

ENERGY BENCHMARKING PROGRAM AGREEMENT

This Energy Benchmarking Program Agreement (“Agreement”) dated as of _____, 201__ between The Community Preservation Corporation (together with its affiliates, “CPC”) and _____ (“Owner”) is for providing energy benchmarking services at the property identified on Schedule A attached hereto and made a part hereof (the “Property”).

1. Services to be Performed. During the term of this Agreement, CPC shall gather information and data related to energy and/or natural resource consumption at the Property from utility companies and energy suppliers.

2. Term of Agreement. This Agreement shall begin on [_____, 201__] **OR** [the date that the Owner acquires the Property] and shall continue until terminated by either party upon not less than thirty (30) days written notice thereof.

3. Use of Subcontractors. In carrying out the services contemplated in this Agreement, CPC may use the services of independent contractors and other professionals selected by CPC (including, without limitation, outside legal counsel), on such terms as CPC, using reasonable judgment, shall deem appropriate.

4. Exculpation. CPC shall be an independent contractor of Owner under this Agreement, and neither CPC nor any of its respective affiliates, agents, officers or employees shall be deemed to be an employee of Owner. Neither CPC nor any agent, officer or employee of CPC shall have any liability for any act, omission or disclosure in connection with this Agreement. Owner shall indemnify and hold CPC harmless from and against any and all loss, cost or expense (including attorney fees and other legal expenses) incurred by CPC in connection with this Agreement, unless incurred as the result of CPC's gross negligence or willful misconduct.

5. Limitation on Warranties. **THIS IS A SERVICES AGREEMENT. CPC WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH AND IN A PROFESSIONAL MANNER. CPC DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. OWNER’S EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE FOR CPC, UPON RECEIPT OF WRITTEN NOTICE, TO USE DILIGENT EFFORTS TO CURE SUCH BREACH.**

6. Authorization. Owner hereby authorizes CPC and/or its designated representative to access and utilize any and all information and data related to energy and/or natural resource consumption at the Property. Owner understands that this information is being made available to help evaluate the energy and resource use patterns in order to identify potential and actual energy

savings results from work performed in connection with financing provided by CPC. By signing this Agreement, Owner gives CPC permission to retrieve data for energy and water accounts of the Property from utility companies and energy suppliers.

7. Acknowledgment. Owner acknowledges that it is entering into this Agreement with CPC out of its own desire to do so and not as a condition of any financing being provided by CPC in connection with the Property.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same instrument.

9. Miscellaneous Provisions.

(a) This Agreement shall be governed by New York law, is the entire agreement between the parties on the matters herein addressed, and may only be amended by a writing signed by both parties.

(b) To the extent that CPC utilizes any of its intellectual or other property in connection with the performance of its services hereunder, CPC shall retain all right, title and interest in and to such property.

(c) This Agreement shall not preclude or limit in any way (i) the right of CPC to provide consulting or other services of any kind or nature whatsoever to any individual or entity as CPC in its sole discretion deems appropriate, or (ii) developing for itself or for others, materials that are competitive with those produced as a result of the services provided hereunder, irrespective of their similarity to the deliverables hereunder.

(d) Neither party shall be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions or the failure to cooperate of the other party (including, without limitation, entities or individuals under its control, or their respective officers, directors, employees or other personnel and agents), acts or omissions or the failure to cooperate by any third party (other than CPC subcontractors), fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

(e) Owner will do, execute, acknowledge and deliver such further acts, documents, forms and assurances as CPC shall from time to time require, for carrying out the intention or facilitating the performance of the terms of this Agreement including, without limitation, a Utility Information Access Authorization Form.

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

CPC:

The Community Preservation Corporation

By: _____

Name and Title:

Owner:

[_____]

By: _____

Name and Title: _____

Schedule A

Property Information

Property Name:

Property Address:

Corporate Name:

Corporate Address:

BIN Number:

BBL Number:

Contact Person:

Contact Telephone Number:

Contact Email Address:

Utility Authorization Form

I, the undersigned, hereby give my permission for The Community Preservation Corporation (CPC) and their affiliates to collect utility bill information for the accounts listed below including the **bill period, meter read dates, usage** and **bill charges** for each billing period, for the purpose of ongoing utility monitoring and utility allowance calculations.

Signature

Date:

Name (please print clearly)

Phone:

* Please attach a copy of a recent bill for this account, and complete the following form clearly and legibly.

Utility Name: _____ (E.g. Con Ed, National Grid)	
Account #: _____	Account is Paid by: Building Owner / Tenant
Name: <i>(as it appears on bill)</i>	Utility Type:
Address and Apt #:	<input type="checkbox"/> Electric <input type="checkbox"/> Gas <input type="checkbox"/> Oil: 2 / 4 / 6 <input type="checkbox"/> Steam <input type="checkbox"/> Water
Online login	Account is used for:
User name:	<input type="checkbox"/> heating <input type="checkbox"/> hot water <input type="checkbox"/> cooling <input type="checkbox"/> lighting/electrical <input type="checkbox"/> laundry <input type="checkbox"/> fire/sprinkler <input type="checkbox"/> other(specify)
Password:	
<i>I authorize CPC to use the above login:</i>	Yes / No
<i>I authorize CPC to create a login for this account:</i>	Yes / No
Phone number associated with this account: _____	Spaces served by account:
	<input type="checkbox"/> Hallway/stairs <input type="checkbox"/> apartment units <input type="checkbox"/> super/landlord's unit <input type="checkbox"/> retail/commercial <input type="checkbox"/> other: