

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

**APPLICATION FOR FINANCIAL ASSISTANCE**

**APPLICATION OF:**

**ORNSTEIN FETNER DEVELOPMENT LLC  
and 249 DREXEL ASSOCIATES LLC**

**APPLICANT NAME**

Please respond to all questions in this Application for Financial Assistance (the “Application”) by, as appropriate:

- filling in blanks;
- checking the applicable term(s);
- attaching additional text (with notation in Application such as “see Schedule H, Item # 1”, etc.); or
- writing “N.A.”, signifying “not applicable”.

All attachments responsive to questions found in this Application should be clearly labeled and attached as Schedule I to the Application. If an estimate is given, enter “EST” after the figure. One signed original and one photocopy of the Application (including all attachments) must be submitted.

The following amounts are payable to the Nassau County Industrial Development Agency (the “Agency”) at the time this Application is submitted to the Agency: (i) a \$1,500 non-refundable application fee (the “Application Fee”); (ii) a \$3,500 expense deposit for the Agency’s Transaction/Bond Counsel fees and expenses (the “Counsel Fee Deposit”), (iii) a \$4,500 expense deposit for the cost/benefit analysis with respect to the project contemplated by this Application (the “Cost/Benefit Deposit”), and (iv) a \$500 expense deposit for the real property tax valuation analysis, if applicable, with respect to the project contemplated by this Application (the “Valuation Deposit”). The Application Fee will not be credited against any other fees or expenses which are or become payable to the Agency in connection with this Application or the project contemplated herein (the “Project”). In the event that the subject transaction does not close for any reason, the Agency may use all or any part of the Counsel Fee Deposit, the Cost/Benefit Deposit and/or the Valuation Deposit to defray the cost of Transaction/Bond Counsel fees and expenses, the cost of obtaining a cost/benefit analysis and/or the cost of obtaining a real property tax valuation with respect to the Project. In the event that the subject transaction does close, the Counsel Fee Deposit, the Cost/Benefit Deposit and the Valuation Deposit shall be credited against the applicable expenses incurred by the Agency with respect to the Project.

**Every signature page comprising part of this Application must be signed by the Applicant or this Application will not be considered complete or accepted for consideration by the Agency.**

The Agency's acceptance of this Application for consideration does not constitute a commitment on the part of the Agency to undertake the proposed Project, to grant any financial assistance with respect to the proposed Project or to enter into any negotiations with respect to the proposed Project.

Information provided herein may be subject to disclosure under the New York Freedom of Information Law (New York Public Officers Law § 84 et seq.) ("FOIL"). If the Applicant believes that a portion of the material submitted with this Application is protected from disclosure under FOIL, the Applicant should mark the applicable section(s) or page(s) as "confidential" and state the applicable exception to disclosure under FOIL.

February 22, 2022

DATE

**PART I. APPLICANT**

A. APPLICANT FOR FINANCIAL ASSISTANCE:

Name: **Ornstein Fetner Development LLC**

Address: **210 Brookfield Ave., Center Moriches, NY 11934**

Fax: \_\_\_\_\_

NY State Dept. of

Labor Reg #: \_\_\_\_\_ Federal Employer ID #: \_\_\_\_\_

NAICS Code #: \_\_\_\_\_

Website: \_\_\_\_\_

Name of CEO or

Authorized Representative Certifying Application: **Alec Ornstein**

Title of Officer: **Member**

Phone Number: \_\_\_\_\_ E-Mail: \_\_\_\_\_

B. BUSINESS TYPE (Check applicable status. Complete blanks as necessary):

Sole Proprietorship \_\_\_\_\_ General Partnership \_\_\_\_\_ Limited Partnership \_\_\_\_\_

Limited Liability Company **X** \_\_\_\_\_ Privately Held Corporation \_\_\_\_\_

Publicly Held Corporation \_\_\_\_\_ Exchange listed on \_\_\_\_\_

Not-for-Profit Corporation \_\_\_\_\_

Income taxed as: Subchapter S \_\_\_\_\_ Subchapter C \_\_\_\_\_

501(c)(3) Corporation \_\_\_\_\_ Partnership \_\_\_\_\_

State and Year of Incorporation/Organization: **New York/2017**

Qualified to do Business in New York: Yes **X** \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_

C. APPLICANT COUNSEL:





- H. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) been involved in, applied for or benefited by any prior industrial development financing in the municipality in which this Project is located, whether by the Agency or another issuer, or in a contiguous municipality? ("Municipality" herein means city, town or village, or, if the Project is not in an incorporated city or village, Nassau County.) If YES, describe:

YES \_\_\_\_\_ NO  X

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- I. Is the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities involved in any litigation or aware of any threatened litigation that would have a material adverse effect on the Applicant's financial condition or the financial condition of said principal(s)? If YES, attach details at Schedule I.

YES \_\_\_\_\_ NO  X

- J. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, ever been involved, as debtor, in bankruptcy, creditors rights or receivership proceedings or sought protection from creditors? If YES, attach details at Schedule I.

YES \_\_\_\_\_ NO  X

- K. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, ever been convicted of any felony or misdemeanor (other than minor traffic offenses), or have any such related persons or principal(s) held positions or ownership interests in any firm or corporation that has been convicted of a felony or misdemeanor (other than minor traffic offenses), or are any of the foregoing the subject of a pending criminal proceeding or investigation? If YES, attach details at Schedule I.

YES \_\_\_\_\_ NO  X

- L. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, been cited for (or is there a pending proceeding or investigation with respect to) a civil violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, taxation, or other operating practices? If YES, attach details at Schedule I.

YES \_\_\_\_\_

NO  x

- M. Is the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, delinquent or have any of the foregoing persons or entities been delinquent on any New York State, federal or local tax obligations within the past five (5) years? If YES, attach details at Schedule I.

YES \_\_\_\_\_

NO  x

- N. Complete the following information for principals (including, in the case of corporations, officers and members of the board of directors and, in the case of limited liability company, members and managers) of the Applicant:

<u>Name</u>	<u>Title</u>	<u>Other Business Affiliations</u>
Alec Ornstein	Member	_____
Cliff Fetner	Member	_____
_____	_____	_____
_____	_____	_____

Do any of the foregoing principals hold elected or appointive positions with New York State, any political division of New York State or any other governmental agency? If YES, attach details at Schedule I.

YES \_\_\_\_\_

NO  x

Are any of the foregoing principals employed by any federal, state or local municipality or any agency, authority, department, board, or commission thereof or any other governmental or quasi-governmental organization?

YES \_\_\_\_\_

NO  x

- O. Operation at existing location(s) (Complete separate Section O for each existing location):

1. (a) Location:  N/A

(b) Number of Employees: Full-Time: \_\_\_\_\_ Part-Time: \_\_\_\_\_

(c) Annual Payroll, excluding benefits: \_\_\_\_\_

(d) Type of operation (e.g. manufacturing, wholesale, distribution, retail, etc.) and products or services: \_\_\_\_\_

(e) Size of existing facility real property (i.e., acreage of land): \_\_\_\_\_

(f) Buildings (number and square footage of each): \_\_\_\_\_

(g) Applicant's interest in the facility

FEE Title: \_\_\_\_ Lease: \_\_\_\_ Other (describe below):

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2. Will the completion of the proposed Project result in the removal of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the Project, or a relocation of any employee of the Applicant, or any employee of a proposed user, occupant or tenant of the Project, from one area of the State of New York (but outside of Nassau County) to a location in Nassau County or in the abandonment of such a plant or facility located in an area of the State of New York outside of Nassau County? If YES, complete the attached Anti-Raiding Questionnaire (Schedule D).

YES \_\_\_\_\_

NO  X

3. Will the proposed Project result in the removal or abandonment of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the proposed Project, or a relocation of any employee of the Applicant, or any employee of a proposed user, occupant or tenant of the proposed Project, located within Nassau County? If YES, identify the location of the plant or facility and provide explanation.

YES \_\_\_\_\_

NO  X

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- P. Has the Applicant considered moving to another state or another location within New York State? If YES, explain circumstances.

YES \_\_\_\_\_

NO  X

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- Q. Does any one supplier or customer account for over 50% of Applicant's annual purchases or sales, respectively? If YES, attach name and contact information for supplier and/or customer, as applicable:

YES \_\_\_\_\_

NO   X  

- R. Does the Applicant (including any related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, have any contractual or other relationship with the Agency or the County of Nassau? If YES, attach details at Schedule I.

YES \_\_\_\_\_

NO   X  

- S. Nature of Applicant's business (e.g., description of goods to be sold, products manufactured, assembled or processed, services rendered):

Real estate development and management

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- T. ANY RELATED PARTY PROPOSED TO BE A USER OF THE PROJECT:

Name: 249 Drexel Associates LLC

Relationship to Applicant: Real Estate Holding Company

Provide the information requested in Questions A through S above with respect to each such party by attachment at Schedule I.

Please see the attached organizational chart annexed to Schedule I hereto.

## **PART II. PROPOSED PROJECT**

A. Types of Financial Assistance Requested:

- ☐ Tax-Exempt Bonds
- ☐ Taxable Bonds
- ☐ Refunding Bonds
- ☐ Sales/Use Tax Exemption
- ☐ Mortgage Recording Tax Exemption
- ☐ Real Property Tax Exemption
- ☐ Other (specify): \_\_\_\_\_

B. Type of Proposed Project (check all that apply and provide requested information):

- ☒ New Construction of a Facility  
Square footage: 23,025
- ☐ Addition to Existing Facility  
Square footage of existing facility: \_\_\_\_\_  
Square footage of addition: \_\_\_\_\_
- ☐ Renovation of Existing Facility  
Square footage of area renovated: \_\_\_\_\_  
Square footage of existing facility: \_\_\_\_\_
- ☒ Acquisition of Land/Building  
Acreage/square footage of land: .35  
Square footage of building: 4,456
- ☒ Acquisition of Furniture/Machinery/Equipment  
List principal items or categories:  
See schedule of same annexed hereto  
\_\_\_\_\_
- ☐ Other (specify): \_\_\_\_\_

C. Briefly describe the purpose of the proposed Project, the reasons why the Project is necessary to the Applicant and why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations:

The proposed project seeks to demolish the current improvements, which are in poor condition, and construct an eighteen (18) unit multi-family dwelling with one (1)

retail unit at ground level. Without the Agency's assistance, the project will not be financially feasible for Applicant to proceed and Applicant will not be able to add new housing stock to the community.

The applicant is further burdened by the high costs of: (i) construction materials; and (ii) real estate taxes.

- D. Is there a likelihood that the proposed Project would not be undertaken by the Applicant but for the granting of the financial assistance by the Agency? (If yes, explain; if no, explain why the Agency should grant the financial assistance with respect to the proposed Project)

YES X

NO       

Without the Agency's assistance, the project would simply not be financially feasible for Applicant to proceed with.

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- E. If the Applicant is unable to arrange Agency financing or other Agency financial assistance for the Project, what will be the impact on the Applicant and Nassau County? Would the Applicant proceed with the Project without Agency financing or other Agency financial assistance? Describe.

The Village of Westbury would lose out on a more attractive improvement that would add necessary new housing stock to the community.

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No, Applicant would not be able to proceed with the project in light of high real estate taxes and construction material costs.

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- F. Location of Project:

Street Address: 249 Drexel Avenue

City/Village(s): Westbury

Town(s): North Hempstead

School District(s): Westbury

Tax Map Section: 10 Block: 187 Lot: 919

Census Tract Number:                     

- G. Present use of the Project site: Commercial

- H. (a) What are the current real estate taxes on the Project site? (If amount of current taxes is not available, provide assessed value for each):

General: \$ 11,685.80

School: \$ 22,829.13

Village: \$ 3,500.00

- (b) Are tax certiorari proceedings currently pending with respect to the Project real property? If YES, attach details at Schedule I including copies of pleadings, decisions, etc.

YES \_\_\_\_\_

NO X \_\_\_\_\_

- I. Describe proposed Project site ownership structure (*i.e.*, Applicant or other entity):  
Applicant is going to form a real estate holding company to take title  
to the Premises at Closing. Please see the organizational chart annexed hereto on Schedule I with regard to same.

- J. To what purpose will the building or buildings to be acquired, constructed or renovated be used by the Applicant? (Include description of goods to be sold, products to be manufactured, assembled or processed and services to be rendered.)  
The proposed project will be used for multi-family housing and retail leasing.

- K. If any space in the Project is to be leased to or occupied by third parties (*i.e.*, parties not related to the Applicant), or is currently leased to or occupied by third parties who will remain as tenants, provide the names and contact information for each such tenant, indicate total square footage of the Project to be leased to each tenant, and describe proposed use by each tenant:  
Applicant intends to lease the apartment units to individuals and/or families and will lease the retail space to the fish market that currently occupies the  
Premises once the new improvement is constructed.

- L. Provide, to the extent available, the information requested, in Part I, Questions A, B, D and O, with respect to any party described in the preceding response.
- \_\_\_\_\_
- \_\_\_\_\_

- M. Does the proposed Project meet zoning/land use requirements at proposed location?

YES X \_\_\_\_\_

NO \_\_\_\_\_

1. Describe present zoning/land use: Business B2
2. Describe required zoning/land use, if different: \_\_\_\_\_
3. If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements:

Variances were obtained from the Village of Wesbury Board of Trustees for (i) layout and location of off-street parking;  
(ii) parking specifications; and (iii) a special use permit to allow at grade parking under the premises.



- N. Does the Applicant, or any related entity or person, currently hold a lease or license on the Project site? If YES, please provide details and a copy of the lease/license.

YES \_\_\_\_\_ NO X

- O. Does the Applicant, or any related entity or person, currently hold fee title to (i.e. own) the Project site?

YES \_\_\_\_\_ NO X

If YES, indicate:

- (a) Date of purchase: \_\_\_\_\_
- (b) Purchase price: \$ \_\_\_\_\_
- (c) Balance of existing mortgage, if any: \$ \_\_\_\_\_
- (d) Name of mortgage holder: \_\_\_\_\_
- (e) Special conditions: \_\_\_\_\_

If NO, indicate name of present owner of Project site: Scores Realty, Inc. & AFKR Realty LLC

- P. Does the Applicant or any related person or entity have an option or a contract to purchase the Project site and/or any buildings on the Project site?

YES X \_\_\_\_\_ NO \_\_\_\_\_

If YES, attach copy of contract or option at Schedule I and indicate:

- (a) Date signed: Contract of Sale dated 4/9/17, as amended by Amendments 1-4
- (b) Purchase price: \$ 1,175,000.00
- (c) Closing date: On or about the 60th day from the issuance of approvals, with Approval Period expiring August 1, 2022

Is there a relationship legally or by virtue of common control or ownership between the Applicant (and/or its principals) and the seller of the Project (and/or its principals)?

If YES, describe:

YES X \_\_\_\_\_ NO \_\_\_\_\_

Applicant will assign the contract of sale (as amended) at Closing to co-applicant 249 Drexel Associates, LLC, with Seller retaining an interest in that limited liability company.

- Q. Will customers personally visit the Project site for either of the following economic activities? If YES with respect to either economic activity indicated below, complete the attached Retail Questionnaire (Schedule E).

Sales of Goods: YES X NO \_\_\_\_\_ Sales of Services: YES \_\_\_\_\_ NO \_\_\_\_\_

- R. Describe the social and economic conditions in the community where the Project site is or will be located and the impact of the proposed Project on the community (including impact on infrastructure, transportation, fire and police and other government-provided services):

The surrounding community contains a combination of commercial and residential properties being located in the area.

The proposed project will provide necessary new housing inventory to the community, which is desperately needed.

- S. Identify the following Project parties (if applicable):

Architect: DiGiovanni & Associates/Architects, David DiGiovanni

Engineer: Northcoast Civil Land Surveying & Civil Engineering/Michael J. Rant, P.E.

Contractors: \_\_\_\_\_  
\_\_\_\_\_

- T. Will the Project be designed and constructed to comply with Green Building Standards? (if YES, describe the LEED green building rating that will be achieved):

YES \_\_\_\_\_ NO X \_\_\_\_\_

- U. Is the proposed Project site located on a Brownfield? (if YES, provide description of contamination and proposed remediation)

YES \_\_\_\_\_ NO X \_\_\_\_\_

- V. Will the proposed Project produce a unique service or product or provide a service that is not otherwise available in the community in which the proposed Project site is located?

