

**AGREEMENT FOR
INTEREST REDUCTION
PAYMENTS
Section 236(e)(2)**

**U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner**

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Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Section 532 of the Department of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Public Law 106-74, approved October 20, 1999) ("Appropriations Act") established Section 236(e)(2) of the National Housing Act (NHA), which authorizes the Secretary, under certain terms and conditions, to continue the payment of Interest Reduction Payments (IRP) after the prepayment of a Section 236 mortgage. HUD uses the information provided to ensure that owners continue to maintain the projects as low-income housing resources. These agreements will allow HUD to preserve low-income housing units. All transactions are subject to the requirements of HUD's Tenant Participation in Multifamily Housing Project Regulations at 24 CFR Part 245. This information is required to obtain benefits. HUD does not ensure confidentiality to respondents.

Old FHA Project No.: _____
New FHA Project No.: _____
Project Name: _____

AGREEMENT FOR INTEREST REDUCTION PAYMENTS

THIS AGREEMENT, made this ___ day of _____, 20___, by
_____ , a _____ (hereinafter called "Borrower"), the
_____ (hereinafter called "Lender"), the SECRETARY OF HOUSING AND URBAN
DEVELOPMENT, acting by and through the Federal Housing Commissioner, (hereinafter called the
"Secretary") [and in cases where the lender is not HUD-approved, a fourth party is a signatory to the
contract in an oversight function, the _____, hereinafter called the Public Agency].

W I T N E S S E T H

WHEREAS, the Secretary is authorized under Section 236 of the National Housing Act, as amended, (hereinafter referred to as "Section 236") to make interest reduction payments (hereinafter referred to as "IRP") to a rental or cooperative housing project, which has a mortgage which is insured under subsection (j), or upon such mortgage's being assigned to HUD, and has implemented this authority by regulation for projects owned by non-profit mortgagors, builder-seller mortgagors, limited distribution mortgagors, cooperative and investor sponsor mortgagors, and public mortgagors;

WHEREAS, the Secretary is authorized under Section 236 (b) to make IRP to lenders in the section 236 non-insured program for the benefit of rental or cooperative housing projects owned by private non-profit corporations or other private non-profit entities, limited dividend corporations or other limited dividend entities, public entities, or cooperative housing corporations, which we financed under a state or local program providing assistance through loans, loan insurance, or tax abatements;

WHEREAS _____ was the mortgagee of record for that certain Mortgage dated _____ and recorded _____ in the official land records of _____ County, _____, (the "236 Mortgage"); and such Mortgage was prepaid and the refinanced debt has resulted in a mortgage held by _____, the successor mortgagee i.e., Lender, being placed upon the property dated _____ and recorded _____ in the official land records of _____ County, _____ [_____, [State] (the "236 (e) (2) Mortgage");

WHEREAS, the Section 236 (e)(2) Mortgage encumbers a multifamily residential rental or cooperative development known as " _____ " (the "Development") located in the City of _____, _____ County, State of _____ and title to which is recorded in the office of the County Clerk and Recorder of _____ County, _____, in Film __, Page __, as Document No. ____; and

WHEREAS, pursuant to Section 236(e)(2) of the National Housing Act, added by section 532 of the Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000, HUD has the authority to permit a project for which IRP is being made, and for which the mortgage on the project has been refinanced (whether such project is subject to an insured

Section 236 mortgage or to a non-insured State Agency Section 236 mortgage) to continue to receive the IRP as long as certain conditions set forth in the statute are met. These include that the owner will continue to operate the project “in accordance with all low-income affordability restrictions for the project in connection with the Federal assistance for the project for a period having a duration that is not less than the term for which such interest reduction payments are made plus an additional 5 years.” By “all low-income affordability restrictions” and the word “Federal” before “assistance,” Congress meant to cover any low-income affordability restrictions in effect at the project on the date of the refinancing resulting in a prepayment of the Section 236 mortgage, if such restrictions have resulted from Federal, as opposed to, for example, state or local assistance, whether such assistance is presently being provided, or was provided at some point in the past. Examples of affordability restrictions linked to Federal assistance can include, but not be limited to, the Section 236 restrictions governing the use of IRP, use restrictions on projects that were preservation eligible and received preservation incentives pursuant to an approved plan of action, use restrictions deriving from tax credits, etc.

