

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, ELIOT  
SPITZER, ATTORNEY GENERAL OF THE STATE  
OF NEW YORK,

Plaintiffs,

-against-

THE VILAGE OF FREEPORT,

Defendant.

ORDER

CV 02 5359 (LDW)

WHEREAS, the parties in the above-captioned case have voluntarily entered into an Agreement therein; and,

WHEREAS, the Court has reviewed and approved the Agreement;

IT IS HEREBY ORDERED that each party shall bear its own costs, experts' fees and attorneys' fees incurred to the date of this Order; and

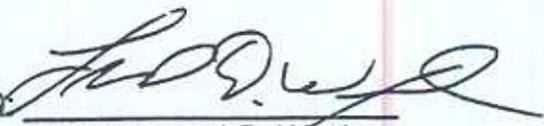
IT IS FURTHER ORDERED that this case is administratively closed for a period of three years from the date of this Order; and

IT IS FURTHER ORDERED that either party may seek enforcement of the Agreement under Article XI by writing a letter to the Court to re-open the case; and

IT IS FURTHER ORDERED that, if the Plaintiffs take no action to re-open the case within three years from the date of this Order, the case will be automatically dismissed with prejudice, and no further action will be taken to enforce this Agreement after such dismissal.

This Order modifies the Court's Order of January 26, 2004.

SO ORDERED:

  
Hon. Leonard D. Wexler

US DJ.  
CENTRAL ISLIP, NY  
6/9/04

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**AGREEMENT**

*by and between*

**THE PEOPLE OF THE STATE OF NEW YORK  
by ELIOT SPITZER, ATTORNEY GENERAL FOR THE STATE OF NEW YORK**

*and*

**THE INCORPORATED VILLAGE OF FREEPORT**

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## AGREEMENT

This Agreement is entered into by and between, THE PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK (the "State"), and the INCORPORATED VILLAGE OF FREEPORT ("the Village") as follows:

WHEREAS, the Village is a municipality duly incorporated under NY Village Law, Chapter 64, Article 2; and,

WHEREAS, the Village has determined that a shortage of safe affordable housing has led to the illegal conversion of single family residences to multiple family dwellings; that effective building and zoning code enforcement is needed to correct unsafe conditions in such residences which may pose threats to the health and safety of occupants and others; that inspections are necessary for such enforcement of the code, including those requirements relating to electricity, gas, heating, ingress/egress, air, light, and over-occupancy; and

WHEREAS, the residents of the Village are protected by the Fourth and Fourteenth Amendments to the United States Constitution, the Fair Housing Act and the New York State Civil Rights Act; and,

WHEREAS, the State and the Village are jointly interested in the lawful enforcement of various housing codes within the Village in a manner that protects residents' rights under the Fourth and Fourteenth Amendments to the United States Constitution, the Fair Housing Act and the New York State Civil Rights Act; and,

WHEREAS the State has commenced an action against the Village in Federal District Court under Index Number CV 02-5359, PEOPLE OF THE STATE OF

NEW YORK, by ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK v. THE VILLAGE OF FREEPORT, alleging various violations of the Fourth and Fourteenth Amendments to the United States Constitution, the Fair Housing Act and the New York State Civil Rights Act; and,

WHEREAS, the Village has denied any wrongdoing or liability in this action;  
and

WHEREAS, the parties have engaged in extensive pre-trial discovery; and

WHEREAS, the State and the Village desire to avoid incurring any further time, costs and expenses, wish to avoid the uncertainty and expense of litigation, and wish to resolve amicably all issues embraced in this action between the State and the Village without resort to further litigation; and

WHEREAS, in consideration of the covenants and undertakings set forth herein and, intending to be legally bound thereby, the State and the Village, and each of them, agree to the terms of this Agreement;

NOW, THEREFORE, it is hereby agreed as follows:

#### **ARTICLE I: DEFINITIONS**

As used throughout this Agreement, the following terms shall have the following meanings:

a. "Department" shall mean the Building Department formed and maintained by the Village, including any successor agencies thereto, together with any and all persons employed by that Department or agents of that Department.

b. "Inspectors" shall mean any and all full-time or part-time Code Enforcement Officers employed by the Department, or any such persons in the full or part-time employ of the

Village whose work responsibilities are the equivalent, or functional equivalent, of those of a Code Enforcement Officer.

