

TOWN OF BABYLON
TOWN / OWNER
AGREEMENT

This **AGREEMENT** made this _____ day of _____, 2008 between the Town of Babylon, 200 East Sunrise Highway, Lindenhurst, New York 11757 (“Town”) and _____ (“Owner”), who reside at and with respect to the Property located at _____, Suffolk County Tax Map Number _____ (“Property” or “Premises”).

For the consideration hereinafter named, the said Town covenants and agrees with said Owner, as follows:

ARTICLE 1

GENERAL PROVISIONS

§1.1 DEFINITIONS:

§1.1.1 **THE CONTRACT:** The Contract between the Town and the Owner (hereinafter “Agreement” or “Contract”) consists of this Agreement, the Exhibits and other documents listed in the Agreement and written modifications issued after execution of the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may only be amended or modified in writing.

§1.1.2 **THE WORK:** The term “Work” means the construction and services to be performed by the Contractor, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§1.1.3 **THE PROJECT:** The Project is the total construction of the Work performed under the Contract.

§1.1.4 **CHANGE ORDER:** A change order is a written modification detailing a change in the Work and/or additional Work and any change in the Contract sum as a result thereof. A change order must be agreed to and executed by the Town, the Owner and the Contractor.

§1.1.5 **THE CONTRACTOR:** The Contractor is the entity performing the Work on the Project.

§1.1.6 **FINAL COMPLETION:** Final Completion is the state in the Work when the Work is in accordance with the Agreement documents, the Work has been inspected and approved by all proper governmental authorities, including the Town and all necessary certificates approving satisfactory inspection by all applicable governmental agencies have been obtained.

§1.1.7 **THE OWNER:** The Owner is the individual(s) holding title and ownership of the Premises where the Work is being performed. The Owner shall also be any person or entity to whom title and ownership of the Premises has been conveyed in any respect subsequent to the execution of this Contract and/or any person or entity to whom this Agreement has been assigned in any respect. The Owner, or any combination of Owners, and any of Owner’s successors or assigns, shall be responsible for the benefit assessment that is assessed against the Premises and for the payment of the Contract sum pursuant to the payment terms made a part of this Agreement at Exhibit “B” and any modification made to said payment terms.

§1.2 **GENERAL TERMS:**

1.2.1 The Contractor agrees to perform and provide the scope of work described in the Project and materials and act in accord with the schedule that is annexed hereto as Exhibit A. The Contract between the Owner and the Contractor describing the scope of work and payout must be annexed hereto and referenced.

§1.2.2 **INITIAL AUDIT:** The initial audit fee of Two Hundred Fifty (\$250.00) dollars paid by the Owner is to be credited to the amount of the Contract.

§1.2.3 **PROJECT COMPLETION:** Contractor will comply with all reasonable time frames set forth by the Town in completing the Project.

§1.3 **CONTRACT SUM AND PAYMENT:**

§1.3.1 The Owner shall pay the Town the amount set forth in the payment terms and schedule annexed hereto as Exhibit "B," which amount shall constitute a benefit assessment on the Property with all the legal rights and responsibilities attached thereto. The amounts to be paid and the schedule of payments are set forth in the payment terms annexed hereto as Exhibit "B."

§1.3.2 **PRE-PAYMENT:** Owner will not be penalized for pre-payment of the benefit assessment.

§1.3.3 **ADJUSTMENTS IN CONTRACT AMOUNT:** If a contract change order requires an adjustment in the Contract amount, the adjustment shall be established by acceptance of the Town, Owner and Contractor of the change order with an itemized lump sum for the additional or reduced Work that shall be contained on the change order. The lump sum amount shall be added or subtracted to the benefit assessment, and the Owner shall accept revised payment terms reflecting the increased or decreased amount, which revised payment terms shall constitute a modification to the Contract and to the payment terms annexed hereto at Exhibit "B".

ARTICLE 2

BENEFIT ASSESSMENT AND PROGRAM RESPONSIBILITY

§2.1 **VOLUNTARY PROGRAM:** The Owner acknowledges that the Town's Long Island Green Homes Program is a voluntary program and Owner was not unduly influenced into signing this Agreement. Owner asserts he/she signed this Agreement knowingly and voluntarily of his/her own accord.

§2.2 **BENEFIT ASSESSMENT:** Owner agrees to a benefit assessment on the Property that will be assessed by the Town after the completion of the Work and shall be paid in the amount and in accord with the schedule set forth in the payment terms. Owner agrees to pay all fees associated with the benefit assessment.

