

Lender's Certificate

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

OMB Approval No. 2502-0598
(Exp. 04/30/2014)

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Project Name:

HUD Project No.:

Lender:

Borrower:

Processed Under: ☐ **Multifamily Accelerated Processing (MAP)**

☐ **Traditional Application Processing (TAP)**

☐ **Other**

To the U.S. Department of Housing and Urban Development (HUD):

GENERAL

1. The entity executing this **Lender's Certificate** ("**Certificate**") is _____, Lender (also referred to as mortgagee in Program Obligations) under that certain Security Instrument, _____ (also referred to as a mortgage in Program Obligations) dated _____, 20____, executed by _____, Borrower (also referred to as mortgagor in Program Obligations), securing a Note evidencing a Loan by Lender to Borrower in the principal sum of \$_____ that Lender has agreed to make on condition that it be insured by HUD pursuant to the Contract of Insurance comprised of Section _____ of the National Housing Act, as amended, and its implementing regulations. Lender understands that the Security Instrument, the Note, this Certificate, and any documents submitted with this Certificate are considered to be consistent with and shall be interpreted consistently with HUD's regulations as they pertain to the Contract of Insurance. Lender agrees to be bound by Program Obligations. (The definition of any capitalized term or word used herein can be found in this Certificate, and if not found in this Certificate, then found in the Note, the Regulatory Agreement between Borrower and HUD, and/or the Security Instrument, except that the term "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Certificate rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site)).

2. Lender submits separately a check to HUD for \$_____ covering the first mortgage insurance premium, together with the other items called for in the Firm Commitment dated _____, 20____, and in any extensions or amendments thereof. Lender certifies that all conditions of the Firm Commitment have been fulfilled to date, including any work done prior to endorsement of the Note that has been approved by HUD in writing, and all HUD imposed conditions have been met with respect to such work.

3. Lender agrees to furnish a copy of this Certificate to any successors and assigns of Lender and agrees that, in any contract for sale or assignment of the Security Instrument to a successor Lender (for purposes of servicing the Loan only), the successor Lender shall agree to be bound by the provisions of this Certificate that relate to the servicing of the Loan.

CONSTRUCTION LOANS

4. For all cases involving construction advances, the agreement providing for the advancement of the Loan proceeds is set forth in a Building Loan Agreement dated _____, 20____ between Lender and Borrower, a duplicate original and two copies of which are submitted separately.

5. Lender submits separately a certified survey of the Mortgaged Property, if required by HUD, and a title policy for the Project as specified in Program Obligations together with evidence that the Mortgaged Property is properly zoned.

6. Applications for insurance of advances of Loan proceeds shall be submitted to HUD, if and as required, under Program Obligations at least five days prior to the date Lender desires to disburse such advance. Applications for advances shall be accompanied by all documentation required by HUD. Lender agrees that the amount approved for disbursement by HUD shall not be released unless the current endorsement to the title policy, insuring Lender and HUD, evidences that (a) the Security Instrument is prior to all liens and encumbrances that may have attached or defects that may have arisen subsequent to the recording of the Security Instrument, except such liens or other matters approved in writing by HUD, including tax liens not delinquent and (b) the Security Instrument is prior to all mechanics' and materialman's liens filed of record subsequent to the recording of the Security Instrument, regardless of whether such liens attached prior to the recording date.

FEES AND CHARGES

7. The charges enumerated on a separate schedule prepared by Lender are attached hereto as Exhibit _____. The charges have been (i) collected in cash or will be so collected not later than the date of initial endorsement; (ii) will be disbursed from Loan proceeds; or (iii) will be collected or disbursed as otherwise set forth in Program Obligations.

ESCROWS, DEPOSITS, UCC AND DATA

8. Borrower has deposited with Lender, subject to the control and order of Lender in a depository satisfactory to Lender in accordance with Program Obligations, a working capital deposit in the form of (*cash or letter of credit*) _____ in the sum of \$_____ that Lender agrees to maintain and control. Funds in this deposit may be released or allocated for the purposes indicated

in the Escrow Agreement for Working Capital (dated _____, 20__, and executed by _____) and for no other purpose unless Lender obtains the prior written approval of HUD.

9. (a) Borrower has deposited with Lender, subject to the control and order of Lender in a depository satisfactory to Lender in accordance with Program Obligations, the following sums required by the Firm Commitment: *(Check and complete applicable paragraphs.)*

☐ (i) Cash required, if any, over the proceeds of the Loan, for costs to complete the project, in the amount of \$_____. Lender understands that these funds must be used before any Loan proceeds are advanced, except when, with the prior written approval of HUD, in accordance with Program Obligations, the funds shall be disbursed on the following basis: _____.

