

**NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL
WEATHERIZATION ASSISTANCE PROGRAM
DHCR # 10**

OWNER AGREEMENT MULTIFAMILY

This Agreement applies to buildings containing rental dwellings units, located in New York State.

This Agreement is made and entered into by and between

the Subgrantee and

the Owner of

building to be Weatherized

This Agreement shall commence on the ____ day of _____, _____ (the commencement date) and shall terminate on the ____ day of _____, _____ (the termination date).

WHEREAS, the Energy Conservation in Existing Buildings Act of 1976 (Weatherization Act) authorizes grants to the states to provide weatherization assistance to eligible households and New York State has received a grant fund for such purpose; and

WHEREAS, the Low-income Home Energy Assistance Act of 1981 (HEAP Act) authorizes grants to the states to provide assistance to eligible households to meet the costs of home energy and New York State has received a grant of funds for such purpose; and

WHEREAS, the Division of Housing and Community Renewal has received an allocation of funds granted to New York State under the Weatherization Act and a sub-allocation of funds awarded under the HEAP Act; and

WHEREAS, said funds are to be used to weatherize the dwelling units of eligible households who are the intended beneficiaries of the assistance available under the Weatherization and HEAP Acts; and

WHEREAS, DHCR has contracted with the Subgrantee to use said funds to provide weatherization services; and

WHEREAS, many eligible households reside in rental dwelling units in buildings that may be weatherized if not less than 50 percent of the dwelling units in the building are occupied by eligible households;

WHEREAS, the Subgrantee has demonstrated a readiness to provide weatherization services for the benefit of eligible households who reside in rental housing;

WHEREAS, the eligible households residing in the dwelling units in buildings receiving weatherization assistance are the intended third party beneficiaries of this Agreement;

WHEREAS, the U. S. Department of Energy has issued a policy guidance which specifies a procedure for the States to prioritize buildings containing rental units by financial participation of the owners to avoid undue enhancement of properties as prohibited by law and by regulation;

NOW THEREFORE, in consideration of the foregoing building the parties agree as follows:

- I. DEFINITIONS As used in this Agreement:
 - A. **SUBGRANTEE** shall mean an organization that contracts with and receives funds from DHCR to provide weatherization services to eligible households.

- B. OWNER shall mean and include the owners of the freehold of the building or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation, directly or indirectly in control of the building located at (herein after the building) which contains a total of _____ dwelling units.
- C. DWELLING UNIT shall mean a house, apartment, a group of rooms or a single room occupied as separate living quarters.
- D. HOUSEHOLD shall mean any individual or group of individuals who are living together as one economic unit in a dwelling unit and who make undesignated payments for their primary heating source in the form of rent and/or maintenance charges or pay for their heat directly.
- E. ELIGIBLE HOUSEHOLD shall mean a household whose income is less than or equal to maximum limit established by DHCR each program year in accordance with the requirements of the Weatherization Act and the HEAP Act, or a household eligible by law or regulation.
- F. ELIGIBLE DWELLING UNIT shall mean:
1. A dwelling unit occupied as of the effective date of this Agreement by an eligible household. The Subgrantee shall not consider any dwelling unit to be an eligible dwelling unit unless it has received sufficient written documentation indicating that the dwelling unit is occupied by an eligible household in the form required by the Subgrantee. The name and income of the eligible household must remain confidential in accordance with state or federal law. A schedule of the documented eligible dwelling units and the rents charged therefore is Exhibit A.
 2. A dwelling unit that is vacant as of the effective date of this Agreement designated by the Owner as a dwelling unit that will be rented to or occupied by an eligible household within 180 days of the certification date of the completion of the work. The Owner shall include in Exhibit A dwelling units which have been so designated, noting them as vacant-eligible.
- G. WEATHERIZATION QUALIFIED shall mean that all units in a multi-family building are eligible to receive WAP services once the building has been deemed income eligible.
- H. COMMON AREA shall include, but not be limited to, stairwells, hallways, basements, roofs, and boiler rooms.
- I. WEATHERIZATION MATERIALS shall mean any and all materials that meet or exceed 1) the standards prescribed by the 10 CFR section 440 (as amended) or 2) higher standards as established by DHCR.
- J. WEATHERIZATION LABOR shall mean the costs incurred by the Subgrantee to employ labor or to engage a subcontractor to install the Weatherization Materials set forth in subparagraph (H) of this Section.
- K. PROGRAM SUPPORT shall mean the costs incurred by the Subgrantee, including audit and in-house costs, in weatherizing the unit other than those outlined in paragraphs H and I of this Section.
- L. WORKSCOPE shall mean the entire scope of the actual work projects as set forth in Exhibit B, including materials and labor, to be performed pursuant to this Agreement.
- M. CERTIFICATION shall mean the written and signed attestation by a DHCR representative that the Workscope for a particular eligible dwelling unit has been satisfactorily performed.
- N. PRO RATA SHARE shall mean the contract cost charged to any weatherization eligible dwelling unit for the weatherization materials, labor and program support supplied by the Subgrantee to a weatherization-eligible dwelling.