§2.3 **ASSIGNABILITY AND OBLIGATION:** This Agreement, the benefit assessment and the amount owed thereunder, and the payment terms annexed hereto as Exhibit "B" and any modification thereof, are assignable upon the conveyance of the Property. Such assignment is contingent upon written notice being provided to the Town at least sixty (60) days prior to any such conveyance detailing the party/parties who will be assuming all applicable obligations under the Contract, benefit assessment and payment terms, and further notice being given no later than thirty (30) days after the completion of the conveyance confirming the party to whom the Property has been conveyed. As a further condition of any such assignment, the Owner must be in compliance with the Agreement and be in good standing and current in payment of the benefit assessment pursuant to the payment terms annexed hereto as Exhibit "B,"

and any modification thereof. The Owner must also provide a copy of his Contract, and all exhibits annexed hereto, to the party/parties to whom the Property is being conveyed and must confirm to the Town that such action has been taken.

§2.4 **SITE VISITATION/INSPECTION:** During the Project, the Town reserves the right, upon prior notice to the Owner, to visit and/or inspect the site by any Town employee, Town agent, or independent entity/individual hired by the Town.

§2.5 **COMMUNICATIONS:** Unless otherwise provided in the contract documents, and except for emergencies, Owner shall direct all communications related to the Work to the Contractor and notify the Town.

§2.6 **ADDITIONAL WORK:** All additional work, “change orders” shall be in writing and signed by the Town, Contractor, and the Owner of the property/premises and shall be incorporated in, and become part of the Agreement. Any change order resulting in an increase in cost shall be paid pursuant to the provisions of this Contract and the Contract between the Town and the Contractor. Contractor is only permitted to do work on the property/premises that is within the scope of the Contract, any other work outside of the scope of the Contract is prohibited unless explicitly approved by the Town

§2.7 **WAIVER OF CLAIMS:** Final payment of the benefit assessment shall constitute a waiver of all claims by the Owner relating to the Contract work, but shall in no way relieve the designated Contractor of liability for warranties, or for nonconforming or defective work, or materials discovered after final payment that are defective or nonconforming.

§2.8 **CONTINUING OBLIGATIONS:** The Owner shall reimburse the Town for any costs and expenses including attorney’s fees with respect to any claim or obligation asserted against the Town in connection with or related to the performance of the Contract Work. The Owner shall reimburse the Town for costs and expenses including attorneys’ fees, costs and expenses incurred by the Town in satisfying, discharging or defending against any such claims, obligations or liens including any action brought or judgment recovered.

§2.9 **NO DAMAGE FOR DELAY:** The Owner agrees to make no claim for damages for delay in the performance of this Contract occasioned by any act or omission of the Town, or any of its representatives, and agrees that all it may be entitled to on account of any such delay is an extension of time as to the completion date noted for the performance of the Work as provided herein. If the work is interrupted, suspended, or delayed for any reason beyond the reasonable control of either party, the work schedule and any completion date shall be adjusted accordingly.

§2.10 **RESCISSION/CANCELLATION BY TOWN:** The Town reserves the right to rescind and/or cancel this Agreement without any liability at any time prior to the actual commencement of the Work by written notice to the Owner.

§2.11 **TERMINATION FOR CONVENIENCE:** Prior to commencement of the Work, the Owner reserves the right to rescind and/or cancel this Agreement without any liability at any time prior to the actual commencement of the work by written notice to the Contractor and the Town.

§2.12 **DAMAGE CAUSED BY CONTRACTOR:** The Town shall not be liable to the Owner for any injury or damage to any person or property caused by the Contractor or any Subcontractors as a result of the Project.

§2.13 **DEBRIS – EXTRA MATERIALS:** The Town shall not be responsible for any debris or materials at the Work site. It is the responsibility of the Contractor to clean the debris created by its Work. It is the responsibility of the Owner to clean any debris/garbage created by or on behalf of the Owner. The Owner agrees to indemnify and hold harmless the Town for any damage, claim or complaint related to any such debris or materials left on the aforesaid property/premises and on all other property/premises affected by such debris and material.

§2.14 **CLEAN UP AND SAFETY:** It is not the responsibility of the Town to keep the Work site clean and safe. Owner agrees that it will not cause, permit or allow to continue any dangerous, hazardous or unsafe condition on or about the Property and that it will take any and all measures needed to address such conditions prior to the start of the Project and at any time during the Project that such conditions exists or become known to the Owner. While the Contractor is responsible for the clean-up of all debris, materials and conditions created by its Work, the Owner is otherwise responsible to maintain the Property in a clean and safe condition. Owner agrees to indemnify and hold harmless the Town for any damage, claim or complaint caused by or related to the cleanliness, safety and conditions at the Property.

