

# Mortgagee's Certificate

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

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(Execute original plus two copies)

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Project Name

Project Number

## To the Federal Housing Commissioner

We hand you herewith a check for \$ \_\_\_\_\_ covering the first mortgage insurance premium, together with the other items called for in your Commitment dated \_\_\_\_\_, 20 \_\_\_\_, and in any extensions or amendments thereof, and we certify that all conditions thereof have been fulfilled to date.

1. We are the Mortgagee under \_\_\_\_\_ (hereinafter referred to as the Mortgage) dated \_\_\_\_\_, 20 \_\_\_\_, executed by \_\_\_\_\_ (hereinafter referred to as the Mortgagor), securing a credit instrument evidencing a loan by us as Mortgagee to the Mortgagor in the principal sum of \$ \_\_\_\_\_ which we have agreed to make on condition that it be insured by you pursuant to your Regulations for Section \_\_\_\_\_ of the National Housing Act, effective as of the date of your Commitment.

2. The agreement providing for the advancement of said loan is embodied in a Building Loan Agreement dated \_\_\_\_\_, 20 \_\_\_\_, three copies of which are submitted herewith.

3. There is submitted herewith a certified Survey of the property and title evidence in form specified in the Regulations together with evidence that the mortgaged premises are not zoned or restricted so as to prevent the construction of the improvements.

4. All applications for insurance of an advance of mortgage proceeds will be submitted to you at least five days prior to the date we wish to disburse such advance. Such application will be accompanied by forms as required by you. We agree that the amount approved for disbursement by HUD will not be released unless the current extension of the title policy evidences clear title.

5. The charges enumerated below have been collected in cash or will be so collected not later than the date of initial endorsement:

- (a) FHA application and commitment fee \$ \_\_\_\_\_
- (b) Initial service charge, if any \$ \_\_\_\_\_  
(not exceeding 2%)
- (c) Title and recording expense \$ \_\_\_\_\_  
(including cost of surveys, recording fees, mortgage and stamp taxes, etc. associated with initial endorsement)
- (d) FHA Inspection Fee \$ \_\_\_\_\_
- (e) Ground rent during construction \$ \_\_\_\_\_  
(may collect only one year's rent at initial endorsements)

6. (a) The undersigned has received from the Mortgagor a working capital deposit in the form of (Cash) – (Letter of Credit) \_\_\_\_\_ in the sum of \$ \_\_\_\_\_.

While under our control, it is understood that funds in this deposit may be released or allocated for the purposes indicated below and for no other purpose unless approved by you:

(1) The cost of equipping and renting the project after final completion of construction of the project (Note: Not applicable to Section 232 profit-motivated nursing home projects);

(2) For accruals during the course of construction, for interest, mortgage insurance premiums, taxes, ground rents, property insurance premiums and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted; and also for allocation to such accruals after completion of construction if the income from the project, at that time, is insufficient to meet such accruals.

Any balance of said funds remaining in our hands one year after the construction completion date will be returned to the Mortgagor, provided the mortgage is not then in default, unless you have directed other disposition. (**Note:** Paragraph (6)(a) is not applicable to nonprofit mortgagor projects under Sections 221, 231, 232, or 242).

We agree that no disbursements will be made from the deposit without your prior written approval, for projects involving Low-Income Housing Tax Credits, if the mortgagor agrees for any balance of said funds to be transferred to the reserve for replacement or any other restricted account specified by you.

6. (b) We certify that the allowance to make the project operational included in the HUD estimate of replacement cost shall be disbursed under the Building Loan Agreement for the same purposes as set forth in paragraph (6)(a). We agree that no disbursement up to and including final endorsement will be made from such allowance without your prior written approval. At final endorsement, any undrawn funds shall be transferred to the Reserve Fund for Replacements. Any remaining undrawn funds shall be applied to the reduction of the insured mortgage at your direction. (**Note:** Paragraph (6)(b) is applicable only to nonprofit mortgagors under Sections 221, 231, 232 or 242.)

7. The Mortgagor has deposited with us or subject to our order in a depository satisfactory to us, the following sums required by your Commitment: (Check applicable paragraphs.)

Cash required, if any, over the proceeds of the Mortgage, to complete the project in the amount of \$ \_\_\_\_\_. Of this amount, \$ \_\_\_\_\_ will be represented by a grant/loan from a nongovernment source; and \$ \_\_\_\_\_ will be represented from a grant/loan from a government source. We

understand that these funds must be used before any mortgage proceeds are advanced, except for the grant/loan funds from a government source, which, with your prior written approval, will be disbursed on the following prorata basis \_\_\_\_\_.

