

FHA FORM NO. 3306
Rev. 7/69
(Previous revision obsolete)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

AGREEMENT AND CERTIFICATION

(For use in Insurance of Advances Cases which include
Profit and Risk Allowances)

This Agreement made this _____ day of _____, 19____, by and between the _____, a _____ (hereinafter called Mortgagee), and _____ a _____ corporation (hereinafter called Mortgage), and Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner);

WHEREAS, Mortgagee has applied to Mortgage for a mortgage loan for the purpose of erecting a housing project to be located at _____ and identified as FHA Project No. _____; and the Mortgagee has applied to the Commissioner for insurance of said mortgage loan under Section _____ of the National Housing Act; and

WHEREAS, the Commissioner has issued his commitment to insure said mortgage loan in the amount of \$ _____, subject to reduction of said amount as provided in the National Housing Act and the Regulations promulgated pursuant thereto; and

WHEREAS, under the provisions of the National Housing Act and the Regulations promulgated pursuant thereto, this agreement is required;

NOW THEREFORE THIS AGREEMENT WITNESSETH:

(1) That in consideration of the agreement by the Mortgagee to make, and of the Commissioner to insure, said loan, Mortgagee agrees to submit to the Commissioner prior to the receipt of the final advance under the mortgage, and within the period fixed in the building loan agreement for completion of the project or any extension of such period approved in writing by the Commissioner, a fully completed and executed Mortgagee's Certificate of Actual Cost and, if required, a fully completed and executed Contractor's Certificate of Actual Cost on forms prescribed by the Commissioner and/or the FHA form for Contractor's, Subcontractor's and Mortgagee's Certifications. The Mortgagee understands and agrees that each of the certificates of cost shall be supported by the certificate of an independent public accountant in form acceptable to the Commissioner.

(2) The Mortgagee and Mortgagee agree that the total advances of mortgage monies shall not exceed the amount permitted by the National Housing Act and the Regulations promulgated pursuant thereto.

(3) The Mortgagee agrees that if it receives from the Mortgagee monies in excess of that permitted under the National Housing Act and the Regulations promulgated pursuant thereto, it will pay upon demand forthwith to the Mortgagee any such excess for application to the reduction of the then outstanding principal balance of the mortgage. Mortgagee agrees that upon its receipt of such excess the contract of mortgage insurance is reduced by the amount of such excess.

The Mortgagee further agrees that if the Commissioner, for cost certification purposes, accepts estimates of costs for any items, the Mortgagee will, upon a determination of actual costs, submit in a form satisfactory to the Commissioner a certification of actual costs which shall be reduced by the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies or others, and that if the substitution of such certified actual costs for the estimates of cost which were used at final endorsement would have required a reduction of the mortgage amount, the Mortgagee will, on demand, pay forthwith to the Mortgagee the amount of such reduction for application to the then outstanding principal balance of the mortgage or for deposit in the Reserve Fund for Replacements as directed by the Commissioner, provided that the disposition of such payment may be divided between application to the mortgage and deposit in said Reserve Fund.

(4) The Mortgagee understands that amounts allowed in the cost certifications which are not required to be paid in cash may result in an excess of the cash proceeds of the mortgage over actual cash disbursements necessary to complete the project and the Mortgagee agrees that, if required by the Commissioner, any such excess cash shall, prior to final endorsement of the mortgage for insurance, be deposited in a special account from which disbursements may be made only with the prior written consent of the Commissioner.

(5) Mortgagee certifies that the financial interests or family relationships which exist between Mortgagee or any of its officers, directors, or stockholders with the Architect and with the General Contractor, subcontractors, suppliers, or equipment lessors are: (If none, so state).

(6) Mortgagee agrees to notify the Commissioner, in writing, prior to final endorsement of the loan for insurance, of any change in relationship subsequent to the execution of this agreement which results in an identity of interest of the Mortgagee with the General Contractor or any subcontractor, supplier, or equipment lessor, in which case the Mortgagee's certification of actual cost will be accompanied by the Contractor's certification of actual cost in form prescribed by the Commissioner and, if required by the Commissioner, certification of actual cost by each subcontractor, supplier, or equipment lessor. It is agreed that the absence of such notice may be treated by the Commissioner as a representation that no change in relationship has occurred which creates any such identity of interest.

(7) Mortgagee agrees to maintain and keep adequate records of all costs referred to in (1) above, and to make such records available for examination by the Commissioner upon request.

(8) Mortgagee agrees that, where this agreement and certification reveals any identity of interest between the Mortgagee and the General Contractor, Mortgagee will include in the contract for the performance of the construction of the project a provision requiring the General Contractor, upon completion of the project, to submit to Mortgagee for delivery to the Commissioner its certificate of all actual costs of labor and materials and necessary services as required by paragraph (1) hereof. Mortgagee further agrees to include in the construction contract the requirement that the Contractor shall maintain adequate records of all such costs, and make such records, documents, abstracts and accounts available for review upon request by the Federal Housing Commissioner.