YES \_\_\_\_\_ NO X \_\_\_\_\_

- 
- W. Is the proposed Project site currently subject to an IDA transaction (whether through the Agency or otherwise)? If yes, explain.

YES \_\_\_\_\_

NO x \_\_\_\_\_

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### **PART III. CAPITAL COSTS OF THE PROJECT**

- A. Provide an estimate of cost of all items listed below:

	<u>Item</u>	<u>Cost</u>
1.	Land and/or Building Acquisition	\$ 1,175,000.00
2.	Building Demolition	\$ 200,000.00
3.	Construction/Reconstruction/Renovation	\$ 3,500,000.00
4.	Site Work	\$ 500,000.00
5.	Infrastructure Work	\$ _____
6.	Architectural/Engineering Fees	\$ 150,000.00
7.	Applicant's Legal Fees	\$ 200,000.00
8.	Financial Fees	\$ 250,000.00
9.	Other Professional Fees	\$ 100,000.00
10.	Furniture, Equipment & Machinery Acquisition (not included in 3. above)	\$ 200,000.00
11.	Other Soft Costs (describe)	\$ 1,225,000.00
12.	Other (describe) Entitlements	\$ _____
	Total	\$ 7,500,000.00

- B. Estimated Sources of Funds for Project Costs:

- |    |  |                 |
|----|--|-----------------|
| a. | Tax-Exempt IDA Bonds:  | \$ _____        |
| b. | Taxable IDA Bonds:   | \$ _____        |
| c. | Conventional Mortgage Loans:   | \$ 5,000,000.00 |
| d. | SBA or other Governmental Financing:<br>Identify: _____              | \$ _____        |
| e. | Other Public Sources (e.g., grants, tax credits):<br>Identify: _____ | \$ _____        |

f.	Other Loans:	\$	_____
g.	Equity Investment:	\$	2,500,000.00
	(excluding equity attributable to grants/tax credits)		
TOTAL		\$	7,500,000.00

What percentage of the total project costs are funded/financed from public sector sources: 0 %

- C. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? If YES, describe particulars on a separate sheet. Contract down payments, legal fees, architectural/engineering fees.

YES X NO \_\_\_\_\_

- D. Are items of working capital, moving expenses, work in progress, or stock in trade included in the proposed uses of the bond proceeds (if applicable)? If YES, provide details:

YES \_\_\_\_\_ NO \_\_\_\_\_ NOT APPLICABLE X

\_\_\_\_\_

\_\_\_\_\_

- E. Will any of the funds to be borrowed through the Agency's issuance of bonds, if applicable, be used to repay or refinance an existing mortgage, outstanding loan or an outstanding bond issue? If YES, provide details:

YES \_\_\_\_\_ NO \_\_\_\_\_ NOT APPLICABLE X

\_\_\_\_\_

\_\_\_\_\_

- F. Has the Applicant made any arrangement for the marketing or the purchase of the bonds or the provision of other third party financing (if applicable)? If YES, indicate with whom (subject to Agency approval) and provide a copy of any term sheet or commitment letter issued with respect to such financing.

YES \_\_\_\_\_ NO \_\_\_\_\_ NOT APPLICABLE X

\_\_\_\_\_

\_\_\_\_\_

G. Construction Cost Breakdown:

Total Cost of Construction: \$ 4,000,000.00 (sum of 2-5 and 10 in Question A above)

Cost for materials: \$ 2,400,000.00  
 % Sourced in County: 85 %

% Sourced in State: 100 % (incl. County)

Cost for labor: \$ 1,600,000.00  
 % Sourced in County: 75 %  
 % Sourced in State: 100 % (incl. County)

Cost for "other": \$ N/A  
 % Sourced in County:            %  
 % Sourced in County:            % (incl. County)

The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to undertake and document the total amount of capital investment as set forth in this Application.

**PART IV. COST/BENEFIT ANALYSIS**

- A. If the Applicant presently operates in Nassau County, provide the current annual payroll. Estimate projected payroll at the Project site in First Year, Second Year and Third Year after completion of the Project:

	<u>Present</u>	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
Full-time:	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Part-time: <sup>1</sup>				

List the average salaries or provide ranges of salaries for the following categories of jobs (on a full-time equivalency basis) projected to be retained/created in Nassau County as a result of the proposed Project:

<u>Category of Jobs to be Retained:</u>	<u>Average Salary or Range of Salary:</u>	<u>Average Fringe Benefits or Range of Fringe Benefits</u>
Management		
Professional		
Administrative		
Production		
Supervisor		
Laborer	\$35,000.00 - \$52,000.00	

<sup>1</sup> NOTE: The Agency converts part-time jobs into FTE's for evaluation and reporting purposes by dividing the number of part-time jobs by two (2).

Independent Contractor <sup>2</sup>		
Other		

<u>Category of Jobs to be Created:</u>	<u>Average Salary or Range of Salary:</u>	<u>Average Fringe Benefits or Range of Fringe Benefits</u>
Management		
Professional		
Administrative		
Production		
Supervisor		
Laborer	\$35,000.00 - \$52,000.00	
Independent Contractor <sup>3</sup>		
Other		

The Agency may utilize the foregoing employment projections and the projections set forth in Schedule C, among other things, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to retain the number of jobs, types of occupations and amount of payroll with respect to the Project set forth in this Application.

- B. (i) Will the Applicant transfer current employees from existing location(s)? If YES, describe, please describe the number of current employees to be transferred and the location from which such employees would be transferred:

YES \_\_\_\_\_

NO X \_\_\_\_\_

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- (ii) Describe the number of estimated full time equivalent construction jobs to be created as a result of undertaking the project, to the extent any:

50

<sup>2</sup> As used in this chart, this category includes employees of independent contractors.

<sup>3</sup> As used in this chart, this category includes employees of independent contractors.



- C. What, if any, is the anticipated increase in the dollar amount of production, sales or services following completion of the Project?

\$ N/A

What percentage of the foregoing amount is subject to New York sales and use tax?

N/A %

What percentage of the Applicant's total dollar amount of production, sales or services (including production, sales or services rendered following completion of the Project) are made to customers outside the economic development region (i.e., Nassau and Suffolk Counties)?

N/A %

Describe any other municipal revenues that will result from the Project (excluding the above and any PILOT payments):

\_\_\_\_\_  
\_\_\_\_\_

- D. What is the estimated aggregate annual amount of goods and services to be purchased by the Applicant for each year after completion of the Project and what portion will be sourced from businesses located in the County and the State (including the County):

	<u>Amount</u>	<u>% Sourced in County</u>	<u>% Sourced in State</u>
Year 1	\$ _____	_____	_____
Year 2	\$ _____	_____	_____
Year 3	\$ _____	_____	_____

- E. Describe, if applicable, other benefits to the County anticipated as a result of the Project, including a projected annual estimate of additional sales tax revenue generated, directly and indirectly, as a result of undertaking the project:

The fish market, which will occupy the improvement's retail space, will collect sales tax  
revenue on its goods sold.

- F. Estimated Value of Requested Financial Assistance:

Estimated Value of Sales Tax Benefit: \$ 224,250.00  
(i.e., gross amount of cost of goods and services  
that are subject to state and local sales and use taxes  
multiplied by 8.625%)

Estimated Value of Mortgage Tax Benefit:  
(i.e., principal amount of mortgage loans  
multiplied by [0.75%])

\$ 37,500.00

Estimated Property Tax Benefit:

Will the proposed Project utilize a property tax  
exemption benefit other than from the Agency: No  
(if so, please describe)

Term of PILOT Requested: 25 years

Existing Property Taxes on Land and Building: \$ 38,014.93

Estimated Property Taxes on completed Project: \$ TBD  
(without Agency financial assistance)

NOTE: Upon receipt of this Application by the Agency,  
the Agency's staff will create a PILOT schedule and estimate  
the amount of PILOT Benefit/Cost utilizing anticipated  
tax rates and assessed valuation, and attach such information  
as Exhibit A hereto.

- G. Describe and estimate any other one-time municipal revenues (not including fees payable  
to the Agency) that the Project will create:

Building permits and other fees required by the village associated with construction of the new improvement,  
as well as general, school and village taxes on the real property and improvements.

#### **PART V. PROJECT SCHEDULE**

- A. If applicable, has construction/reconstruction/renovation work on the Project begun? If  
YES, indicate the percentage of completion:

1. (a) Site clearance	YES <u>    </u>	NO <u>X</u>	<u>    </u> % complete
(b) Environmental Remediation	YES <u>    </u>	NO <u>X</u>	<u>    </u> % complete
(c) Foundation	YES <u>    </u>	NO <u>X</u>	<u>    </u> % complete
(d) Footings	YES <u>    </u>	NO <u>X</u>	<u>    </u> % complete

- |                             |          |                    |                |
|-----------------------------|----------|--------------------|----------------|
| (e) Steel                   | YES ____ | NO <u><b>X</b></u> | ____% complete |
| (f) Masonry                 | YES ____ | NO <u><b>X</b></u> | ____% complete |
| (g) Interior                | YES ____ | NO <u><b>X</b></u> | ____% complete |
| (h) Other (describe below): | YES ____ | NO <u><b>X</b></u> | ____% complete |

2. If NO to all of the above categories, what is the proposed date of commencement of construction, reconstruction, renovation, installation or equipping of the Project?

Demolition and construction will commence immediately upon closing and issuance of building permits.

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- B. Provide an estimate of time schedule to complete the Project and when the first use of the Project is expected to occur:

The project is anticipated to take one (1) year to complete from the issuance of building permits.

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## **PART VI. ENVIRONMENTAL IMPACT**

- A. What is the expected environmental impact of the Project? (Complete the attached Environmental Assessment Form (Schedule G)).

**No adverse environmental impact will be caused by the project.**

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- B. Is an environmental impact statement required by Article 8 of the N.Y. Environmental Conservation Law (i.e., the New York State Environmental Quality Review Act)?

YES \_\_\_\_

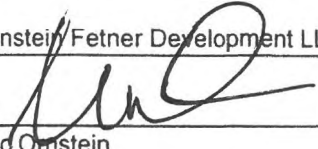
NO **X**

- C. Please be advised that the Agency may require at the sole cost and expense of the Applicant the preparation and delivery to the Agency of an environmental report in form and scope satisfactory to the Agency, depending on the responses set forth in the Environmental Assessment Form. If an environmental report has been or is being prepared in connection with the Project, please provide a copy.

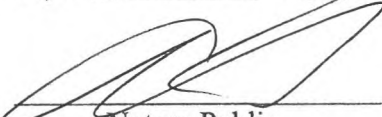
- D. The Applicant authorizes the Agency to make inquiry of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation or

any other appropriate federal, state or local governmental agency or authority as to whether the Project site or any property adjacent to or within the immediate vicinity of the Project site is or has been identified as a site at which hazardous substances are being or have been used, stored, treated, generated, transported, processed, handled, produced, released or disposed of. The Applicant will be required to secure the written consent of the owner of the Project site to such inquiries (if the Applicant is not the owner), upon request of the Agency.

THE UNDERSIGNED HEREBY CERTIFIES, under penalties of perjury, that the answers and information provided above and in any schedule, exhibit or statement attached hereto are true, accurate and complete, to the best of the knowledge of the undersigned.

Name of  
Applicant: Ornstein/Fetner Development LLC  
Signature:   
Name: Aled Ornstein  
Title: Member  
Date: February 7, 2022

Sworn to before me this 17  
day of February, 20 22

  
Notary Public

ANTHONY PATRICK LUPO  
Notary Public, State of New York  
No. 01LU6365585  
Qualified in Suffolk County  
Commission Expires July 25, 2024

## **CERTIFICATIONS AND ACKNOWLEDGMENTS OF THE APPLICANT**

### **FIRST:**

The Applicant hereby certifies that, if financial assistance is provided by the Agency for the proposed project, no funds of the Agency (i) shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, (ii) be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

### **SECOND:**

The Applicant hereby certifies that no member, manager, principal, officer or director of the Applicant or any affiliate thereof has any blood, marital or business relationship with any member of the Agency (or any member of the family of any member of the Agency).

### **THIRD:**

The Applicant hereby certifies that neither the Applicant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners (other than equity owners of publicly-traded companies), nor any of their respective employees, officers, directors, or representatives (i) is a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury, including those named on OFAC's Specially Designated and Blocked Persons List, or under any statute, executive order or other governmental action, or (ii) has engaged in any dealings or transactions or is otherwise associated with such persons or entities.

### **FOURTH:**

The Applicant hereby acknowledges that the Agency shall obtain and hereby authorizes the Agency to obtain credit reports and other financial background information and perform other due diligence on the Applicant and/or any other entity or individual related thereto, as the Agency may deem necessary to provide the requested financial assistance.

### **FIFTH:**

The Applicant hereby certifies that each owner, occupant or operator that would receive financial assistance with respect to the proposed Project is in substantial compliance with applicable federal, state and local tax, worker protection and environmental laws, rules and regulations.

### **SIXTH:**

The Applicant hereby acknowledges that the submission to the Agency of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the recapture from the Applicant of an amount equal to all or any part of any tax exemption claimed by reason of the Agency's involvement in the Project.

**SEVENTH:**

The Applicant hereby certifies that, as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof.

**EIGHTH:**

(i) Does the Project propose the creation of housing?

YES X NO       

If YES, how many units? 18

If YES, the Applicant hereby certifies that:

(a) the Applicant has adopted a Fair Housing/Equal Housing Opportunity Policy substantially in the form of Exhibit B to this Application;

(b) the proposed Project complies with applicable fair housing laws and that eligibility criteria for housing in any part of the Project will not include any residency requirements or preferences, including durational ones, age restrictions (unless for senior housing permitted by law), or other discriminatory criteria;

(c) the Applicant (1) has posted its Fair Housing/Equal Housing Opportunity Policy publicly; and (2) will display fair housing law posters for consumers in its rental or sales office(s), in a form substantially similar to the model fair housing posters attached to this Application as Exhibit C (the Agency will provide applicants with fair housing law posters for display upon request by an applicant); and

(d) key employees of the Applicant in charge of marketing and rental of the Project have completed (or will complete within one year of closing) four (4) hours of fair housing training provided by Long Island Housing Services ("LIHS") at a reasonably acceptable time and location and at no additional cost to the Applicant. In the event LIHS declines to provide or make available reasonably acceptable no-cost fair housing training, the provisions of this Certification VIII(i)(d) shall cease to be of any force and effect.

(ii) If YES to (i) above, does the Project propose the creation of "affordable" or "workforce" housing ("Affordable Housing")?

YES X NO       

If YES, the Applicant hereby certifies that the Applicant (1) has adopted a non-discriminatory affirmative marketing plan that meets the criteria set forth in Exhibit D to this Application; and (2) will submit such marketing plan to the Agency in writing prior to closing.

If YES, answer the following questions:

(a) What portion of the Project would consist of Affordable Housing (e.g., number of units)?

three (3)

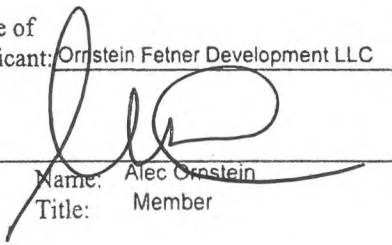
(b) What are the eligibility requirements for the Affordable Housing?

80% of AMI

(c) Cite the specific source of such eligibility requirements (e.g., federal, state or local law).

LI Workforce Housing Act

Name of  
Applicant: Orrstein Fetner Development LLC

By:   
Name: Alec Orrstein  
Title: Member



**CERTIFICATION AND AGREEMENT  
WITH RESPECT TO FEES AND COSTS**

Capitalized terms used but not otherwise defined in this Certification and Agreement shall have the meanings assigned to such terms in the Application.

The undersigned, being duly sworn, deposes and says, under penalties of perjury, as follows: that I am the chief executive officer or other representative authorized to bind the Applicant named in the attached application for financial assistance ("Application") and that I hold the office specified below my signature at the end of this Certification and Agreement, that I am authorized and empowered to deliver this Certification and Agreement and the Application for and on behalf of the Applicant, that I am familiar with the contents of said Application (including all schedules, exhibits and attachments thereto), and that said contents are true, accurate and complete to the best of my knowledge and belief.