- c. "Officers" shall mean any and all full-time or part-time police officers employed by the Police Department formed and maintained by the Village, including any successor agencies thereto.
- d. "Village" shall mean the Village of Freeport, any of its constituent agencies, departments, commissions, boards, or any employee, agent or person acting or purporting to act on behalf of the Village.
- e. "Village Board" shall mean the Village Board of Trustees, as constituted pursuant to NY Village Law § 3-301.
- f. "Code" shall mean any of the codes administered and enforced by the Village, including the Code of the Village of Freeport (which includes the Village building, plumbing, electrical and housing codes) and the New York State Uniform Fire Protection and Building Code.
- g. "Residence" shall mean a property in which the property's owner, tenant, or other person resides.
- h. "Attempted Inspection" shall mean an attempt to conduct an inspection of a residence, regardless of whether the attempt actually results in an inspection.
- i. "Exigent Circumstances" shall mean circumstances of immediate danger to life, limb or property. Exigent circumstances are not presented by evidence of illegal multiple occupancy without other circumstances that threaten immediate danger to life, limb or property.
- j. "Habitual Offense" shall mean a violation of a Code by the same defendant who was

previously convicted of violating the same provision of a Code at the same residence within the three years prior to the date of the inspection.

k. "Court" shall mean the United States District Court for the Eastern District of New York, which shall have jurisdiction over this Agreement and the parties to this Agreement.

l. "Date of this Agreement" shall mean the date that this Agreement is approved by the Court.

m. The use of the singular form of any word includes the plural and vice versa where the sense of the document requires same.

## **ARTICLE II: APPLICABLE LAW**

The Parties agree that, in the administration and enforcement of the Code, the Department and any other Village personnel involved in Code administration and enforcement shall comply with the Fourth Amendment to the United States Constitution; the Fourteenth Amendment to the United States Constitution; the federal Fair Housing Act, 42 U.S.C. §§ 3604(a), 3604(b) and 3617, and its implementing regulations, and N.Y. Civil Rights Law § 40-c.

## **ARTICLE III: TRAINING OF BUILDING DEPARTMENT INSPECTORS**

### **Section 3.1 Periodic Training**

a. The Village will continue to train inspectors and Department supervisors concerning the requirements of the Fourth Amendment, using the curriculum of the training conducted by the Village in February 2003 and January 2004. Any changes to the Fourth Amendment curriculum shall be subject to the State's prior approval. The course shall be provided annually, in February 2005, February 2006, and February 2007. The Village shall certify

that each inspector and Department supervisor has completed this training by submitting such certifications to the State within 30 days of each training.

b. The Village, through the Village Attorney, further will train all inspectors and Department supervisors concerning the requirements of the Fourteenth Amendment, the federal Fair Housing Act, 42 U.S.C. §§ 3604(a), 3604(b) and 3617, and its implementing regulations, and N.Y. Civil Rights Law § 40-c. The State shall provide materials for this training for use by the Village Attorney. The first such training shall be provided within 30 days of the date of this Agreement. Subsequent training on these subjects shall be included in the curriculum for the annual trainings in February 2005, February 2006, and February 2007. The curriculum for such subsequent trainings shall be subject to the State's prior approval. The Village shall certify that each inspector and Department supervisor has completed this training by submitting such certifications to the State within 30 days of each training.

c. The Village, through the Village Attorney, will train all inspectors, Department supervisors, and prosecutors concerning the terms and provisions of this Agreement. The State shall provide materials for the training for use by the Village Attorney. The first such training shall be provided within 30 days of the date of this Agreement. Subsequent training shall be provided in February 2005, February 2006, and February 2007. The Village shall certify that each inspector, Department supervisor, and prosecutor has completed this training by submitting such certifications to the State within 30 days of each training.

### **Section 3.2 Training New Hires**

The Village agrees to provide new inspectors, and Department supervisors with training on the constitutional and statutory provisions discussed above at the first available training session offered by the Village's training consultant. The Village agrees to provide new inspectors, Department supervisors, and prosecutors with training concerning the requirements of the Agreement within 30 days of their hire. Pending completion of the training sessions by any new inspector, the Village shall restrict the activities of said employee to that of a "trainee" who shall be accompanied by a certified inspector when attempting any residential inspection.

### **Section 3.3 Notice to State – New Hires**

Within 30 days of hiring a new employee with inspection responsibilities, the Village shall inform the State of the date of hire and the date of the training required by Section 3.2. Further, the Village shall certify that the new employee has completed the training required by Section 3.2.

## **ARTICLE IV: CONSENT INSPECTIONS**

### **Section 4.1 Investigation Prior to Attempted Inspections**

With the exception of inspections conducted pursuant to Section 4.8 of this Agreement, inspectors shall conduct an investigation with due diligence, prior to an attempted inspection, to determine if there is reason to believe that a Code violation within the interior of a residence exists. As part of the investigation, the inspector shall review relevant Village government, utility, and State Department of Motor Vehicles records and conduct such other inquiry as may be necessary to determine whether a violation exists, including but not limited to interviews of witnesses. If the inspector's investigation does not reveal

evidence of a Code violation within the interior of the residence, the Building Department shall not conduct an attempted inspection.

#### **Section 4.2 Determination of Authority to Consent to Inspections**

Excepting those inspections conducted pursuant to "exigent circumstances" pursuant to Section 4.8 herein, all inspectors shall determine that the person from whom they are seeking consent to inspect a residence has the authority to consent to such inspection prior to accepting consent to an inspection of a residence from such person. If no one present at the residence at the time of the attempted inspection has such authority, the inspectors shall not accept consent to inspect the residence and shall not inspect the residence at that time.