§2.15 **NOTICE:** The Owner shall notify the Town and, where applicable, its homeowner's insurance, and any other applicable insurance carrier, in writing of any loss, damage or injury to Work, persons or property arising out of the operations of the Project and any and all accidents on the Property that may be related to the Project within two (2) days of the occurrence. The notice to the Town shall specify the name of the Contractor, the property that is the subject of the Project, the date of the incident, the location of the incident, the identity of the person or things injured, damaged or lost, and the name of any insurance carrier to whom the Owner has provided notice.

§2.16 **INDEMNITY:** To the fullest extent permitted by law, the Owner shall hold harmless, indemnify and defend the Town against all losses, claims, fines or expenses, including, but not limited to, attorney's fees, resulting from any lack of safety or unsafe conditions caused or permitted by Owner or Owner's agents/employees on the Project and/or Property.

§2.17 **MATERIALS OR EQUIPMENT FURNISHED BY OTHERS:** The Owner recognizes that the scope of the Contract Work includes installation of materials or equipment furnished by others, and that it will indemnify and hold harmless the Town regarding liability related to same including but not limited to the proper care in receiving, handling, storing and installing such items, unless otherwise provided in the contract documents.

§2.18 **NO WARRANTY:** The Town does not, in any respect, warrant the goods, materials, work, labor or services provided pursuant to the Project.

§2.19 **EXISTING ELECTRICAL/PLUMBING SERVICES:** Pursuant to inspection by Contractor, if the existing electrical or plumbing service is inadequate, work on the Project will immediately stop and will not resume until any deficiencies/inadequacies in the electrical or plumbing service are addressed to the Town's satisfaction. All costs associated with addressing any electrical or plumbing conditions pursuant to this provision shall be borne solely by the Owner. The Town shall not be responsible or liable in any respect for any damage or delay caused as a result of any inadequacies/deficiencies in the electrical or plumbing services on the Property.

§2.20 **PHYSICAL DEFECTS:** If while performing the Agreement, the Town, Contractor or Owner finds any physical defects, including, but not limited to, mold, insect damage, wood rot, water damage, oil or any similar condition, material or substance on or in the Property, the Work will stop immediately, no further action will be taken on the Project and the Town will be immediately notified of the conditions/circumstances. All costs associated with addressing any physical defects pursuant to this provision shall be borne solely by the Owner. The Town shall not be responsible or liable for any damage or delay caused as a result of the existence of or of any remediation/repair of physical defects on the Property.

§2.21 **HAZARDOUS MATERIALS:** If a hazardous material or substance not addressed in the Contract documents is encountered, including, but not limited to, mold, asbestos or polychlorinated biphenyl (PCB), Work shall stop immediately upon the condition being recognized, no further action will be taken on the Project until further notice, and the Town will be immediately notified of the condition/circumstances. All costs associated with addressing any hazardous material conditions pursuant to this provision shall be borne solely by the Owner. The Town shall not be responsible or liable in any

respect for any damage or delay caused as a result of the existence or of any discovery or remediation/repair of hazardous materials on the Property.

§2.22 **FAILURE TO PERFORM:** Should the Owner feel that the Contractor is failing to satisfy its contractual obligations or in default in any respect with regard to its work on the Project, the Owner must notify the Town no later than three (3) days after the Owner recognizes such potential default. The Town reserves the right, but does not have an obligation, to inspect the Property and to engage the Contractor and the Owner in discussions between all parties to reach a resolution of any disputes or issues that may exist on the Project. The Owner agrees to act in good faith and to fully cooperate and participate in any request by the Town for a meeting between the parties to resolve any possible default/issue. The Contractor shall be paid for services actually authorized and performed pursuant to the provisions of this Agreement up to the date of termination or withdrawal. The Town shall not be liable in any respect in the event that the Contractor should be terminated or withdraw from the Project for any reason. In the event that a Contractor should be terminated or withdraw from the Project prior to its completion, the Town's sole responsibility shall be to cooperate with the Owner in a good faith effort to find a qualified replacement contractor. In the event that the parties are unable to find a qualified replacement contractor to complete the Project, the Town shall have no further responsibility or liability to the Owner.

§2.23 **CHANGES REQUIRED BY LAW:** Any and all changes related to the Property required by law, including, but not limited to, changes required by Building Code for which there are additional costs, are not the responsibility of the Town.