The grounds of my belief relative to all matters in the Application that are not based upon my own personal knowledge are based upon investigations I have made or have caused to be made concerning the subject matter of this Application, as well as upon information acquired in the course of my duties and from the books and records of the Applicant.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that the Applicant hereby releases the Nassau County Industrial Development Agency, its members, officers, servants, attorneys, agents and employees (collectively, the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency harmless from and against any and all liability, damages, causes of actions, losses, costs or expenses incurred by the Agency in connection with: (A) examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the financial assistance requested therein are favorably acted upon by the Agency, (B) the acquisition, construction, reconstruction, renovation, installation and/or equipping of the Project by the Agency, and (C) any further action taken by the Agency with respect to the Project; including, without limiting the generality of the foregoing, (i) all fees and expenses of the Agency's general counsel, transaction/bond counsel, economic development consultant, real property tax valuation consultant and other attorneys, experts and consultants (if deemed necessary or advisable by the Agency), and (ii) all other expenses (including attorneys' fees) incurred by the Agency in defending any suits, actions or proceedings that may arise as a result of any of the foregoing. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails within a reasonable or specified period of time to take reasonable, proper or requested action or withdraws, abandons, cancels, or neglects the Application or if the Applicant is unable to find buyers willing to purchase the total bond issue required or is unable to secure other third party financing or otherwise fails to conclude the Project, then upon presentation of an invoice by the Agency, its agents, attorneys or assigns, the Applicant shall pay to the Agency, its agents, attorneys or assigns, as the case may be, all fees and expenses reflected in any such invoice.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that each of the Agency's general counsel, transaction/bond counsel, economic development consultant, real property tax valuation consultant and other experts and consultants is an intended third-party beneficiary of this Certification and Agreement, and that each of them may (but shall not be obligated to) enforce the provisions of the immediately preceding paragraph, whether by lawsuit or otherwise, to collect the fees and expenses of such party or person incurred by the Agency (whether or not first paid by the Agency) with respect to the Application.

Upon successful closing of the required bond issue or other form of financing or Agency assistance, the Applicant shall pay to the Agency an administrative fee set by the Agency (which amount is payable at closing) in accordance with the following schedule:

- (A) Taxable Bond Issues Six-tenths (6/10) of one percent (1%) for the first twenty million dollars (\$20,000,000) of total project costs and, if applicable, two-tenths (2/10) of one percent (1%) for any additional amounts in excess of twenty million dollars (\$20,000,000) of total project costs.
- (B) Tax-Exempt Bond Issues – Six-tenths (6/10) of one percent (1%) of total project costs.
- (C) Straight-Lease Transactions Six-tenths (6/10) of one percent (1%) for the first twenty million dollars (\$20,000,000) of total project costs and, if applicable, two-tenths (2/10) of one percent (1%) for any additional amounts in excess of twenty million dollars (\$20,000,000) of total project costs
- (D) General Counsel Fee – One-tenth (1/10) of one percent (1%) of total project costs, with a minimum fee of \$4,000.
- (E) All Initial Transactions - Two Thousand Five Hundred Dollars (\$2,500) closing compliance fee payable at closing and One Thousand Dollars (\$1,000) per year (or part thereof) administrative fee, payable in advance, at the closing for the first year (or part thereof) and on January 1st of each year for the term of the financing. The annual service fee is subject to periodic review and may be adjusted from time to time in the discretion of the Agency.
- (F) Refundings – The Agency fee shall be determined on a case-by-case basis.
- (F) Assumptions – The Agency fee shall be determined on a case-by-case basis.
- (G) Modifications – The Agency fee shall be determined on a case-by-case basis, but in accordance with the following schedule.
  - A basic Consent - \$750
  - A Transfer of Benefits
    - Basic - \$3,000
    - Complex - \$6,000
  - Extensions - \$1,000
- (H) Terminations - The Agency fee shall be determined on a case-by-case basis, but in accordance with the following schedule.
  - Basic - \$2,000
  - Complex - \$2,500

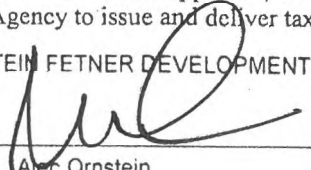
The Agency's transaction/bond counsel fees and expenses are payable at closing and are based on the work performed in connection with the Project.

The Agency's transaction/bond counsel's fees, general counsel fee and the administrative fees may be considered as a cost of the Project and included as part of any resultant financing, subject to compliance with applicable law.

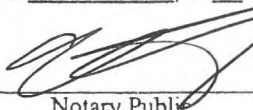
Guided by the above stated schedule amounts, upon the termination of the financing of the Project, Applicant agrees to pay all costs in connection with any conveyance by the Agency to the Applicant of the Agency's interest in the Project and the termination of all related Project documents, including the fees and expenses of the Agency's general counsel, bond/transaction counsel, and all applicable recording, filing or other related fees, taxes and charges.

I further acknowledge and agree on behalf of the Applicant that, in the event the Agency shall have used all of its available tax-exempt bond financing allocation from the State of New York, if applicable, and shall accordingly be unable to obtain an additional allocation for the benefit of the Applicant, the Agency shall have no liability or responsibility as a result of the inability of the Agency to issue and deliver tax-exempt bonds for the benefit of the Applicant.

ORNSTEIN FETNER DEVELOPMENT LLC

Name:   
Title: Member

Subscribed and affirmed to me this 17  
day of February, 20 22

  
Notary Public

ANTHONY PATRICK LUPO  
Notary Public, State of New York  
No. 01LU6345555  
Qualified in Suffolk County 24  
Commission Expires July 25, 2024

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TABLE OF SCHEDULES:

<u>Schedule</u>	<u>Title</u>	<u>Complete as Indicated Below</u>
A.	Tax-Exempt Bond Manufacturing Questionnaire	If Applicant checked “YES” in Part I, Question H of Application, if applicable[[
B.	New York State Financial and Employment Requirements for Industrial Development Agencies	All applicants
C.	Guidelines for Access to Employment Opportunities	All applicants
D.	Anti-Raiding Questionnaire	If Applicant checked “YES” in Part I, Question O.2. of Application
E.	Retail Questionnaire	If Applicant checked “YES” in Part II, Question Q of Application
F.	Applicant’s Financial Attachments, consisting of:	All applicants
	1. Applicant’s financial statements for the last two fiscal years (unless included in Applicant’s annual reports).	
	2. Applicant’s annual reports (or Form 10-K’s) for the two most recent fiscal years.	
	3. Applicant’s quarterly reports (Form 10-Q’s) and current reports (Form 8-K’s) since the most recent Annual Report, if any.	
	4. In addition, attach the financial information described above in items F1, F2, and F3 of any anticipated Guarantor of the proposed transaction, if different than the Applicant, including the personal financial statement of any anticipated Guarantor that is a natural person.	
G.	Environmental Assessment Form	All applicants
H.	Form NYS-45 (and 45-ATT)	All applicants
I.	Other Attachments	As required

**TAX-EXEMPT BOND MANUFACTURING QUESTIONNAIRE**

(To be completed by the Applicant if the Applicant checked "YES" in Part I, Question H of the Application for Financial Assistance, if applicable).

Please complete the following questions for each facility to be financed. Use additional pages as necessary.

1. Describe the production process which occurs at the facility to be financed.

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2. Allocate the facility to be financed by function (expressed in square footage) (e.g., production line, employee lunchroom, offices, restrooms, storage, warehouse, loading dock, repair shop, parking, research, sales, etc.) and location in relation to production (e.g., same building, adjacent land or building, off-site, etc.). Please attach blueprints of the facility to be financed.

<u>FUNCTION</u>	<u>LOCATION</u>	<u>SQ. FOOTAGE</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

TOTAL

3. Of the space allocated to offices above, identify by function (e.g., executive offices, payroll, production, etc.) and location in relation to production (e.g., same building, adjacent land or building, off-site, etc.).

<u>FUNCTION</u>	<u>LOCATION</u>	<u>SQ. FOOTAGE</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

TOTAL

4. Of the space allocated to storage or warehousing above, identify the square footage and location of the areas devoted to storage of the following:

SQ. FOOTAGE

LOCATION

Raw Materials used  
for production of  
manufactured goods

\_\_\_\_\_

Finished product storage

\_\_\_\_\_

Component parts of  
goods manufactured at  
the facility

\_\_\_\_\_

Purchased component  
parts

\_\_\_\_\_

Other (specify)

\_\_\_\_\_

TOTAL

\_\_\_\_\_

5. List raw materials used at the facility to be financed in the processing of the finished product(s).

\_\_\_\_\_  
\_\_\_\_\_

6. List finished product(s) which are produced at the facility to be financed.

\_\_\_\_\_  
\_\_\_\_\_

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true and correct.

Name of  
Applicant:

Ornstein Fetner Development LLC

Signature:

Name:

Alec Ornstein

Title:

Member

Date:

February 17, 2022

**NEW YORK STATE FINANCIAL AND EMPLOYMENT REPORTING  
REQUIREMENTS FOR INDUSTRIAL DEVELOPMENT AGENCIES**

- A. Pursuant to applicable law, the Agency requires the completion of an Initial Employment Plan (see Schedule C) and a year-end employment plan status report, both of which shall be filed by the Nassau County Industrial Development Agency (the "Agency") with the New York State Department of Economic Development. The Project documents will require the Applicant to provide such report to the Agency on or before February 11 of the succeeding year, together with such employment verification information as the Agency may require.

Except as otherwise provided by collective bargaining agreements, the Applicant agrees to list any new employment opportunities with the New York Department of Labor Community Services Division and the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. 97-300), or any successor statute thereto (the "JTPA Entities"). In addition, except as otherwise provided by collective bargaining agreements, the Applicant, where practicable, will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for such new employment opportunities.

- B. The Applicant will be required to file annually a statement with the New York State Department of Taxation and Finance and the Agency of the value of all sales or use tax exemptions claimed in connection with the Project by reason of the involvement of the Agency.
- C. The following information must be provided for all bonds issued, outstanding or retired during the year:

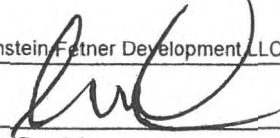
Name, address and owner of the project; total amount of tax exemptions granted (broken out by state and local sales tax, property taxes, and mortgage recording tax); payments in lieu of taxes made; total real estate taxes on the Project prior to exemption; number of jobs created and retained, and other economic benefits realized.

Date of issue; interest rate at end of year; bonds outstanding at beginning of year; bonds issued during year; principal payments made during year; bonds outstanding at end of year; federal tax status; and maturity date(s).

**Failure to provide any of the aforesaid information will be constitute a DEFAULT under the Project documents to be entered into by the Agency and the Applicant in connection with the proposed Project.**



Please sign below to indicate that the Applicant has read and understood the above and agrees to provide the described information on a timely basis.

Name of Applicant:	<u>Ornstein Feltner Development LLC</u>
Signature:	<u></u>
Name:	<u>Alec Ornstein</u>
Title:	<u>Member</u>
Date:	<u>February 17, 2022</u>

**GUIDELINES FOR ACCESS TO EMPLOYMENT OPPORTUNITIES****INITIAL EMPLOYMENT PLAN**

Prior to the expenditure of bond proceeds or the granting of other financial assistance, the Applicant shall complete the following initial employment plan:

Applicant Name: Ornstein Fetner Development LLC and 249 Drexel Associates, LLC  
 Address: 210 Brookfield Ave., Center Moriches, NY 11934  
 Type of Business: Real estate development and management  
 Contact Person: Alec Ornstein Tel. No.: 631-764-5027

Please complete the following table describing the projected full-time equivalent employment plan for the proposed Project following receipt of financial assistance:

<u>Current and Planned Occupations</u>	<u>Present Jobs Per Occupation</u>	<u>Estimated Number of Full Time Equivalent Jobs After Completion of the Project:<sup>4</sup></u>			<u>Estimate of Number of Residents of the LMA<sup>5</sup> that would fill such jobs by the third year</u>
		<u>1 year</u>	<u>2 years</u>	<u>3 years</u>	
<u>Management</u>	<u>                    </u>	<u>.5</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Professional</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Administrative</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Production</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Supervisor</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Laborer</u>	<u>                    </u>	<u>5</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Independent Contractor</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>Other (describe)</u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

<sup>4</sup> NOTE: Convert part-time jobs into FTE's for evaluation and reporting purposes by dividing the number of part-time jobs by two (2).

<sup>5</sup> The "LMA" means the Local Market Area, which is defined by the Agency as Nassau and Suffolk Counties. The Labor Market Area is the same as the Long Island Economic Development Region, as established pursuant to Section 230 of the New York State Economic Development Law.

Please indicate the number of temporary construction jobs anticipated to be created in connection with the acquisition, construction and/or renovation of the Project: 50

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required:

Upon the completion of construction of the new improvement.

Are the Applicant's employees currently covered by a collective bargaining agreement?

YES \_\_\_\_\_

NO x \_\_\_\_\_

IF YES, Union Name and Local: \_\_\_\_\_

Please note that the Agency may utilize the foregoing employment projections, among other things, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to retain the above number of jobs, types of occupations and amount of payroll with respect to the proposed project.

Attached hereto as Schedule H is a true, correct and complete copy of the Applicant's most recent Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (Form NYS-45 and 45-ATT). Upon request of the Agency, the Applicant shall provide such other or additional information or documentation as the Agency may require with respect to the Applicant's current employment levels in the State of New York.

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of  
Applicant:

Ornstein Fetner Development LLC

Signature:

Name:

Alec Ornstein

Title:

Member

Date:

February 11, 2022

**ANTI-RAIDING QUESTIONNAIRE**

(To be completed by Applicant if Applicant checked "YES" in Part I, Question O of the Application for Financial Assistance)

- A. Will the completion of the Project result in the removal of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the Project, or a relocation of any employee of the Applicant or of a proposed user, occupant or tenant of the Project, from an area in New York State (but outside of Nassau County) to an area within Nassau County?

YES \_\_\_\_\_

NO x \_\_\_\_\_

If the answer to Question A is YES, please provide the following information:

Address of the to-be-removed plant or facility or the plants or facilities from which employees are relocated: \_\_\_\_\_

\_\_\_\_\_

Names of all current users, occupants or tenants of the to-be-removed plant or facility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- B. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Applicant, or of a proposed user, occupant or tenant of the Project, located in an area of the State of New York other than in Nassau County?

YES \_\_\_\_\_

NO x \_\_\_\_\_

If the answer to Question B is YES, please provide the following information:

Addresses of the to-be-abandoned plants or facilities: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Names of all current occupants of the to-be-abandoned plants or facilities:

\_\_\_\_\_

\_\_\_\_\_

- C. Has the Applicant contacted the local industrial development agency at which its current plants or facilities in New York State are located with respect to the Applicant's intention to move or abandon such plants or facilities?

YES \_\_\_\_\_

NO \_\_\_\_\_

If the answer to Question C is YES, please provide details in a separate attachment.

IF THE ANSWER TO EITHER QUESTION A OR B IS "YES", ANSWER QUESTIONS D AND E.

- D. Is the Project reasonably necessary to preserve the competitive position of the Applicant, or of a proposed user, occupant or tenant of the Project, in its industry?

YES \_\_\_\_\_

NO \_\_\_\_\_

- E. Is the Project reasonably necessary to discourage the Applicant, or a proposed user, occupant or tenant of the Project, from removing such plant or facility to a location outside of the State of New York?

YES \_\_\_\_\_

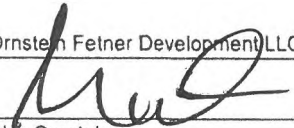
NO \_\_\_\_\_

IF THE ANSWER TO EITHER QUESTION D OR E IS "YES", PLEASE PROVIDE DETAILS IN A SEPARATE ATTACHMENT.

Accordingly, the Applicant certifies that the provisions of Section 862(1) of the General Municipal Law will not be violated if financial assistance is provided by the Agency for the proposed Project.

NOTE: If the proposed Project involves the removal or abandonment of a plant or facility of the Applicant, or a proposed user, occupant or tenant of the Project, within the State of New York, notification will be made by the Agency to the chief executive officer(s) of the municipality or municipalities in which such plant or facility was located.

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of Applicant:	<u>Ornstein Fetner Development LLC</u>
Signature:	
Name:	<u>Alec Ornstein</u>
Title:	<u>Member</u>
Date:	<u>February 17, 2022</u>

**RETAIL QUESTIONNAIRE**

(To be completed by Applicant if Applicant checked either "YES" in Part II, Question Q of the Application for Financial Assistance)

- A. Will any portion of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) consist of facilities or property that are or will be primarily used in making retail sales to customers who personally visit the Project?

