

**Agreement and
Certification**
Section 232

**U.S. Department of Housing
and Urban Development**
Office of Residential
Care Facilities

OMB Approval No. 2502-0605
(exp. 03/31/2018)

Public reporting burden for this collection of information is estimated to average 0.5 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

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.

This AGREEMENT AND CERTIFICATION (Agreement), is effective as of the _____ day of _____, 20____, by and among _____ (**Borrower**), whose principal address is _____, and _____ (**Lender**), whose principal address is _____, and (if applicable), _____ (**General Contractor**), whose principal address is _____, in connection with FHA Project No. _____, located in the City/County of _____, State of _____ (**Project**). (The definition of any capitalized term or word used herein can be found in this Agreement and Certification, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Security Instrument, except that the term **Program Obligations** means (1) all applicable statutes and any regulations issued by HUD 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 Agreement 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)).

Borrower has applied to Lender for a Loan for one of the following purposes [*check applicable box*] in connection with the Project:

Constructing or substantially rehabilitating a Project, the work to be performed by General Contractor, and Lender has applied to HUD for insurance of the Loan in the amount of \$_____, under Section _____ of the National Housing Act, as amended, in which case all paragraphs below shall apply;

or

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Financing or refinancing, after the completion of repairs (or satisfactory arrangements for completion of repairs), of a Project, and Lender has applied to HUD for insurance of the Loan in the amount of \$ _____, under Section _____ of the National Housing Act, as amended, in which case only Paragraphs 1, 2, and 6, below, shall apply.

HUD has issued a Firm Commitment to insure the Loan in said amount pursuant to said Section and Program Obligations issued pursuant thereto. The amount of the Loan is subject to reduction, as provided in said Act, and this Agreement and Certification is automatically amended accordingly.

In consideration of the mutual promises and undertakings contained herein, and for the purpose of inducing the Lender to make and HUD to insure said Loan, the parties acknowledge and agree as follows:

1. Prior to receipt of the final advance under the Loan, and within the time fixed by the Loan Documents, Borrower agrees, if required by Program Obligations for cost certification and the National Housing Act, as amended, to submit to HUD, (a) a fully completed and executed Mortgagor's Certificate of Actual Cost, HUD-92330-ORCF, and (b) a fully completed and executed Contractor's Certificate of Actual Cost (or Subcontractor's Certificate of Actual Cost) on HUD-92330-A-ORCF or forms prescribed by HUD; or in the case of a loan insured pursuant to Section 223(f) of the National Housing Act, as amended, a fully completed and executed Borrower's Certificate of Actual Cost, HUD-2205A-ORCF. Borrower and General Contractor understand, agree and shall ensure that each of the certificates of cost is supported by the certificate of an independent Certified Public Accountant or independent public accountant in form acceptable to HUD, if required by Program Obligations for cost certification.

2. Borrower and Lender agree that the total advances under the Loan cannot exceed the amount permitted by Section 227 of the National Housing Act, as amended, and Program Obligations. In the case of loans insured pursuant to Sections 223(a)(7) or 223(f) of the National Housing Act, as amended, Borrower and Lender understand and agree that the Firm Commitment and Loan may be reduced to comply with the provisions of said Section 227 and Program Obligations issued pursuant thereto, and Borrower and Lender further agree to execute such instruments as may be required to accomplish such reduction.

3. Borrower agrees that if it receives Loan funds in excess of that permitted under the National Housing Act, as amended, and Program Obligations, it shall pay upon demand to Lender any such excess for application to the reduction of the then-outstanding principal balance of the Loan. Lender agrees that upon its receipt of such excess the Contract of Insurance shall be reduced accordingly, and Borrower and Lender agree to execute such instruments as may be required to accomplish such reduction. Borrower further agrees that if HUD, for cost certification purposes, accepts estimates for any items, Borrower shall, at final endorsement, establish a cash escrow to pay all the "to be paid in cash items" identified in its Certificate of Actual Cost, and to pay debts to third parties who made the original disbursement for an item listed as paid on the Certificate of Actual Cost, unless documentation, satisfactory to HUD, is

93 submitted evidencing that Borrower paid these amounts after the date of its Certificate of Actual
94 Cost. Borrower understands that the items covered by this cash escrow must be paid within 45
95 days after the date of final endorsement, except for those items in dispute, involved in litigation
96 or those items that are non-critical repairs to be completed after endorsement and covered by an
97 appropriate escrow agreement. If Borrower's actual cost is less than the estimates accepted for
98 cost certification purposes, and HUD determines that this difference plus the net amount (total
99 receipts less expenses of perfecting claims) of settlement of claims against bonding companies or
100 others, would have required a reduction of the Loan. Borrower understands funds in excess of
101 the mortgage amount determined following cost certification must be placed in the Project's
102 Reserve for Replacement, or used to reduce the mortgage.
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104 4. Borrower certifies that any financial or business interests or family relationships
105 which exist between Borrower, or any of its officers, directors, stockholders, partners, managers,
106 managing members, or members (Principals) and the Architect, General Contractor,
107 subcontractors, suppliers, equipment lessors, or any of the Principals of any of the foregoing
108 entities (**Identity of Interest**) for the Project are herewith listed by name, title, address,
109 relationship and interest: (*Attach exhibit if necessary. If None, so state*).
110