II. LIQUIDATED DAMAGES

The parties agree that for the purpose of this Agreement, in the event of a Breach by the Owner, liquidated damages shall be the pro rata share _____ (enter the contract per unit cost) multiplied by the number of units effected by the breach.

III. OWNER'S OBLIGATIONS

- A. For eligible dwelling units which are not subject to statutorily authorized rent control and rent stabilization, the Owner agrees that the rents for eligible dwelling units as set forth in Exhibit A shall not be increased as a result of this weatherization project, for the term of this Agreement.
- B. For eligible dwelling units which are subject to statutorily authorized rent control and rent stabilization, the Owner remains able to receive approval for normal incremental rent increases granted by the New York State Division of Housing and Community Renewal (DHCR).
- C. The Owner agrees that the rents for eligible dwelling units, as set forth in Exhibit A, shall not be increased, solely due to the weatherization improvements paid for by owner investment funds and Weatherization Assistance Program Funds. Federal regulations (10 CFR Sec. 440.22) specifically prohibit the Owner's application for, and receipt of, a Major Capitol Improvement rent increase for the total weatherization work completed under this Agreement as outlined in Exhibit B.
- D. 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 eligible dwelling units listed in Exhibit A.
- E. The Owner agrees that dwelling units identified in Exhibit A which are designated as vacant-eligible as of the effective date of this Agreement, shall be rented to or occupied by an income eligible household within 180 days of the certification date. The Owner further agrees to submit, or cause to have submitted to the Subgrantee, written proof of that household's eligibility, prior to lease or occupancy of such vacant-eligible dwelling unit. The City of New York Local Law 1 of 2004 (New York City Childhood Lead Poisoning Prevention Act of 2003) applies to all vacant units.
- F. The Owner hereby swears or affirms that the building is not presently being offered for sale and further agrees to notify the Subgrantee 30 calendar days prior to the sale or purchase or conversion of building. At least 10 business days prior to the closing, the Owner agrees to obtain, in writing, the purchaser's consent to assume the Owner's obligations under this Agreement or, if this consent is not obtained, to pay the Subgrantee the full cost of the weatherization workscope pro rated by the number of months left under this Agreement.
- G. The Owner agrees to complete or cause to be completed to the satisfaction of the Subgrantee, the work as specified in Exhibit C, if applicable.
- H. The Owner agrees to maintain all the weatherization 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 Subgrantee recognized building maintenance course as part of the owner investment requirement listed in Exhibit B of this agreement.
- I. 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 so that the installation of prime windows may proceed in an unimpeded manner. Such work must be in accordance with all applicable codes.
- J. The Owner hereby swears or affirms that the building has not previously received weatherization assistance under any program administered by the NYS Weatherization Assistance Program after September 30, 1993. Failure to disclose such previous weatherization shall be a breach of this Agreement. In the event of such breach the Owner shall pay the Subgrantee the full cost of weatherization work under this Agreement. On a case by case basis, reweatherization can be subject to review by the WAP administering agency.