WHEREAS, pursuant to Section 236(e)(2), which provides that the IRP shall continue under subsection (e)(2) “under the terms of the contract for such payments,” the IRP can continue if an insured project is being refinanced, on the condition that the ownership entity would have been an eligible ownership entity prior to the refinancing, and further, because subsection (e)(2) is a part of the Section 236 statute, the IRP can only continue if Section 236 statutory and regulatory requirements continue to operate, such as the establishment of the operative rent, including calculation of a basic rental charge and a fair market rental charge, the return to HUD, where appropriate, of excess income, the calculation of the amount of the IRP, etc.

WHEREAS, the 236 Mortgage has been security for that certain loan which is evidenced by a Mortgage Note in the original principal amount of \$ _____ dated _____ (the “236 Mortgage Note”) which was made pursuant to Section 236, and as such, is subsidized in whole or in part

with IRP made by the Secretary to the mortgagee of record, with payments made as shown on the payment schedule attached hereto as Exhibit A; and

WHEREAS, the Mortgagor and successor mortgagee, i.e., Lender, desire that the IRP under Section 236 continue, pursuant to the authority of Section 236(e)(2) after refinancing resulting in a prepayment of the 236 Mortgage note, and replacement by a successor Mortgage Note; and

WHEREAS, pursuant to the provisions set forth in 24 CFR Part 236, the Secretary made interest reduction payments to the mortgagee, and upon prepayment of the Section 236 mortgage, the successor mortgagee, hereafter called "Lender," must enter into an IRP contract with the Secretary in order for IRP payments to continue pursuant to the authority of Section 236(e)(2); and

WHEREAS, the Lender (if it is HUD-approved) or Public Agency (if the Lender is not HUD-approved), whichever is applicable, is willing to undertake the administrative duties required by Section 236 with respect to the Development pursuant to this IRP contract between the Borrower, Lender, and HUD, which involves the Lender's supervision of the performance of the parties to this IRP contract (or Public Agency's supervision, if applicable), and, in the event of any violations thereof, the timely notification to HUD of the nature of any non-performance.

WHEREAS, the dividends payable to the Borrower shall, if the mortgagor is a limited dividend mortgagor, be limited pursuant to the terms and provisions of this Agreement. If prior to the Section 236(e)(2) transaction, the mortgagor was a limited dividend mortgagor with a Section 236 insured mortgage, then upon completion of the transaction it remains controlled by the regulatory provision at 24 CFR 236.50 (rev. as of April 1, 1995), and saved by the current 24 CFR 236.1(c), which among other things provides that the "amount of any allowable distribution, or disbursement from surplus cash shall not exceed in any one fiscal year more than 6 percent of the mortgagor's initial equity investment in the project, as determined by the [Federal Housing] Commissioner." If prior to the Section 236(e)(2)

transaction, the mortgagor was a limited dividend mortgagor with a Section 236 state-agency, non-insured mortgage, then the extent of any limitation on distributions is not controlled by the section 236 regulation, but rather, is controlled by state or local law.

In either of the cases referred to in the paragraph above, in the event that there is Section 8 at the project and the mortgagor is a limited distribution mortgagor, such mortgagor may also be governed by a section 8 regulation governing the amount of the distribution.