☐ (ii) Cash required, if any, over the proceeds of the Loan, for costs to complete the project, in the amount of \$_____ shall be represented by a grant/loan from _____, a nongovernmental source. Lender understands that these funds must be used before any proceeds from the Loan are advanced.

☐ (iii) The amount required, if any, over the proceeds of the Loan, for costs to complete the project, is \$_____, and shall be represented by a grant/loan from _____, a governmental source.

(b)(i) The amount set forth in Section 9(a) is in the form of _____ (*cash or letter of credit*). Lender understands that these funds must be used before any proceeds from the Loan are advanced, except when, with the prior written approval of HUD, the funds shall be disbursed on the following basis _____; or

(ii) In addition to the amount set forth in Section 9(a), Lender has collected an escrow from grant or loan proceeds provided by _____ in the amount of \$_____. This escrow is in the form of _____ (*cash or letter of credit*). The agreement providing for the advancement of grant/loan proceeds executed among Lender, HUD, and the Governmental Authority is dated _____, 20__ and is executed by _____.

☐ (c) Escrow deposit guaranteeing payment for off-site facilities in the amount of \$_____. This deposit is in the form of _____ (*cash or letter of credit*). The Escrow Agreement for Off-Site Facilities is dated _____, 20__, and is executed by _____.

☐ (d) Interest rate differential escrow in the amount of \$_____ that represents the dollar difference between the interest rate in effect after cut-off for cost certification and the permanent interest rate upon which the debt service on the Loan is calculated. The escrow is in the form of _____ (*cash or letter of credit*), dated _____, 20__, and is executed by _____.

- ☐ (e) List other escrows, e.g., demolition.

10. Lender submits separately: (*Check applicable paragraphs.*)

- ☐ (a) Off-site bond in the amount of \$_____.
- ☐ (b) Evidence to the effect that required off-site utilities and streets shall be provided by the public authorities having jurisdiction or by public utility companies serving the Project.

11. Lender submits separately a duplicate copy of the following assurance for the completion of the project: (*Check applicable paragraph.*)

- ☐ (a) Performance bond and payment bond of a HUD-approved surety in the penal sum of \$_____ for each bond.
- ☐ (b) Assurance of Completion Agreement reflecting the deposit with _____ of a fund in the amount of \$_____ in the form of _____ (*cash or letter of credit*) which fund has been deposited and is subject to Lender's order and shall be disbursed with the written approval of HUD in the manner and for the purposes provided for in said agreement.
- ☐ (c) Personal undertaking in the amount of \$_____. It is understood that HUD reserves the right to approve the acceptability of the Principals in the personal undertaking.

12. Submitted separately is the sponsor's guarantee to meet an initial operating deficit (dated _____, 20__, and executed by _____) as required by the Firm Commitment: (*if required, check and complete the following paragraph.*)

- ☐ Escrow Agreement for Operating Deficit evidencing a (*cash, or letter of credit*) _____ deposit in the amount of \$_____, dated _____, 20__, and executed by _____.

13. (a) Lender submits separately the appropriate security agreement(s) executed by Borrower covering all of the Mortgaged Property that, under applicable law, may be subject to a security interest under the Uniform Commercial Code ("**UCC**"), whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof ("**UCC Collateral**").

(b) Lender submits separately a UCC search conducted by _____ (must be the title insurance company, a reputable UCC search firm, counsel to Borrower or another licensed attorney) dated, _____ (no earlier than 30 days before this Certificate) of the appropriate UCC filing office(s)

indicating that no UCC filings have been made against Borrower, the Project or the Project Assets, unless approved in writing by HUD.

14. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Loan or at such later date as may be agreed to by HUD in writing, Lender shall require a monthly deposit with Lender or in a depository satisfactory to Lender in accordance with Program Obligations of the sum required by the HUD Regulatory Agreement constituting a Reserve for Replacement, which account shall be subject to Lender's order and from which account withdrawals may be made only upon the receipt of HUD's written permission. Lender acknowledges that the amount of the monthly deposit may be increased or decreased from time to time at the direction of HUD in accordance with Program Obligations. Such funds shall at all times remain under the control of Lender or Lender's designee and shall be held in accounts insured or guaranteed by a federal agency and in accordance with Program Obligations. Notice of any failure to receive the required deposits shall be forwarded to HUD within 60 days of the date such deposits are due.