* Insert type of mortgage, e. g. "Individual", "Partnership", "Trust Corporation".

(9) Mortgagor agrees that it will require in the general contract and in all agreements with subcontractors (which term for the purposes of this paragraph shall also include material suppliers and equipment lessors) a provision that if there is, or comes into being, any identity of interest between the Mortgagor and any Subcontractor, or (in those cases where the General Contractor is required to certify his actual costs) between the General Contractor and any Subcontractor, then (a) each Subcontractor will agree to submit to the Commissioner (unless specifically waived in writing by the Commissioner) a certificate of the actual cost of providing the material and/or services after deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof, and (b) such Subcontractor will join in the execution and submission of the FHA form for Contractor's, Subcontractor's and Mortgagor's Certifications. The Subcontractor's certificate of actual cost will be supported by the certification of an independent Certified Public Accountant or an independent Public Accountant in form acceptable to the Commissioner. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless the Commissioner has in advance granted approval in writing of the subcontract and has approved a specific dollar amount or a specific percentage for profit and/or general overhead.

(10) Mortgagor agrees that if there comes into being any identity of interest between the Mortgagor and the Architect or between the General Contractor and the Architect, the Architect will immediately be relieved of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be \$_____ for design services only. No fee will be allowed to the identity of interest Architect for supervision.

(11) Mortgagor agrees that, if there is any identity of interest between the Mortgagor and the General Contractor, the construction contract will be on a cost plus fee basis with a maximum upset price, provided, however, that in lieu of the contractor's fee, the Mortgagor shall be entitled to include in its certificate of actual cost an allowance for Builder's and Sponsor's profit and risk. The allowance for Builder's and Sponsor's profit and risk shall be determined by applying the profit and risk percentage, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto and which was in effect on the date the Commitment was issued, to the actual cost, as accepted by the Commissioner, of those items which, under the provisions of the National Housing Act, shall be included in computing the allowance. Mortgagor further agrees that for the purpose of determining actual cost, no general overhead expense in excess of \$_____ will be allowed by the Commissioner as actual cost.

(12) Mortgagor agrees that in the event there is no identity of interest between the Mortgagor and the General Contractor, the Builder's and Sponsor's profit and risk allowance provided for in paragraph (11) herein shall not be applicable, but the Mortgagor shall be entitled to include in its certificate of actual cost a Sponsor's profit and risk allowance which shall be determined by applying the profit and risk percentage, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto and which was in effect on the date the Commitment was issued, to the actual cost, as accepted by the Commissioner, of those items which, under the provisions of the National Housing Act, shall be included in computing the allowance. (The National Housing Act specifically excludes, among other items, the amount of the construction contract in computing the allowance.)

(13) Mortgagor agrees that if there is any identity of interest between the Mortgagor and the General Contractor and more than 50 percent of the actual cost of construction is subcontracted with any one contractor, or subcontractor, or more than 75 percent with three or less contractors or subcontractors, the Builder's and Sponsor's profit and risk allowance provided for in paragraph (11) herein shall not be permitted as an actual cost and the Mortgagor shall be limited to the inclusion of the Sponsor's profit and risk allowance, provided for in paragraph (12) herein, on its certificate of actual cost. For the purpose of this paragraph, it is further agreed that (a) the terms contractor and subcontractor include material suppliers and equipment lessors and (b) any two or more contractor or subcontractors having an identity of interest or common ownership shall be considered as one contractor or subcontractor.

(14) Mortgagor further agrees that if there comes into being an identity of interest between the Mortgagor and the General Contractor following the execution by the parties of a lump sum contract, the allowable costs to the Mortgagor of the construction contract and profit and risk allowance shall be determined in accordance with the applicable provisions of paragraphs (11), (12) and (13) herein.

(15) The foregoing agreements and certifications by the Mortgagor and Mortgagee are made and delivered for the purpose of influencing an official action of the Federal Housing Commissioner and are to be relied upon by the Commissioner as true.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement the day and year first above written.

ATTEST:

_____ (Mortgagor)

By _____

_____ (Mortgagee)

By _____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
ACTING BY AND THROUGH THE FEDERAL HOUSING
COMMISSIONER

By _____
(Authorized Agent)

*Enter amounts from appropriate items on FHA Form 2284

FHA FORM NO. 3306A
Rev. 7/69
(Prior revision obsolete)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

AGREEMENT AND CERTIFICATION

(For use in Insurance Upon Completion Cases which
include Profit and Risk Allowances)

This Agreement made this _____ day of _____, 19____, by and between the _____, a _____ (hereinafter called Mortgagee), and _____ corporation (hereinafter called Mortgagee), and Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner);