NOW THEREFORE, the Secretary, the Lender, and the Borrower [and the Public Agency if applicable] hereby agree to enter into this Agreement to reflect the continuation of the IRP for the benefit of the Development after prepayment of the Section 236 mortgage to cover the successor Section 236(e)(2) mortgage held by the Lender, and further agree as follows:

1. The loan amortization terms of the Section 236 Mortgage Note, attached hereto as Exhibit A, had been submitted to and approved by the Secretary when the loan was initially insured by the Secretary for the aforesaid maximum amount of the loan which was attributable to the cost of subsidized dwelling units (as such term is defined below).
2. The successor mortgagee, i.e., Lender, represents that the Development consists of ____ dwelling units comprised of ____ zero-bedroom units, ____ one-bedroom units, ____ two-bedroom units [Insert greater number of bedroom units if appropriate]. [If prior to the section 236(e)(2) refinancing, the project was a non-insured section 236 (b) project, complete the following two sentences] ____% of the dwelling units are designated as subsidized dwelling units. The ratio of subsidized dwelling units and rooms to unsubsidized dwelling units and rooms shall not be changed without approval of the Secretary.

- 3. The Secretary previously reserved an amount for annual interest reduction payments to be paid under the terms of the IRP contract, which schedule of payments is set forth in Exhibit A attached hereto. The Secretary shall now make IRP on a monthly basis in equal monthly installments based upon the successor Mortgage Note, but in no event can the IRP exceed the amounts set forth in Exhibit A attached hereto for the month and year so designated; notwithstanding the forgoing, in no event shall the annual interest reduction subsidy exceed \$_____ in any given year. To the extent the IRP paid, pursuant to the successor Mortgage Note is less annually than the IRP paid under the predecessor Mortgage Note, unutilized IRP moneys, after the term of the amortization schedule for predecessor Mortgage Note, can be used to help subsidize the successor Mortgage Note for an additional period of time. In no event can more IRP be paid out by HUD in the aggregate under the successor Mortgage Note than would have been paid out if the 236 Mortgage Note had not been prepaid. The successor IRP payment schedule for the Section 236(e)(2) mortgage note is set forth in Exhibit B.**
- 4. The term of this Agreement for IRP shall begin on the date on which the Lender enters into the successor Mortgage Note. The initial IRP shall be due on the first day of the first month following the date on which the Lender enters into the Successor Mortgage Note. All IRP made hereunder shall be made upon receipt of a billing containing representations of facts by the Lender on a form prescribed by the Secretary. If the Secretary finds that an IRP payment or payments made to the Agency have been excessive because of inaccurate facts contained in the Lender's billing or other cause, the Lender shall be obligated immediately to refund the amount that was overpaid. Adjustments in the IRP shall also be made in the event a subsidized dwelling unit is destroyed or rendered not habitable for any reason, unless said unit is restored or rehabilitated within a reasonable time (or in the case of a project that had been a**

non-insured section 236(b) project, prior to the refinancing pursuant to section 236(e)(2), unless an unsubsidized unit is designated in its place).

5. The Borrower covenants and agrees with respect to each subsidized dwelling unit of the Development that:

- (a) Unless HUD agrees to permit a basic rental charge and fair market rental charge pursuant to 236(f)(1)(A)(ii)(II) and (iii)(II), the Borrower covenants and agrees with respect to each subsidized dwelling unit of the Development that the Borrower has established or shall establish for each such dwelling unit (i) a basic rental charge determined on the basis of operating the Development with even monthly payments of principal and interest with respect to the 236 Mortgage Note, bearing interest at one percent per annum for an amortization period set forth in the 236 Mortgage Note, and (ii) a fair market rental charge determined on the basis of operating the Development with even monthly payments of principal and interest and fees and charges (or mortgage insurance premium if mortgage insurance is involved) with respect to the 236 Mortgage Note as approved by the Secretary based upon an amortization period set forth in the 236 Mortgage Note. (Payments required to be made under the _____ Note described above may be included in the cost of “operating the Development” for the purpose of the foregoing rental calculation.) Such basic rental charges and fair market rental charges, as approved by the Lender, will be provided to the Secretary for HUD’s approval.**
- (b) Any revisions in the basic rental or fair market rental for any subsidized dwelling unit shall be approved by the Lender and shall be submitted to HUD for its approval, as further provided below in this paragraph (b). The Lender shall approve rental revisions in conformity with applicable Federal statutes, HUD regulations and directives and applicable state law and regulations, and shall notify the**

