business days after tender of the deposit, he or she may cancel the application or residency agreement 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 prospective resident.

(vi) Escrow revisions. Before funds are transferred to any new escrow account, or if the escrow agent is replaced, the plan must be amended to provide the same full disclosure with respect to any new account, the escrow agent and the escrow agreement as was originally provided. A bond, letter of credit or other security may be substituted for any escrow account only after the 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.

(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 prospective resident until after occupancy in the Residence has commenced (consummation of the plan). Consummation of the plan does not relieve the sponsor of its obligations pursuant to [GBL section 352-h](#).

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

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

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

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

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

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

(2) all prospective residents 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 prospective resident written notice of not fewer than 10 business days. Thereafter, the funds may be paid to the sponsor unless the prospective resident 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 prospective resident or the escrow agent holding the deposits in escrow may apply to the Attorney General for a determination on the disposition of the deposit and any interest earned thereon. Forms for this purpose will be available from the Office of the Attorney General. The party 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 prospective resident and the escrow agent shall abide by any interim directive issued by the Attorney General.

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

(d) The Attorney General shall act upon the application within 180 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. The Attorney General in its sole discretion, reserves the right to reject any application.

(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 prospective resident direct payment to a specified party in accordance with a written direction signed by both the sponsor and prospective resident; or

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

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

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

(ix) Exhibits to plan. Copies of the forms provided by the bank for opening any escrow account and the escrow agreement as proposed must be included as exhibit B-17 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-17 of the submission.

(x) Records on file. The escrow agent shall maintain all records concerning any escrow account for seven years after release of the funds. Upon the dissolution of any law firm which was the escrow agent, the former partners or members of the firm shall make appropriate arrangements for the maintenance of these records by 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 prospective resident 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 an application form or residency agreement.

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

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

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

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

(ii) Documentation. The proposed form of surety bond or letter of credit, any underlying agreement or related agreement, and any undertaking or covenants required hereunder, shall be appended to the application and also filed as exhibits to the plan in exhibits Part B section 25.2(c)(5)(ii)(B-18) of this Part or as exhibits to an amendment to the plan.

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

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

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

(i) Deposits into escrow account. All 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 application and deposit are received by sponsor, in an attorney's segregated special escrow account or accounts, established pursuant to and in compliance with paragraph (3) of this subdivision. Such funds shall be released by the escrow agent to the sponsor upon receipt by the escrow agent of a copy of the surety bond issued to the prospective resident whose funds are being released.

(ii) Payments. All funds received from prospective residents 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 prospective resident to the order of the attorney or law firm as escrow agent.

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

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

(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 prospective resident as obligee on the bond; provision for the amount of the 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 prospective resident-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 the commencement of occupancy in the respective unit the deposit for which is secured by such surety bond or until the secured funds of a prospective resident have been returned in full, or until the funds secured by the surety bond have been placed in ~~the~~-any escrow account pursuant to paragraph (7) of this subdivision or until there is an undisputed prospective resident default or a determination by the Attorney General or order or judgment of a court of competent jurisdiction that the prospective resident 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 prospective resident-obligee before the funds are released to the sponsor from ~~the~~-any escrow account. The sponsor, the escrow agent and the surety company shall each retain a copy of the surety bond.

(viii) Invoking the bond. The prospective resident-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 prospective resident-obligee without the consent or despite the objection of the sponsor, upon the following events or circumstances;

(a) timely rescission of an application or residency agreement by a prospective resident 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) determinations by the Attorney General pursuant to subparagraph (x) of this paragraph that rescission or the return of funds is required;

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

(e) direction by the sponsor upon request by the prospective resident.

(ix) Failure by prospective resident-obligee to produce a copy of the bond. A prospective resident's inability to produce a copy of the surety bond shall not be a basis for the surety to reject the prospective resident's claim. The surety shall retain a copy of the bond and shall pay the secured funds to the prospective resident-obligee without a copy of the bond as long as the prospective resident 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 prospective resident or the surety issuing the bond may apply to the Attorney General for a determination on the disposition of the deposit 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 prospective resident and the surety shall abide by any interim directive issued by the Attorney General.

