**NYS HOMES & COMMUNITY RENEWAL**

**WEATHERIZATION ASSISTANCE PROGRAM-ARPA**

**FORM #8C**

**MULTI-FAMILY BUILDING OWNER AGREEMENT**

This Agreement is made and entered into by and between:

 **Subgrantee, and**

 **Owner, for**

 **Address of Building to be Weatherized**

This Agreement is entered into on the day of , . The parties agree as follows:

1. **Definitions**

The following terms shall have the following, specific meanings when used in this Agreement:

**Agreement** – This contract setting forth the Work Scope (defined below), obligations of the Owner (defined below) and Subgrantee (defined below).

**Building** – The structure that contains the Dwelling Units (defined below) to be weatherized under this Agreement and located at the address indicated above.

**Certification** – An official attestation that the Work Scope (attached as Exhibit A) has been satisfactorily completed.

**Certification Date** – The date the Certification is delivered to the Owner by mail, personally or electronically.

**Common Area** – Those areas that are not exclusive to specific occupants of the Building such as stairwells, hallways, boiler rooms, roof decks, etc.

**Dwelling Unit** – Separate living quarters for one or more persons, including space and provisions for living, sleeping, eating, cooking, and sanitation.

**Effective Date** – The date this Agreement is executed as evidenced by the latest, dated signature(s) of Owner and/or Subgrantee (both defined below).

**HCR** – New York State Division of Housing and Community Renewal.

**HTFC** – Housing Trust Fund Corporation

**Household** – An individual or individuals living together as one economic unit in a Dwelling Unit making undesignated or direct payments for their primary heating source.

**Owner** – The entity or individual(s) that maintains the legal rights to encumber the Building and perform all of the obligations required of it/them under this Agreement.

**PPM** **-** The Policies and Procedures Manual, available at:

<http://www.nyshcr.org/Publications/WeatherizationManual/WAP_Manual.pdf>.

**Subgrantee** – The entity, individual(s), or agency that has been selected by HCR to perform the Subgrantee’s obligations described in this Agreement and is accountable to HCR for the utilization of any funds received for that purpose.

**Qualifying Household** – A Household determined eligible for assistance by the Subgrantee in accordance with the requirements of the American Rescue Plan Act of 2021 (hereinafter “ARPA”) the HEAP Act, and as described in the PPM. A Qualifying Household is considered a beneficiary of this Agreement.

**Qualifying Dwelling Unit** – either:

1. A Dwelling Unit that is occupied as of the effective date of this Agreement by a Qualifying Household. The Subgrantee shall not consider any Dwelling Unit to be a qualified Dwelling Unit unless it has received written documentation in the form required by HCR that the Dwelling Unit is occupied by a Qualifying Household. The name and income of the Qualifying Household must remain confidential in accordance with state or federal law. A schedule of the Qualifying Dwelling Units and the rents charged for those units is attached as Exhibit B.

Or,

1. A Dwelling Unit that is vacant as of the effective date of this Agreement and will be occupied by a Qualifying Household within 180 days of the Certification Date under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building. The Owner shall include in Exhibit B all Dwelling Units which have been so designated, noting them as vacant-eligible.

**WAP** – Weatherization Assistance Program as administered by HCR in New York State.

**Materials** – All materials that meet or exceed the standards prescribed at 10 CFR section 440 (as may be amended) or higher standards established by HCR.

**Work Scope** – All work described in Exhibit A (attached), including the necessary materials and labor required for the ARPA project(s) described in the attached exhibits.