YES X NO       

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- B. If the answer to Question A is YES, what percentage of the cost of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project?

8 %

- C. If the answer to Question A is YES, and the amount entered for Question B is greater than 33.33%, indicate whether any of the following apply to the Project:

1. Is the Project likely to attract a significant number of visitors from outside the economic development region (i.e., Nassau and Suffolk Counties) in which the Project is or will be located?

YES        NO X

2. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services?

YES        NO X

3. Will the Project be located in one of the following: (a) an area designated as an empire zone pursuant to Article 18-B of the General Municipal Law; or (b) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (i) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of the households receiving public assistance, and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?

YES        NO X

If the answer to any of the subdivisions 1 through 3 of Question C is YES, attach details.

- D. If the answer to any of the subdivisions 2 through 3 of Question C is YES, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? If YES, attach details.

YES \_\_\_\_\_

NO \_\_\_\_\_

- E. State percentage of the Applicant's annual gross revenues comprised of each of the following:

Retail Sales: 0 \_\_\_\_\_ %

Services: 0 \_\_\_\_\_ %

- F. State percentage of Project premises utilized for same:

Retail Sales: 0 \_\_\_\_\_ %

Services: 0 \_\_\_\_\_ %

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of  
Applicant:

Ornstein Faltner Development LLC

Signature:

Name:

Alec Ornstein

Title:

Member

Date:

February 17, 2022

**APPLICANT'S FINANCIAL ATTACHMENTS**



**ENVIRONMENTAL ASSESSMENT FORM**

## *Part 1 - Project Information*


### Instructions for Completing

**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 – Project and Sponsor Information</b>							
Ornstein Fetner Development LLC							
Name of Action or Project: Drexel Residences							
Project Location (describe, and attach a location map): 249 Drexel Avenue, Westbury, NY 11590							
Brief Description of Proposed Action: Proposed 3 Story multiple dwelling building with 18 residential apartments, 1750 SF of retail space, recreational/common space and a 28 space parking lot.							
Name of Applicant or Sponsor: Michael Rant		Telephone: 516-922-3031 E-Mail: info@northcoastcivil.com					
Address: 23 Spring Street							
City/PO: Oyster Bay		State: NY	Zip Code: 11771				
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">NO</td> <td style="text-align: center;">YES</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input checked="" type="checkbox"/>	<input type="checkbox"/>						
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: Village of Westbury Zoning Board of Appeals Approval, Planning Board Approval & Building Permit			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">NO</td> <td style="text-align: center;">YES</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input checked="" type="checkbox"/>						
3. a. Total acreage of the site of the proposed action?		.35 acres					
b. Total acreage to be physically disturbed?		.35 acres					
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		.35 acres					
4. Check all land uses that occur on, are adjoining or near the proposed action:							
5. <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): <input type="checkbox"/> Parkland							

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services available at or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies:			
Energy Code Compliant Fixtures _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			
_____			
_____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Proposed Drywells <hr/>		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<hr/>		
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<hr/>		
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<hr/>		
<b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor/name: Michael Rant      Date: 1/19/2022		
Signature:  Title: Engineer		

**PRINT FORM**

**FORM NYS-45**

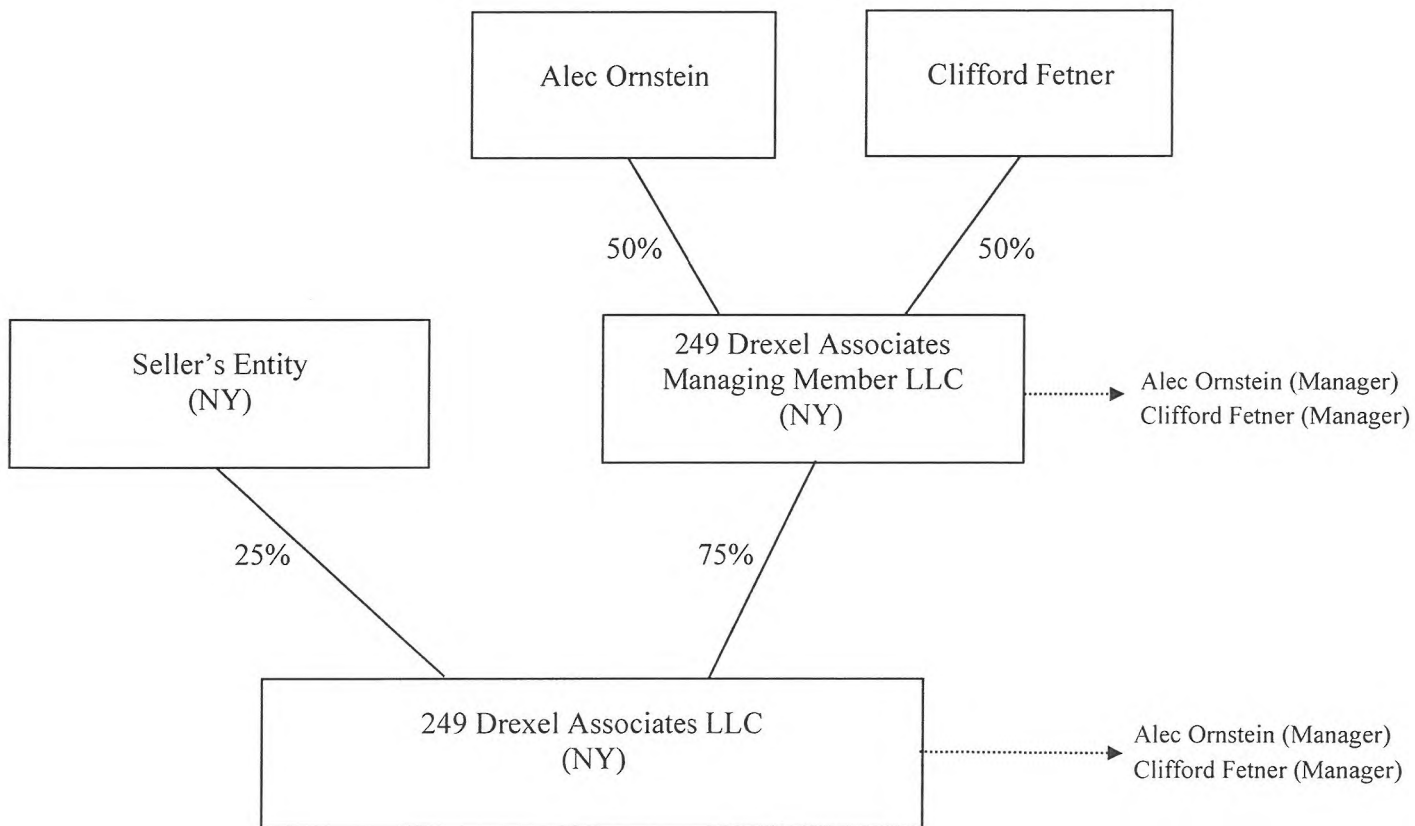
Attach most recent quarterly filing of Form NYS-45 and 45-ATT, as well as the most recent fourth quarter filing. Please remove the employee social security numbers and note which employees are part-time.

**OTHER ATTACHMENTS**

249 Drexel Associates LLC will have the contract of sale, as amended, assigned to them by the contract vendee/co-applicant, Ornstein Fetner Development LLC. The seller's principal, Richard Scores, will likely create a new entity to receive a twenty-five percent (25%) interest in 249 Drexel Associates LLC at the closing of title. The principals of Ornstein Fetner Development LLC will retain the remaining seventy-five percent (75%) interest in 249 Drexel Associates LLC. Please see the organizational chart annexed hereto with regard to the foregoing.

Please also see the Schedule of Furniture/Machinery/Equipment annexed hereto.

Westbury Fish – Structure (Post-Closing)



### **SCHEDULE OF FURNITURE/MACHINERY/EQUIPMENT**

1. HVAC System
2. Elevator System
3. Security/Alarm System
4. Kitchen Appliances
5. Bathroom Fixtures
6. Lighting Fixtures and Systems
7. Various Gym Equipment



**FIRST AMENDMENT TO  
SUBSCRIPTION AGREEMENT**

November \_\_\_\_, 2021

This First Amendment (the "Amendment"), dated November \_\_\_\_, 2021, to that certain Subscription Agreement, dated April 9, 2017 (the "Subscription Agreement"), by and between 249 Drexel Associates LLC, a New York limited liability company (the "Company"), and Richard Scores ("Scores"), is made and entered into, to be effective as of the date hereof, by the Company and Scores.

**WHEREAS**, the Company and Scores entered into the Subscription Agreement on April 9, 2017; and

**WHEREAS**, the Company and Scores desire to amend certain terms of the Subscription Agreement as set forth herein.

**NOW, THEREFORE**, the Company and Scores, intending to be mutually bound, hereby agree as follows:

1. Second Whereas Clause. The second Whereas Clause to the Subscription Agreement is deleted in its entirety, and the following is inserted in its stead:

“**WHEREAS**, simultaneously with the Closing (as defined in the Contract), the Company desires to sell to the Subscriber, and the Subscriber desires to purchase from the Company, a \_\_\_\_\_ ) membership interest in the Company (the "Membership Interest") for an aggregate purchase price of One Million Dollars (\_\_\_\_\_, the "Purchase Price"), upon the terms and conditions set forth herein (the "Subscription");”

2. Fourth Whereas Clause. The fourth Whereas Clause to the Subscription Agreement is deleted in its entirety, and the following is inserted in its stead:

“**WHEREAS**, upon consummation of the Subscription, (i) the Subscriber shall own a \_\_\_\_\_ ) membership interest in the Company, and (ii) 249 Drexel Managing Member shall own a \_\_\_\_\_ membership interest in the Company; and”

3. Exhibit A. The form of Amended and Restated Operating Agreement of the Company, as set forth on Exhibit A to the Subscription Agreement, is deleted in its entirety, and replaced with the form Amended and Restated Operating Agreement of the Company set forth on Exhibit A to this Amendment.

4. Section 5. Section 5 of the Subscription Agreement is deleted in its entirety, and the following is inserted in its stead:

“**5. Alternative Structure**. Notwithstanding anything contained herein to the contrary, in the event that the Company or 249 Drexel Managing Member reasonably determines, either prior to or following the consummation of the

Subscription, that the transactions contemplated hereby should be achieved through an alternative structure (the "Alternative Structure"), the Agreement shall remain in effect, and Subscriber and the Company shall take all actions necessary to implement such Alternative Structure, as directed by the Company or 249 Drexel Managing Member; provided, however, that pursuant to the Alternative Structure, Subscriber must receive the same material rights, minority member protection, and benefits (including Tax benefits) as contemplated hereby and as defined in the Operating Agreement, to wit, a \_\_\_\_\_ economic interest, directly or indirectly, in the Project (as defined in the Operating Agreement), in exchange for an aggregate investment of \_\_\_\_\_."

5. Effect of this Amendment. The Subscription Agreement shall remain in full force and effect, enforceable in accordance with its terms, except to the extent that its terms are replaced, amended or modified by this Amendment. This Amendment shall become effective upon execution by all signatories hereto. By the execution and delivery of this Amendment, each signatory (i) reaffirms the enforceability of the Subscription Agreement, as amended and modified by this Amendment and (ii) agrees to be bound by the Subscription Agreement as so amended and modified.

6. Counterparts; Signatures. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and electronic image signatures transmitted hereon shall be deemed original signatures.

7. Governing Law. This Amendment shall be governed by, and interpreted in accordance with, the laws of the State of New York, all rights and remedies being governed by such laws.

*[signature page follows]*

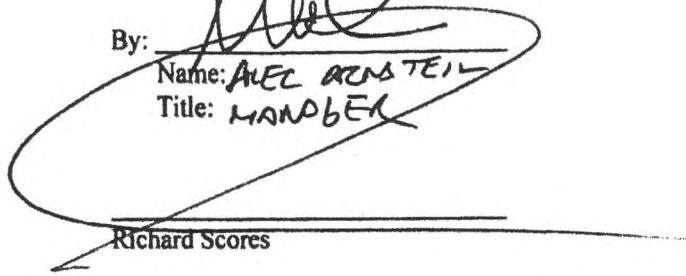
IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Subscription Agreement, to be effective as of the date first written above.

249 DREXEL ASSOCIATES LLC

By: 

Name: ALEC ARNSTEIN

Title: MANAGER

  
Richard Scores

*[Signature Page to the First Amendment to Subscription Agreement]*

**Exhibit A**

**Operating Agreement**

See attached.

## **FOURTH AMENDMENT TO CONTRACT OF SALE**

**THIS FOURTH AMENDMENT TO CONTRACT OF SALE (“Fourth Amendment”),** dated the \_\_\_\_\_ day of November, 2021, by and between **SCORES REALTY, INC.**, a New York corporation, and **AFJR REALTY LLC**, a New York limited liability company, each having an office at 20 Central Avenue, Farmingdale, New York 11743 (collectively, “**Seller**”), and **ORNSTEIN FETNER DEVELOPMENT LLC**, a New York limited liability company, having an address in care of Ornstein Development, 210 Brookfield Avenue, Center Moriches, New York 11934 (“**Purchaser**”).

**WITNESSETH:**

**WHEREAS**, Seller and Purchaser entered into that certain Contract of Sale, dated April 9, 2017 (the **“Original Contract”**), as amended by that certain First Amendment to Contract of Sale, dated August 28, 2017 (the **“First Amendment”**), as amended by that certain Second Amendment to Contract of Sale, dated August 9, 2019 (the **“Second Amendment”**), and as further amended by that certain Third Amendment to Contract of Sale, dated January 9, 2020 (the **“Third Amendment”**), hereinafter together with the Original Contract, First Amendment, and Second Amendment, collectively referred to as the **“Contract”**), wherein Seller agreed to sell, and Purchaser agreed to purchase, that certain parcel of land being in the Village of Westbury, Town of North Hempstead, County of Nassau, and State of New York, and designated on the Land and Tax Map of the County of Nassau as Section 10, Block 187, Lots 918, 919, and 920 (collectively, the **“Premises”**) subject to the terms, covenants and conditions contained therein; and

**WHEREAS**, the parties hereto desire to further amend the Contract as set forth in this Fourth Amendment.

**NOW, THEREFORE**, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Section 3 of Original Contract is hereby amended to delete "The purchase price (the "Purchase Price") for the Property is \_\_\_\_\_ from the first and second lines thereof and replace with "The purchase price (the "Purchase Price") for the Property is (\$ \_\_\_\_\_
2. Section 3 of the Original Contract, as amended by Paragraph 1 above, shall be further amended to delete "the amount of \_\_\_\_\_ (\_\_\_\_\_ from the twentieth and twenty-first lines thereof and replace with "the balance of the Purchase Price after receiving credit for the Deposit, subject to the credits and prorations set forth in this Contract".

3. Section 11(c) of the Original Contract is hereby deleted in its entirety and replaced with the following:

“(c) Closing shall be conditioned (x) upon consummation of the Membership Interest Closing as defined in the Subscription Agreement, dated as of April 9, 2017, as amended by that certain First Amendment to Subscription Agreement, executed simultaneously with the Fourth Amendment to Contract of Sale, between Purchaser and Richard Scores and/or his Assignee as hereinafter defined; and (y) Cash Capital Contributions being received by 249 Drexel Associates LLC (“Company”) sufficient along with the construction financing obtained by the Company to complete construction of the Project as defined in the Company’s Operating Agreement.”

4. Section 11 of the Original Contract, as amended by Paragraph 4 above, is hereby further amended to add the following at the end thereof:

“(d) Closing shall be conditioned upon Purchaser’s delivery to Richard Scores and/or Assignee as hereinafter defined of (i) a commitment letter or term sheet evidencing that a lender has committed to Purchaser to provide construction financing for Purchaser’s intended development (“Construction Financing”); and (ii) the Closing of the Construction Financing.