Since the grant/loan proceeds from a government source will not be funded upfront at the time of initial closing, and escrow in the amount of \$ \_\_\_\_\_, which represents 10 percent of the grant/ loan proceeds being provided from this source, this escrow is in the form of \_\_\_\_\_.

The agreement providing for the advancement of grant/loan proceeds executed / to be executed between us, HUD, and the government agency or instrumentality is submitted herewith.

Cash required, if any, over the proceeds of the Mortgage, to complete the project, which will be used before any mortgage proceeds are advanced, in the amount of \$ \_\_\_\_\_.

Escrow deposit guaranteeing payment for off site utilities and streets in the amount of \$ \_\_\_\_\_. This deposit is in the form of (Cash)-(Letter of Credit) -(U.S) bearer bonds with a market value of 15 percent of the required escrow. \_\_\_\_\_.

Interest rate differential escrow in the amount of \$ \_\_\_\_\_ which represents the dollar difference between the interest rate in effect after cut-off for cost certification and the permanent interest rate upon which the mortgage debt service is calculated. The escrow is in the form of (Cash) - (Letter of Credit) \_\_\_\_\_.

We shall require that the Mortgagor establish and maintain with us, or in a depository satisfactory to us, a sinking fund in accordance with the Regulatory Agreement executed by the Mortgagor and Commissioner for those Section 232 cases where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass through of principal and interest on the mortgage. We agree:

(a) To require the mortgagor to direct and empower the payor of the capital reimbursement funds into a trust account designated by us. Also, the trust instrument shall be irrevocable unless approved by us and shall provide that the trustee shall immediately segregate from each provider payment an amount representing the excess depreciation component of the capital reimbursement per a schedule prepared by us and pay it into the sinking fund held by us.

(b) To establish and maintain the sinking fund in an interest bearing bank whose capital and surplus are at least \$50,000,000 and which is federally insured.

(c) To furnish HUD quarterly financial reports on the investments, accounting on balances, deposits and withdrawals.

(d) To monitor the sinking fund and examine the external auditor's fund balance report and notify HUD whether it complies with the contractual agreement between the mortgagor and us.

(e) To promptly notify HUD in the event of any breach of the regulatory agreement executed between us and the mortgagor, and further agree to seek specific performance or other injunctive relief a appropriate, promptly upon learning of any violation under this regulatory agreement.

(f) The sinking fund constitutes "funds held by us on behalf of the mortgagor" is held under the contractor of mortgage insurance "for and on behalf of the mortgagor," and as such, is unrelated to the bond transaction.

(g) In the event of a claim for insurance benefits, the amount of benefits is subject to surcharge if funds have been disbursed from the sinking fund in a manner or for purposes not in compliance with the regulatory agreement between us and the mortgagor. No such surcharge shall be made on the basis of the mortgagor's failure to make required deposits into the sinking fund.

8. We hand you herewith: (Check applicable paragraphs.)

Off site bond in the amount of \$ \_\_\_\_\_.

Evidence to the effect that required off site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the project.

9. We hand you herewith a duplicate copy of the following assurance for the completion of the project: (Check applicable paragraph.)

Performance bond and payment bond of an approved Surety in the penal sum of \$ \_\_\_\_\_ for each bond.

Assurance of Completion Agreement reflecting the deposit with \_\_\_\_\_ of a fund in the amount of \$ \_\_\_\_\_ in the form of (Cash)-(Letter of Credit) \_\_\_\_\_ which fund has been deposited and is subject to our order and will be disbursed with your written approval in the manner and for the purposes provided for in said agreement.

Personal undertaking in the amount of \$ \_\_\_\_\_. It is understood that HUD reserves the right to decide the acceptability of the principals in the personal undertaking.

10. We hand you herewith the Sponsor's guarantee to meet an initial operating deficit as required by your Commitment: (If required, check and complete the applicable paragraph.)

Agreement of Sponsors to Furnish Additional Funds in the amount of \$ \_\_\_\_\_, and Bond Guaranteeing Sponsor's Performance.

Escrow Agreement evidencing a deposit of \$ \_\_\_\_\_ U. S. bearer bonds, with a market value of at least 115 percent of required escrow amount, cash, or a Letter of Credit in the amount of \$ \_\_\_\_\_.

11. We hand you herewith the Sponsor's guarantee to meet the 12-month debt services reserve escrow required by your Commitment: (Applicable only to Section 232 projects involving independent living units. If required, check and complete the applicable paragraph.)