§2.24 **INDEMNIFICATION/HOLD HARMLESS:** To the fullest extent permitted by law, the Owner, in connection with or arising out of or relating to the Work, shall indemnify, defend and hold the Town harmless against including but not limited to all liabilities, claims, obligations and causes of action that may be asserted against the Town arising out of or relating to (i) the acts or omissions of the Owner and Owner's agents or employees; (ii) Owner's breach or failure to comply with any of the provisions of this Agreement; (iii) acts of vandalism, violence or any other improper or illegal acts on the Property. Owner's obligation hereunder is binding upon its successors and assigns and will inure to the Town's benefit and to the benefit of any assign(s) and successor(s) of interest to the Town.

§2.25 **INSURANCE:** The Owner, and any successor or assign of the Owner, shall maintain property or homeowner's insurance with the coverage for general liability in the amount of the value of the property from at least the commencement of the Project Work through the full payment of the benefit assessment amount as set forth in the payment terms annexed hereto as Exhibit "B" and any modification made to the said payment terms.

§2.26 **DEFAULT:** In the event of Owner default of any of the terms and conditions of this Agreement, the Town shall provide written notice allowing the Owner three (3) days to cure or correct the default. In the event that the Owner has not cured or taken measures to cure the default to the Town's satisfaction within three (3) days of the date of notice, the Town may, at its sole option, declare the contract terminated and direct that all Work on the Project stop immediately or take other measures to address the default, the costs of which will be borne solely by the Owner. In the event of default, the Owner will still be responsible for any of the costs of the Work which the Town is obligated to pay to the Contractor and any other parties as a result of the Project. In such event, the Town, at its sole option, may require immediate payment in full of the amount due, or the Town may require the Owner to make payments in accord with the payment terms or any modification thereof, which the Owner will be obligated to follow.

§2.27 **OWNER REPRESENTATIONS:** The Owner represents that Owner is the individual(s) holding title and ownership of the subject Premises where the work is being performed. The Owner further represents that it has read and understands the payment terms that are made a part of this Contract and are annexed hereto as Exhibit "B"; that it will abide by the said payment terms and any modification thereof; and that the amounts to be paid pursuant to this Agreement constitute a benefit assessment assessed against the Premises by the Town. The Owner further understands and acknowledges that the Town has entered into this Agreement in reliance upon the Owner's representations.

ARTICLE 3

MISCELLANEOUS PROVISIONS

§3.1 **ANTI-LOBBYING:** Owner asserts that the Contractor was chosen off the Town's approved licensed Contractors list. The choice of Contractor was not the result of any lobbying performed by either the Town or the Contractor.

§3.2 **SIGN:** Owner agrees during the performance of the Contract Work that a sign may be placed and maintained on the Property indicating that the Work being done is part of and in accordance with the Town's Long Island Green Homes Program. The sign shall remain on the Owner's property/premises for a period of thirty (30) days after final completion of the work.

§3.3 **CLAIMS RELATING TO THE TOWN:** Owner shall give the Town written notice of all claims within ninety (90) calendar days of Owner's knowledge of facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between Town and Owner shall be resolved in the manner provided in this Agreement.

§3.4 **DIRECT DISCUSSION:** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute through direct discussion.

§3.5 **GOVERNING LAW, COURTS AND JURY WAIVER:** This Agreement shall be deemed to be made in the State of New York and shall be governed by the laws of the State of New York. If direct discussion does not successfully resolve this dispute, any dispute between the parties shall be addressed before any State or local court of competent jurisdiction in the State of New York, County of Suffolk. The right of a trial by jury in any action wherein this Agreement may be involved or the basis of a suit is hereby waived by the Owner.

§3.6 **THIRD PARTIES:** The provisions of this Contract shall not be deemed to create any new right of action in favor of third parties against the Town.

§3.7 **SEVERABILITY:** In the event that any of the provisions contained herein shall be held invalid or unenforceable, the same shall not effect the other provisions of this Agreement which shall continue to remain in full force and effect.

§3.8 **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement of the Town and Owner and nothing in this agreement shall be construed to create a contractual relationship between persons or entities other than the Town and Owner. All oral discussions pertaining to the work are merged in the Agreement and no representation not included in writing shall bind either of the parties, and this Agreement may not be modified, enlarged or altered other than in a written document signed by the parties.

§3.9 **NO WAIVERS:** Failure of the Town to insist upon the strict performance/compliance of any provisions or to exercise any option or enforce any rule or regulation shall not be construed as a waiver for the future of any such provision, rule or regulation.

§3.10 **ARTICLE HEADINGS:** The Article headings of this Agreement are for convenience only and are not to be given any effect whatsoever in construing this Agreement.