1. **Recitals**
2. HTFC administers the federal American Rescue Plan Act (ARPA)in New York State, and has made funds available to the Subgrantee to complete ARPA projects in their local region. HTFC is authorized to administer the ARPA program by the following laws and rules:

* + 1. Pursuant to the current New York State budget appropriations and in accordance with New York State Social Services Law §97(5)(a); and
		2. The Low-income Home Energy Assistance Act of 1981 (HEAP Act) authorizes grants to the states to provide assistance to Qualifying Households to meet the costs of home energy, including certain weatherization activities.
1. HCR has received an allocation of funds granted to New York State under the ARPA. These funds are to be used to weatherize the Dwelling Units of Qualifying Households who are the intended beneficiaries of the assistance available under American Rescue Plan Act of 2021. HTFC has contracted with the Subgrantee to provide the type of work described in this Agreement.

1. The Owner owns or holds a controlling interest in the building and has applied to HTFC for ARPA assistance, to reduce carbon emissions, improve the energy efficiency of the building and/or to install certain energy-related health and safety work. The Subgrantee has determined that the building is eligible for the Work Scope.
2. The Work Scope has been prepared based on an inspection of the building and an analysis of the building’s energy use, building characteristics and construction details. Owner has received and reviewed the accompanying proposed Work Scope. Owner and Subgrantee agree that only work listed in the Work Scope may be performed by the Subgrantee unless prior written approval is provided by HCR.
3. This Agreement sets out rights and obligations of both the Owner and the Subgrantee. The Agreement provides the Subgrantee with authorization to enter the building and perform and install the Work Scope and provides the Owner with an assurance that the Work Scope will be completed in a timely manner, and to HCR quality standards.
4. **Owner's Obligations**
	1. The Owner agrees not to evict or commence any eviction proceeding against any tenant(s) of any Qualifying Dwelling Unit in the Building, except for cause and subject to all legal requirements and procedures for any such eviction and/or proceeding. As further described in the PPM (Sub sections 4.02.02 through 4.03) this restriction is in force for a period of not less than two years where the cost of heat is paid by the Household, and not less than five years where the cost of heat is included in the rent. The time periods begin on the Certification Date.
	2. For Qualifying Dwelling Units subject to statutorily authorized rent control or rent stabilization, nothing in this agreement prohibits the Owner from receiving approval for standard, periodic, incremental rent increases granted by HCR or the local rent control guidelines board.
	3. The Owner agrees that the rents for Qualifying Dwelling Units, as set forth in Exhibit B, shall not be increased because of the weatherization improvements paid for by WAP Funds.
	4. The Owner shall not apply for, nor receive, a major capitol improvement rent increase for any weatherization work completed under this Agreement and detailed in Exhibit A.
	5. The Owner agrees that the terms, promises and obligations of this Agreement shall supersede and be superior to any inconsistent provision of any oral or written lease or other agreement affecting the rents collected for the Qualifying Dwelling Units listed in Exhibit B.
	6. The Owner agrees that Dwelling Units identified in Exhibit B which are designated as vacant-eligible as of the Effective date of this Agreement, shall be rented to or occupied by a Qualifying Household within 180 days of the Certification date under a Federal, State, or local program for rehabilitating the building or making similar improvements to the building.
	7. The Owner affirms that the building is not presently being offered for sale and further agrees to notify the Subgrantee not less than 30 calendar days prior to the sale or purchase or conversion of building. Owner agrees to obtain, in writing, the purchaser's consent to assume the Owner's obligations under this Agreement at least 10 business days prior to the closing of any sale. If consent is not obtained, Owner agrees to pay the Subgrantee the full cost of the ARPA Work Scope. The requirement in this section ends when the restrictions described in section III (A) end, or such earlier date that this Agreement is terminated.
	8. The Owner agrees to complete all work identified in Exhibit C of this Agreement as the responsibility of the Owner. All work completed by the Owner shall be completed in accordance with HCR standards and procedures. The Subgrantee has no obligation to begin its work until the Owner’s work is done to the Subgrantee's satisfaction. If the Owner fails to complete, or cause to be completed, the work to the Subgrantee's satisfaction, the Subgrantee may complete the work or cause it to be completed. Any expenses incurred by the Subgrantee in completing work that is the Owner’s responsibility shall be paid by the Owner to the Subgrantee.
	9. The Owner agrees to maintain all the ARPA Materials, including new heating systems, installed or necessary under this Agreement in a manner consistent with optimum performance, save for normal wear and tear, and in conformance with all relevant codes regarding maintenance. The Owner agrees to enroll appropriate building personnel in a building maintenance course approved by Subgrantee related to work listed in Exhibit B and/or C of this agreement.
	10. In the event windows will be replaced, repaired, or modified, the Owner agrees to be responsible for the removal and reinstallation (or installation where none exist and are required by code) of all child guards, security gates, or other items attached to, or installed in, windows so that the installation of prime windows may proceed in an unimpeded manner. Such work must be in accordance with all applicable codes.
	11. The Owner affirms that the building has not previously received weatherization assistance under any program administered by the NYS Weatherization Assistance Program less than 15 years from the date of this agreement. Failure to disclose such previous weatherization shall be a default of this Agreement. In the event of such default the Owner shall pay the Subgrantee the full cost of ARPA work under this Agreement.