We have accepted a personal note from the mortgagor for \$ \_\_\_\_\_ which we will hold until final completion and Bond Guaranteeing Sponsor's Performance. The note will then be converted to cash or a letter of credit. We agree that HUD will treat the note as a cash item and reduce the insurance benefits by the amount of the note if there is a mortgage default and we make a claim for insurance benefits before the note is converted.

A escrow deposit in the amount of \$ \_\_\_\_\_. This deposit is in the form of (Cash) - (Letter of Credit) \_\_\_\_\_.

12. If, upon completion of construction, there is any property on the premises which is not, under the laws of the jurisdiction, clearly subject to the lien of the real estate mortgage, we will require from the mortgagor a financial statement and security agreement per UCC or a chattel

mortgage or other appropriate security instrument covering such property. If the law of the jurisdiction is such that no additional security instrument is necessary to cover such property, we will submit our attorney's opinion to that effect.

13. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by you in writing, we shall require a monthly deposit with us or in a depository satisfactory to us of one-twelfth (1/12) of the sum set forth in your Commitment for Insurance constituting a "Reserve Fund for Replacements" which fund will be subject to our order and from which fund withdrawals may be made only upon the receipt of your written permission. These funds will be deposited with us by the Mortgagor in cash or in the form of obligations of or guaranteed as to principal by the United States of America. We will, upon appropriate request by the Mortgagor, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to the Commissioner within 60 days.

14. We understand that nothing herein contained or contained in the said credit instrument or Mortgage securing the same, or in the other contract documents, is to be deemed a waiver of any of the provisions of the aforesaid HUD Regulations, but all of said instruments are intended to be subject thereto. We hereby agree to conform with and abide by such HUD Regulations in all matters with respect to the aforesaid loan and the project in so far as they are applicable to us. We agree to furnish you with a complete report of the results of our annual inspection of the mortgaged premises required by the said Regulations.

15. We certify that, if the Mortgagor defaults in its obligation to complete the construction of the improvements on the mortgaged premises, we have the right to complete the project, which right is transferable to the Commissioner, and for that purpose the undisbursed balance of the Mortgage will be available in the event the completion of the project is undertaken by either of us. Such undisbursed balance may be used to discharge any and all valid liens or claims against the project and all such advances will be considered as made for the account of the Mortgagor and will be covered by the terms of the Mortgage. It is understood that all mortgage proceeds funds so advanced for the completion and preservation of the property will be covered by the Contract of Mortgage Insurance.

16. So long as the Contractor, and/or Mortgagor, or upon default, the Surety or any other person acting on behalf of, or in substitution for them, shall be ready, able and willing to complete the Contract for the construction of the project, we will, upon notice from you, advance the undisbursed balance of the Mortgage and authorizing the release of grant loan proceeds, if any, for that purpose. The term "Contractor" shall mean all persons, firms or corporations contracting directly with the Mortgagor for the construction of all or any portion of the project.

17. We certify that all insurance policies on the project required by the terms of the insured Mortgage will have attached thereto a standard Mortgagee clause making the loss payable to the Mortgagee and the Secretary, Department of Housing and Urban Development, as their interests may appear.

18. We certify and agree that: (Check and complete the following

applicable subparagraphs (a), (b), (c), (d), (e) or (f)).

(a) We have not imposed and will not impose a financing charge of any kind directly or indirectly, other than the initial service charge in the amount of \$ \_\_\_\_\_ which is included in the mortgage proceeds.

(b) In addition to the initial service charge, we have collected in the form of (Cash)-(Letter of Credit) \_\_\_\_\_ 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) - (Letter of Credit) \_\_\_\_\_ to cover construction loan extension fees. In an addendum, we have identified the time frames in which the extension fees must be paid.

(c) We intend to retain the permanent loan and have collected a permanent placement fee of \$ \_\_\_\_\_. In addition to the initial service charge and permanent placement fee, we have collected in the form of (Cash)-(Letter of Credit) \_\_\_\_\_ the amount of \$ \_\_\_\_\_ as a discount or financing charge for the permanent loan. We also intend to collect in the form of (Cash) - (Letter of Credit) \_\_\_\_\_ an amount of \$ \_\_\_\_\_ to cover permanent loan extension fees. In an addendum, we have identified the time frames in which the extension fees must be paid.