- K. The Owner agrees to provide the Subgrantee fuel consumption data for this building for two years of total energy consumption data (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 the fuel, the Subgrantee should request an Energy Information Form from the tenant to collect post-consumption fuel data.
- L. When the Owner's work is subject to the City of New York Local Law 1 of 2004 (New York City Childhood Lead Poisoning Prevention Act of 2003) copies of clearance test results shall be provided to the Subgrantee.
- M. The Owner agrees to disclose in Exhibit A units in which one or more children under the age of seven resides and to update the subgrantee of these changes prior to the commencement of the work.
- N. The Owner agrees to file a notice of commencement with the Department of Health and Mental Hygiene according to 27-2056.11(2)(II) of Local Law 1 of 2004.

IV. SUBGRANTEE'S OBLIGATIONS

- A. The Subgrantee agrees to install, or cause to have installed, Weatherization Materials together with the Labor attendant thereto in the Building, as itemized in the Subgrantee's Estimated Workslope in Exhibit B.
- B. The Subgrantee agrees to commence, or cause to commence, the installation of weatherization materials on or about (date); provided that the Owner insures that the Subgrantee will have access to all dwelling units and common areas to be weatherized upon seven days notice of a date certain by the Subgrantee.
- C. The Subgrantee agrees to accept and retain the documentation required from the Owner pursuant to paragraphs III(C), III(F), and V (if applicable) of this Agreement.
- D. The Subgrantee agrees to duly establish an interest bearing Owner Investment Account and to deposit the moneys rendered to the Subgrantee by the Owner pursuant to paragraph V (if applicable) of the Agreement in said account. The Subgrantee further agrees to promptly release from this account such sums at such time as are required in Exhibit C (if applicable) of this Agreement to such parties as are specified. Upon completion and certification of the work agreed upon in paragraph V (if applicable) of this Agreement, the interest earned on the Owner Investment Account shall be deposited by the Subgrantee into the Subgrantee's New York State Weatherization Assistance Program bank account and shall be expended no later than the next succeeding program year.
- E. The subgrantee agrees to notify the owner in writing of the units that may be eligible for the installation of cooling measures and will require additional approval for this work.

V. OWNER'S WORK

- A. The parties agree that the Subgrantee shall not commence, or cause to be commenced, weatherization work unless the Owner completes, or agrees to complete to the satisfaction of the Subgrantee, the repairs or other requirements specified in the Owner's Work Agreement, if any, annexed hereto as Exhibit B, and submits written documentation of same to the Subgrantee.
- B. In the event that the Subgrantee agrees to commence the installation of Weatherization Materials prior to the Owner's completion of the work required in Exhibit B, the Owner shall:
 - 1. Post a performance bond in an amount equivalent to the cost of securing the completion of the required work with the Subgrantee named as insured; or
 - 2. Render to the Subgrantee \$_____, said sum being the cost of securing the completion of the required work. Said sum shall be deposited by the Subgrantee in a duly established Owner Investment Account to be released to the Owner or the Subcontractor, responsible for completion of the Owner's Work to the satisfaction of the Subgrantee. The amount includes the construction management fees due to the Subgrantee.

VI. BREACH: THE FOLLOWING SHALL CONSTITUTE EVENTS OF BREACH

- A. The Subgrantee's failure complete the weatherization work in a timely manner and / or a quality manner; provided the

Subgrantee gained access to the eligible dwelling units upon seven days notice by the Subgrantee to the Owner.

- B. The Owner's failure in a timely manner to submit to the Subgrantee the documentation required in paragraphs III(C), III(F), and V (if applicable) to this Agreement.
- C. The Owner's failure to rent or place in occupancy an income eligible 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 to fail to provide supporting documentation within ten business days of this deadline to the Subgrantee shall constitute prima facie proof of breach.
- D. The Owner's attempt to increase the rent charged an eligible household occupying an eligible dwelling unit, except as noted in paragraph III (A2).