* 1. The Owner agrees to provide the Subgrantee fuel consumption data for this building for two years of total energy consumption (electrical and heating fuel) immediately following the completion of the work in this Agreement. This data shall be supplied to the Subgrantee as soon as practicable after it is received by the Owner. In situations where the tenant is responsible for paying for fuel costs, the Subgrantee will collect fuel consumption data directly from the tenant.
	2. The Owner agrees to provide documentation of lead hazard clearance test results to the Subgrantee for any work done by or on behalf of the Owner that is subject to local, State or Federal lead hazard control laws, codes, ordinances or rules.
	3. The Owner agrees to comply with all applicable codes, ordinances, laws, and rules, including local lead hazard control and other health and safety laws, and to follow any recommendations or directives received from HCR or Subgrantee regarding hazards or safety.
1. **Subgrantee's Obligations**
	1. The Subgrantee agrees to install, or cause to have installed, weatherization materials, ARPA appliances and provide any necessary labor for the installation in the building, as itemized in Exhibit A. Subgrantee will provide best efforts to leave the living spaces broom-clean; however, Owner understands that the work often will produce ordinary construction-related dust and debris.
	2. The Subgrantee agrees to commence, or cause to commence, the installation of weatherization materials and / or ARPA appliances on or about , provided that the Owner allows the Subgrantee access to all Dwelling Units and Common Areas to receive services upon seven days’ notice of a date certain by the Subgrantee. Subgrantee expects to complete the Weatherization work within months; however, it is understood that as the work progresses unexpected circumstances may arise. If a hazardous condition is revealed or circumstances arise during the process that require remediation or other unexpected requirements the Subgrantee may defer the project completion as discussed in the PPM Sub sections 6.00 through 6.05.
	3. The Subgrantee agrees to accept and retain all documentation required from the Owner pursuant to this Agreement.
2. **Fees**
	1. The Owner agrees to pay the Subgrantee a construction management fee in the amount of $ for construction management services unrelated to and beyond the ARPA Work Scope.
3. **Default**

The following shall constitute events of default:

* 1. The Subgrantee's failure to complete the weatherization work in a timely manner or failure to complete the work in a workmanlike manner, provided the Subgrantee gained access to the Qualifying Dwelling Units upon seven days notice by the Subgrantee to the Owner.
	2. The Owner's failure to submit to the Subgrantee in a timely manner any documentation required by this Agreement.
	3. The Owner's failure to rent or place in occupancy a Qualifying Household in a vacant-eligible Dwelling Unit specified in Exhibit A within 180 calendar days of the Certification Date. The Owner's failure to meet this deadline and failure to provide supporting documentation within ten business days of this deadline to the Subgrantee shall constitute prima facie proof of default.
	4. The Owner's attempt to increase the rent charged a Qualifying Household occupying a Qualifying Dwelling Unit as agreed to in section III (C) of this Agreement.