(c) If the Attorney General determines:

(I) that the prospective resident is entitled to the disputed funds secured by the surety bond, the surety shall pay

the funds to the prospective resident in accordance with the determination of the Attorney General;

(2) that the prospective resident 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 180 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 funds secured by the bond be paid to the prospective resident nor shall the surety bond be discharged until any dispute is finally resolved either by written agreement of the parties directing payment of the funds or discharge of the surety bonds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

(6) Letter of credit. A sponsor whose application to use alternate security is approved by the Attorney General, may meet its obligation to insure the availability of such funds to prospective residents by effectuating the issuance of a letter of credit for the benefit of the prospective residents 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 deposits or payments expected to be received from prospective residents, 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 (3)(iii) of this subdivision to act as escrow agent under the plan, who shall act as a fiduciary for the benefit of prospective residents under the plan.

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

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

(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 residency agreements have been entered into and occupancy has commenced in all units referred to in the application for alternate security pursuant to subparagraph (4)(i) of this subdivision or until the covered funds of prospective residents have been returned to them in full.

(vii) Undertaking. If the letter of credit will expire prior to the latest date of commencement of occupancy in any unit, 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 commencement of occupancy of all units or until the covered funds of prospective residents have been returned in full.

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

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

(b) Payments. All funds received from prospective residents 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 prospective resident 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 prospective residents 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 an application or residency agreement by a prospective resident 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 mandating that rescission or the return of funds is required;

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

(e) direction by the sponsor upon request of the prospective resident;

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

(x) Disputes.

(a) In the event of a dispute, the sponsor shall apply, and the prospective resident, 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 con-

temporarily 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 prospective resident, the escrow agent and the bank shall abide by any interim directive issued by the Attorney General.

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

(d) The Attorney General shall act upon the application within 180 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 prospective resident nor shall the letter of credit be terminated until any dispute is finally resolved either by written agreement of the parties directing payment of the funds, or by a determination of the Attorney General or by order or judgment of a court of competent jurisdiction.

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

(8) *[Reserved]*

(9) Disclose under what circumstances, if any, prospective residents risk forfeiture of their deposit for failure to pay the balance of the entrance fee. Disclose any events of default in addition to failure to pay the balance of the entrance fee. Highlight as a special risk any provision allowing sums in excess of 10 percent of the entrance fee to be retained as liquidated damages. Highlight as a special risk if sponsor may seek specific performance of the residency agreement.

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

(11) Disclose the procedure for notifying prospective residents that their units are completed and ready for occupancy. Disclose all payments which must be made prior to taking occupancy. Notice will be served in compliance with section 25.1(d)(1) of this Part no less than 30 days before the date on which final payment is due. Sponsor may permit prospective residents to waive this 30-day provision by including such optional waiver in the plan or in an amendment thereto.

(i) State that the sponsor will fix dates by which the entrance fee must be paid in its entirety by serving notice on each prospective resident setting prospective resident's deadline for payment and the date on which residents may first occupy their units.

(12) State when sponsor expects the units to be ready for occupancy, which should correspond to the first year of operation projected in schedule B-1. State that if such date is delayed 12 months or more, prospective residents will be offered rescission.

