

USE AGREEMENT
Section 236(e)(2)

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

OMB Control No. 2502-0572
(exp. 12/31/2017)

Public reporting burden for this collection of information is estimated to average 15 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-incoming 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.

Project Name:
Project Location:
Project Number:

236(e)(2) USE AGREEMENT

This Agreement, entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), and (Owner), provides as follows:

WHEREAS, (the "Project"), a (number) unit project located in (City, State), was financed with a Secured Note (the "Mortgage Note") and Mortgage (the "Mortgage"), dated and [insured and] assisted by the Secretary under Section 236 of the National Housing Act (NHA), as amended, and covering real property as described in Exhibit "A" attached hereto, which Mortgage was recorded in the (City or County) Registry of Deeds at (location);

WHEREAS, the Owner has refinanced the Project with the Secretary's approval, that such refinancing involved a prepayment of the Mortgage Note and the creation of a successor Mortgage and Note with interest reduction payments ("IRP") to continue under the authority of section 236(e)(2) of the NHA, and pursuant to the terms of the Agreement for Interest Reduction Payments of even date herewith (collectively, the "Transaction");

WHEREAS, in exchange for the Secretary's approval of the Transaction, the Owner has agreed to subject the Project to certain use restrictions, as set forth herein, which shall run with the land;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

1. [If applicable] Continuation of Section 8 Assistance. The Project currently receives the benefit of Section 8 assistance for (number) units pursuant to the terms of the HAP Contract. The Owner agrees to accept and utilize project-based Section 8 assistance in accordance with the HAP Contract, and agrees to accept on the same terms and conditions of the existing HAP Contract, any renewal or extension of the HAP Contract or any contract under a program designated by the Secretary as a successor to the Section 8 program for as long as the IRP payments remain in effect, plus an additional five years.

2. [if applicable] Termination of Section 8 Assistance. In the event that the HAP Contract is terminated or not renewed, for any reason, the Owner shall continue to rent the Project under the terms of the Section 236 Interest Reduction Payments Agreement.

3. Continuation of All Affordability Restrictions. As a condition for receiving continued IRP under section 236(e)(2), the owner agrees, pursuant to that provision, “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 not less than the term for which such interest reduction payments are to be made as a result of the section 236(e)(2) refinancing, plus an additional 5 years. By “all” low-income affordability restrictions” and the word “Federal” before “assistance,” the statutory provision requires the continuation of any low-income affordability restrictions in effect at the project on the date of the 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.**

At the subject project, the following affordability restrictions shall continue for the period referred to in the preceding paragraph: [use numbering if more than one restriction is relevant] (1) The affordability restriction inherent, through the operation of the section 236 statute, and in the section 236 program, which is to provide affordable housing for low-income tenants, and, which as implemented by HUD, makes the housing affordable for tenants whose income is at 80 percent of median income or lower. Thus, all section 236 statutory and regulatory requirements governing rents and occupancy operate, including the establishment of basic and fair market rents, pursuant to 24 CFR 236(f) of the NHA; (2) [if relevant] ; (3) [if relevant] ; and (4) [if relevant]

4. Physical Condition of the Property. The owner shall, for the term of this use agreement, maintain the property in a condition that is decent, safe and sanitary, and in good repair. It shall do so in conformity with HUD requirements at 24 CFR Part 5, Subpart G, or any successor regulation.

5. Financial Reporting Requirements. The owner shall, for the term of this use agreement comply with HUD financial reporting requirements at 24 CFR Part 5, Subpart H, or any successor regulation.

6. Tenant-based Assistance. The owner shall not unreasonably refuse to lease a dwelling unit to, or discriminate against, a prospective tenant because the tenant is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC Section 1437f).

7. Runs With the Land. This Agreement shall run with the land and be binding upon the Owner, as well as any successors and assigns. Notwithstanding the above sentence, upon conveyance of the Project during the term of this Agreement, the Owner shall by contract, require its successors or assignees to assume its obligations under this Agreement.

8. Term. This Agreement shall continue in full force and effect until _____ .
[the term for which the IRP is to be made, plus an additional 5 years].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and have agreed that it shall be effective as of the _____ day of _____, _____.

Witness

OWNER:

By:

By: _____

Witness

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT

By: _____

Director
Multifamily Housing Division
HUD