15. In cases where a Residual Receipts account is required with respect to the Loan under the Regulatory Agreement, Lender shall deposit or place in a depository satisfactory to Lender, in accordance with Program Obligations, all funds received from Borrower for deposit therein. The Residual Receipts account shall be subject to the control of Lender, and withdrawals may be made only with the prior written approval of HUD. These funds shall be held in an interest-bearing account which shall be insured or guaranteed by a federal agency and in accordance with Program Obligations. Lender agrees to notify HUD in writing of any non-compliance with Program Obligations with respect to such Residual Receipts account immediately when known to Lender.

16. Lender agrees to: (a) obtain the prior written approval and/or consent of HUD in those instances required in the Security Instrument; (b) furnish HUD with all pleadings, reports and data in those instances required in the Security Instrument, including but not limited to the physical inspection report of the Mortgaged Property, except for physical inspections performed by HUD or on behalf of HUD, and financial reporting data; and (c) furnish HUD with a copy of any application by Lender for the appointment of a receiver pursuant to the Security Instrument and all related pleadings.

CERTIFICATIONS, AGREEMENTS, AND ACKNOWLEDGEMENTS

17. Lender certifies that if Borrower defaults in its obligations to (i) complete construction of the Improvements, or (ii) to complete substantial rehabilitation to the Improvements on the Mortgaged Property, Lender has the right, transferable to HUD, to (i) complete the Improvements as provided in the Building Loan Agreement, or (ii) to complete any substantial rehabilitation to the Improvements. In the event completion of the Improvements or completion of substantial rehabilitation to the Improvements is undertaken by either Lender or by HUD, the undisbursed balance of the Loan may be advanced for this purpose and to discharge any valid liens or claims against the Mortgaged Property. Such advances shall be considered as made for the account of Borrower and shall be covered by the terms of the Security Instrument and the Contract of Insurance.

18. So long as the Contractor or Borrower, or, upon default, the Contractor's surety or any other person authorized to act on behalf of or in substitution for any of them shall be willing and able to complete construction or substantial rehabilitation of the Improvements, Lender, upon HUD's request,

shall advance up to the undisbursed balance of the Loan and shall authorize release of any grant or loan proceeds or other funds available under Section 9 above for that purpose. The term **“Contractor”** as used above, means any person, corporation or other entity contracting directly with Borrower for the construction of all or any portion of the Improvements.

19. [INTENTIONALLY OMITTED]

20. Lender certifies and agrees that no financing charges other than charges disclosed herein have been or shall be made. Until final endorsement for insurance by HUD, all funds collected pursuant to items (c), (d), or (e) below and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of Borrower and shall be subject to HUD's control and direction in the event of a claim under the Contract of Insurance.

Lender further certifies and agrees that: (*Check and complete the following applicable subparagraphs*)

- ☐ (a) Lender has not imposed and shall not impose a financing charge of any kind directly or indirectly, other than the initial service charge.
- ☐ (b) In addition to the initial service charge, Lender has collected in the form of (*cash or letter of credit*) _____ in the amount of \$_____ as a discount or financing charge for the construction loan. Also, an amount of \$_____ has been collected in the form of (*cash or letter of credit*) _____ to cover construction Loan extension fees. In an attached addendum, Lender has identified the time frames in which the extension fees must be paid.
- ☐ (c) Lender intends to retain the permanent loan and has collected a permanent placement fee of \$_____. In addition to the initial service charge and permanent placement fee, Lender has collected in the form of (*cash or letter of credit*) _____ the amount of \$_____ as a discount or financing charge for the permanent loan.
- ☐ (d) Lender has a firm commitment from _____ to purchase the Loan when fully disbursed and fully insured at a financing charge or discount of _____ percent, and Lender has collected in the form of (*cash or letter of credit*) _____ the amount of \$_____ to cover said charge or discount.
- ☐ (e) This Project shall be financed with (*tax-exempt or taxable*) _____ bonds. Therefore, Lender has collected in the form of (*cash or letter of credit*) _____ the amount of \$_____ and has distributed or shall distribute from Loan proceeds the amount of \$_____ to cover the costs of issuance. A statement is attached as Exhibit ____ itemizing these costs with an explanation of the necessity of each cost and the source of the funds.
- ☐ (f) The Loan is a unitary loan under which Lender intends to retain the Loan for both the construction and permanent loan terms. Lender has collected a unitary loan placement fee of \$_____. In addition to the initial service charge and the unitary loan placement fee, Lender

has collected in the form of (cash or letter of credit) _____ the amount of \$_____ as a discount or financing charge for the unitary loan.