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

- (14) The plan shall state that at sponsor's option prospective residents will be afforded:
- (i) not fewer than seven days after delivering an executed application together with the required deposit to rescind the application and have the full deposit refunded promptly. The prospective resident must either personally deliver a written notice of rescission to the sponsor or broker within the seven-day period or mail the notice of rescission to the sponsor or broker 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 completing an application.
- (15) A complete copy of the application and residency agreement must be included in the plan.
- (16) If prospective resident's obligation to pay the entrance fee is contingent upon obtaining a commitment for financing or actually obtaining financing, explain the terms of the contingency. State the time within which the prospective resident must notify sponsor of any inability to obtain financing. Include the prospective resident's time to obtain financing or a commitment and the risk, if any, that the commitment may expire or that the terms of the commitment may change prior to execution of the residency agreement or commencement of occupancy. If a prospective resident's obligations are contingent on obtaining a financing commitment and the financing commitment lapses or expires prior to execution of the residency agreement or commencement of occupancy, and the prospective resident has made a good faith effort to extend the commitment, sponsor must grant to such prospective resident a right of rescission and a reasonable period of time to exercise the right.
- (17) The plan and residency agreement must provide that any conflict between the plan and the residency agreement will be resolved according to the terms of the plan.
- (18) State that within a specified number of days after a prospective resident delivers an executed application together with the required deposit, the sponsor must either accept the application and return a fully executed counterpart to the prospective resident or reject the application and refund the full deposit previously tendered. Discuss the outcome for the prospective resident if the sponsor takes no action within the time period specified in the plan.
- (19) The application form, residency agreement, and plan may not contain, or be modified to contain, a provision waiving prospective resident's rights or abrogating sponsor's obligations under article 23-A of the GBL.
- (m) *Financing for qualified residents.* Disclose the terms of any commitment by sponsor or a lender procured by sponsor to provide financing of the entrance fee.
- (1) Disclose all material terms of such financing including, but not limited to, maximum percentage of fee to be financed, term of loan, interest rates, monthly payment, prepayment options and penalties and any other material terms.
  - (2) If any proposed financing contains unusual risks and features which are not prevalent among financing institutions in the State of New York, highlight as a special risk and explain the risks of such financing.
  - (3) The attorney who prepared the plan must note such financing in the transmittal letter to the Office of the Attorney General required by section 25.2(c)(1) of this Part.
- (n) *Effectiveness.* The plan must explain whether a prospective resident's right to commence occupancy is contingent upon the plan's being declared effective. If the offer is not contingent on the plan being declared effective, highlight as a special risk. Disclose that because no minimum number of residency agreements are required before occupancy commences, residents who initially take occupancy may be living in a substantially vacant residence for an indeterminate period of time. Disclose any financial risk factors resulting from such minimal occupancy.

(1) The plan may be declared effective by:

(i) an amendment to the plan; or

(ii) by personal service of notice on every prospective resident or by commencement of service by mail in the manner required by section 25.1(d) of this Part stating that the plan is declared effective and submitting an amendment to the Office of the Attorney General within five days confirming that the plan was declared effective on a specified date. The amendment must conform to section 25.5(e) of this Part. State that the right to commence occupancy shall not occur until the plan is declared effective and the effectiveness amendment is accepted for filing by the Office of the Attorney General. If there is a minimum percentage of units which must be subject to executed residency agreements in order for the plan to be declared effective, state what it is. If a mortgagee or construction lender imposes any minimum requirement, disclose that information.

(2) Disclose whether there are any limitations on which prospective residents may be counted toward effectiveness, such as exclusion of family members or business associates of principals of the sponsor.

(3) Disclose whether the plan must be declared effective when residency agreements have been executed and accepted by sponsor for a designated percentage of the units offered under the plan, such as 80 percent or more.

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

(5) If the plan may be abandoned by sponsor, at its option, before it is declared effective, the plan must state that within a specified number of days after abandonment, all monies paid by prospective residents shall be refunded to them in full, with interest earned, if any. Sponsor shall promptly file an amendment together with form RS-3 as required by section 25.1(k)(2) of this Part.

(6) Disclose any conditions under which the plan may be abandoned after effectiveness.

(o) *Terms of residency agreement.* A copy of the full residency agreement must be included in Part II as an exhibit to the plan. The following information should be included in the residency agreement.

(1) Fees and financial aspects.

(i) Entrance fees.

(a) Disclose the method, amount and schedule of payment of any entrance fee required as a prerequisite for admission to the residence; for example, whether the full payment is due prior to admission or whether payment can be made in installments before or after occupancy commences. A copy of the application and all documents to be executed by the residence and the applicant must be included as an exhibit.

(b) Disclose that all entrance fees paid prior to occupancy must be held in compliance with the requirements of [New York State General Business Law, sections 352-e\(2\)\(b\) and 352-h](#).

(c) Disclose any entrance fee options. Include a discussion of whether monthly fees vary in proportion to the amount of the entrance fee; for example, if a resident pays a higher entrance fee, are monthly fees reduced?