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116 5. Borrower agrees to notify HUD in writing within 10 days of any change in
117 relationships covered by paragraph 4 herein which results in the creation or elimination of an
118 Identity of Interest at any time prior to final endorsement of the Note. In the event that there
119 currently exists, or there comes into being prior to final endorsement of the Note, an Identity of
120 Interest between Borrower or its Principals, and General Contractor or its Principals, Borrower's
121 Certificate of Actual Cost will be accompanied by the Contractor's Certificate of Actual Cost, in
122 the form prescribed by HUD; and, if required by HUD, similar certificates by any subcontractor,
123 supplier, or equipment lessor covered by this paragraph 5. It is agreed that the absence of such
124 notice to HUD of the creation or elimination of an Identity of Interest may be treated by HUD as
125 a representation that no Identity of Interest has been created or eliminated.
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127 6. Borrower agrees to maintain and keep adequate records of all costs incurred in
128 connection with the Project, and to make such records available for examination by HUD upon
129 request.
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131 7. If this Agreement and Certification discloses an Identity of Interest between
132 Borrower and General Contractor, Borrower shall include in the Construction Contract a
133 provision requiring General Contractor, upon completion of the Project, to submit to Borrower
134 for delivery to HUD the Contractor's Certificate of Actual Cost, in the form prescribed by HUD.
135 Borrower further agrees to include in said Construction Contract the requirement that General
136 Contractor shall maintain adequate records of all such costs, and make such records, documents,
137 contracts and accounts available for review upon request by HUD.
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139 8. Borrower agrees that it shall include in the Construction Contract, and require the
140 inclusion in all subcontracts, whether for labor, material, or equipment leases, a provision that if
141 there is, or comes into being, an Identity of Interest between Borrower and any subcontractor; or,
142 in those cases in which General Contractor is required to certify actual costs, between General
143 Contractor and any subcontractor, then, if HUD so requires, such subcontractor shall submit to
144 HUD a Certificate of Actual Cost in the form and with the audit standards prescribed by HUD,
145 including the deduction of all kickbacks, rebates, adjustments, discounts, or any other
146 arrangements in the nature thereof. For purposes of determining actual cost, no profit or general
147 overhead may be included in the subcontract unless HUD has granted advance written approval
148 of a specific dollar amount or a specific percentage.
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150 9. Borrower agrees that if there currently exists, or if there comes into being prior to
151 final endorsement of the Note, any Identity of Interest between Borrower and the Architect, or
152 between the General Contractor and the Architect, the Architect shall immediately be relieved of
153 inspection duties and the maximum Architect's fees allowable for cost certification purposes will
154 be \$_____ for design services only, and no fees will be allowed for supervision.
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156 10. If more than 50 percent of the actual cost of construction is subcontracted with
157 any one contractor or subcontractor, or more than 75 percent with three or fewer contractors or
158 subcontractors (**50-75% Rule**), HUD will not allow any expense for General Contractor's
159 general overhead.
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161 11. If there currently exists, or if there comes into being prior to final endorsement of
162 the Note, an Identity of Interest between Borrower and General Contractor, or in any other
163 circumstance required by HUD, the form of construction contract shall be cost-plus, with a
164 maximum upset price. For the purpose of determining actual cost, General Contractor's fee shall
165 not exceed \$_____, and the general overhead shall not exceed
166 \$_____. In the event that the 50-75% Rule is violated, for the purpose of
167 determining actual cost, HUD will not allow any expense for General Contractor's fee and
168 general overhead.
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170 12. Borrower and General Contractor understand that for purposes of the 50-75%
171 Rule, the terms "contractor" and "subcontractor" include material suppliers and equipment
172 lessors, and any two or more contractors or subcontractors having an Identity of Interest or
173 common ownership are considered as one contractor or subcontractor. Further, it is understood
174 that the 50-75% Rule is not applicable to manufacturers of industrialized housing, trade items
175 performed by persons on General Contractor's payroll, mobile home park programs,
176 supplemental loan programs, or rehabilitation programs other than gut rehabilitation.
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178 13. Borrower and General Contractor further understand and agree that if an Identity
179 of Interest arises between Borrower and General Contractor following their execution of a lump-
180 sum form of construction contract, allowable costs shall be governed by the applicable
181 provisions of paragraphs 11 and 12 of this Agreement and Certification.

182 Each signatory below hereby certifies that the statements and representations of fact made by
183 such signatory contained in this Agreement and all supporting documentation thereto are true,
184 accurate, and complete. This Agreement has been made, presented, and delivered for the
185 purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon
186 by HUD as a true statement of the facts contained therein.
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188 IN WITNESS WHEREOF, the following parties have duly executed this Agreement and
189 Certification.
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191 **BORROWER:**

LENDER:

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194 _____

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197 **By:** _____

By: _____

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200 _____

201 Print name and title

Print name and title

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204 **GENERAL CONTRACTOR:**

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207 _____

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210 **By:** _____

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214 Print name and title

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