#### **Section 4.3 Use of Script to Request Consent for Inspection**

Excepting those inspections carried out under exigent circumstances pursuant to Section 4.8, all inspectors, when seeking consent to an inspection of a residence, shall request consent using the script attached hereto as "Exhibit A."

#### **Section 4.4 Written Consents**

All inspectors shall provide the person from whom they are seeking consent a written consent form, in the form of "Exhibit B" annexed hereto, and shall not conduct any consent inspections unless such person signs and returns the consent form to the inspector. Said consent forms shall be carbonized and a copy given to the person consenting to the inspection. The consent form shall be available in both English and Spanish. In the event the person from whom the inspector seeks consent refuses to sign the consent form, the Department may then proceed with securing a search warrant if the facts warrant same.

#### **Section 4.5 Repeated Attempted Inspections of the Same Residence**

Where inspectors are denied consent to inspect a residence by a person who has authority to consent, and that person does not specifically inform the inspector to return at a different time to seek consent from another person, inspectors shall not conduct any additional attempted inspections of that residence unless the *Building Department* receives, subsequent to the first attempted inspection, at least one complaint based upon information that is different and independent from the complaint which resulted in the first attempted inspection. The Building Department shall conduct an investigation, pursuant to Section 4.1 of this Agreement, prior to any additional attempted inspection. This section does not preclude the Department from seeking and securing a search warrant if the facts warrant same.

#### **Section 4.6 Audio/Video Recording of Inspections**

Every inspector, when seeking consent to an inspection of a residence, will continue to audio- and video-record the entire discussion with the person from whom the inspector is seeking consent on the digital recorders supplied by the Department. The audio and video recorders shall be activated immediately upon the inspector's arrival at the residence and shall remain on continuously until the inspector's departure from the residence.

#### **Section 4.7 Officers Accompanying Inspectors**

Officers shall not accompany inspectors to residences where inspectors are seeking consent to inspect, except in those instances in which the officers have a valid law enforcement reason unrelated to the enforcement of the Code and/or inspectors have a well-founded and well-articulated concern for their safety. *The underlying reasons for the*

officers' presence shall be documented in inspectors' daily log books, as described below in Section 7.1(e).

#### **Section 4.8 Exigent Circumstance Inspections**

Officers, Fire Department officials, and/or other employees or agents of the Village who are lawfully present inside a residence may call inspectors to the scene only in cases in which the Officers or Freeport Fire Department officials and/or other employees or agents of the Village observe, in plain view and within the geographic scope of their presence, evidence of Code violations and/or building conditions that present exigent circumstances. If exigent circumstances do not exist, then the Department shall initiate and follow the inspection process required by Sections 4.1 to 4.7 above or, in the alternative, make application for a search warrant if the facts so warrant.

### **ARTICLE V: ISSUANCE OF APPEARANCE TICKETS**

#### **Section 5.1 Notice and Opportunity to Cure**

- a. Upon an inspection of a residence, and providing the recipient consents to a re-inspection as provided for herein below, the Department shall not issue appearance tickets without first giving the offender notice and opportunity to cure any and all observed violations of the Village Code within a period of no fewer than 15 business days from the date of such notice, except that if a cure period is required by a statute or code provision, that cure period shall be given. The cure period for removal of litter, debris, or other obstacles (outdoor or indoor) may be shorter than 15 days. The only exception to the requirement of notice and opportunity to cure shall be in instances of exigent circumstances, habitual offenses or when the recipient refuses to consent to re-inspection.
- b. However, if the recipient can demonstrate to the Superintendent of the Department

that he or she has taken reasonable steps to accomplish the cure within the 15 business day or statutory or code period, and that he or she could not complete the cure within that period, the Department shall grant a reasonable extension of the cure period to allow sufficient time for the cure to be completed. The number of such extensions shall be left to the reasonable discretion of the Superintendent.

- c. All notices must be typed and on the letterhead of the Freeport Department of Buildings and must conform, at a minimum, to the sample letter and consent form attached as Exhibit C.
- d. All notices must be mailed via first class-mail to the owner of the premises or to the tenant, if the facts indicate the tenant created or caused the violation. For each notice, the Department shall prepare an affidavit of service indicating the date on which the notice was actually mailed. The date of mailing shall be the date of notice for purposes of computing the cure period.
- e. In order to receive an opportunity to cure violations without receiving appearance tickets for those violations, the recipient shall consent to a re-inspection of his or her residence before the close of the applicable cure period by returning the consent form to the Department before the date of re-inspection specified in the notice. Further, in the event the Department grants an extension of the cure period, the recipient shall consent to the date and time of such re-inspection. In the event the recipient does not consent to the re-inspection, then the Department may issue the appearance tickets.

## **Section 5.2 Civil Proceedings; Unaffected**

Nothing contained herein shall be construed to restrict the Village or the Department from seeking and obtaining injunctive relief in a civil court proceeding for the purposes of enforcing the Code.