☐ (g) Additional financing charges or discount of \$_____ are to be collected under Exhibit _____ attached hereto for the purpose shown in (b), (c), (d), (e), or (f). (*Strike inapplicable letters.*) The arrangement for the collection of additional financing charges or discount must follow Program Obligations and use forms prescribed by HUD.

☐ (h) The Loan to be made to Borrower shall be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent participation certificates pursuant to a participation agreement between Lender and the investor, with respect to which agreement Lender has agreed to repay the investor at a stated interest rate according to a fixed payment schedule.

☐ (i) The Loan to be made to Borrower shall be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent fully modified, pass-through, mortgage-backed securities, guaranteed as to principal and interest by Ginnie Mae.

☐ (j) The Note rate includes a servicing fee payable to Lender monthly during the life of the Loan ("**Servicing Fees**"). In addition, the Lender may impose reasonable and customary administrative fees and charges (including but not limited to, reimbursements for out-of-pocket expenses) for handling and investing the cash held in the Reserve for Replacement, the Residual Receipts account, if applicable, and any other interest-bearing escrows related to the Project and for processing, reviewing and approving other matters ("**Administrative Fees**"), as more fully set forth in Program Obligations. Borrower is entitled to earn interest on the Reserve for Replacement and Residual Receipts accounts, as more fully set forth in Program Obligations. Lender shall not invest escrow account monies in interest-bearing accounts unless interest earned is added to and included in the relevant escrow account, and unless the net income is paid or credited to the account of Borrower. Net income is defined as the earnings remaining after the following expenses are deducted: (i) any Servicing Fees, and (ii) any Administrative Fees.

21. Lender certifies and agrees that, except for (a) Loan advances made in accordance with Program Obligations, (b) notes executed pursuant to Section (20)(g) above, or (c) Lender advances made pursuant to the Security Instrument, Lender does not have outstanding and shall not make loans or advances to Borrower, any of the sponsors, the general contractor, or the architect for any purpose connected directly or indirectly with this Project without prior written approval of HUD and that Lender has not made or offered, and shall not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person to make loans or advances that Lender would be prohibited from making under the terms of this paragraph.

22. Lender certifies that Lender has not made and shall not make payment of any kickback or fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this Loan transaction, including the purchase or sale of the Mortgaged Property, except for compensation paid or to be paid, if any, for the actual performance of services and approved by HUD.

23. Lender certifies that in any case where a letter of credit has been accepted instead of cash, (a) such unconditional and irrevocable letter of credit is in accordance with Program Obligations and has been issued by (1) another banking institution; or (2) Lender, subject to receiving HUD's written permission prior to initial endorsement; and (b) Lender has not made and shall not make any inducements as described in Section 21 above to procure issuance of letters of credit. Lender also agrees that if demand under the letter of credit is not immediately met, Lender shall forthwith provide cash equivalent to the undrawn balance thereunder without recourse to Borrower and without regard to Lender's ability to recover such amount from any other entity or person who securitized the letter of credit.

24. (a) For Loans funded with the proceeds of state or local bonds, Ginnie Mae mortgage-backed securities, other bond obligations as defined by HUD, any of which contain a prepayment lock-out and/or prepayment premium provision, Lender agrees, in the event of a default during the term of the prepayment lock-out and/or prepayment premium (i.e., prior to the date on which prepayments may be made with a prepayment premium of one percent or less), to follow those procedures set forth in Program Obligations.

(b) After commencement of amortization, Lender agrees to notify HUD of the delinquency when a payment is not received by the fifteenth (15th) day of the month in which it is due.

25. Lender certifies to HUD that the following are the only identities of interest, as defined in Program Obligations, between Lender and Borrower, any Principal of Borrower, Contractor, any subcontractor, or the seller of the land:

Lender agrees that it shall disclose to HUD any future identities of interest, as defined in Program Obligations, during the construction period or prior to final endorsement.

26. Lender certifies to HUD that no identity of interest, as defined in Program Obligations, exists between Lender and the counsel to Borrower and that no portion of the amounts included in the Loan for Borrower's attorneys has been paid to Lender or its employees.

27. Lender certifies to HUD that all funds, escrows, and deposits specified in this Certificate and any and all other funds held by or at the order of Lender in connection with the Loan transaction covered by this Certificate shall be funds held pursuant to Program Obligations and any applicable escrow agreements.

