

**AGREEMENT FOR
INTEREST REDUCTION
PAYMENTS**

Section 236(b)

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

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

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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.

AGREEMENT FOR INTEREST REDUCTION PAYMENTS

THIS AGREEMENT, made as of this ___ day of _____, 200_, by

_____, a _____ limited partnership (hereinafter called

"Borrower"), the _____ (hereinafter called the "Agency") and the SECRETARY OF

HOUSING AND URBAN DEVELOPMENT, acting by and through the Federal Housing Commissioner,

(hereinafter called the "Secretary").

WITNESSETH

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 with respect to a rental or cooperative housing project owned by a private non-profit corporation or other private non-profit entity, a limited dividend corporation or other limited dividend entity, or a cooperative housing corporation which, pursuant to Section 236(b), is financed under a state or local program providing assistance through loans, loan insurance, or tax abatements; and

WHEREAS, the _____ is the mortgagee of record for that certain Mortgage dated

_____ and recorded _____ in the official land records of

_____ County, _____, (the "236 Mortgage"); and

WHEREAS, the Section 236 Mortgage encumbers a multifamily residential rental development known as " _____ Apartments" (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, the 236 Mortgage secures 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 part with “Interest Reduction Payments” 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 Agency has agreed to purchase the 236 Mortgage and 236 Mortgage Note from the existing mortgagee, and the existing Borrower has requested HUD approval for the termination of the mortgage insurance on the 236 Mortgage Note ; and

[If there is a change in ownership]

WHEREAS, a new Borrower, with the approval of the Secretary, will purchase the right, title and interest of the previous Borrower in and to the Development, subject to the 236 Mortgage, and will assume all of the previous Borrower’s obligations under the 236 Mortgage and the 236 Mortgage Note; and

WHEREAS, at the time of purchase of the 236 Mortgage, the Agency will voluntarily terminate the Section 236 mortgage insurance on the 236 Mortgage; and

WHEREAS, the Agency desires that the interest reduction payments under Section 236 continue with respect to the 236 Mortgage Note after cancellation of the Section 236 mortgage insurance; and

WHEREAS, pursuant to the provisions set forth in 24 CFR Part 236, the Secretary made interest reduction payments to the prior mortgagee, and upon termination of the Section 236 insurance, the Agency must enter into an interest reduction payments contract with the Secretary in order to continue the interest reduction payments because the regulations at 24 CFR Part 236 apply only to federally-insured Section 236 notes and mortgages; and

WHEREAS, the Agency is willing to undertake the administrative duties required by Section 236 with respect to the Development pursuant to a Regulatory Agreement dated as of the date hereof, between the Borrower [hereinafter, the existing Borrower if no transfer of title is part of the transaction, or the new Borrower, if such a transfer does take place] and the Agency (the “Regulatory Agreement”); and

WHEREAS, the dividends payable to the Borrower shall be limited pursuant to the terms and provisions of said Regulatory Agreement.

NOW THEREFORE, the Secretary, the Agency and the Borrower hereby agree to enter into this Agreement to reflect the continuation of the interest reduction payments for the Development from and after the conversion of the federally-insured Section 236 mortgage to an agreement for an uninsured Section 236 mortgage held by the Agency and further agree as follows:

- 1. The Agency has agreed to purchase the 236 Mortgage Note in the original amount of \$_____. The loan amortization terms of the 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 terms is defined below).**
- 2. The Agency represents that the Development consists of ____ dwelling units comprised of ____ zero-bedroom units, ____ one-bedroom units, and ____ two-bedroom units [insert greater number of bedroom units, if appropriate] of which ____% 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 contract as set forth in Exhibit A attached hereto. The Secretary shall pay the interest reduction payments on a monthly basis in equal monthly**

installments based upon such annual amounts in Exhibit A provided, however, that the interest reduction payments shall not 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.

4. The term of this Agreement for Interest Reduction Payments shall begin on the date on which the Agency purchases the 236 Loan from the prior mortgagee. The initial interest reduction payments shall be due on the first day of the first month following the date on which the Agency purchases the 236 Mortgage Note. All interest reduction payments made hereunder shall be made upon receipt of a billing containing representations of facts by the Agency on a form prescribed by the Secretary. If the Secretary finds that an interest reduction payment or payments made to the Agency have been excessive because of inaccurate facts contained in the Agency's billing or other cause, the Agency shall be obligated immediately to refund the amount that was overpaid. Adjustments in the interest reduction payments 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 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 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 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 Agency, 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 made or approved by the Agency and shall be submitted to HUD for its approval, as further provided below in this paragraph (b). The Agency shall make or approve rental revisions in conformity with applicable Federal statutes, HUD regulations and the Regulatory Agreement, 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 approval of rent revisions made or approved by the Agency. Notice of approval or disapproval of any revision shall be given within thirty days of the date of receipt of the Agency's notification to the Secretary of the revision. The Agency 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 include 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 the Agency.

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 dwq.), 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.**
- (g) On forms approved by the Agency, 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 Agency, 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. The Agency shall not 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 the Agency and is entitled to participation under Section 236(b) 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 Agency covenants and agrees that without the prior written approval of the Secretary it will not assign the 236 Mortgage or the 236 Mortgage Note; except that, in connection with any new financing, the Agency may assign or pledge the 236 Mortgage, and/or the 236 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 Mortgage and**

the 236 Mortgage Note to a trustee, so long as the Agency shall remain the record holder of the 236 Mortgage.

- 7. (a) The Secretary shall terminate payments under this Agreement if**
- (i) the 236 Mortgage is extinguished;**
 - (ii) the Project ceases to be owned by an eligible owner under Section 236;**
 - (iii) the Agency is no longer mortgagee of record and the Secretary has not approved the Agency's successor as mortgagee of record; or,**
 - (iv) the Agency 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 interest reduction payments at any time under this Agreement if either of the following events occurs:**
- (i) Upon default by the Borrower or the Agency under any provision of this Agreement; or**
 - (ii) If an action of foreclosure is instituted by the Agency, except that in the event the Agency:**
 - (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, providing for continued eligibility of the Development for receiving the benefits of Section 236;**
- (c) 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 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 Mortgage Note is paid in full, or (b) at the option of, and upon written notice from, the Secretary after the expiration of one year from the date of the termination of payments in accordance with Paragraph 7 hereof, unless such payments have been reinstated in accordance with Paragraph 8.**
- 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 Agency or by the Borrower without prior written approval of the Secretary. In the event of any assignment not permitted hereunder, the Interest Reduction Payments shall terminate unless the Secretary agrees in writing to reinstate them.**
- 11. The Borrower is an eligible mortgagor pursuant to Section 236(b) of the National Housing Act and is entitled to a semiannual distribution as limited by the terms of a Regulatory Agreement dated as of the date hereof between the Borrower and the Agency.**
- 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 Agency: _____ Agency of Housing
Attention: _____, Executive Director
Address
City, State & Zip

If to Borrower: 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 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.

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 _____ and the Secretary of Housing and Urban Development.

MORTGAGEE:

By: _____
Its: _____

HUD SIGNATURE PAGE

**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 236 Loan, including
Amount and Term of Interest Reduction Payments]**