## **Section 5.3 Determination of Defendants; Owner/Tenant**

In all cases in which the name and address of the owner of a residence is readily ascertainable from public records, and the investigatory facts warrant the conclusion, the owner shall be the defendant in any case brought for Code violations at the residence at issue. The Village shall not issue appearance tickets for identical violations against both the owners and the tenants. This provision shall not preclude the Village from issuing appearance tickets to tenants if the facts warrant same.

## **Section 5.4 Facts Supporting Issuance of Appearance Tickets**

All appearance tickets issued shall be based on the personal observation of either Village inspectors or officers or individuals with personal knowledge of the facts constituting the alleged violation of the Code. Where the personal observations of the inspector are the basis for the issuance of appearance tickets for Code violations in the interior of the premises, the Village shall not issue said appearance tickets for Code violations present in the interior of a residence without having first conducted an inspection of the interior of that residence in a manner consistent with the requirements of Article IV, unless the violation is in plain view from outside the residence.

## **ARTICLE VI: COMPLAINT PROCEDURE**

### **Section 6.1 Complaints**

Any person may initiate a complaint against an inspector or other employee of the Department by completing (to the extent possible) and signing a complaint in the form attached hereto as "Exhibit D" or the equivalent thereof and filing the complaint with the Village Clerk's office either in person, by mail, or by facsimile. Copies of the complaint form shall be available in English and Spanish. Copies of the form shall be available at the Department, the Village Attorney's office, the Village Court Clerk's office, and the Freeport Recreation Center. The complaint form shall also be available to be downloaded from the Village's website, [www.freeportny.com](http://www.freeportny.com). If any Village office receives a telephone call complaint, it shall refer said complaint to the Village Attorney who shall exercise due diligence to ascertain the name and address of the complainant and, upon obtaining same, shall send a complaint form to such complainant. The Village shall have an individual fluent in the Spanish language available to speak to persons telephoning with a complaint.

### **Section 6.2 Referral of Complaints to Village Attorney**

In the event that the Department, or any other agency or department of the Village receives a complaint against an inspector or other employee of the Department, it shall immediately refer the complaint to the Village Attorney.

### **Section 6.3 Complaint Investigation**

The Village Attorney shall investigate complaints. Such investigation shall include, inter alia, interviews of the complainant, the persons complained of, and any witnesses. The Village Attorney shall maintain notes of all such interviews.

#### **Section 6.4 Determination on Complaints**

The Village Attorney shall determine whether a complaint is "substantiated" (i.e., where allegations of misconduct are found to be substantially true), "unsubstantiated" (where the Village Attorney cannot reasonably determine the truth or falsity of the allegations), or "unfounded" (where the Village Attorney determines the allegations to be false or unprovable).

#### **Section 6.5 Recommendation on Substantiated Complaint**

In those instances where the Village Attorney finds a complaint "substantiated," the Village Attorney shall recommend to the Superintendent of Buildings any appropriate and lawful discipline for the inspector or other Department employee complained of. The Village Attorney shall also file copies of his or her recommendations with the Mayor's office. The dispensing of any discipline resulting from the complaint shall be consistent with the disciplinary procedures established by the governing collective bargaining agreement between the Village and the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO, Freeport Unit.

#### **Section 6.6 Recordkeeping – Village Attorney**

The Village Attorney shall create and maintain a computerized record of all complaints, which shall include the following information: (a) the name of the complainant; (b) the name of the person complained of; (c) a brief summary of the allegation, including the date of the alleged incident; (d) the date the complaint was received; (e) the final disposition; (f) the date of disposition; and (g) if applicable, the date and nature of disciplinary recommendation and implementation by the Village.

### **Section 6.7 Recordkeeping – Building Department**

The Department shall create and maintain a computerized record of the action taken in each instance in which the Village Attorney has recommended that disciplinary action be taken against a Department employee.

### **Section 6.8 Village Attorney Report**

Within 180 days of the date of this Agreement and every 180 days thereafter, the Village Attorney shall issue a report to the Mayor and to the State concerning the status of complaints against any Department employee.

## **ARTICLE VII: RECORDKEEPING**

Within 30 days of the date of this Agreement, the Village shall ensure that the following records are kept:

### **Section 7.1 Daily Log**

Each inspector shall keep a daily log book ("daily log") reflecting activities undertaken during each day on duty. The daily log shall include at a minimum the following:

- (a) date/time of each shift;
- (b) the areas of the Village assigned for inspection, if any, during each shift;
- (c) the assignment during each shift;
- (d) information about the carrying out of the assignment, including the time, action taken, names, addresses of any witnesses to their carrying out of the assignment, including but not limited to the names and addresses of any persons encountered at the residence that the inspector attempted to inspect; and
- (e) whether the inspection was actually conducted. In any cases in which an

officer accompanied an inspector to a residence, the officer's presence and the reason for such accompaniment shall be stated in detail in the log. Daily logs shall be carried and kept by all inspectors while on duty and shall be maintained as property of the Village.