(d) Disclose whether an entrance fee is required per person or per unit. If the fee is set on a per unit ba-

sis, disclose whether there are any limits on the number of occupants.

(e) Disclose the intended use of the entrance fees. Will they be released to sponsor or held in escrow for return to residents in whole or in part? Will they be used for construction, debt service, or other costs incurred in establishing or operating the residence?

(f) If entrance fees are to be used to complete construction of the residence, disclose whether completion of a project or a particular phase of the project is dependent on securing a minimum number of residents for admission.

(g) Disclose the plan for financing the project and the percentage of construction costs to be financed by entrance fees, if any.

(h) Disclose the intended use of any interest income earned on entrance fees.

(i) Disclose that it is the obligation of the sponsor to provide to residents an annual certified accounting of the disposition of entrance fees and interest earned.

(ii) Refund of entrance fees.

(a) Specify requirements and procedures for the refund of entrance fees if the applicant rescinds the contract prior to taking occupancy.

(b) If the plan provides for refund of entrance fees to a resident upon departure from the facility, disclose whether the entrance fee will be held in escrow, secured in another manner or will be unsecured. Disclose whether the resident will be entitled to receive interest earned and, if so, the applicable interest rate. If fees are not to be held in escrow or otherwise secured after occupancy commences, disclose whether reimbursement is contingent upon sponsor's obtaining a replacement for the departing resident. Disclose any time limit on sponsor's obligation to reimburse the resident.

(c) Disclose whether the resident or resident's estate is entitled to a refund contingent on a particular event or condition (for example, death of the resident or onset of a medical condition requiring departure from the residence). If the amount of the refund is contingent on length of occupancy, set forth a schedule demonstrating this relationship. Disclose whether a portion of the refund of the entrance fee will be withheld for administrative or processing costs.

(d) Disclose whether the resident is entitled to a refund upon voluntary departure from the residence.

(e) Disclose whether a resident who terminates occupancy of a unit occupied by more than one resident is entitled to a refund when fewer than all of the residents terminate occupancy. Disclose whether payment of a refund is contingent on the unit becoming vacant.

(iii) Monthly and other fees.

(a) Disclose the monthly fee and other fees provided for in the residency agreement. Disclose whether such fees are per person or per unit. Disclose due dates, grace periods and penalties.

(b) Disclose whether co-residents of a unit are jointly and severally liable for the monthly service fee.

(c) Disclose whether the monthly fees may be increased after the resident takes occupancy, the basis for such increase, and the applicable notice requirements and procedures for implementation.

(2) Residential services and amenities.

(i) Disclose and fully describe all services and amenities covered by the basic monthly fee.

(a) Disclose and fully describe basic food service and meal plans including dining facilities, and meal delivery services. Disclose whether special dietary needs of residents will be accommodated. Indicate which meals or meal plans are covered.

(b) Disclose the housekeeping and laundry services provided. Indicate whether laundry facilities are available to the residents for their own use.

(c) Disclose the transportation to shopping, medical facilities and cultural and social events included. Describe any exercise facilities and classes and educational, social and cultural activities covered.

(ii) Disclose and fully describe all services and amenities not covered by the basic monthly fee, but available for additional fees. Disclose the fee for each service.

(a) Disclose and fully describe the availability of optional meal plans including snacks, customized meal plans and personal service of meals in units.

(b) Describe any optional housekeeping or laundry services available.

(c) Disclose whether customized transportation for individual appointments is provided and if so, the type of transportation.

(d) Describe any additional facilities, classes, educational, social and cultural activities.

(iii) Disclose availability and cost of guest accommodations.

(iv) Disclose all agreements between the residence and contractors and the nature of the services provided, such as management, food, laundry, housekeeping, pest control. Identify the contractor for each such service. Disclose any affiliation between the residence and the contractor. Disclose whether the contractual fees are in accordance with prevailing rates for such services.