Secretary in writing of every such revision. The Secretary shall not unreasonably withhold its approval of rent revisions approved by the Lender. Notice of approval or disapproval of any revision by the Secretary shall be given within thirty days of the date of receipt of the Lender's notification to the Secretary of the revision. The Lender has furnished the Secretary copies of such State and local laws and regulations and shall inform him of any changes in such laws and regulations.

- (c) The Section 236 rent charged for each subsidized unit plus utility allowance, which includes all utilities except telephone, will be equal to 30% of the tenant's adjusted annual income or the basic rental, whichever is greater, but in no event is the rental charged to exceed the fair market rental.**
- (d) The Borrower shall limit admission to those families whose incomes do not exceed the lower of the applicable income limits that are set by the Secretary pursuant to the Section 236 Regulations and applicable program requirements or by a state or local Agency if the mortgage was originally a Section 236 non-insured mortgage prior to the Section 236(e)(2) refinancing, and such state or local Agency remains the lender after the refinancing. If the state or local agency is not the lender after the refinancing, the income limits set by the Secretary pursuant to the Section 236 regulations and applicable program requirements for Section 236 insured mortgages shall apply in this situation. The Borrower shall comply with the provision of any applicable federal, state or local law prohibiting discrimination in housing on the ground of race, ancestry, color, creed, national origin, disability, marital status, familial status, age or sex, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241, 42 U.S.C. 2000d, et seq.), the Fair Housing Act (Title VIII of the Civil rights Act of 1968, as amended, 42 U.S.C. 3535(d), 3600-3620), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and all requirements imposed pursuant to the Regulations of the Department of Housing and Urban Development**

(24 CFR Part 107) issued pursuant to Executive Order 11063. The Borrower shall require that contractors and subcontractors engaged in the construction or rehabilitation of the Development provide equal opportunity for employment without discrimination as to race, sex, marital status, color, disability, religion, national origin or ancestry.

- (e) The Borrower shall not restrict occupancy by reason of the fact that there are children in the family, unless the Development, or a portion thereof, has been designed for an elderly family. A project or portion of a project designed for the elderly can be restricted to a family where the head of household or spouse is 62 years of age or older. For such project or portion of a project, a single person 62 years of age or older shall be deemed a family. In no case, however, can an elderly family be discriminated against in admissions because of children in that family who are 18 years of age or younger.**
- (f) No tenant of a subsidized dwelling unit shall be permitted to rent more than one unit in the Development at any given time without the prior written approval of the Secretary [and the Agency, if the Lender is not HUD-approved and the Agency is overseeing the administrative duties required by Section 236].**
- (g) On forms approved by the Lender [and Agency, if the Lender is not HUD-approved and the Agency is overseeing the administrative duties required by Section 236], the Borrower shall obtain from each prospective tenant of a subsidized dwelling unit a certification of income and an annual recertification of income from all such tenants who are paying less than fair market rental.**
- (h) In a manner prescribed by the Lender (or the Public Agency, if the Lender is not HUD-approved and such Public Agency is a signatory to this IRP contract, thereby agreeing to oversee the administrative duties required by section 236), the Borrower shall obtain written evidence substantiating the information given on such tenants'**

annual recertifications and shall retain the evidence in its files for three years. If any annual recertification reveals a change in adjusted income whereby such a tenant would be eligible for a lower or higher rent, such adjustment in rent charged shall be made, provided that the adjusted rent for any such unit shall be the basic rental or an amount equal to 30% of the tenant's income, whichever is greater, but shall never exceed fair market rental.