(e) Closing shall be conditioned upon Seller (or an affiliate of Seller), as tenant, and Purchaser, as landlord, executing and delivering a lease on commercially reasonable terms acceptable to Seller and Purchaser, which lease shall include the following basic terms: (i) the lease shall be limited to the entire commercial space located on the first floor of the building (estimated to be approximately 1,750 square feet); (ii) the monthly rent shall be equal to

foot of the commercial space for the first five (5) years following the commencement date of the lease; (iii) the lease shall be <sup>1</sup> Seller paying its pro rata share of/ or all costs and expenses as appropriate with the commercial space, including, without limitation, real estate taxes, utilities, and common area maintenance charges or assessments; (iv) the lease shall provide that the commercial space shall be used for the retail sale of fish and related items owned and operated by Seller; (v) the lease shall not permit any assignment or sublease thereof; and (vi) Seller shall have the right to renew at fair market value.”

5. Paragraph 16 is supplemented as follows: Seller may assign this Contract to a Trust, LLC or any other Corporate entity or person (“Assignee”) for tax and/or Estate Planning purposes without Purchaser’s consent, provided that simultaneously with such assignment the Property has been conveyed to such Assignee and Assignee agrees to assume all obligations under this Agreement.
6. This Fourth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. Electronic signatures (i.e. scanned, facsimile, portable document format (.pdf), DocuSign and/or e-mail signatures) shall be deemed an original signature.
8. All other terms and conditions of the Contract shall remain unmodified, in full force and effect and are hereby ratified.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to be executed on the date first above written.

**SELLER:**

**SCORES REALTY, INC.**

By: 

Name: Richard Scores  
Title: President

**AFJR REALTY LLC**

By: 

Name: Richard Scores  
Title:

**PURCHASER:**

**ORNSTEIN FETNER DEVELOPMENT LLC**

By: 

Name: Alexander M. Ornstein  
Title: MEMBER



### **THIRD AMENDMENT TO CONTRACT OF SALE**

**THIS THIRD AMENDMENT TO CONTRACT OF SALE** ("**Third Amendment**"), dated as of the 9<sup>th</sup> day of January, 2020, by and between **SCORES REALTY, INC.**, a New York corporation, and **AFJR REALTY LLC**, a New York limited liability company, each having an office at 20 Central Avenue, Farmingdale, New York 11735 (collectively, "**Seller**"), and **ORNSTEIN FETNER DEVELOPMENT LLC**, a New York limited liability company, having an address at c/o Ornstein Development, 90 High Street, Huntington, New York 11743 ("**Purchaser**").

#### **WITNESSETH:**

**WHEREAS**, Seller and Purchaser entered into that certain Contract of Sale, dated April 9, 2017 ("**Original Contract**"), as amended by that certain First Amendment to Contract of Sale, dated as of August 28, 2017 ("**First Amendment**"), and as further amended by that certain Second Amendment to Contract of Sale, dated August 9, 2019 ("**Second Amendment**"), hereinafter together with the Original Contract and First Amendment collectively referred to as the "**Contract**") wherein Seller agreed to sell, and Purchaser agreed to purchase, that certain parcel of land being in the Village of Westbury, Town of North Hempstead, County of Nassau and State of New York, and designated on the Land and Tax Map of the County of Nassau as Section 10, Block 187, Lots 918, 919 and 920 (collectively, the "**Property**") subject to the terms, covenants and conditions contained therein; and

**WHEREAS**, the Extended Approval Period (as defined in the Contract) is scheduled to expired on the date hereof; and

**WHEREAS**, the parties hereto desire to amend the Purchase Agreement as set forth in this Third Amendment.

**NOW, THEREFORE**, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Extended Approvals Period (as defined in the Contract) is hereby extended to and including January 31, 2022.

2. In the event Purchaser has obtained (i) approval from the Village Board of the Village of Westbury for its special use permit application currently pending; and (ii) those variances applied for by Purchaser with the Board of Zoning Appeals of the Village of Westbury, but Purchaser has not yet received all other Approvals (as defined in the Contract) prior to January 31, 2022, then, in such event, Purchaser shall have the right to further extend the Extended Approval Period to and including August 1, 2022 upon written notice to Seller delivered on or before January 17, 2022.

3. In consideration of the extension of the Extended Approvals Period as set forth in Paragraph 1 above, Purchaser shall pay to Seller the sum of \_\_\_\_\_ and 00/100

DOLLARS (the "Extension Fee"). which Extension Fee shall be remitted by Purchaser to Seller as follows: (i) \_\_\_\_\_, of the Extension Fee, in the amount of \_\_\_\_\_ shall be delivered by Purchaser to Seller on or before April 1, 2021; and (ii) \_\_\_\_\_ of the Extension Fee, in the amount of \_\_\_\_\_ shall be delivered by Purchaser to Seller on or before December 31, 2021. In the event Purchaser seeks an extension until August 1, 2022, it shall pay a further Extension Fee ("Further Extension Fee") of \_\_\_\_\_ a or before March 1, 2022. The Extension Fee or Further Extension Fee shall be non-refundable, deemed earned and not be credited against the Purchase Price.

4. Paragraph 4 of the First Amendment, inserting Section 29 into the Contract, is hereby deleted in its entirety. Seller shall have no right to entertain offers for the Property from third parties.

5. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6. Electronic signatures (i.e. scanned, facsimile, portable document format (.pdf) and/or e-mail signatures) shall be deemed an original signature.

7. All other terms and conditions of the Contract shall remain unmodified, in full force and effect and are hereby ratified.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed on the date first above written.

**SELLER:**

**SCORES REALTY, INC.**  
a New York corporation

By: 

Name: Richard Scores  
Title: President

**AFJR REALTY LLC**  
a New York limited liability company

By: 

Name: Richard Scores  
Title: President

**PURCHASER:**

**ORNSTEIN/ETNER DEVELOPMENT LLC**  
a New York limited liability company

By: 

Name:  
Title:

## SECOND AMENDMENT TO CONTRACT OF SALE

THIS SECOND AMENDMENT TO CONTRACT OF SALE (this "Second Amendment"), dated the 9<sup>th</sup> day of August, 2019 by and between **SCORES REALTY, INC.**, a New York corporation and **AFJR REALTY LLC**, a New York limited liability company, each having an address at 20 Central Avenue, Farmingdale, New York, 11735 (collectively, "Seller"), and **ORNSTEIN FETNER DEVELOPMENT LLC**, a New York limited liability company, having an address at c/o Ornstein Development, 223 Wall Street, Suite 303, Huntington, NY 11743 ("Purchaser"). Seller and Purchaser are collectively referred to herein as the "Parties".

### WITNESSETH:

**WHEREAS**, the Parties entered into a Contract of Sale, dated as of April 9, 2017 (the "Original Contract"), as amended by that certain First Amendment to Contract of Sale, dated as of August 28, 2017 (the "First Amendment" together with the Original Contract, the "Contract"), wherein Seller agreed to sell and Purchaser agreed to purchase that certain parcel of land, being in the County of Nassau, State of New York; designated on the Land and Tax Map of Nassau County as Section 10, Block 187, Lots 918, 919, and 920 (collectively, the "Property"); and

**WHEREAS**, the Parties desire to further amend the Contract in connection with the "2017 Limited Land Use Moratorium of the Village of Westbury" (the "Moratorium"), which expired on July 9, 2019; and

**NOW, THEREFORE**, in consideration of the Property and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Contract.
2. Section 6(c)(i) and Section 6(c)(ii) are hereby amended and restated in their entirety as follows:
  - (i) "Subject to Excusable Delays, Purchaser shall use commercially reasonable efforts to obtain the Approvals, in accordance with the Plans and Specifications by no later than July 9, 2020 (the "Approval Period"). Purchaser shall have the option to extend the Approval Period an additional six (6) months to no later than January 9, 2021 (the "Extended Approval Period"), if Purchaser has not yet obtained the Approvals. If the Approvals have not been issued by the last day of the Approval Period, (July 9, 2020) or the Extended Approval Period (January 9, 2021), either Seller or Purchaser may terminate this Contract by giving written notice thereof to the other party, in accordance with Section 12 of the Contract, at any time

thereafter but prior to issuance of the Approvals. Upon issuance of the Approvals, the parties shall have no right to terminate this contract based upon its inability to obtain Approvals for the construction of the Project.

Notwithstanding whether Approvals have been obtained by the expiration of the Approval Period, (July 9, 2020) or the Extended Approval Period (January 9, 2021), despite Purchasers good faith efforts to obtain same notwithstanding Excusable Delays, Purchaser reserves the right to waive this requirement and proceed with the Closing by giving written notice thereof to the Seller, in accordance with Section 12 of the Contract. Upon Purchaser providing written notice to Seller of said requirement, Seller shall have no right to terminate this Contract."

- (ii) "Purchaser shall provide Seller with an opportunity to review any and all Plans and Specifications required by any municipal agency in connection with Purchaser's applications for the Approvals by no later than September 7, 2019 (the "Review Period"). Purchaser shall be responsible for the costs and expenses of all applications related to the Approvals, including reasonable fees of attorneys and professional consultants."

- 3. Section 29 is hereby deleted in its entirety
- 4. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or other electronic signatures shall have the same effect as if an original signature.
- 5. All other terms and conditions of the Contract shall remain in full force and effect.

*[Remainder of Page Left Blank; Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the date first written above.

**SELLER:**

**SCORES REALTY, INC.**

By: 

Name:

Title:

**AFJR REALTY LLC**

By: 

Name:

Title:

**PURCHASER:**

**ORNSTEIN FETNER DEVELOPMENT LLC**

By: 

Name: *C. Ornstein Fetner*

Title:

**FIRST AMENDMENT TO CONTRACT OF SALE**

**THIS FIRST AMENDMENT TO CONTRACT OF SALE** (this "Amendment"), dated the \_\_\_\_ day of August, 2017 by and between **SCORES REALTY, INC.**, a New York corporation and **AFJR REALTY LLC**, a New York limited liability company, each having an address at 20 Central Avenue, Farmingdale, New York, 11735 (collectively, "Seller"), and **ORNSTEIN FETNER DEVELOPMENT LLC**, a New York limited liability company, having an address at c/o Ornstein Development, 223 Wall Street, Suite 303, Huntington, NY 11743 ("Purchaser"). Seller and Purchaser are collectively referred to herein as the "Parties".

**WITNESSETH:**

**WHEREAS**, the Parties entered into a Contract of Sale, dated as of April 9, 2017 (the "Contract"), wherein Seller agreed to sell and Purchaser agreed to purchase that certain parcel of land, being in the County of Nassau, State of New York; designated on the Land and Tax Map of Nassau County as Section 10, Block 187, Lots 918, 919, and 920 (collectively, the "Property"); and

**WHEREAS**, the Parties desire to amend the Contract to extend certain time periods as a result of the adoption of the "2017 Limited Land Use Moratorium of the Village of Westbury" (the "Moratorium"); and

**WHEREAS**, the Moratorium was filed with the Secretary of State on May 4, 2017, and became effective immediately (see Exhibit A attached hereto); and

**WHEREAS**, the Moratorium shall be in effect for a period of eighteen (18) months after the effective date or until a new zoning ordinance is passed, whichever is shorter ("Moratorium Period"); and

**WHEREAS**, the Moratorium prohibits the filing and pursuit of all land use applications, with certain exemptions (see Exhibit A attached hereto), in specific areas of the Village of Westbury, including the Property,

**NOW, THEREFORE**, in consideration of the Premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Contract.
2. The Due Diligence period has expired.

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8/25/17



3. Section 6(c)(i) and Section 6(c)(ii) are hereby amended and restated in their entirety as follows:

- (i) "Subject to Excusable Delays, as hereinafter defined, Purchaser shall use commercially reasonable efforts to obtain the Approvals, as defined below, in accordance with the Plans and Specifications, as defined below, within twelve (12) months from the earlier of (x) the expiration of the Moratorium Period, or (y) from the date a variance for relief is granted from the Board of Trustees ("Administrative Relief"), if applicable (the "Approval Period"). Purchaser shall have the option to extend the Approval Period an additional six (6) months from the earlier of (x) the expiration of the Moratorium Period, or (y) from the date Administrative Relief is granted, if applicable (the "Extended Approval Period") if Purchaser has not yet obtained the Approvals. If the Approvals have not been issued by the last day of the Approval Period or the Extended Approval Period, either Seller or Purchaser may terminate this Contract by giving written notice thereof to the other party, at any time thereafter but prior to issuance of the Approvals. Upon issuance of the Approvals, the parties shall have no right to terminate this contract based upon its inability to obtain Approvals for the construction of the Project."
- (ii) "Within sixty (60) days following the earlier of (x) the expiration of the Moratorium Period, or (y) from the date Administrative Relief is granted, if applicable, Purchaser shall provide Seller with an opportunity to review any and all Plans and Specifications required by any municipal agency in connection with Purchaser's applications for the Approvals (the "Review Period"). Purchaser shall be responsible for the costs and expenses of all applications related to the Approvals, including reasonable fees of attorneys and professional consultants."

4. Section 29. **Right of First Refusal Period** shall be added and stated as follows:

"(c) If Seller receives an offer to purchase the Property during the Moratorium Period from a third party ("Third Party Offer"), Seller shall notify Purchaser of such offer, within three (3) days of receipt ("Offer Notice"). The Offer Notice shall be provided in accordance with Section 12 herein and shall include all material terms of the Third Party Offer. Purchaser shall have twenty (20) days from the date of receipt of the Offer Notice to either (i) accept the Third Party Offer, or (ii) reject the Third Party Offer ("Right of First Refusal Period").

If during the Right of First Refusal Period, Purchaser accepts the Third Party Offer, an amendment to the Contract shall be executed, reflecting the terms of the newly accepted offer ("Third Party Amendment").



If during the Right of First Refusal Period, Purchaser rejects the Third Party Offer, Seller may enter into a contract of sale with the third party ("Third Party Contract"), on all the same terms and conditions as contained in the Third Party Offer. Seller has sixty (60) days from the date of rejection to fully execute the Third Party Contract ("Execution Period"). If the Seller fails to execute the Third Party Contract by the expiration of the Execution Period, the rights and obligations of the Purchaser and Seller under the Contract shall remain in full effect and the Third Party Offer shall be considered rescinded, subject to revival of this Section during the Moratorium Period. Upon full execution of the Third Party Contract, Seller shall promptly return the Deposit and in addition thereto shall reimburse Purchaser for all demonstrated expenses accrued relating to this transaction, up to I \_\_\_\_\_ Dollars ("Contract Expenses"). Contract Expenses shall include, but are not limited to legal fees, title expenses, engineering costs, surveys, appraisals, and environmental testing. Seller shall reimburse Purchaser's Contract Expenses upon execution of the Third Party Contract.

Upon the full execution and delivery of the Third Party Contract, the Contract shall be terminated immediately, and thereafter neither the Purchaser nor Seller shall have any further rights or obligations hereunder except as expressly set forth herein to survive such termination.

If a Third Party Offer is presented during the Moratorium Period and subsequently the Moratorium period expires prior to the full execution of the Third Party Contract, the Third Party Offer shall immediately be considered rescinded, and the rights and obligations of the Purchaser and Seller under the Contract shall remain in full effect.

5. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or other electronic signatures shall have the same effect as if an original signature.
6. All other terms and conditions of the Contract shall remain in full force and effect.

*[Remainder of Page Left Blank; Signature Page Follows]*

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8/25/17

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the date first written above.

**SELLER:**

**SCORES REALTY, INC.**

By: 

Name:

Title:

**AFJR REALTY LLC**

By: 

Name:

Title:

**PURCHASER:**

**ORNSTEIN FETNER DEVELOPMENT LLC**

By: 

Name:

Title:

CONTRACT OF SALE

BETWEEN

SCORES REALTY, INC.

and

AFJR REALTY LLC

SELLER

AND

ORNSTEIN FETNER DEVELOPMENT LLC

PURCHASER

Dated: April 9, 2017

Property: 249 Drexel Avenue  
Westbury, New York 11590

CONTRACT (this "Contract") made this 9<sup>th</sup> day of April, 2017 (the "Effective Date") by and between SCORES REALTY, INC., a New York corporation and AFJR REALTY LLC, a New York limited liability company, each having an address at 20 Central Avenue, Farmingdale, New York 11735 (collectively the "Seller") and ORNSTEIN FETNER DEVELOPMENT LLC, a New York limited liability company, having an address at c/o Ornstein Development, 223 Wall Street, Suite 303, Huntington NY 11743 ("Purchaser").

WITNESSETH

WHEREAS, upon the terms and conditions hereinafter set forth Seller agrees to sell and convey fee title to that certain parcel of land described on Schedule A annexed hereto with the improvements erected thereon (which parcel of land and the improvements erected thereon are referred to collectively as the "Property") to Purchaser and Purchaser agrees to purchase the Property.