(3) Health care services. Disclose and fully describe all health care services and assistance with activities of daily living, if the sponsor provides such health care services and/or assistance with activities of daily living, contracts with outside vendors or related parties for such services, or assists residents in procuring them. Activities of daily living means assistance with the basic activities of everyday living: bathing, continence, dressing, toileting, eating or transferring from a chair or bed. If such health care services or assistance with activities of daily living are provided pursuant to a license or operating certificate from the Department of Health, the license or operating certificate from the Department of Health and a copy of the residency agreement for such facility may be attached in lieu of providing the disclosures required by this paragraph.

(i) Disclose whether a health care facility is available on the premises and whether it provides for monitoring of individual health needs, dispensing medications, physical or rehabilitation therapy, or social work services and if so, provide proof of a license or operating certificate from the applicable state agency. If a license or operating certificate is required but has not been obtained by the residence, disclose as a special risk. Disclose whether such services are covered by the basic monthly fee. Disclose whether such services are provided by the residence or a separate provider. If such services are provided by a separate provider, disclose the name and address of the provider and any affiliation between the residence and the provider.

(ii) Disclose whether assistance with the administration of medication is provided and, if so, provide proof of a license or operating certificate from the applicable state agency. If a license or operating certificate is

required but has not been obtained by the residence, disclose as a special risk. Disclose whether such services are covered by the basic monthly fee. If assistance with the administration of medication is not provided, disclose that the resident will have to obtain such services if needed at the resident's own expense. Disclose whether the residence will provide referrals and the estimated cost for such services.

(iii) Disclose whether assistance with activities of daily living is provided, and, if so, provide proof of a license or operating certificate from the applicable state agency. If a license or operating certificate is required but has not been obtained by the residence, disclose as a special risk. Disclose the cost of such services, if not covered by the basic monthly fee. If assistance with activities of daily living is not provided, disclose that the resident will have to obtain such services if needed at the resident's own expense. Disclose whether the residence will provide referrals for such services and the estimated cost for such services.

(iv) Wherever services require licensing or an operating certificate from a state agency, disclose any grievance mechanism to the applicable state agency available to residents.

(v) Disclose the availability and proximity of alternate facilities providing higher levels of care, such as skilled nursing facilities or facilities offering assistance with activities of daily living, and disclose whether such facilities have a license or operating certificate from the New York State Department of Health or the New York State Department of Social Services. Disclose whether such facilities are affiliated with this residence. If so, disclose the requirements for admission, waiting periods and fees.

#### (4) Staff.

(i) Disclose the title, duties, responsibilities and educational requirements for professional staff, such as nutritionists and social workers.

(ii) Disclose whether any mandatory training in medical, geriatric and emergency procedures is provided.

(iii) Disclose the staffing during normal business hours, evening hours, and weekends. Include the number and type of personnel working during each such shift.

(iv) Disclose licensed staff members and the applicable licensing agency.

#### (5) Termination of occupancy.

(i) Disclose the resident's rights to terminate the agreement and vacate the residence.

(ii) Disclose any events of default which constitute a basis for termination of a resident's contract and occupancy for non-payment of fees and failure to comply with the terms of the residency agreement. Disclose the procedure for notification and the resident's right to contest the proposed termination and the applicability of the Real Property Actions and Proceedings Law to any termination proceeding. Disclose the relevant time periods to cure a default or reinstate the residency agreement. Disclose whether the residence will impose legal fees or any other penalty if such a proceeding is brought.

(iii) Disclose the criteria for termination of occupancy based on changes in the physical and mental status of the resident, including the resident's need for assistance with the administration of medications or assistance with activities of daily living. Such disclosure must include how the resident is to be evaluated, who makes the determination, whether the resident and the resident's family or personal representative is notified in writing of the basis for the decision, whether the decision is reviewable and the procedures for such review. Disclose the rights of residents and the applicability of the Real Property Actions and Proceedings Law to any termination proceeding. Disclose any provisions in the residency agreement that constitute a basis for involuntary transfer of the resident and termination of the residency agreement.

(iv) Disclose whether and how long the unit will be reserved and whether the resident will be obligated for payment of monthly fees during a temporary absence (*e.g.*, hospitalization, recuperation or rehabilitation therapy).