VII. REMEDIES

- A. In the event that the Subgrantee does not complete the weatherization work a timely workmanlike manner, the owner shall notify the subgrantee in writing of the nature of the breach in accordance with paragraph VI A and the Owner's intention to terminate or suspend this Agreement for breach. If the Subgrantee does not, within seven business days from receipt of notification, commence to, and diligently pursue cure of such breach, or if the Subgrantee fails to provide to the Owner reasonable notice that such breach does not, in fact exist, the Subgrantee shall reimburse to the Owner the amount of moneys remaining in the Owner Investment Account, with interest, or release the Owner from all obligations under the performance bond.
- B. In event that the Owner fails to rent or place in occupancy an income eligible household in a vacant "Eligible Dwelling Unit" specified in Exhibit A within 180 calendar days of the certification date, the Subgrantee shall notify the Owner in writing by registered mail of the nature of the breach. If the Owner does not, within seven business days from receipt of notification, commence to pursue diligent cure of such breach or provide the Subgrantee with reasonable notice that such breach does not, in fact, exist, the Owner shall pay the Subgrantee the per dwelling unit liquidated damages; provided, however, that if said eligible dwelling unit was counted for determining whether common space shall be deemed to be eligible for weatherization, the Owner shall in addition pay the Subgrantee the common area liquidated damages.
- C. In the event that the Owner fails to submit in a timely manner to the Subgrantee the documentation required in paragraphs III(C), III(F) and V (if applicable) of this Agreement, the Subgrantee shall notify the Owner in writing by registered mail of the nature of the breach. If the Owner does not, within seven business days from receipt of notification, commence to pursue diligent cure of such breach or provide the Subgrantee with reasonable notice that such default does not, in fact, exist, the Owner shall pay the Subgrantee an amount equal to ten percent of the per unit liquidated damages multiplied by the total number of dwelling units eligible for weatherization.
- D. In the event that the Owner is in breach in accordance with paragraph VI D (increases the rent charged to an eligible household occupying an Eligible Dwelling Unit), the occupant(s) of the Agreement can assert any direct claim against the Owner in any action or special proceeding in any Court of appropriate jurisdiction.

VIII. INDEMNIFICATION

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.

The Subgrantee shall indemnify NYS DHCR as a certificate holder and as an additional insured, and must contain a provision that the insured shall give notice that the coverage afforded under the policies will not be cancelled or that DHCR's interest will not be otherwise affected until at least thirty days prior notice has been given to DHCR.

IX. SYNOPSIS OF TERMS

The Subgrantee shall provide a synopsis of the terms of this Agreement to the households occupying each eligible dwelling unit within thirty days of the weatherization work.

X. ACCESS TO DOCUMENTS

The Subgrantee shall provide any occupant of an eligible dwelling unit access to this document in accordance with federal and state laws regarding confidentiality and privacy.

XI. 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.

XII. 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.

The parties acknowledge that this Agreement is under seal.

Owner/Agent

Date

Subgrantee

Date

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**OWNER AGREEMENT MULTIFAMILY
EXHIBIT A ELIGIBLE DWELLING UNITS AND RENTS**

The documented eligible dwelling units including designated eligible vacant units which are to be weatherized or caused 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:

Address:

Unit Number or Description: Children under 7 Yes No Rent as of _____:

Units designated as vacant-eligible to meet or exceed the building eligibility will be filled within 180 days of this date:
____/____/____ (This must be sent to the Owner after certification.)

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**OWNER AGREEMENT MULTIFAMILY
EXHIBIT B ESTIMATED WEATHERIZATION WORKSCOPE**

Subgrantee:		Material	Labor Costs
Total:			

Owner:		Material	Labor Costs
Total:			

NOTE: A copy of Workscope may be attached as long as the Subgrantee/owner work is clearly identified.

Owner:		Bldg. Maintenance Trng. Course
Total:		

	<u>Subgrantee</u>		<u>Owner</u>
TOTAL ESTIMATED COST:	Materials: \$ _____	Materials:	\$ _____
	Labor: \$ _____	Labor:	\$ _____
		Bldg. Mtnc. Trng. Course:	\$ _____

Owner/Agent

Date

Subgrantee

Date

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**OWNER AGREEMENT MULTIFAMILY
EXHIBIT C WEATHERIZATION WORKSCOPE**

Attach a copy of the Apartment Building Work Summary (DHCR#19) with original signatures from the Subgrantee and Owner.

TOTAL COST: Materials: _____

Labor: _____

Owner/Agent

Date

Subgrantee

Date