NOW, THEREFORE, the parties agree as follows:

1. **Certain Definitions.** The terms defined in this Article 1 shall for all purposes of this Contract have the meanings herein specified unless the context requires otherwise.

- a) "Approvals" shall have the meaning ascribed in Section 6 (c) (iii).
- b) "Broker" shall have the meaning ascribed in Article 8.
- c) "Closing" shall have the meaning ascribed in Section 11(a).
- d) "Closing Date" shall have the meaning ascribed in Section 11(a).
- e) "Deed" shall have the meaning ascribed in Section 17(a).
- f) "Deposit" shall have the meaning ascribed in Section 3(i).
- g) "Due Diligence Period" shall have the meaning ascribed in Section 6(b).
- h) "Effective Date" shall have the meaning ascribed in the preamble of this Contract.
- i) "Escrow Agent" shall have the meaning ascribed in Section 3(i).
- j) "Excusable Delays" shall have the meaning ascribed in Article 27.
- k) "Maximum Representation Expense" shall have the meaning ascribed in Section 19(c).
- l) "Maximum Title Expense" shall have the meaning ascribed in Section 10(d).
- m) "Permits" shall have the meaning ascribed in Section 6 (c) (iv).
- n) "Permitted Exceptions" shall have the meaning ascribed in Article 11.
- o) "Plans and Specifications" shall have the meaning ascribed in Section 6 (c) (v).
- p) "Project" shall have the meaning ascribed in Section 6 (c) (v).
- q) "Property" shall have the meaning ascribed in the "WHEREAS" paragraph in this Contract.
- r) "Purchase Price" shall have the meaning ascribed in Article 3.
- s) "Transfer Tax" shall have the meaning ascribed in Section 17 (b).
- t) "Violations" shall have the meaning ascribed in Section 6(a).

2. **Subject of Sale.**

- (a) Seller agrees to sell and convey to Purchaser, the Property, described in

Schedule A and known as (i) 249 Drexel Avenue, Westbury, New York, 11590; and (ii) Nassau County Tax Map No. Section 10, Block 187, Lots 918, 919 and 920; and Purchaser agrees to purchase from Seller the Property subject to the terms and conditions contained in this Contract.

(b) This sale includes all right, title and interest, if any, of Seller in and to: (i) the Property; (ii) any land lying in the bed of any street, road or avenue opened or proposed, directly in front of the Property, to the center line thereof, and all right, title and interest of Seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to the Property by reason of change of grade of any street; and Seller will execute and deliver to the Purchaser at the Closing, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award; and (iii) all fixtures, fittings and articles of personal property attached to and appurtenant to the Property, to the extent existing, but no part of the Purchase Price shall be deemed to be paid for such fixtures.

### 3. Purchase Price.

The purchase price (the "Purchase Price") for the Property is \_\_\_\_\_ d  
Dollars (\$) \_\_\_\_\_, payable by Purchaser to Seller as follows  
(which amount shall be allocated between the parcels comprising the Property ~~in accordance~~  
~~with Exhibit \_\_\_\_\_ attached hereto~~);

(i) \_\_\_\_\_ /100 Dollars (\$  
(the "Initial Deposit") on the signing of this Contract and another  
\_\_\_\_\_/100 (\$) \_\_\_\_\_ at the conclusion of the Due Diligence Period  
defined in Section 6(b) below (or earlier waiver of Purchaser's right to terminate during the Due  
Diligence Period) if Purchaser has not terminated the Contract pursuant to Section 6(b) (the  
"Second Deposit") for a total deposit of \_\_\_\_\_ 00/100  
Dollars (\$) \_\_\_\_\_ the "Deposit"). The Deposit shall be paid at Purchaser's option either by  
electronic wire transfer of immediately available federal funds to an escrow account designated  
by Stuart M. Steinberg, P.C. (the "Escrow Agent") or by certified check of Purchaser, bank  
teller's check to the order of Escrow Agent or company check to the order of Escrow Agent,  
subject to collection. In the event any Purchaser's check in payment of the Deposit is canceled or  
returned uncollected because of insufficient funds, or the check is dishonored for any other  
reason, Purchaser must replace the deposit check with Bank or Certified Funds within three (3)  
business days, time being of the essence as to that date; otherwise Seller may cancel this  
Contract by notice thereof to Purchaser and retain any portion of the Deposit already made as  
liquidated damages and the parties shall have no further obligations hereunder;

(ii) On the Closing Date, the amount of  
\_\_\_\_\_ d 00/100 Dollars (\$) \_\_\_\_\_ be paid at Seller's option either by  
electronic wire transfer of immediately available federal funds to an account designated by Seller  
or by certified or bank teller's check to the order of Purchaser; and

**4. Apportionments and Reimbursements.** Unless otherwise provided in this Contract,  
at the Closing, the following are to be reimbursed or apportioned as of 11:59 P.M. on the day

\* As determined by Seller

preceding the Closing Date based upon the respective party's period of ownership for the item being apportioned (the reimbursements and apportionments shall be made based upon the actual number of days in the month in which the Closing Date occurs):

(a) Water rates and water meter charges, and sewer rent, on the basis of the fiscal period for which assessed. If there be a water meter, or meters, on the Property the unfixed meter charges and the unfixed sewer rent thereon for the time intervening from the date of the last reading shall be apportioned on the basis of such last reading, and shall be appropriately readjusted after the Closing on the basis of the next subsequent bills.

(b) Real estate taxes (or payments in lieu thereof). If the Closing shall occur before the real estate tax rate is fixed, the apportionment of such taxes shall be upon the basis of the tax rate for the immediately preceding lien period applied to the latest assessed valuation, subject to further and final adjustment when the tax rate is fixed for the fiscal period in which the Closing takes place.

(c) Charges for all utility services supplied to the Property (including, without limitation, gas, steam and electricity), if any.

(d) Any errors or omissions in computing apportionments at Closing shall be corrected. This provision shall survive the Closing.

#### **5. Intentionally Omitted.**

#### **6. "As-Is" Condition; Due Diligence; Approvals.**

(a) As-Is Condition. Purchaser represents to Seller that (i) Purchaser has independently examined, inspected, and investigated to the full satisfaction of Purchaser, the physical nature and condition of the Property and the operating expenses and carrying charges affecting the Property, (ii) except as expressly set forth in this Contract, neither Seller nor any agent, officer, partner, member, manager, employee, or representative of Seller has made any representation whatsoever regarding the subject matter of this Contract or any part thereof, including (without limiting the generality of the foregoing) representations as to the physical nature or condition of the Property, the existence or non-existence of asbestos, hazardous substances or wastes, underground storage tanks or any other environmental hazards on or about the Property, or operating expenses or carrying charges affecting the Property, and (iii) Purchaser, in executing, delivering and performing this Contract, does not rely upon any statement, offering material, operating statement, historical budget, engineering structural report, any environmental reports, information, or representation to whomsoever made or given, whether to Purchaser or others, and whether directly or indirectly, verbally or in writing, made by any person, firm or corporation except as expressly set forth herein. Without limiting the foregoing, but in addition thereto, except as otherwise expressly set forth in this Contract, Seller shall deliver, and Purchaser shall take, the Property in its "as is" condition, subject to reasonable wear, tear and natural deterioration between now and Closing, and with all faults on the Closing Date except notes or notices or violations of law or municipal ordinances, orders or requirements imposed or issued



by any governmental or quasi-governmental authority having or asserting jurisdiction, against or affecting the Property as of the date of this Contract shall be cured by Seller by Closing (collectively, "Violations") subject to the "Maximum Representation Expense". Notwithstanding the foregoing, due to Purchaser's stated intention of demolishing the improvements on the Property, Seller shall not be obligated to cure any Violations affecting the improvements and Seller shall take title subject to same, except that Seller shall pay, at Closing, the amount of any fines associated therewith subject to the Maximum Representation Expense.

(b) Due Diligence. Notwithstanding the provisions of subsection (a) to the contrary, Purchaser shall have sixty (60) days after the Effective Date to perform and complete (i) a Phase 1 environmental study of the Property and (ii) an engineering study of the Property, to determine if the Property is suitable for Purchaser's intended use (the "Due Diligence Period"). Purchaser shall have the option to extend the Due Diligence Period an additional thirty (30) days if Purchaser is diligently performing the aforementioned studies. Purchaser shall, at its sole cost and expense, make prompt arrangements for such studies and diligently pursue completion thereof. During the Due Diligence Period, upon reasonable advance telephone notice from Purchaser, Seller shall allow Purchaser and Purchaser's designee(s) ("Purchaser's Designee(s)") access to the Property, and provided further that Purchaser shall not perform any invasive or intrusive testing to the Property without Seller's prior written consent, which shall not be unreasonably withheld, and provided Purchaser covenants to repair any damage to the Property caused by such testing. Seller may have a representative of Seller accompany Purchaser, or Purchaser's Designee(s), during any access of the Property. On or before the expiration of the Due Diligence Period, Purchaser may terminate this Contract by notice to Seller (accompanied by copies of all studies performed), provided Purchaser shall not be in default under this Contract at such time, in which event the Initial Deposit shall be promptly returned to Purchaser, whereupon this Contract shall become null and void and thereafter neither party shall have any further rights or obligations hereunder except as expressly set forth herein to survive such termination, including, without limitation, Purchaser's obligation to restore the Property to the condition that existed prior to any access by Purchaser. Purchaser and Purchaser's Designee(s) shall indemnify, defend and hold Seller harmless of, from and against liability, damages, costs, claims or losses relating to, or arising out of, Purchaser's or Purchaser's Designee(s)' access of the Property under this Section 6(b). Purchaser's Designee(s) shall furnish to Seller at least three (3) business days prior to any entry of the Property, at Purchaser's own cost and expense, and cause to be maintained and kept in full force and effect at all times that any such entry is made upon the Property, insurance against claims for personal injury and property damage, under a policy of general liability insurance of not less than 00/100 Dollars per occurrence and naming Seller as an additional insured. The provisions of this Section 6(b) shall survive the Closing or termination of this Contract.

(c) Approvals.

(i) Subject to Excusable Delays, as hereinafter defined, Purchaser shall use commercially reasonable efforts to obtain the "Approvals", as defined below, in accordance with the Plans and Specifications, as defined below, within twelve (12) months from the end of the Due Diligence Period (the "Approval Period"). Purchaser shall have the option to extend the Approval Period

an additional six (6) months if Purchaser is diligently pursuing, but has not yet obtained, the Approvals. If the Approvals have not been issued by the last day of the Approval Period, despite Purchaser's good faith effort to obtain same, either Seller or Purchaser may terminate this Contract by giving written notice thereof to the other party, at any time thereafter but prior to issuance of the Approvals. Upon issuance of the Approvals, the parties shall have no right to terminate this Contract based upon its inability to obtain Approvals for the construction of the Project.

(ii) Within sixty (60) days following the Due Diligence Period (or earlier waiver of Purchaser's right to terminate during the Due Diligence Period), Purchaser shall provide Seller with an opportunity to review any and all Plans and Specifications required by any governmental authority in connection with Purchaser's applications for the Approvals. Purchaser shall be responsible for the costs and expenses of all applications related to the Approvals, including reasonable fees of attorneys and professional consultants.

(iii) "Approvals" shall mean "final and unappealable and non-contingent" rezoning approvals and any variances, including but not limited to site plan approval and any building permits required for the Project (as hereinafter defined) from the Village of Westbury or any or all other governmental or quasi-governmental authorities or agencies which are necessary for securing the rights to develop, use and occupy the Property for the Project substantially in accordance with the Plans and Specifications. "Approvals" shall also mean the adoption by the Nassau County Industrial Development Agency of an inducement resolution evidencing the intention to provide certain financial assistance with respect to the "Project" as defined below. "Approvals" shall also include Purchaser having a construction financing commitment in place.

(iv) "Permits" shall mean collectively all permits, licenses, sewer and water "tap-in" rights or commitments, building approvals to be obtained by Purchaser at its sole cost and expense, to permit construction of the Project. Permits shall include without limitation all permits for building, demolition, grading, utilities installation and connection, and street access for construction vehicles.

(v) "Plans and Specifications" shall mean, such conceptual plans (including, but not limited to, architectural design and site layout plans) and procedures to be prepared by Purchaser, and which shall outline the intended uses, designs and site plan for the Property and the construction of the Project. Seller and Purchaser recognize and agree that the Plans and Specifications shall be for a 3 or 4-story residential apartment complex consisting of approximately thirty (30) apartment units (the "Project").

**7. Assessments.** If, at the time of Closing the Property or any part thereof shall be affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is a charge or lien, or has been paid, then for the purposes of this Contract all the unpaid installments of any such assessment, which are to become due and payable after the Closing Date, shall be considered due and are to be paid by the Seller at Closing. Notwithstanding anything herein to the contrary, Seller shall not be liable for any assessments accrued after the closing and Purchaser shall not be liable for any assessments



accrued before the Closing.

**8. Broker.** Seller and Purchaser represent to each other that neither party has dealt with any broker or real estate consultant other than \_\_\_\_\_ (the "Broker") in connection with the transaction contemplated by this Contract. Seller agrees to pay all fees, commissions or other charges due to the Broker if, as and when there is a Closing hereunder, pursuant to Seller's separate agreement with the Broker. Seller and Purchaser shall indemnify and hold the other free and harmless from and against any liabilities, damages, costs or expenses (including, but not limited to, reasonable attorneys' fees and disbursements) suffered by the indemnified party arising from a misrepresentation or a breach of any covenant made by the indemnifying party pursuant to this Article. The provisions of this Article shall survive the Closing.

#### **9. Risk of Loss.**

(a) **Condemnation.** If, at any time prior to the Closing Date, a portion of the Property shall be taken in the exercise of the power of condemnation or eminent domain by any sovereign, municipality or other public or private authority, or shall be the subject of a duly noticed hearing held by any such authority relating to a pending taking in the exercise of the power of condemnation or eminent domain (a "Taking"), Seller shall give Purchaser prompt written notice and Purchaser shall have the right to terminate this Contract by notice to Seller within ten (10) days after receipt of notice from Seller of the occurrence of a Taking, in which event this Contract shall be deemed canceled and of no force and effect and neither party shall have any further obligations or liabilities against or to the other, except that Seller shall cause the return of the Deposit plus the cost of title expenses to Purchaser. Seller agrees to deliver promptly after receipt thereof any and all written notices of a Taking received by Seller after the date hereof.

(b) **Destruction or Damage.** In the event that the Property, or any part thereof, shall be damaged or destroyed by fire or any other casualty ("Casualty") prior to the Closing Date, which in the judgment of the Purchaser does not reduce the value of Property, occurrence of such damage, destruction or casualty shall not be deemed an objection to closing, and Seller shall assign to Purchaser the proceeds of any insurance insuring against such damage, destruction, or casualty payable to it. In the event of any damage or destruction or other casualty which in the judgment of the Purchaser substantially reduces the value of the Property, Purchaser may cancel this Contract and receive a full refund of his Deposit plus the cost of title expenses and neither party shall be under any obligation to the other. In the event of any damage, destruction or other casualty to the Assets or leased Property, Seller shall immediately following the occurrence of such casualty give written notice thereof to Purchaser advising of the nature and extent thereof.

#### **10. Title.**

(a) At the Closing Seller shall deliver and Purchaser shall accept title to the Property as any reputable title company, either directly or through a recognized agent (the "Title Company"), would be willing to approve and insure in accordance with their standard form of title policy at regular rates, subject to (a) the title exceptions set forth in Schedule B to this Contract and (b) such other title exceptions which Seller may, in accordance with the provisions

of this Contract, cause the Title Company to omit or affirmatively insure will not be enforced against the Property (the title exceptions whether liens, encumbrances, defects, encroachments or other objections described in (a) and (b) are sometimes referred to collectively as "Permitted Exceptions"). Purchaser shall, promptly following the Effective Date, make application to a Title Company for a title commitment and promptly provide same to Purchaser and notify Seller of any Non-Permitted Title Objections, as defined below. It is understood and agreed that this transaction is contingent on Seller's ability to convey title to both parcels comprising the Property.

(b) If as of the Closing it should appear that the Property is affected by any lien, encumbrance, defect, encroachment or objection which is not a Permitted Exception (collectively, "Non-Permitted Title Objections"), then in such event, Seller, at Seller's election, shall have the privilege to remove or satisfy the same, and shall, for that purpose, be entitled to one or more adjournments of the Closing, but not to exceed sixty (60) days pursuant to this Article.