- (i) Except to the extent that the Secretary has specifically authorized the Borrower to retain such amounts, the Borrower shall remit to the Secretary on or before the tenth day of each month the amount by which the rent collected on each subsidized dwelling unit exceeds the approved basic rental for each unit, if any, in the same manner as prescribed for similar Section 236 projects, which remittance shall be accompanied by a monthly report on a form approved by the Secretary. A monthly report shall be filed and a copy forwarded to the Agency even if no remittance is required. In no event will the excess rents directly or indirectly flow back to the Project unless authorized by HUD. Neither the Lender, [nor the Agency if it is undertaking the administrative duties under Section 236 because the Lender is not HUD-approved] shall have any direct or indirect responsibility relating to the collection and/or remittance of Section 236 excess payments, provided, however, the Agency shall retain the right to enforce such collection against the Borrower to assure that the interest reduction payments are not terminated under paragraph 7 hereof.**
- (j) The Borrower shall maintain accurate records and accounts in such form and manner as the Agency may prescribe, including compliance with Subpart H of Part 205 of Title 24, of the Code of Federal regulations and shall make such records and accounts available for inspection and audit by the Secretary at any time.**

- (k) The Borrower shall not sell, convey or transfer the Development, except to a purchaser who is approved by the Secretary (and by the Lender if the mortgage is not HUD-insured, or if such Lender consent is otherwise required), and is entitled to participation under Section 236(e)(2) and who assumes the duties and obligations under this Agreement.**
- (l) Subject to HUD requirements, each of the dwelling units in the Project shall be available for rental to members of the general public. None of the dwelling units in the Project shall at any time be utilized on a transient basis, shall ever be leased or rented for less than thirty (30) days or shall ever be used for other than housing purposes. The Project shall not be used as a hotel, motel, dormitory, fraternity, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or court for use on a transient basis.**
- (m) The borrower will not initiate or cause any involuntary displacement of a tenant (except for cause as set out in the tenant's lease) due to this transaction or any financing, LIHTC, or state or local agency requirements.**
- (n) The Borrower will, at all times, maintain the property in a condition which is decent, safe and sanitary, and in good repair in accord with Subpart G of Part 205 of Title 24, of the Code of Federal regulations.**

6. The Lender covenants and agrees that without the prior written approval of the Secretary it will not assign the 236 (e)(2) Mortgage or the 236 (e)(2) Mortgage Note; except that, in connection with any new financing, the Lender may assign or pledge the 236 (e) (2) Mortgage, and/or the 236 (e)(2) Mortgage Note, this Agreement, and the proceeds of payments hereunder and its rights hereunder as security to its noteholders or bondholders or to a trustee without such prior written approval of the Secretary, or sell a participation

interest in the 236 (e)(2) Mortgage and the 236 Mortgage (e)(2) Note to a trustee, so long as the Lender shall remain the record holder of the 236 (e)(2) Mortgage.

- 7. (a) The Secretary shall terminate payments under this Agreement if**
- (i) the 236 (e) (2) Mortgage is extinguished;**
 - (ii) the Project ceases to be owned by an eligible owner;**
 - (iii) the Lender is no longer mortgagee of record and the Secretary has not approved the Lender's successor as mortgagee of record; or,**
 - (iv) the Lender, or the Public Agency, where the Lender is not HUD-approved, does not meet its obligation to monitor the operation and condition of the Project pursuant to Section 236 or does not certify, in a manner acceptable to the Secretary, that it is satisfying this requirement.**
- (b) The Secretary shall have the discretion to terminate IRP at any time under this Agreement if either of the following events occurs:**
- (i) Upon default by the Borrower or the Lender, If applicable, under any provision of this Agreement; or**
 - (ii) If an action of foreclosure is instituted by the Lender, except in the event the Lender:**
 - (1) gives to the Secretary advance written notice of its intention to institute such foreclosure; and**
 - (2) submits to the Secretary in advance a plan, acceptable to the Secretary, and the Public Agency if the Lender is not-HUD-approved , providing for continued eligibility of the Development for receiving the benefits of Section 236;**
- (c) The Secretary The Secretary shall have the discretion to decrease the**

amount of the monthly IRP payment if the number of units in the project available for rental by tenants also decreases. Any such decrease in the IRP payment shall be, to the extent possible, in proportion to the decrease in the available units.