§3.11 **NOTICES:** All notices and communications required or permitted under this Agreement shall be in writing and shall be deemed duly given only if delivered personally or by express delivery service for next Business Day delivery (such as UPS Next Day Air and Federal Express), or if sent by registered or certified United States mail, return receipt requested, first class, postage prepaid, to the following addresses

(or to another address of a party that such party elects to designate in writing to all other addresses listed below):

(a) If to Town:

Town of Babylon
Town Attorney's Office
200 East Sunrise Highway
Lindenhurst, New York, 11757

with one copy for informational purposes to:

Long Island Green Homes Program
Town of Babylon
Town Hall Annex
281 Phelps Lane, Room 19
North Babylon, NY 11703

(b) If to Owner:

§3.12 **BINDING TERMS:** Except as otherwise provided herein, the terms hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns, respectively, of the Town and Owner.

§3.13 **AGREEMENT REFERENCES:** All words and terms in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other number and any other gender as the context in which used may require; and the use herein of the words "successors and assigns" or "successors or assigns" of the Owner shall be deemed to include the heirs, legal representatives and assigns of the Owner.

§3.14 **RIGHT TO AN ATTORNEY:** The Owner has been advised of, and has had the opportunity to seek, independent counsel of Owner's own choosing with respect to the review of this Agreement and entering into this Agreement. The Owner has knowingly and consciously chosen not to consult with legal counsel in this regard.

§3.15 **COPY OF AGREEMENT:** The Owner represents that he/she has read and received the duplicate original of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, and such are as corporations have caused these present to be signed by their duly authorized officer.

TOWN OF BABYLON:

OWNER:

By: Steven Bellone, SUPERVISOR

By: _____

Dated: _____

Dated: _____

By: _____

Dated: _____

SAMPLE

EXHIBIT A: SCOPE of WORK

CONTRACT:

**QUALIFIED WORK ITEMS UNDER THE
LONG ISLAND GREEN HOMES PROGRAM:**

1. Air seal all accessible areas of attic.....	\$600.00
2. Install 8 inches of loose fill cellulose to lower attic flat.....	\$315.00
3. Install ½ inch of polyiso to attic kneewall.....	\$700.00
4. Install 4 inches high density foam insulation under front window...	\$650.00
5. Install 2 inches of polyiso to exterior foundation in rear crawl space.....	\$700.00
6. Install 4 inches high density foam insulation to rim joist in crawl space.....	\$490.00
7. Install 4 inches high density foam insulation to rear basement rim joist.....	\$300.00
8. Install 1 inch of polyiso to rear garage wall and cover with type 'X' 5/8-inch drywall tape and spackle.....	\$1,075.00
9. Replace existing boiler with 93% AFUE gas-fired Boiler and 30-gallon indirect tank.....	<u>\$6,500.00</u>
TOTAL	\$11,330.00

EXHIBIT B: PAYMENT TERMS

CONTRACT:

**QUALIFIED WORK ITEMS UNDER THE
LONG ISLAND GREEN HOMES PROGRAM:**

1. Air seal all accessible areas of attic.....	\$600.00
2. Install 8 inches of loose fill cellulose to lower attic flat.....	\$315.00
3. Install ½ inch of polyiso to attic kneewall.....	\$700.00
4. Install 4 inches high density foam insulation under front window...	\$650.00
5. Install 2 inches of polyiso to exterior foundation in rear crawl space.....	\$700.00
6. Install 4 inches high density foam insulation to rim joist in crawl space.....	\$490.00
7. Install 4 inches high density foam insulation to rear basement rim joist.....	\$300.00
8. Install 1 inch of polyiso to rear garage wall and cover with type 'X' 5/8-inch drywall tape and spackle.....	\$1,075.00
9. Replace existing boiler with 93% AFUE gas-fired Boiler and 30-gallon indirect tank.....	\$6,500.00
TOTAL	\$11,330.00

DEDUCTIONS:

LESS: Applied Energy Audit Expense	\$250.00
LESS: LIPA Rebate (@10% of qualified costs)	<u>TBD¹</u>
TOTAL DEDUCTIONS from CONTRACT AMOUNT	<u>\$250.00</u>
NET AMOUNT of BENEFIT ASSESSMENT	\$11,080.00

ESTIMATED ANNUAL ENERGY COST SAVINGS:	\$2,421.44
ESTIMATED PAYBACK PERIOD (Years):	4.58 Years
BENEFIT ASSESSMENT PAYMENT TERM (Years):	6.0 Years
BENEFIT ASSESSMENT PAYMENT TERM (Months):	72 Months

TOTAL MONTHLY BENEFIT ASSESSMENT PAYMENT \$168.35

¹ A LIPA rebate of up to 10% of qualified construction costs may apply and, if so, will be factored in to the benefit assessment calculation to reduce the monthly cost to the Owner and/or the length of the term of the benefit assessment payment.

SAMPLE