* 1. Commencement of an eviction proceeding by the Owner against a tenant of a Qualifying Dwelling Unit occupied by a Qualifying Household in contradiction to the requirements and time periods restricted by section III (A) of this Agreement.
1. **Arbitration**
	1. If a dispute arises out of or relates to this contract, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration.
	2. Any dispute arising out of or relating to this contract, or the breach thereof, that cannot be resolved by mediation within 30 days shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration will be conducted in the English language in accordance with the United States Arbitration Act. There shall be three arbitrators, named in accordance with such rules. The location of any hearing required or requested by the parties, or the arbitrators, will be in the county where the building is located if possible. If the parties in consultation with the arbitrators fail to agree upon a location, the arbitrators shall dictate the location of any hearing.
	3. The award of the arbitrators shall be accompanied by a statement of the reasons upon which the award is based.
	4. The arbitrators shall decide the dispute in accordance with the substantive law of the state of New York.
	5. At any time after the commencement of an arbitration proceeding pursuant to this section, HCR, in its sole discretion, retains the right to complete or cause to complete any work left unfinished by the Subgrantee, by assigning another Subgrantee or hiring a contractor. The costs for such work shall be the responsibility of the party otherwise responsible under this Agreement.
2. **Liquidated Damages**

The parties agree that for the purpose of this Agreement, in the event of default by the Owner (as described in section VII of this Agreement) in the performance of its obligations, in addition to actual damages Subgrantee shall collect an additional penalty of “Liquidated Damages” equaling 10% (ten percent) of the contract per unit cost, multiplied by the number of units affected by the default. In the event that common areas are included in the scope of work, then10% (ten percent) of the pro rata share of the costs attributed to the Common Area shall be included in the calculation of the Liquid Damages, should the Common Areas be affected by the default or breach. Liquidated Damages are necessary because the costs of administrative expenses and agreements with subcontractors for which Subgrantee may be obligated cannot be readily determined. The Liquidated Damages agreed to herein are meant to compensate Subgrantee for those costs the parties agree it will have expended. It is agreed that Liquidated Damages are not intended to be a penalty of any kind.

1. **Remedies**
	1. In the event that the Subgrantee does not complete the ARPA work in a timely, workmanlike manner, the Owner shall notify the Subgrantee in writing of the nature of the default and of the Owner's intention to terminate or suspend this Agreement for default. If the Subgrantee does not, within seven business days from receipt of notification, commence and diligently pursue cure of such default; or if the Subgrantee fails to provide to the Owner reasonable notice that such default does not exist, the Subgrantee shall reimburse to the Owner the amount remaining in any Owner Investment Account, with interest, or release the Owner from all obligations under the performance bond.
	2. In event that the Owner fails to rent or place in occupancy a Qualifying Household in a vacant Qualifying Dwelling Unit specified in Exhibit B within 180 calendar days of the Certification Date, the Subgrantee shall notify the Owner in writing by registered mail of the nature of the default. If the Owner does not, within seven business days from receipt of notification pursue diligent cure of the default; or provide the Subgrantee with reasonable notice that such default does not exist, the Owner shall pay the Subgrantee the per Dwelling Unit Liquidated Damages described in section IX; including the pro-rated share of Common Area if applicable.
	3. In the event that the Owner fails to submit in a timely manner to the Subgrantee any documentation required in this Agreement, the Subgrantee shall notify the Owner in writing by registered mail of the nature of the default. If the Owner does not, within seven business days from receipt of notification, pursue diligent cure of such default or provide the Subgrantee with reasonable notice that such default does not exist, the Owner shall pay the Subgrantee Liquidated Damages as described in section IX.
	4. In the event that the Owner is in default in accordance with section VII (D) (increases the rent charged to a Qualifying Household occupying a Qualifying Dwelling Unit), the occupant(s) can assert a direct claim against the Owner in an action or special proceeding in any court or administrative agency having jurisdiction.
2. **Indemnification**
3. The Subgrantee shall not be held responsible or liable in any way for the failure to provide work, labor, service, or materials provided for by the terms of this Agreement by reason of Federal, State, or municipal requirements or regulations prohibiting the provision of such work, labor, service, or materials.
4. The Subgrantee and the Owner agree to indemnify the State of New York, HTFC and its officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations in performing work under this Agreement.
5. The Subgrantee agrees to provide insurance in the form and amount specified by HTFC and to name HTFC as a certificate holder and an additional insured. Said insurance must contain a provision that the insured shall give notice that the coverage afforded under the policies will not be cancelled or that HTFC’s interest will not be otherwise affected until at least thirty days prior notice has been given to HTFC.
6. **Synopsis of Terms**