In the event the Secretary deems necessary the termination or decrease of payments under this Agreement, he shall give prior written notice thereof to the parties indicated in Paragraph 12 hereof stating the reasons therefor and providing for a reasonable period to cure.

- 8. If interest reduction payments are terminated or to be terminated pursuant to Paragraph 7 herein, such payments may, within one year, be reinstated or continued by the Secretary at his discretion and on such conditions as he may prescribe.**
- 9. This Agreement shall terminate (a) when the 236(e)(2) Mortgage Note is paid in full, or (b) upon termination of the IRP assistance, provided the Owner executes and records an Amended and Restated Section 236(e)(2) Use Agreement (or Section 236(b) Use Agreement) Following Termination of Section 236(e)(2) (or Section 236(b)) Agreement for Interest Reductions Payments.**
- 10. Except as provided under Paragraphs 5(k) and 6 of this Agreement, the rights and obligations under this contract are not assignable by the Borrower, Lender, or Agency without prior written approval of the Secretary. In the event of any assignment not permitted hereunder, the IRP shall terminate unless the Secretary agrees in writing to reinstate them.**
- 11. The Borrower is an eligible mortgagor for purposes of Section 236(e)(2).**
- 12. Except as otherwise provided herein, all notices, demands, requests, instructions, certifications and any other form of communication required or permitted to be given hereunder in order to be binding on the recipient must be given in writing addressed as**

follows (or to such other address as any party hereto shall specify by notice to the other parties):

If to HUD: **Department of Housing and Urban Development**
Attention: Director of Multifamily Housing
Address
City, State & Zip

If to the Lender: _____
Attention: _____,
Address
City, State & Zip

If to the Borrower: **Name**
Address
City, State & Zip

If to the Agency: **Name**
Address
City, State & Zip

13. **This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.**

14. **The Mortgagor agrees to accept Section 8 project-based assistance, or project based assistance from any successor program, on the same terms and conditions as the existing Section 8 assistance for as long as this assistance is offered by the Secretary during the remaining term of this Agreement.**

Signature page for _____ Apartments Interest Reduction Payments Agreement between the Borrower and the Secretary of Housing and Urban Development.

Old FHA Project No.: _____

New FHA Project No.: _____

IN WITNESS WHEREOF, the parties hereto have set their hands and as of the day and year above written.

BORROWER:

By: _____,
a _____ limited partnership

By: _____, its
general partner

By: _____
Name:
Title:

Signature page for _____ Apartments Interest Reduction Payments Agreement between the _____ Mortgagee and the Secretary of Housing and Urban Development.

Old FHA Project No.: _____

New FHA Project No.: _____

MORTGAGEE:

By: _____

Its: _____

[to be executed by the Agency also, if the lender is not HUD-approved]

Agency:

By: _____

Its: _____

HUD SIGNATURE PAGE

Old FHA Project No.: _____
NewFHA Project No.: _____
FHA Project Name: _____

**SECRETARY OF HOUSING AND URBAN
DEVELOPMENT acting by and through the
FEDERAL HOUSING COMMISSIONER**

By: _____
Its: **Authorized Agent**

Exhibit A

IRP Schedule

**[Amortization Schedule of pre-refinanced 236 Loan, including
Amount and Term of Interest Reduction Payments]**

Exhibit B

IRP Schedule

**[Amortization Schedule of 236(e)(2) post-refinanced Loan, including
Amount and Term of Interest Reduction Payments]**