### **Section 7.2 Preliminary Investigation Reports**

- a. Each inspector shall complete a written report each time that he or she conducts an investigation prior to an attempted inspection pursuant to Section 4.1 ("Preliminary Investigation Report"). The report shall state the reasons why the inspector determined that evidence of a Code violation within the interior of a residence did or did not exist. To the extent applicable, the report shall set forth the inspector's findings, including the results of his or her review of Village, utility, and State Department of Motor Vehicles records and all other factors relied upon.
- b. The Department shall maintain all Preliminary Investigation Reports and all documents relied upon in reaching the findings of each report.

### **Section 7.3 Attempted Inspection Reports**

- a. Each inspector shall complete a written report each time that he or she attempts an inspection of a residence. The report shall include the following:
  - (1) the inspector's name;
  - (2) the reason for the attempted inspection (*e.g.*, complaint by neighbor), including, for a repeated attempted inspection, whether there was a second separate and independent complaint, as required by Section 4.5;
  - (3) whether a warrant was obtained, or whether it was a consent inspection or an exigent circumstance inspection (if an exigent circumstance, an

- explanation of why the circumstance was exigent);
- (4) whether consent was refused or granted, if applicable;
  - (5) if granted, the name of the person who consented to the inspection and the grounds on which it was determined that the person had authority to consent;
  - (6) the name of any other person spoken to;
  - (7) whether Code violations were found, and, if so, which ones, and on what basis;
  - (8) whether a notice of violation and opportunity to cure was issued and, if so, for which Code violations. A copy of the notice shall be attached to the attempted inspection report;
  - (9) whether appearance tickets were issued. In those cases in which appearance tickets were issued in the first instance without notice and the opportunity to cure (in cases of exigent circumstances, habitual offenses, and/or a failure to consent to a re-inspection), the reasons for the issuance of the appearance tickets shall be documented. A copy of any such ticket shall be attached to the attempted inspection report; and
  - (10) whether the notice of violation or appearance ticket was issued to the owner or to a tenant, and the reason therefor.
- b. In those cases in which a consent inspection was conducted, a copy of the signed consent form for the inspection shall be attached to the attempted inspection report.
- c. Each attempted inspection report shall be dated and signed by the inspector.

#### **Section 7.4 Records of Cure Period**

The Department shall keep records of all requests for extensions of the cure period, and shall document the reasons for the approval or disapproval of each such request. The Department also shall keep records of all cure periods shorter or longer than 15 business days and shall document the reasons therefor.

#### **Section 7.5 Computerized Records of Attempted Inspections and Violations**

The Department shall use a computerized form to record all information required by Sections 7.2, 7.3 and 7.4, which shall have been approved by the State. The Department shall enter information about each attempted inspection into said report form on at least a weekly basis.

#### **Section 7.6 Audio/Video Recordings of Attempted Inspections**

All inspectors shall continue to audio- and video- record all attempts to conduct inspections on digital recorders provided by the Department, pursuant to Section 4.6. The Department shall transfer such digitized recordings into computerized records on at least a weekly basis and maintain them during the term of this Agreement.

#### **Section 7.7 Computerized Records of Complaints**

The Village Attorney shall maintain copies of the computerized record of complaints; his or her determinations on each complaint; the complaint forms, interview notes, and any recommendations concerning discipline, if any, to the Department.

#### **Section 7.8 Preservation of Records**

The Department shall maintain copies of all records required by this Article.

## ARTICLE VIII: NOTICE

### **Section 8.1 Notice to Defendants in Village Court**

Within 45 days of the date of this Agreement, the Village shall begin to distribute a notice to all persons who appear in Village Court as defendants in actions alleging Code violations that the Village has entered into this Agreement, that describes the Agreement's required procedures for consent inspections, the issuance of appearance tickets, and the processing of complaints, and that lists the locations (including the Village Court Clerk's office) where complaint forms are available. Within 15 days of the date of this Agreement, a draft notice shall be submitted to the State for its approval prior to its use. Such notice shall be in English and Spanish.

### **Section 8.2 Notice on Village Website**

Within 30 days of the date of the Agreement, the Village shall post the Agreement in a conspicuous location on its website ([www.freeportny.com](http://www.freeportny.com)). It shall also advise the community of the locations at which to obtain copies of the complaint form. The Village shall maintain this information on its website for the duration of the term of this Agreement.