(c) If Seller elects to adjourn the Closing pursuant to this Article, this Contract shall remain in effect for the period or periods of adjournment, in accordance with its terms.

(d) Seller shall not be required to bring any action or proceeding or to otherwise incur any expense to remove or discharge any Non-Permitted Title Objection, real estate taxes or similar liens unless such Non-Permitted Title Objection(s) can be removed or discharged by payment of a sum of money only, and if both (1) such removal or discharge can reasonably be expected to be accomplished within a period of sixty (60) days beyond the date scheduled for the Closing (as same may be adjourned as permitted under this Contract) and (2) the sum of money required to accomplish such removal or discharge does not exceed 100 \_\_\_\_\_ Dollars (the "Maximum Title Expense"). In such event, Seller agrees to adjourn the Closing for the period required to remove or discharge such Non-Permitted Title Objections, real estate taxes or similar liens but not to exceed sixty (60) days beyond the date scheduled for the Closing (as same may be adjourned as permitted under this Contract), and to expend an amount not to exceed the Maximum Title Expense to remove or discharge such Non-Permitted Title Objections. If there shall be any Non-Permitted Title Objections that can be removed or discharged by the payment of a sum of money only which exceeds the Maximum Title Expense, or that can be removed by the payment of less than the Maximum Title Expense but not within the available time, and Seller notifies Purchaser that Seller elects not to, or cannot, remove or discharge such Non Permitted Title Objections, Purchaser may cancel this Contract by notice given within five (5) business days after receipt of Seller's notice. If Purchaser fails to timely cancel this Contract as provided in the preceding sentence, Purchaser shall accept such title as Seller can convey and the Purchase Price shall be reduced by the lesser of the Maximum Title Expense or the amount required to remove or discharge said Non-Permitted Title Objection. The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to this Contract and no Non-Permitted Title Objections may be raised as objections, except for those provisions expressly stated to survive the Closing. Anything in this Section to the contrary notwithstanding, an attempt by Seller to remove or discharge any Non-Permitted Title Objection shall not be

deemed to be or create an obligation of Seller to remove or discharge the same.

(e) The foregoing provisions of this Article to the contrary notwithstanding, Seller agrees to remove or discharge any Non-Permitted Title Objections voluntarily created by Seller after the date of this Contract.

(f) Unpaid franchise or corporation taxes, dissolution taxes or any other similar taxes so levied, of any corporation in the chain of title shall be no objection to title so long as the Title Company insures against collection of any such taxes out of or enforcement against the Property without special or additional premium or, if such special or additional premium is required, if Seller pays such special or additional premium.

(g) The foregoing provisions of this Article to the contrary notwithstanding, Seller agrees to remove or discharge any Non-Permitted Title Objections voluntarily created by Seller after the Effective Date.

#### **11. Closing.**

(a) The closing of title (the "Closing") shall take place on or about the 60th day after the issuance of the Approvals, at Seller's attorney's office located at 2 Rodeo Drive, Edgewood, New York or the offices of Purchaser's Lending Institution or Attorney for Purchaser's Lending Institution (the actual date of Closing is referred to as the "Closing Date").

(b) The parties agree to use commercially reasonable efforts to exchange proposed closing documents, to the extent practicable and necessary, at least two (2) business days prior to the date scheduled for the Closing.

(c) Closing shall be conditioned upon consummation of the Membership Interest Closing as defined in the Subscription Agreement of even date herewith between the Purchaser and Richard Scores.

**12. Notices.** All notices hereunder to Seller or Purchaser shall be sent in writing and by certified or registered mail, return receipt requested, or may be sent by Federal Express or other overnight courier which obtains a signature upon delivery, or may be delivered by hand delivery addressed to such party at the address of such party given at the beginning of this Contract or at such other address as such party shall designate from time to time by notice to the other party with copies of all such notices to Seller to be likewise sent to Stuart M. Steinberg, P.C., Sheralven Building, 2 Rodeo Drive, Edgewood, New York 11717, Attention: Stuart M. Steinberg, Esq. and of all such notices to Purchaser to be likewise sent to Certilman Balin Adler & Hyman, LLP, 90 Merrick Avenue, 9<sup>th</sup> Floor, East Meadow, New York 11554, Attention Howard M. Stein, Esq. Notices shall be deemed given three (3) days after mailing by certified or registered mail, and in the case of overnight/ground courier or hand delivery, on the date actually delivered to the appropriate address, except for notice(s) which advise the other party of a change of address of the party sending such notice or of such party's attorney, which notice shall not be deemed given until actually received by the party to whom such notice is addressed or delivery is

refused by such party. Notices on behalf of the respective parties may be given by their attorneys and such notices shall have the same effect as if in fact subscribed by the party on whose behalf it is given. Notwithstanding the foregoing provisions of this Article, notices served by hand delivery shall be deemed served on the date of delivery if delivered at or prior to 5:00 P.M. and on the next business day if delivered after 5:00 P.M.

### **13. Vendee's Lien; Inability to Convey.**

(a) In case of default by Seller, the Deposit and "net cost of title examination" are hereby made liens upon the Property, but such liens shall not continue after a default by Purchaser hereunder or the termination of the Contract and the return of the Deposit to Purchaser if Purchaser is entitled thereto. The term "net cost of title examination" is defined for purposes of this Contract as the expense actually incurred to the Title Company by Purchaser for title examination, without issuance of a policy, including the cost, if any, of a new survey of the Property obtained by Purchaser (the cost of said survey not to exceed \_\_\_\_\_). Whenever Purchaser is entitled to the return of the Deposit pursuant to this Contract upon a default by Seller, Purchaser shall also be entitled to the net cost of title examination.

(b) If, for any reason whatsoever, other than a default of Seller, Seller shall be unable to convey title to both parcels comprising the Property subject to and in accordance with the terms of this Contract, the sole obligation of Seller shall be to cause the refund of the Deposit and to reimburse Purchaser for the net cost of title examination and upon the making of such refund and reimbursement, this Contract shall be null and void and of no further force or effect and no party hereto shall have any further claim against the other by reason of this Contract and the lien, if any, of Purchaser against the Property shall wholly cease.

### **14. Discharge of Encumbrances.**

(a) The amount of any unpaid taxes, assessments, water charges and sewer rents that Seller is obligated to pay and discharge, with the interest and penalties thereon, at the option of Seller, shall be allowed to be paid by Purchaser out of the Purchase Price. If on the Closing Date there may be any liens or encumbrances which Seller is obligated to pay and discharge, Seller may use any portion of the balance of the Purchase Price to satisfy the same, provided Seller shall deliver to Purchaser instruments in recordable form and sufficient to satisfy such liens and encumbrances of record, together with the cost of recording or filing said instruments. If Seller requests prior to the Closing, Purchaser agrees to provide at the Closing separate certified checks or wire transfers, as requested, aggregating the balance of the Purchase Price to facilitate the satisfaction of any such liens or encumbrances.

(b) Notwithstanding anything to the contrary, the existence of any such taxes, assessments, water charges or sewer rents or other liens or encumbrances shall not be deemed objections to title if the Title Company shall be willing to omit as exceptions to coverage all such taxes, assessments, water charges, sewer rents, liens and encumbrances or insure against collection of same out of the Property. Seller shall have the right, in lieu of payment and discharge, to deposit with the Title Company such funds or assurances or to pay additional



premiums as the Title Company may require in order to so omit or insure. In such case, the taxes, assessments, water charges, sewer rents, liens and encumbrances with respect to which the Title Company has agreed so to omit or affirmatively insure shall not be considered objections to title.

**15. Affidavit Regarding Judgments.** If a search of the title discloses judgments, bankruptcies or other returns against other persons having names the same as or similar to that of Seller but who are not Seller or its affiliates or subsidiaries, Seller will deliver to the Title Company an affidavit(s) stating that such judgments, bankruptcies or other returns are not against Seller or, at Seller's option, deliver an indemnity agreement to the Title Company, in such form and content that the Title Company will remove such judgments, bankruptcies or other returns as exceptions to title or will insure against collection of such judgments out of the Property.

**16. Assignment of this Contract.** This Contract may not be assigned by Purchaser except that Purchaser may assign this Contract to 249 Drexel Associates LLC or other entities so long as the Purchaser and related entities owns at least a            interest in 249 Drexel Associates LLC or those other entities. A transfer, sale or assignment of the majority stock interest in a corporate purchaser or in a corporate general partner of a partnership purchaser, or of a general partnership interest in a partnership purchaser, or of the membership interest in a limited liability company purchaser or of a manager interest in a limited liability company purchaser, or of any controlling interest of Purchaser shall constitute an assignment of this Contract, which assignment or attempted assignment shall be void if made without the written consent of Seller.

**17. Deed; Transfer Taxes.**

(a) The deed to the Property shall be a Bargain and Sale Deed with Covenant Against Grantor's Acts (the "Deed") in proper statutory short form for recording and shall be duly executed and acknowledged so as to convey to Purchaser the fee title to the Property covered thereby.

(b) At the Closing, Seller shall deliver to Purchaser a certified or bank check to the order of the New York State Department of Finance for the amount of New York State Real Estate Transfer Tax, if any, imposed by Article 31 of the Tax Law ("Transfer Tax"), and a return in respect of the Deed, if any be required, duly signed and sworn to by Seller. Purchaser agrees to sign each such return and to cause each such check and each such return to be delivered to the appropriate recording officer immediately after the Closing in accordance with Article 31 of the Tax Law.

(c) Anything in subdivision (b) to the contrary notwithstanding, Seller may, at its option, elect by notice given prior to the Closing that Purchaser deliver any or all of said checks, in which event at the Closing, Purchaser shall receive a credit against the cash portion of the Purchase Price in the amount of such checks delivered by Purchaser. Seller may also, at its option and with the Title Company's consent, deliver or direct Purchaser to deliver a certified or bank check or attorney trust account check of Escrow Agent to the order of the Title Company for the amounts set forth in subdivision (b). Purchaser shall indemnify and hold Seller harmless

from and against any interest or penalty charges imposed by reason of the untimely delivery to the appropriate recording officer of the check required under subdivision (b).

(d) This Article shall survive the Closing.

**18. Liquidated Damages.** In the event Purchaser should default under this Contract, the parties hereto agree that the damages that Seller will sustain as a result thereof will be substantial but will be difficult to ascertain. Accordingly, the parties agree that in the event of such default, Seller shall retain the Deposit as and for its liquidated damages and not as a penalty as its sole remedy hereunder.

**19. Representations and Warranties.**

(a) Seller represents and warrants to Purchaser that as of the Closing Date:

(i) There will be no leases, tenancies, licensees affecting the Property or other persons in possession of the Property.

(ii) Seller is and will not be a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code").

(iii) Seller is, and at the Closing shall be, a New York corporation or a New York limited liability company, as applicable, duly organized and validly existing under the laws of the State of New York. The execution, delivery and performance of this Contract in accordance with its terms, does not violate the operating agreement or formation documents of Seller, or any contract, agreement, commitment, order, judgment or decree to which Seller is a party, or by which it, or the Property, are bound, or result in the creation of any lien, charge or encumbrance upon the Property or any part thereof (except as provided in this Contract). Seller has the right, power and authority to make and perform its obligations under this Contract without the need for governmental approval, consent or filing, and this Contract shall be a valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

(iv) To Seller's knowledge, except for the Permitted Exceptions, there are no written agreements or written contracts relating to the operation or use of the Property to which Seller is a party and which will be binding on Purchaser after the Closing.

(v) To Seller's knowledge, Seller has received no written notice within the past six (6) months of any Violations affecting the Property. In the event there are violations of record, Seller shall have the Violation(s) removed before Closing.

(vi) The Seller is not a party to a contract agreement or commitment to sell the Property or dispose of the Property.

(vii) To Seller's knowledge there are no condemnation or similar proceedings affecting the Property.

(ix) This Contract constitutes the valid and binding agreement which has been authorized by its shareholders or members, as applicable, and is enforceable.

(x) There is no litigation affecting the Property.

(xi) There are no special assessments affecting the Property.

(xii) There are no judgments of any court of record in the State of New York or of the United States against Seller which are in any way a lien upon the Property, nor has any petition in bankruptcy or other insolvency proceedings been filed by or against the Seller.

(b) Subject to the subparagraph (c) below, if any material representation of Seller shall fail to be true, Purchaser's sole remedy shall be to terminate this Contract and receive the return of (i) the Deposit, (ii) the net cost of title examination, and (iii) the cost of all inspections, which items (ii) and (iii) in the aggregate shall not exceed \$ \_\_\_\_\_ and upon the receipt of same, this Contract shall be null and void and of no further force or effect and neither party shall have any rights or obligations against or to the other. Seller shall have the option to rescind Purchaser's termination of this Contract and adjourn the Closing for a period not to exceed forty five (45) days beyond the date scheduled for the Closing (as same may be adjourned as permitted under this Contract) in order to make such representation true. If the Closing shall take place without Purchaser making an objection (by written notice to Seller) to an untrue representation of which Purchaser shall have actual knowledge, Purchaser shall be deemed to have waived all liability of Seller by reason of such untrue representation. The untruth of any non-material representation of Seller shall not affect the rights and obligations of the parties hereto.

(c) The provisions of subparagraph (b) above to the contrary notwithstanding, if any representation(s) of Seller shall fail to be true and such representation(s) can be made true by the payment of a liquidated sum of money only, and if both (i) such representation(s) can reasonably be expected to be made true within a period of sixty (60) days and (ii) the sum of money required to make such representation(s) true shall not exceed \_\_\_\_\_ and 00/100 Dollars (the "Maximum Representation Expense"), in such event, Seller agrees to adjourn the Closing for the period required to make such representation(s) true, but not to exceed ninety (90) days beyond the date scheduled for the Closing (as the same may be adjourned as permitted under this Contract) and to expend (or, at Seller's election, to obligate itself to expend by indemnify agreement, bond or any other manner) an amount not to exceed the Maximum Representation Expense. If there shall be any untrue material representation(s) which can be made true by the payment of a sum of money only which exceeds the Maximum Representation Expense or which can be made true by the payment of less than the Maximum Representation Expense but not within the available time, and Seller notifies Purchaser that Seller elects not to, or cannot, make such material representation(s) true within the available time, Purchaser may

cancel this Contract by notice to Seller given within ten (10) days after receipt of Seller's notice. If Purchaser fails to timely cancel this Contract as provided in the preceding sentence, Purchaser shall accept such title as Seller can convey and the Purchase Price shall be reduced by the lesser of the sum of money required to make such representations true, or the Maximum Representation Expense. The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation on the part of the Seller to be performed pursuant to the provisions of this Contract, except those which are herein specifically stated or made to survive the Closing and Seller shall have no further liability with respect to such untrue material representation(s).

**20. Closing Documents. At the Closing:**

**(a) Seller shall deliver to Purchaser:**

- (i) the Deed in accordance with Article 17 hereof;
- (ii) a duly executed certificate of Seller, in the applicable form set forth in Treasury Regulations §1.1445-2(b)(2);
- (iii) the checks and returns in accordance with Article 17 hereof;
- (iv) an affidavit or affidavits of title in favor of the Title Company, in form reasonably acceptable to Seller and the Title Company, to enable the Title Company to issue a Title Commitment;
- (v) IRS Form 1099;
- (vi) FIRPTA Affidavit;
- (vii) proof of Seller's authority to enter into this Contract and perform its obligations thereunder;
- (viii) a certificate of Seller that all representations will remain true and correct as of the Closing Date; and
- (ix) and any other documents as are reasonably requested by Purchaser;

**(b) Purchaser shall deliver to Seller:**

- (i) the balance of the Purchase Price as provided in Article 3 hereof;
- (ii) the checks and returns in accordance with Article 17 hereof;
- (iii) proof of Purchaser's authority to enter into this Contract and perform its obligations thereunder;



(iv) any other documents as are reasonably requested by Seller.

**21. Further Assurances.** The parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Contract), as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Contract. The provisions of this Article shall survive the Closing.

**22. Certiorari Proceedings.** Seller shall have sole authority to prosecute, settle and withdraw proceedings to review the real estate tax assessment for the Property. If there should be a refund of any real estate taxes paid by Seller in respect of the fiscal year in which the Closing occurs, such refund, less reasonable attorneys' fees and disbursements, shall be apportioned between Seller and Purchaser as of the Closing Date and shall be paid promptly upon receipt thereof. Purchaser acknowledges that it has no interest in any proceedings or refunds applicable to any fiscal tax year or period prior to the Closing. The provisions of this Article shall survive the Closing.

**23. Deposit Provisions.** With respect to the Deposit, Escrow Agent is instructed as follows:

(a) Upon the Closing, Escrow Agent is authorized and directed to pay the Deposit to Seller upon payment by Purchaser to Seller of the balance of the Purchase Price.

(b) In the event this Contract is terminated by reason other than Purchaser's default, Escrow Agent is authorized and directed to pay or deliver the Deposit to Purchaser.

(c) In the event this Contract is terminated by reason of Purchaser's default, Escrow Agent is authorized and directed to pay or deliver the Deposit to Seller.

(d) In the event of a dispute or proceeding between the Parties relating to this Contract, Escrow Agent may represent Seller, Purchaser knowingly waiving the existence of a conflict of interest.

(e) Escrow Agent, by signing this Contract at the end hereof where indicated, signifies its agreement to hold the Deposit for the purposes as provided in this Contract. In the event of any dispute, Escrow Agent shall have the right to deposit the Deposit in court to await the resolution of such dispute. In any event, Escrow Agent shall not be personally liable so long as it acts in good faith.

(f) Escrow Agent shall not incur any liability by reason of any action or non-action taken by it in good faith except its own negligence or pursuant to the judgment or order of a court of competent jurisdiction. Escrow Agent shall have the right to rely upon the genuineness of all certificates, notices and instruments delivered to it pursuant hereto, and all the signatures thereto or to any other writing received by Escrow Agent purporting to be signed by any party hereto,

and upon the truth of the contents thereof. Except as otherwise expressly provided in this Article, Escrow Agent shall not pay or deliver the Deposit to any party unless written demand is made therefor and a copy of such written demand is delivered to the other party. If Escrow Agent does not receive a written objection from the other party to the proposed payment or delivery within ten (10) business days after such demand is served by personal delivery on such party, Escrow Agent is hereby authorized and directed to make such payment or delivery. If Escrow Agent does receive such written objection within such ten (10) day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment or delivery, Escrow Agent shall forward a copy of the objections, if any, to the other party or parties, and continue to hold the Deposit unless otherwise directed by written instructions from the parties to this Contract or a final judgment of a court of competent jurisdiction. In any event, Escrow Agent shall have the right to refrain from taking any further action with respect to the subject matter of the escrow until it is reasonably satisfied that such dispute is resolved or action by Escrow Agent is required by an order or judgment of a court of competent jurisdiction.

(g) Escrow Agent shall be entitled to consult with other counsel in connection with its duties hereunder. Seller and Purchaser, jointly and severally, agree to reimburse Escrow Agent, upon demand, for the reasonable costs and expenses including attorneys' fees (either paid to retained attorneys or equaling the reasonable value of services rendered to itself) incurred by Escrow Agent in connection with its acting in its capacity as Escrow Agent and as approved by a court having competent jurisdiction. In the event of a litigation relating to the subject matter of the escrow, whichever of Seller or Purchaser is not the prevailing party shall reimburse the prevailing party for any costs and fees paid by the prevailing party or paid from the escrowed funds to Escrow Agent.

(h) In the event there is a dispute as to which party is entitled to the Escrow Deposit and in the further event the Escrow Agent does not deposit the Escrow fund with a court of competent jurisdiction, the Escrow Deposit shall be placed in an interest bearing account opened with both parties tax I.D. numbers. The prevailing party in such dispute shall be entitled to the Escrow deposit along with all interest earned thereon provided that such party shall be responsible for all tax consequences with respect to the interest earned and shall indemnify and hold harmless the other party accordingly, including reasonable attorney's fees.

**24. Authority.** Each party represents and warrants to the other that: (i) the execution, delivery and performance of this Contract in accordance with its terms, do not violate the partnership agreement, corporate charter, by-laws or certificate of incorporation of either, or any contract, agreement, commitment, order, judgment or decree to which either party is bound; (ii) the parties have the right, power and authority to make and perform their obligations under this Contract; and (iii) this Contract is a valid and binding obligation of the parties enforceable against each in accordance with its terms. The parties covenant and warrant that the representations in the preceding sentences of this Article will be true on the Closing Date. The terms of this Article shall survive the Closing.

## **25. Confidentiality.**

(a) Purchaser agrees that all written documentation furnished to Purchaser by Seller concerning the Property, including, without limitation, any documents and reports of an environmental nature or otherwise concerning the property, (all of the aforementioned information is collectively referred to as "Evaluation Material") shall be treated confidentially as hereinafter provided.

(b) No Evaluation Material shall be used or duplicated by Purchaser in any way detrimental to Seller, or for any purpose other than evaluating a possible purchase of the Property by Purchaser. Purchaser agrees to keep all Evaluation Material (other than information which is a matter of public record or is provided in other sources readily available to the public other than as a result of disclosure thereof by Purchaser or Related Parties) strictly confidential; provided, however, that the Evaluation Material may be disclosed to the directors, officers, and employees and partners of Purchaser, and to Purchaser's attorneys, accounting firm, engineers, surveyors and title examiners (all of whom are collectively referred to as "Related Parties") who need to know such information for the purpose of evaluating a possible purchase of the Property. The Related Parties shall be informed of the confidential nature of the Evaluation Material and shall be directed to keep all such information in the strictest confidence and use such information only for the purpose of evaluating a possible purchase by Purchaser. Purchaser will promptly, upon request of Seller, deliver to Seller all Evaluation Material furnished to them by Seller, whether furnished before or after the date hereof, without retaining copies thereof. Purchaser will direct Related Parties to whom Evaluation Material is made available not to make similar disclosures and any such disclosure shall be deemed made by and be the responsibility of Purchaser.

(c) Prior to the Closing, Purchaser shall keep strictly confidential and shall cause the Related Parties to keep strictly confidential the provisions of this Contract and the transactions contemplated thereunder. After the Closing, Purchaser shall not make any public disclosures and shall cause the Related Parties not to make any public disclosures regarding the provisions of this Contract or the transactions accomplished at the Closing without the prior written consent of Seller, which consent shall not be unreasonably withheld.

(d) This Article shall survive the Closing or earlier termination of the Contract.

**26. Additional Covenants.** Seller shall deliver possession of the Property to Purchaser within sixty (60) days after the Closing Date AS IS and vacant and free of any tenants, or licensees, legal or otherwise. Furthermore, Seller shall have ninety (90) days from the end of the Approval Period or, the issuance of all Approvals, if sooner, to remove all tenants or licensees, legal or otherwise.

**27. "Excusable Delays"** shall mean delays caused by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty, moratorium or similar laws prohibiting performance or any other cause, whether similar or dissimilar, beyond the reasonable control of either Seller or Purchaser or delays caused by Seller's or Purchaser's performance or failure to perform its obligations

under this Contract, as applicable.

## **28. Miscellaneous.**

(a) This Contract and the Schedules and Exhibits annexed hereto constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and except for any other documents executed contemporaneously herewith all understandings and agreements heretofore or simultaneously had between the parties hereto are merged in and are contained in this Contract and said Schedules and Exhibits.

(b) The provisions of this Contract may not be waived, changed, modified or discharged orally, but only by an agreement in writing signed by the party against which any waiver, change, modification or discharge is sought.

(c) The captions or article titles contained in this Contract are for convenience and reference only and shall not be deemed a part of the text of this Contract.

(d) The terms "hereof," "herein," and "hereunder," and words of similar import, shall be construed to refer to this Contract as a whole, and not to any particular article or provision, unless expressly so stated.

(e) The Schedules and Exhibits annexed hereto are hereby incorporated in and made part of this Contract.

(f) All words or terms used in this Contract, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

(g) This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns, if any, but nothing contained herein shall be deemed a waiver of the provisions of Article 16 hereof. None of the provisions of this Contract are intended to be, nor shall they be construed to be, for the benefit of any third party.

(h) If a party is required to perform an act or give a notice on a date that is a Saturday, Sunday or national holiday, the date such performance or notice is due shall be deemed to be the next business day.

(i) This Contract is to be governed and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law.

(j) The terms "affiliates" and "subsidiaries" shall be given the same meaning as used in the broadest sense in any provision of the rules and regulations governing federal taxation and securities.

(k) The parties waive the right to a jury trial in any action or proceeding brought against

the other in connection with this Contract. The prevailing party in such suit shall be entitled to its reasonable attorney's fees.

END OF TEXT – SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract the day and year first above written.

SELLER:

SCORES REALTY, INC.

By: 

Name: Richard Scores

Title: President

AFJR REALTY LLC

By: 

Name: Richard Scores

Title: President

PURCHASER:

ORNSTEIN FETNER DEVELOPMENT LLC

By: 

Name: Alexander Ornstein

Title: President

As to Article 23

STUART M. STEINBERG, P.C.

By: 

Stuart M. Steinberg



SCHEDULE B  
ATTACHED TO AND FORMING PART OF THE CONTRACT BETWEEN  
SCORES REALTY, INC. AND AFJR REALTY LLC, AS SELLER  
AND  
ORNSTEIN FETNER DEVELOPMENT LLC, AS PURCHASER

"SUBJECT TO" PROVISIONS

1. Any laws, regulations or ordinances presently in effect or which will be in effect on the Closing (including, but not limited to, zoning, building and environmental protection) as to the use, occupancy, subdivision or improvement of the Property adopted or imposed by any governmental body or the effect of any noncompliance with or any violation thereof.
2. Consents, if any, by Seller or any former owner of the Property, for the erection and maintenance of any structure or structures on, under or above any street or streets on which the Property may abut, provided the same do not render title unmarketable or uninsurable.
3. Real estate taxes, water and sewer charges not yet due and payable, subject to apportionment between the parties.
4. Judgments against Purchaser or estates, interest, defects, objections, liens or encumbrances created, suffered, assumed or agreed to by, or with the privity of, Purchaser.
5. Lack of title to any property beyond the lines of the Property, or title to areas within, or rights or easements in, any abutting streets, avenues, lanes, ways or waterways, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement provided they do not affect any portion of the building or ingress or egress thereto and the title insurer is willing to affirmatively insure the same without additional premium.
6. Lack of title to any personal property whether attached to or used in connection with the Property or otherwise.
7. State of facts shown or revealed on a survey provided that none of such facts renders title unmarketable or uninsurable.
8. Covenants, conditions, restrictions, liens and easements of record, provided that same are not violated by existing structures, unless the Title Company will affirmatively insure without additional premium that any such violations of existing structures will not cause a forfeiture or reversion of title.
9. Rights of any utility company to maintain and operate lines, wires, poles, cables and distribution boxes, in, over and upon the Property.

**EXHIBIT A**

Upon acceptance of the Application by the Agency for processing and completion of the Cost/Benefit Analysis, the Agency will attach a proposed PILOT Schedule hereto, together with an estimate of the net tax benefit/cost of the proposed PILOT Schedule.



## **EXHIBIT B**

### **Fair Housing/Equal Housing Opportunity Policy to be adopted by Agency Applicants for Housing Projects**

As part of our continuing effort to ensure compliance with federal, state, and local anti-discrimination laws, we would like to take this opportunity to remind you of our policies regarding equal housing opportunity. It is important for all employees to review his or her own actions in light of these requirements and for everyone to keep in mind the importance of treating all persons equally.

It is the policy and practice of this company not to engage in or assist the efforts of others to engage in housing discrimination. Consistent with that policy, we remind you that the antidiscrimination laws of the United States, New York State, and local laws are quite specific in the area of housing, and in conformance with those laws, you must not engage in any of the following conduct during the course of your work for this company:

1. Refuse to show, rent, sell, negotiate for the rental or sale of, or otherwise make unavailable or deny, housing to any person because of race, color, religion, creed, sex/gender, familial status (having or expecting a child under 18), national origin, ethnicity, disability, marital status, age, sexual orientation, military status, source of income or status as survivor of domestic violence (each a "prohibited basis");
2. Discriminate against any person in the terms, conditions or privileges of a rental or sale or in the provision of services or facilities in connection therewith because of a prohibited basis;
3. Make any verbal or written statement with respect to the rental or sale of housing that indicates any preference, limitation or discrimination concerning a prohibited basis, or any statement indicating an intention to make any such preference, limitation or discrimination;
4. Represent to any person because of a prohibited basis that any housing or unit is not available for inspection, rental or sale when such apartment is in fact so available;
5. Steer persons into or away from certain areas of a building, development or neighborhood because of a prohibited basis;
6. Refuse to provide a reasonable accommodation in rules, policies, practices or services for tenants, buyers, or applicants with disabilities; and
7. Refuse to allow a reasonable modification to individual units or common areas for tenants, buyers, or applicants with disabilities.

We are firmly committed to the goal of fair housing. You should understand that any violation of this Fair Housing/Equal Housing Opportunity Policy will lead to discipline, up to and including discharge.

## EXHIBIT C

### Sample Fair Housing Posters

U. S. Department of Housing and Urban Development



EQUAL HOUSING  
OPPORTUNITY

**We Do Business in Accordance With the Federal Fair  
Housing Law**

(The Fair Housing Amendments Act of 1988)

**It is illegal to Discriminate Against Any Person  
Because of Race, Color, Religion, Sex,  
Handicap, Familial Status, or National Origin**

- |   |   |
|---|---|
| <input type="checkbox"/> In the sale or rental of housing or residential lots | <input type="checkbox"/> In the provision of real estate brokerage services |
| <input type="checkbox"/> In advertising the sale or rental of housing         | <input type="checkbox"/> In the appraisal of housing                        |
| <input type="checkbox"/> In the financing of housing                          | <input type="checkbox"/> Blockbusting is also illegal                       |

Anyone who feels he or she has been  
discriminated against may file a complaint of  
housing discrimination:

1-800-669-9777 (Toll Free)

1-800-927-9275 (TTY)

[www.hud.gov/fairhousing](http://www.hud.gov/fairhousing)

U.S. Department of Housing and  
Urban Development


Assistant Secretary for Fair Housing and  
Equal Opportunity

Washington, D.C. 20410

Previous editions are obsolete

Form HUD-928.1 (6/2011)

Do you suspect you have been discriminated against because of your age, race, disability, familial status, or because you are a member of other protected classes? If you witness or experience discrimination, contact the New York State Division of Human Rights at 1-888-392-3644 or [WWW.DHR.NY.GOV](http://WWW.DHR.NY.GOV)

 **HUMAN RIGHTS**  
DIVISION OF  
LABOR

**HOUSING  
DISCRIMINATION IS  
SOMETIMES BLATANT,  
SOMETIMES SUBTLE,  
BUT ALWAYS UNLAWFUL.**

**EXHIBIT D**  
**Requirements for Affirmative Marketing Plans for Housing Projects**

Affirmative marketing plans submitted by the Applicant shall be required only for affordable or “workforce” units and shall contain the following information:

1. Street address, village, town, zip code, and census tract number for the Project;
2. Number of affordable units to be marketed and whether they will be available for rent or purchase;
3. The number, if any, and location of market rate units included in the Project;
4. Whether the housing will be “housing for older persons”, defined as at least 80% occupancy of units with at least one person 55 or older or 100% occupancy of persons age 62 or older;
5. A description of how units will be advertised for sale or rental prior to first occupancy, including whether Applicant will utilize its own website, commercial websites, print media outlets, social media outlets such as Facebook, a sign at the project site, mailings, leaflets/flyers, brochures, and other forms of advertising;
6. A statement that the Applicant will use fair housing logo or phrase “Equal Housing Opportunity” on all advertising described above;
7. A statement that the Applicant will distribute written information regarding the availability of affordable units at the project to a list of organizations provided to the Applicant by the Agency, which list may be updated annually;
8. Whether the Applicant will conduct the marketing and initial rent-up or sales itself or contract with a third-party;
9. A statement that an initial application period with a specific start and end date will be utilized for accepting applications for consideration for the initial rental of the units and that the period will last for at least thirty (30) days after the marketing described in this plan is commenced. In addition, a statement that following the initial application period, all the applications submitted during the initial application period will be considered through the use of a lottery and not on a first-come first-served basis, unless the number of applications received during the initial application period is less than the total number of units available for rental.
10. A statement that the Applicant will maintain records of the activities it undertakes to implement its marketing plan.