(v) Disclose whether the residence will be responsible for safeguarding, storing and removing the resident's personal property and possessions in the event of the resident's death or transfer. Disclose how notice will be provided to the resident's family or personal representative, as to the location of such property and how long it will remain in storage.

(vi) Disclose the rights of a co-resident to continued occupancy of a unit when another co-resident dies or is transferred either temporarily or permanently. Disclose whether the initial contract remains in effect.

(6) Residents' rights.

(i) Disclose the availability of any procedures to address and resolve disputes and grievances of a resident.

(ii) Disclose whether the residence has established or will establish a residents' council or other entity consisting of residents and/or their families. If so, describe its composition, functions, and policies. Also disclose the number of seats, if any, on the governing board to be occupied by residents. Disclose the term of office.

(iii) Disclose whether residents receive advance notice of changes in policies, house rules or procedures regarding management and operation of the residence, and whether their consent or approval is required for the implementation of such changes.

(iv) Disclose any provisions applicable to additional residents occupying a unit after the initial resident has taken occupancy, *e.g.*, whether a spouse or relative may co-occupy the unit. Disclose whether an applicant to become an additional resident must individually apply and be separately approved as meeting the entrance criteria.

(v) Disclose the right of a resident to move to another unit.

(7) Pre-occupancy rights and obligations.

(i) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the resident takes occupancy of the unit and the rights and obligations of residents whose units have been damaged prior to their occupancy.

(ii) Disclose whether any minimum number of residency agreements must be entered into and accepted by sponsor before occupancy in the residence may commence.

(iii) State that occupancy of a residential unit will take place only concurrently with the issuance of a temporary or permanent certificate of occupancy for the entire project or issuance of a partial, temporary or permanent certificate of occupancy for the unit to be occupied or for the building in which the unit is located.

(p) *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) 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.

(2) Sponsor must represent that it has the financial resources to meet its obligations and state the means by which it will fund these obligations. If the funding source is stated as income from projected entrance and monthly fees, disclose other sources of funding, if any, that will be utilized if such projections are not met. Disclose whether any bond or other security has been furnished to secure sponsor's obligations. If no bond or other security has been posted to secure sponsor's obligations, highlight as a special risk.

(3) Describe whether and to what extent the sponsor is obligated to repair any damage from a casualty or other cause that occurs before the resident takes occupancy of the unit and the rights and obligations of residents whose units have been damaged prior to their occupancy.

(4) State that the sponsor shall procure fire and casualty insurance pursuant to an agreed amount replacement value policy or in an amount sufficient to avoid co-insurance, as reflected in schedule B.

(5) Disclose whether in the event of the dissolution or liquidation of the sponsor, the principals of the sponsor will provide financially responsible entities or individuals who will assume the status and all of the obligations of the sponsor for those units under the offering plan, applicable laws or regulations. Disclose the consequences of failing to provide financially responsible successors, including the possible termination of the residence and loss of resident's entrance fees.

(6) The sponsor must 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 units offered. Project the timetable for procuring a firm commitment for construction financing.

(7) State the sponsor's obligation to build and complete the residence in accordance with the building plans and specifications identified in the plan and sponsor's right to substitute equipment or materials and make modifications of layout or design, provided however, that sponsor may not:

(i) substitute equipment or materials of lesser quality or design; or

(ii) change the size, location of buildings, units or other improvements if such changes adversely affect the residence.

(8) Prior to occupancy of the first unit, sponsor must obtain a permanent certificate of occupancy for the property or, alternatively, obtain a temporary or partial certificate of occupancy for the unit or the building in which the unit is to be located. The sponsor and its principals must obtain a permanent certificate of occupancy for the property within a projected timetable after the first unit has been occupied. Sponsor must obtain the permanent certificate of occupancy before the partial or temporary certificate of occupancy expires, unless extended. Highlight as a special risk if the sponsor does not anticipate obtaining a permanent certificate of occupancy two years or more after the first unit is occupied.