## ARTICLE IX: OVERSIGHT AND COMPLIANCE

### **Section 9.1 Periodic Review – State**

- a. The Village shall select an employee who will be the compliance officer for this Agreement and who shall be an individual with supervisory responsibilities within the Building Department ("Reviewer").
- b. Within 60 days from the date of this Agreement, and every 60 days thereafter, the Reviewer shall review the following records for compliance with the procedures required by the Agreement:

- (1) A representative sample of computerized records of attempted inspection reports prepared by the Department and, in all cases where the Department conducted an inspection, the underlying written reports and consent forms. The sample shall consist of six days' worth of such records for each 60-day period. The State shall select the six days and inform the Reviewer of that selection at the close of each 60-day period;
- (2) A representative sample of Preliminary Investigation Reports, consisting of all such reports corresponding to the six days selected pursuant to subpart (1);
- (3) A representative sample of notices of violation, consisting of all notices corresponding to the six days selected pursuant to subpart (1);
- (4) All requests for and determinations on extensions for the cure period and all records of cure periods less than or more than 15 business days;
- (5) A representative sample of audio-recordings, and the corresponding video-recordings, of attempted inspections, consisting of all such recordings corresponding to the six days selected pursuant to subpart (1); and
- (6) A representative sample of daily logs, consisting of all such records corresponding to the six days selected pursuant to subpart (1);

c. For purposes of reviewing records of attempted inspections (subparagraphs (b)(1), (2), and (5) above), the Reviewer shall use a checklist including the Agreement's requirements for consent inspections, which shall be provided by the State;

d. If additional information is necessary to determine whether the Village is in compliance with the Agreement, including interviews of employees, the Reviewer shall

obtain such information.

## **9.2 Periodic Reporting – Village**

a. Starting 90 days after the date of this Agreement, and every 180 days thereafter, the Reviewer shall issue reports to the Village and to the State. The Reviewer also shall issue a Final Report at the end of the term of this Agreement. Generally, these reports shall include the Reviewer's determination as to whether the Village is in compliance with the Agreement and the factual basis for that determination.

b. More specifically, based on the review of representative samples of records described in Section 9.1, each report shall include:

- (1) A determination of whether the Village followed the Agreement's procedures for conducting consent inspections pursuant to Sections 4.2-4.8 (including use of the consent script and written consent form). The report shall identify any completed inspection for which no consent form was completed. The report further shall identify any audio-recording on which the consent script was not followed.
- (2) A determination of whether the Village followed the Agreement's procedures for the investigation of complaints prior to attempting inspections pursuant to Section 4.1. The report shall identify any attempted inspection for which no Preliminary Investigation report was completed.
- (3) A determination of whether the Village followed the Agreement's procedures for the issuance of appearance tickets pursuant to Article V (including notice and opportunity to cure). The report shall identify any appearance tickets that were issued without notice and opportunity to cure and the reason

therefor. The report further shall identify any requests for extension of the cure period that were denied, any cure periods of fewer or greater than 15 business days, and the reasons therefor.

(4) A determination of whether the Village followed the Agreement's procedures for recordkeeping pursuant to Article VII (including audio- and video-recording). The report shall identify any attempted inspection for which no audio-recording was made.

c. Each determination shall be supported by a listing of all the documents on which it is based (identifying names and addresses of attempted inspections and names of inspectors) and shall set forth the reasons for such determination. Each determination also shall include specific listings of any incidents of noncompliance.

d. The report shall include as attachments all audio-recordings relied upon by the Reviewer and all completed review checklists. Upon request, the Village shall provide any additional information requested by the State for purposes of determining compliance.

### **Section 9.3 Additional Information – State**

If the State determines that additional information is necessary to determine whether the Village is in compliance with the terms and conditions of the Agreement, the State shall request and identify such information from the Village (through the Village Attorney).

Within 10 business days of the request, the Village shall either produce such information, or if the requested information does not exist, shall provide a statement from the Village Attorney that such information does not exist.

#### **Section 9.4 Employee Interviews – State**

If, at any time, the State determines that interviews with individual Village employees or agents are necessary to determine whether the Village is in compliance with the terms and conditions of this Agreement, the Village shall make such persons available for interview upon 10 days written notice to the Village Attorney. Representatives of the Village Attorney's office and the Civil Service Employees Association may be present at such interviews.

#### **Section 9.5 Time to Comply**

The Village shall send copies of any documents relative to Code Enforcement activities at residences to the State upon request within 10 business days of such request.

#### **Section 9.6 State Access to Village Databases**

In order to ensure full implementation of this Agreement, the State shall, on 10 days written notice, have unrestricted access to any documents and databases kept by the Department from the date of this Agreement forward, including, but not limited to, the documents required to be maintained by this Agreement as described above. The State shall have, on 10 days written notice, access to all facilities as are reasonably necessary to determine whether the Village is in compliance with this Agreement.

### **ARTICLE X: REMEDIES FOR NONCOMPLIANCE**

#### **Section 10.1 Notice of Material Breach**

If the State determines that there has been a material breach of this Agreement and so notifies the Village, the Village shall within 15 days of receipt of such notice submit in writing to the State its position on the State's determination of noncompliance.

### **Section 10.2 Meeting for Resolution**

At either party's request, the Village and the State shall meet to discuss the findings of the State and the Village's response.

### **Section 10.3 Proposed Voluntary Remedial Actions**

At such a meeting or thereafter, the State may propose remedies to the Village for any problems identified by the State. If the Village does not implement such remedies within 30 days, the State may apply to the Court for the imposition of those and/or other remedies pursuant to Article XI below.