The Subgrantee shall provide a synopsis of the terms of this Agreement to the Households occupying each Qualifying Dwelling Unit within thirty days of the Certification Date.

1. **Access to Documents**

The Subgrantee shall provide any occupant of a Qualifying Dwelling Unit access to this document in accordance with federal and state laws regarding confidentiality and privacy.

1. **Exhibits**

All Exhibits relevant to this Agreement shall be signed by both parties and become a part of this Agreement upon signing of both parties. In the event an exhibit or exhibits cannot be completed at signing, provisions relating to those exhibits shall not be considered binding until such time as they are completed, signed by both parties, and attached to this Agreement.

1. **Severability**

The provisions of this Agreement are severable. If any provision of this Agreement is found invalid, such finding shall not affect the validity of this Agreement as a whole or any part or provision hereof other than the provision so found to be invalid.

In witness thereof, the parties have executed this Agreement.

Owner Signature Date

Subgrantee Signature Date

**NYS HOMES & COMMUNITY RENEWAL**

**WEATHERIZATION ASSISTANCE PROGRAM - ARPA**

**FORM #8C**

**MULTI-FAMILY BUILDING OWNER AGREEMENT**

**EXHIBIT A –WORK SCOPE**

[ATTACH Work Scope]

**Prior to the commencement of work:**

I have reviewed the workscope listed above (or ATTACHED) and agree to accept the Weatherization Assistance Program measures as indicated.

Owner Signature Date

Subgrantee Signature Date

**Upon completion of work:**

I agree, to the best of my knowledge, that the work indicated above (or ATTACHED) has been completed to an acceptable work quality.

Owner Signature Date

Subgrantee Signature Date

**NYS HOMES & COMMUNITY RENEWAL**

**WEATHERIZATION ASSISTANCE PROGRAM -ARPA**

**FORM #8C**

**MULTI-FAMILY BUILDING OWNER AGREEMENT**

**EXHIBIT B - QUALIFYING DWELLING UNITS**

Building Address:

The Qualifying Dwelling Units including designated eligible vacant units which are to be weatherized by the Subgrantee under the attached Agreement, and each unit's rent as of the effective date of the attached Agreement, are as follows:

| **Unit Number or Description** | **Vacant-eligible?** | **Children under 7?** | **Rent as of Effective Date of Agreement** |
| --- | --- | --- | --- |
|  | [ ]  YES [ ]  NO | [ ]  YES [ ]  NO |  |
|  | [ ]  YES [ ]  NO | [ ]  YES [ ]  NO |  |
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Units designated as **vacant-eligible** to meet or exceed the building eligibility will be filled within 180 days of the Certification Date [see section III (F) of this Agreement.

**NYS HOMES & COMMUNITY RENEWAL**

**WEATHERIZATION ASSISTANCE PROGRAM - ARPA**

**FORM #8C**

**MULTI-FAMILY BUILDING OWNER AGREEMENT**

**EXHIBIT C – WORK TO BE COMPLETED BY OWNER**

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| --- | --- | --- |
| **Description of Work Item(s)** | **Estimated Materials Costs** | **Estimated Labor Costs** |
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| **Estimated Totals:** |  |  |
| **Estimated Total of Owner’s Work:** |  |