28. For any case involving materials stored off-site, Lender agrees to:

(a) File Financing Statements (UCC-1), in the proper jurisdiction with the proper office;

(b) Make whatever additional filings are necessary to maintain a first lien on the materials until they are incorporated into the Improvements;

(c) Release the Financing Statement filings as appropriate;

(d) Unconditionally certify by letter to HUD with each disbursement request that the Security Instrument(s) is (are) a “first lien” on such building materials covered by the Instrument(s). This certification shall be supported by an opinion from Lender’s legal counsel;

(e) In the event of default under the Security Instrument, either assign Lender’s security interest to HUD or acquire title through foreclosure to the materials intended for use or incorporation into the building(s) and convey title to HUD; and

(f) Require a performance bond and payment bond each in an amount equal to 100 percent of the construction contract be used to satisfy the assurance of completion requirements.

29. Lender certifies that all HUD form closing documents submitted to HUD in connection with this transaction (with the exception of the Opinion by Counsel to Borrower and the accompanying Certification by Borrower) conform to those documents Lender obtained from HUD and such documents have not been changed or modified in any manner except as suitably identified and approved by HUD as evidenced by the attached memorandum. It is understood that changes and modifications do not include filling in blanks, attaching exhibits or riders, deleting inapplicable provisions or making changes authorized by Program Obligations. Lender further certifies that all closing documents submitted to and accepted by HUD at closing in connection with this transaction are listed in the attached memorandum.

30. Lender acknowledges, based upon its reasonable due diligence, (a) that as of the date hereof, the licenses and permits in effect are sufficient to allow the construction of the Project to proceed to completion in the ordinary course, and (b) that it will confirm in writing before final endorsement of the Note that Borrower has obtained the necessary governmental certificates, permits, licenses, qualifications and approvals of Governmental Authorities, that would customarily be obtained at a later date, to own and operate the Mortgaged Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the Firm Commitment. Lender also acknowledges that appropriate actions have been taken by and necessary filings have been made with those Governmental Authorities all as disclosed by Borrower in Exhibit _____, attached hereto.

31. [INTENTIONALLY OMITTED]

32. Lender certifies that it has made reasonable inquiry and has discovered no liens or encumbrances against the Mortgaged Property that are not reflected as exceptions to coverage in the title policy.

33. Lender agrees (a) to notify HUD in writing immediately upon learning of any Violation of the Regulatory Agreement by Borrower, (b) that Violations under the terms of the Regulatory Agreement may only be treated as a default under the Security Instrument where HUD requests Lender to do so and (c) following a Declaration of Default by HUD under the Regulatory Agreement and upon the request of HUD, Lender, at its option, may declare the entire Indebtedness to be due and payable.

34. Lender agrees to promptly review any Borrower’s request to transfer the Project and not unreasonably withhold Lender’s approval of the transfer. If HUD approves the transfer, Lender

agrees to execute a release and assumption agreement or a security instrument modification agreement incorporating any new Regulatory Agreement in the existing Security Instrument. It is understood that Lender's consent to the transfer shall in no way prejudice Lender's rights under the Contract of Insurance with HUD.

35. Lender agrees (a) to require Borrower to keep the Mortgaged Property insured at all times against such hazards as Lender and HUD may from time to time require and as set forth in the Security Instrument, and (b) to notify HUD of any known payments made by an insurer. Lender certifies that all insurance policies on the Project comply with the terms of the Security Instrument, and where applicable, that those insurance policies have attached thereto a standard mortgagee clause making the loss payable to Lender, as its interest may appear, and where applicable, the Lender is shown as an additional insured. If Lender determined that any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, Lender certifies that it has collected a receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____.

36. Lender certifies that the Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

37. If the Security Instrument is assigned to HUD under the Contract of Insurance, HUD shall not be bound by the requirements of this Certificate.

38. The term "**Financing Charge(s)**," as used herein shall mean any charge, direct or indirect, for supplying the Loan to Borrower or servicing the Loan for HUD, Ginnie Mae, a third party investor or Lender's own account.

39. Lender agrees that, if there is a sale or transfer of all or a partial interest in the Note (other than a sale or transfer of a participation or other beneficial interest, e.g., a transfer of any interest of a Ginnie Mae MBS Security, or the creation of a security interest) or a change of the loan servicer, Lender shall be responsible for ensuring that Borrower is given Notice of the sale, transfer and/or change.

40. Lender certifies that the security agreement and the Uniform Commercial Code Financing Statement filings, along with any other documents required by State law, establish a perfected first lien security interest under the Uniform Commercial Code in the UCC Collateral in favor of Lender. Lender acknowledges that it must maintain a perfected lien position in the UCC Collateral for the life of the Loan.

Lender hereby certifies that the statements and representations of fact contained in this instrument and all documents submitted and executed by Lender in connection with this transaction are, to the best of Lender's knowledge, true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Date

Lender

	By

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.