## **ARTICLE XI: ENFORCEMENT**

### **Section 11.1 Jurisdiction of Court**

The Court shall retain jurisdiction over the parties and this matter for the term of three years from the date of the Agreement.

### **Section 11.2 Remedial Powers of Court**

Either party may seek enforcement of this Agreement by application to the United States District Court for the Eastern District of New York in the event of a material breach of this Agreement which is not resolved under the procedures of Article X. The Court shall retain all legal and equitable powers necessary to enforce the terms of this Agreement and remedy any material breaches thereof.

## **ARTICLE XII: MISCELLANEOUS**

### **Section 12.1 Authorized Signatories**

The signatories to this Agreement are duly authorized by their respective parties to enter into said Agreement on their behalf and to bind them to the terms and conditions thereof.

### **Section 12.2 Full Agreement**

This Agreement constitutes the full and complete understanding and agreement of the State and the Village and, upon execution, supersedes and renders null and void any and all prior undertakings or agreements, written or oral, between the State and the Village.

### **Section 12.3 Contractual Provisions**

All of the terms of this Agreement are contractual and not merely recitals, and none may be modified or changed except by a writing executed by the State and the Village.

### **Section 12.4 Severability**

If any of the provisions, terms or clauses of this Agreement are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms and conditions of this Agreement shall remain valid and binding on the State and the Village.

### **Section 12.5 CSEA/Grievance Procedure**

Nothing in this Agreement shall be deemed to limit or expand any contractual rights concerning disciplinary procedures established by the governing collective bargaining agreement between the Village and the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO, Freeport Unit. The validity of this Agreement, however, cannot be challenged through an arbitration proceeding. In the event of any decision by an arbitrator that is contrary to the terms of this Agreement, both parties shall present the arbitrator's determination to the Court and shall advocate the preemptive effect of this Agreement before the Court. In the event that the validity of this Agreement is raised as an issue by any grievance, the Village shall notify the State within five days of service of the grievance.

### **Section 12.6 Binding Effect**

This Agreement shall inure to the benefit of, and be binding upon, the legal representatives and any successor agency or successor in interest of the State and the Village.

### **Section 12.7 State, OAG Notices**

All references in this Agreement to the State, with the exception of references to the State in the "Whereas" clauses and in the signature clause of the Agreement, are meant to refer more specifically to the Office of the Attorney General ("OAG"). Any notices or records to be sent to the State described herein shall be sent to Chief, Civil Rights Bureau, OAG.

### **Section 12.8 Attorneys' Fees**

Each party shall be responsible for its own attorneys' fees, costs, disbursements, experts' fees and all other fees incurred to the date of court approval of this Agreement in connection with the case in Federal District Court under Index Number CV 02-5359, entitled PEOPLE OF THE STATE OF NEW YORK, by ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK v. THE VILLAGE OF FREEPORT, and shall not assert any claim for attorneys' fees incurred to the date of court approval of this Agreement against the other party in connection with said case.

## **ARTICLE XIII: TERM AND SCOPE OF AGREEMENT**

### **Section 13.1 Term and Scope of Agreement**

The term of this Agreement shall be three years and shall commence on the date the Agreement is approved by the Court.

### **Section 13.2 Termination of Agreement**

This Agreement shall automatically terminate on the third anniversary of the approval date of the Agreement, unless otherwise extended by the Court for good cause shown.

**Section 13.3 Application and Scope of Agreement**

This Agreement shall apply to Code Enforcement activities directed at residences.

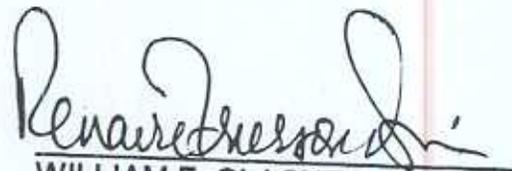
**IN WITNESS WHEREOF**, the State and the Village hereto,  
intending to be legally bound hereby, have executed this Agreement on the date written  
below.

Dated: New York, New York  
May \_\_, 2004

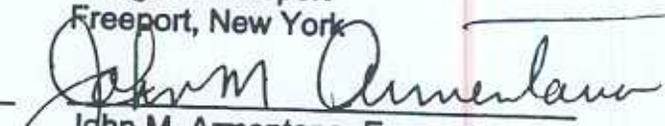
ELIOT SPITZER  
Attorney General of the  
State of New York  
New York, New York 10271  
(212) 416-8250  
Counsel for the State

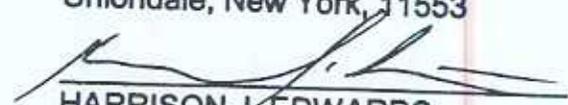
By:   
DENNIS D. PARKER  
Bureau Chief, Civil Rights Bureau

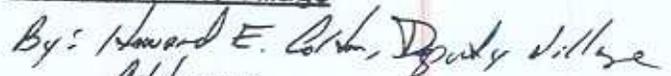
HILARY B. KLEIN  
JUAN MERCHAN  
ALVIN BRAGG  
Assistant Attorneys General

