

**Agreement and
Certification
Section 242**

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

OMB Approval No. 2502-0602
(Exp. 08/31/2019)

Public reporting burden for this collection of information is estimated to average 1.5 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: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 13 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

This AGREEMENT AND CERTIFICATION (Agreement), is effective as of the _____ day of _____, 20____, by and between _____ (**Borrower**), whose principal address is _____, and _____ (**Lender**), whose principal address is _____, and _____ (if applicable), _____ (**General Contractor or Construction Manager**), whose principal address is _____, in connection with FHA Project No. _____, located in the City/County of _____, State of _____. (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://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips, 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 or Construction Manager, 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

- Financing or refinancing, after the completion of limited rehabilitation (or satisfactory arrangements for completion of limited rehabilitation), 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, and (b) a fully completed and executed Contractor's Certificate of Actual Cost (or Subcontractor's Certificate of Actual Cost) on HUD-92330-A 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. Borrower and General Contractor or Construction Manager understand, agree and shall ensure that, unless otherwise approved by HUD 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 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 Program Obligations, 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 submitted evidencing that Borrower paid these amounts after the date of its Certificate of Actual Cost. Borrower understands that the items covered by this cash escrow must be paid within 45 days after the date of final endorsement, except for those items in dispute, involved in litigation or those items that are non-critical repairs to be completed after endorsement and covered by an appropriate escrow agreement. If Borrower's actual cost is less than the estimates accepted for cost certification purposes, and HUD determines that this difference plus the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies or others, would have required a reduction of the Loan. Borrower understands funds in excess of the mortgage amount determined following cost certification must be used in accordance with Program Obligations.

4. Borrower certifies that any financial or business interests or family relationships which exist between Borrower, or any of its officers, directors, stockholders, partners, managers, managing members, or members (Principals) and the Architect, General Contractor or Construction Manager, subcontractors, suppliers, equipment lessors, or any of the Principals of any of the foregoing entities (**Identity of Interest**) for the Project are herewith listed by name, title, address, relationship and interest: *(Attach exhibit if necessary. If None, so state).*

5. Borrower agrees to notify HUD in writing within 10 days of any change in relationships covered by paragraph 4 herein which results in the creation or elimination of an Identity of Interest at any time prior to final endorsement of the Note. In the event that there currently exists, or there comes into being prior to final endorsement of the Note, an Identity of Interest between Borrower or its Principals, and General Contractor or its Principals, Borrower's Certificate of Actual Cost will be accompanied by the Contractor's Certificate of Actual Cost, in the form prescribed by HUD; and, if required by HUD, similar certificates by any subcontractor, supplier, or equipment lessor covered by this paragraph 5. It is agreed that the absence of such notice to HUD of the creation or elimination of an Identity of Interest may be treated by HUD as a representation that no Identity of Interest has been created or eliminated.
6. Borrower agrees to maintain and keep adequate records of all costs incurred in connection with the Project, and to make such records available for examination by HUD upon request.

7. If this Agreement and Certification discloses an Identity of Interest between Borrower and General Contractor or Construction Manager, Borrower shall include in the Construction Contract a provision requiring General Contractor or Construction Manager, upon completion of the Project, to submit to Borrower for delivery to HUD the Contractor's Certificate of Actual Cost, in the form prescribed by HUD. Borrower further agrees to include in said Construction Contract the requirement that General Contractor shall maintain adequate records of all such costs, and make such records, documents, contracts and accounts available for review upon request by HUD.
8. Borrower agrees that it shall include in the Construction Contract, and require the inclusion in all subcontracts made in association with the Construction Contract, whether for labor, material, or equipment leases, a provision that if there is, or comes into being, an Identity of Interest between Borrower and any subcontractor; or, in those cases in which General Contractor or Construction Manager is required to certify actual costs, between General Contractor or Construction Manager and any subcontractor of the General Contractor or Construction Manager, then, if HUD so requires, such subcontractor shall submit to HUD a Certificate of Actual Cost in the form and with the audit standards prescribed by HUD, including the deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless HUD has granted advance written approval of a specific dollar amount or a specific percentage.
9. Borrower agrees that if there currently exists, or if there comes into being prior to final endorsement of the Note, any Identity of Interest between Borrower and the Architect, or between the General Contractor or Construction Manager and the Architect, the Architect shall immediately be relieved of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be \$ _____ for design services only, and no fees will be allowed for supervision.
10. The Borrower agrees to submit with this form signed duplicate copies of any collateral agreement(s) and/or side deal agreement(s) executed by the Borrower or any Principals of the Borrower evidencing any secured or unsecured borrowing made in association with the construction of the Project. The Borrower further agrees to obtain the approval of HUD before entering into any such agreement after executing this form.

Each signatory below hereby certifies that the statements and representations of fact made by such signatory contained in this Agreement and all supporting documentation thereto are true, accurate, and complete. This Agreement 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.

IN WITNESS WHEREOF, the following parties have duly executed this Agreement and Certification.

BORROWER:

LENDER:

By: _____

By: _____

Print name and title

Print name and title

GENERAL CONTRACTOR OR CONSTRUCTION MANAGER:

By: _____

Print name and title