(9) If the first unit may be occupied prior to the issuance of a permanent certificate of occupancy for the property:

(i) Sponsor is required to maintain all deposits and funds in any special escrow account required by [GBL, section 352-e\(2-b\)](#) unless the sponsor's engineer, architect or other qualified expert certifies that a lesser amount will be reasonably necessary to complete the work needed to obtain a permanent certificate of occupancy, in which case the sum exceeding the amount so certified by the sponsor's engineer, architect or other qualified expert may be released from any special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit, post a surety bond in the amount so certified, or provide other collateral acceptable to the Office of the Attorney General.

(ii) Notwithstanding subparagraph (i) of this paragraph, if the offering plan is subject to the provisions of [GBL, section 352-ee](#), sponsor is required to maintain all deposits and funds in any special escrow account

required by [GBL, section 352-e\(2-b\)](#) unless the sponsor's engineer or architect certifies that a lesser amount will be reasonably necessary to complete all alterations and improvements to the building. In such case the sum exceeding the amount so certified by the sponsor's engineer or architect may be released from any special escrow account. Alternatively, sponsor must deposit with an escrow agent an unconditional, irrevocable letter of credit, post a surety bond in the amount so certified, or provide other collateral acceptable to the Office of the Attorney General.

(10) State whether the sponsor agrees to warrant the materials or workmanship of each unit. Fully disclose the terms of the warranties.

(11) State that the sponsor agrees to pay for the authorized and proper work involved in the construction and establishment of the residence that sponsor is obligated to complete under the plan and will cause all mechanics liens with respect to such construction to be promptly discharged or bonded.

(12) State that the sponsor agrees to make available to all residents for inspection a set of "as-built" plans.

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

(14) If sponsor has a right of access to complete construction of the residence, describe sponsor's obligation to repair damages and the extent to which sponsor can interfere with residents' use.

(15) If existing mortgages or construction loans exist as liens against the property, sponsor must obtain the consent of the mortgagee or construction lender for the proposed use of the premises as a senior residence.

(16) Disclose whether the residence will be managed by the sponsor or an affiliate of the sponsor. If neither, disclose how and by whom the residence will be managed. Disclose the extent of participation by residents in the management of the residence; see also paragraph (o)(6) of this section.

(q) *Upkeep of units and restrictions on occupancy.*

(1) Repairs.

(i) Describe the obligation to repair and maintain units, and the allocation of responsibility between residents and management.

(ii) Describe any improvements, maintenance or provision of furnishings required of residents, such as painting or carpeting of units.

(iii) Describe the responsibility for repairs or replacements required as the result of the negligence or abuse by a resident.

(iv) State the requirement, and any conditions, for residents to grant access to management to inspect, remove violations, make general repairs, cure defaults by the resident and for other purposes.

(2) Additions, alterations and improvements.

(i) Describe the rights and obligations of the residents and the management with respect to additions, alterations and improvements.

(ii) Describe the work that residents can do without the consent of the management, what work requires consent, and the requirements which apply if a resident does his or her own work, at his or her own ex-

pense, such as filing plans and obtaining insurance.

(iii) Describe any requirements or restrictions regarding aesthetic or architectural controls for any additions, alterations or improvements to individual units.

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

(i) any limitation on pets;

(ii) any aesthetic controls;

(iii) any limitations on business or professional use, stating whether such limitations are more restrictive than those applicable to the sponsor;

(iv) any restrictions on occupancy of units leased by corporations, partnerships or fiduciaries;

(v) any restrictions on illegal or offensive uses;

(vi) any limitations on guest privileges;

(vii) limitations on utilization of common areas and parking facilities; and

(viii) limitations contained in the certificate of occupancy and zoning regulations.

(4) Describe any other material restrictions of the declaration or by-laws, including those required by local law, which significantly affect the rights and obligations of the residents or management.

(r) *Tax implications.*

(1) If the plan provides that entrance fees are partly or fully refundable, discuss the possible applicability of [section 483 of the Internal Revenue Code \(26 U.S.C. section 483\)](#). This discussion should explain that it is possible that the Internal Revenue Service may deem such a refundable entrance fee an interest free loan and that the resident could be subject to the imputed “pretend” interest rules of the IRS. Explain that the net effect to residents of the application of such rules would be that residents would be responsible for paying income tax on imputed interest which they could have earned on a bank deposit if they had not paid the refundable entrance fee.