  
WILLIAM F. GLACKEN

Mayor  
RENAIRE FRIERSON-DAVIS  
Deputy Mayor  
Village of Freeport  
Freeport, New York

  
John M. Armentano, Esq.  
Special Counsel for Village  
Farrell Fritz, PC  
EAB Plaza  
Uniondale, New York, 11553

  
HARRISON J. EDWARDS  
Village Attorney  
Village of Freeport  
46 North Ocean Avenue  
Freeport, New York 11520  
Counsel for the Village

By:   
Howard E. Cohen, Deputy Village  
Attorney



**VILLAGE OF FREEPORT**  
**Village Counsel**  
46 NORTH OCEAN AVENUE  
FREEPORT, NEW YORK 11520  
(516) 377-2242 FAX (516) 377-2493

WILLIAM F. GLACKEN  
Mayor

JOSEPH MADIGAN  
SUPERINTENDENT OF BUILDINGS

**Exhibit A**  
**Inspection Statement**

1. (Show identification and badge.) Hello, my name is \_\_\_\_\_. I am a Building Inspector/Housing Inspector/Code Enforcement Officer Trainee (select one), with the Freeport Department of Buildings.
2. I am here because I would like to conduct an inspection of this home. We received a complaint that \_\_\_\_\_.
3. I would like to ask for your consent to conduct the inspection, but first I need to see if you are someone who has the right to give me that consent, so I have to ask you some questions.
  - A. Do you live here?
  - B. May I please ask your name?
  - C. How old are you?
4. (If the person has authority to consent) Please be advised that you do not have to consent to this inspection, and that you have the absolute right to refuse to let us in. If you do not consent to the inspection, the Village cannot and will not take any action against you, including coming back again on this same complaint, except that we would be allowed to try to apply for a search warrant from the court.
5. May we have consent to inspect your home?



**VILLAGE OF FREEPORT**

**Village Counsel**

46 NORTH OCEAN AVENUE  
FREEPORT, NEW YORK 11520  
(516) 377-2242 FAX (516) 377-2493

WILLIAM F. GLACKEN  
Mayor

JOSEPH MADIGAN  
SUPERINTENDENT OF BUILDINGS

**Exhibit B  
Consent Form  
CONSENT TO INSPECT**

I, \_\_\_\_\_ am the \_\_\_\_\_  
Name (Property Interest: Owner, etc.)  
\_\_\_\_\_ of the \_\_\_\_\_ located at \_\_\_\_\_

\_\_\_\_\_ and have been informed of my Constitutional right to be free of any inspection of the aforesaid property, except with a search warrant, and of my right to refuse to consent to this inspection. I also have been informed that if I refuse to consent to this inspection, no action will be taken against me (except that the Village has the right to apply for a search warrant) and the Village will not again seek consent to inspect this property based on the complaint it is investigating today.

Having been so informed, I hereby give \_\_\_\_\_ and \_\_\_\_\_ of the Freeport Building Department permission to inspect this property on the date and time specified below. This permission is given freely and voluntarily.

Signed: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_



**VILLAGE OF FREEPORT**  
**Village Counsel**  
46 NORTH OCEAN AVENUE  
FREEPORT, NEW YORK 11520  
(516) 377-2242 FAX (516) 377-2493

WILLIAM F. GLACKEN  
Mayor

JOSEPH MADIGAN  
SUPERINTENDENT OF BUILDINGS

**Exhibit C**  
**Notice Letter**

Property owner/tenant  
123 Street  
Freeport, New York, 11520

Re: Inspection of 123 Street

**NOTICE OF VIOLATION**

Dear Sir/Madam:

On January 1, 2004, an inspection was conducted of the above mentioned address. During the inspection, the following violations of the Code of the Village of Freeport were observed:

- 1.
- 2.
- 3.

These violations must be corrected within fifteen (15) business days from the date of this notice. If you take steps to cure the violations, but are unable to correct the violations within fifteen business days, you may apply for an extension of the period. To request an extension, contact the Building Department at 516-377-2242 within fifteen business days.

If a request for an extension is not made and granted, an inspector will conduct a re-inspection of the premises on February 1, 2004, between the hours of 2:00 p.m. and 3:00 p.m. If an extension is granted, you will be informed of a reinspection date and time when the extension is granted. The purpose of the re-inspection is to verify that the violations have been corrected.

Very truly yours,

Joseph Madigan  
Superintendent of Buildings

**Exhibit C – page 2**

I, \_\_\_\_\_, have read the Notice of Violation issued by the Freeport Department of Buildings. I hereby give my consent to the Freeport Department of Buildings to re-inspect my property, on the date and time specified in the Notice, for the purpose of verifying that the violations have been corrected.

This permission is given freely and voluntarily.

Dated: Freeport, New York

\_\_\_\_\_  
Owner/Tenant  
123 Street  
Freeport, New York, 11520

Please have this form returned to the Freeport Department of Buildings at 46 North Ocean Avenue, Freeport, New York, 11520 before the date of the re-inspection.