(d) We have a firm commitment from \_\_\_\_\_ to purchase the loan when fully disbursed and fully insured at a financing charge or discount of \_\_\_\_\_ and we have collected in the form of (Cash)-(Letter of Credit) \_\_\_\_\_ the sum of \$ \_\_\_\_\_ to cover said charge or discount. The commitment also requires the collection of permanent loan extension fees in the amount of \$ \_\_\_\_\_, which will be collected in the form of (Cash) - (Letter of Credit) \_\_\_\_\_. In an addendum, we have identified the time frames in which the extension fees must be paid.

(e)(1) This project will be financed with (tax-exempt) - (taxable) \_\_\_\_\_ bonds. Therefore, we have collected in the form of (Cash) - (Letter of Credit) \_\_\_\_\_ the amount of \$ \_\_\_\_\_ to cover costs if issued. A statement is attached itemizing these costs with an explanation of the necessity of each cost. We also intend to collect in the form of (Cash) - (Letter of Credit) \_\_\_\_\_ the amount of \$ \_\_\_\_\_ to cover permanent loan extension fees. In an addendum, we have identified the time frames in which the extension fees must be paid.

(e)(2) GNMA Mortgage Backed Securities will be issued for the construction and/or permanent loan(s). We have collected a GNMA Indemnification Escrow in the form of (Cash)-(Letter of Credit) \_\_\_\_\_ in the amount of \$ \_\_\_\_\_. This escrow will be maintained for 36 months after the issuance of the GNMA security to cover certain losses and expenses which would result from a mortgage default. We understand that this fee is not cost certifiable by the mortgagor inasmuch as it will potentially be returned to the mortgagor at the end of the escrow period if the project is not in default be paid.

(f) Additional financing charges or discount of \$ \_\_\_\_\_

are to be collected under the attachment hereto for the purpose shown in (b), (c), (d), (e). (Strike inapplicable letters). The arrangement for the collection of additional financing charges or discount must follow forms and procedures prescribed by Commissioner.

No financing charges other than charges disclosed herein have been or will be made. Until final endorsement for insurance by the Commissioner, all funds collected pursuant to items (c), (d), or (e) above and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of the mortgagor and shall be subject to your control and direction in the event of claim under the contract of insurance.

19. Except for mortgage advances approved by the Commissioner or notes executed pursuant to (18) (f), we do not have outstanding and will not make loans or advances to the mortgagor, 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 the Commissioner. We have not made or offered, and will 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 which we would be prohibited from making under the terms of this paragraph.

20. We certify that we have not made and will 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 mortgage 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 you.

21. We certify that in any case where a letter of credit has been accepted instead of cash, (a) such, unconditional and irrevocable letter of credit has been issued by (1) another banking institution; (2) ourselves, subject to receiving your written permission prior to initial endorsement; (b) if demand under the letter of credit is not immediately met, we will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the mortgagor, any sponsor, the general contractor or the architect; (c) we have not made and will not make any inducements as described in Paragraph 19 above to procure issuance of letters of credit; and (d) we have made every reasonable effort to satisfy ourselves that both the mortgagor and the institution which issued the letter of credit are aware that it is entirely possible that demands will be made for cash under the terms of the letter and that no possibility exists that mortgage proceeds will be available to reimburse the issuing bank for such cash payouts.

22. For mortgages funded with the proceeds of State or local bonds which contain a lock-out and/or penalty provision, we agree, in the event of a default during the term of the prepayment lock-out and/or penalty (i.e., prior to the date on which prepayments may be made with

a penalty of one percent or less), to:

(a) request a three-month extension of the deadline prescribed by 24 CFR Section 207.258 for filing a notice of our intention to file an insurance claim and our election to assign the mortgage;

(b) assist the mortgagor in arranging a refinancing to cure the default and avert an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;

(c) report to HUD at least monthly on any progress in arranging a refinancing;

(d) otherwise cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(e) require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out and/or penalty.

23. For any case involving components stored offsite, we agree to:

(a) File UCC-1, financing statements, in the proper jurisdiction with the proper office;

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

(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 the building components covered by the instrument(s). This certification will be supported by an opinion from our legal counsel;

(e) In the event of default under the mortgage, either assign our security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD.

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

24. Whenever the terms "Mortgage," "Mortgagor," or "Mortgagee" are used herein, the same shall be deemed to include respectively: the security instrument whether the same be a Mortgage or a Deed of Trust; the Obligor of the debt secured thereby; the Obligee, or the Trustee(s) and the Beneficiary of said credit instrument. The term "financing charge(s)", as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the mortgagor. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Date	Mortgagee
Attest:	By