(2) Discuss any other federal, state or local tax implications of the financial arrangements set forth in the plan.

(3) Discuss the current status of IRS rules and memoranda and provide the opinion of an attorney on these issues.

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

(1) Include an opinion from counsel for sponsor (or independent counsel if the attorney is a principal of the sponsor) that describes the tax implications of entering into a residency agreement under the terms of this offering plan.

(2) Counsel's opinion may not contain a general disclaimer of liability. It may, however, contain disclaimers of liability in the event that the critical facts presented by sponsor and sponsor's experts were or prove incorrect or there are changes in the applicable law and regulations, decisional law or Internal Revenue Service rulings.

They may state that they are attorneys' opinions, but not guarantees.

(t) *Identity of parties.*

(1) State the names, business addresses, backgrounds and experience of sponsor, and principals of sponsor as defined in section 25.1(c)(3) 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 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 greater equity interest in the sponsor.

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

(3) Identify each senior residence, cooperative, condominium or homeowners' association, other than the subject building(s), where the sponsor, general partner or principal of the sponsor owns 10 percent or more of the unsold shares or units as an individual, general partner or principal. State whether the sponsor, general partner, or principal is current in its financial obligations, including, but not limited to, contractual obligations affecting the property, payment of maintenance 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 any brokers employed by sponsor in promoting the offering. Describe:

(i) any prior felony convictions of such broker, or any principals of the brokerage; and

(ii) any prior convictions, injunctions and judgments against the broker, or any principals of the brokerage that may be material to the offering plan or an offering of securities generally, that occurred within 15 years

prior to the submission of the proposed offering plan.

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

(8) State the relationship, if any, between the sponsor or its principals and:

(i) the broker;

(ii) the managing agent;

(iii) the engineer or architect; and

(iv) any person or firm who will provide services to the residence subsequent to the commencement of occupancy.

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

(u) *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 the plan is accepted for filing.

(v) *General.* Describe any other material facts concerning the sponsor, the broker, the managing agent, any of their principals, the property, the offering, and prospective residents' 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, and sponsor's capacity to perform all of its obligations under the plan.

(2) Disclose whether the property was the subject of any prior offerings. Disclose whether any preliminary binding agreements have been entered into or whether money has been collected from prospective residents. 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, disability, marital status or other grounds prohibited by law.

(4) Note prospective residents' right to rescind residency agreements following material adverse amendments; see section 25.5(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.

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

(1) If a sponsor is reserving the right to transfer air or developmental rights to other buildings or if the prior or current owner of the building or buildings previously has conveyed, transferred or reserved air or developmental rights for use in other buildings:

(i) Disclose that the building(s) undergoing construction or conversion cannot be expanded or may be limited.

(ii) Disclose the maximum amount of space or the maximum number of stories that may be added to adjoining properties from the sale of air rights from this property. State that additional space or stories may be added from the transfer of air rights from other properties.

(2) A sponsor who is reserving the right to add to the existing building(s) must provide the following information:

(i) A comprehensive narrative description of the additional space to be built in compliance with section 25.7(cc) of this Part.

(ii) Approved building plans and specifications must be obtained prior to acceptance for filing.

(3) A sponsor who is reserving the right to add to the existing building(s) must submit a statement from a professional engineer or a registered architect concerning the impact of the renovation or additional construction on essential services. This must include:

(i) the hours when construction will occur;

(ii) security to be furnished during construction period;

(iii) handling of construction debris;

(iv) insurance and liability during the construction period; and

(v) access to the building.

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

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

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

(2) If not included in the Description of Property and Building Condition, describe any rehabilitation to be completed by sponsor and the timetable for completion.

(3) If not stated in the Description of Property and Building Condition, state whether the number of units offered is identical to the number of units stated in the Certificate of Occupancy, whether the proposed use of the units is the same as the use indicated in the Certificate of Occupancy and whether ancillary amenities that are included, such as parking facilities, are provided for in the Certificate of Occupancy.

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

(5) Disclose the existence of any applicable federal, state or local laws concerning lead-based paint and whether the sponsor will comply with such laws and regulations promulgated thereunder.