WHEREAS, Mortgagee has applied to Mortgagee for a mortgage loan in the amount of \$ _____ for the purpose of erecting a housing project to be located at _____ and identified as FHA Project No. _____; and

WHEREAS, Mortgagee has applied to the Commissioner for mortgage insurance under Section _____, of the National Housing Act, covering said mortgage loan and Commissioner has issued a commitment to insure said mortgage loan upon completion of the project in an amount not to exceed \$ _____, which amount, however, is subject to reduction as provided in the National Housing Act and the Regulations promulgated pursuant thereto; and

WHEREAS, the provisions of the National Housing Act and the Regulations require the execution of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

- (1) That in consideration of the agreement by the Mortgagee to make said mortgage loan and as an inducement to the Commissioner to insure said loan, the Mortgagee agrees to submit to the Commissioner prior to endorsement of the loan for insurance its Certificate of Actual Cost, and, if required, the Contractor's Certificate of Actual Cost, on forms prescribed by the Commissioner, and/or the FHA form for Contractor's, Subcontractor's and Mortgagee's Certifications. Mortgagee agrees that all Certificates of Actual Cost shall be certified to by an independent Certified Public Accountant or an independent Public Accountant in form acceptable to the Commissioner. The Mortgagee further agrees that if the Commissioner, for cost certification purposes, accepts estimates of cost for any items the Mortgagee will, upon determination of the actual costs, submit in a form satisfactory to the Commissioner a certification of such actual costs which shall be reduced by the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies or others, and that if the substitution of such certified actual costs for the estimates of cost which were used at final endorsement would have required a reduction of the insured mortgage, the reduction so required shall be made provided that the entire amount, or any part thereof, may, with the consent of the Commissioner, be deposited in the Reserve Fund for Replacements.
- (2) Mortgagee and Mortgagee agree that, prior to endorsement of the loans for insurance, the mortgage loan and the commitment will be adjusted to comply with the provision of Section 227 of the National Housing Act, as amended, and Regulations issued pursuant thereto.
- (3) Mortgagee by its execution of this Agreement agrees to the acceptance of the mortgage loan reduced by the amount, if any, required by Section 227 of the National Housing Act, as amended, and the applicable Regulations, and Mortgagee and Mortgagee further agree to execute such instruments as may be required to legally accomplish such reduction, and Mortgagee agrees that the contract of insurance will likewise be reduced by the amount the mortgage and commitment are so reduced.
- (4) The mortgagee understands that whether or not the mortgage is required to be reduced pursuant to the provisions of Section 227 of the National Housing Act, as amended, amounts allowed pursuant to such provisions but not required to be paid in cash by reason of waiver of such payment or the acceptance of such payment in the stock of the mortgagee, may result in an excess of the cash proceeds of the mortgage over actual cash disbursements necessary to complete the project. The mortgagee agrees that any such excess shall, prior to endorsement of the mortgage for insurance, be deposited in a special account from which disbursements may be made only with the prior written consent of the Commissioner.
- (5) Mortgagee certifies that the financial interests or family relationships which exist between Mortgagee or any of its officers, directors, or stockholders with the Architect and with the General Contractor, subcontractors, suppliers, or equipment lessors are: (If none, so state).
- (6) Mortgagee agrees to notify the Commissioner, in writing, prior to final endorsement of the loan for insurance, of any changes in relationship subsequent to the execution of this agreement which results in an identity of interest of the Mortgagee with the General Contractor or any subcontractor, supplier, or equipment lessor, in which case the Mortgagee's certification of actual cost will be accompanied by the Contractor's certification of actual cost in form prescribed by the Commissioner and, if required by the Commissioner, certification of actual cost by such subcontractor, supplier, or equipment lessor. It is agreed that the absence of such notice may be treated by the Commissioner as a representation that no change in relationship has occurred which creates any such identity of interest.
- (7) Mortgagee agrees to maintain and keep adequate records of all costs referred to in (1) above, and to make such records available for examination by the Commissioner upon request.

* Insert type of Mortgagee e. g. "Individual", "Partnership", "(State) Corporation"

Appendix 33b

- 2 -

(8) Mortgagor agrees that, where this agreement and certification reveals any identity of interest between the mortgagor and the General Contractor, Mortgagor will include in the contract for the performance of the Construction of the project a provision requiring the General Contractor, upon completion of the project, to submit to Mortgagor for delivery to the Commissioner its certificate of all actual costs of labor and materials and necessary services as required by paragraph (1) hereof. Mortgagor further agrees to include in the construction contract a requirement that the Contractor shall maintain adequate records of all such costs and make such records, documents, contracts and accounts available for review upon request by the Federal Housing Commissioner.

(9) Mortgagor agrees that it will require in the general contract and in all agreements with subcontractors (which term for the purposes of this paragraph shall also include material suppliers and equipment lessors) a provision that if there is, or comes into being, any identity of interest between the Mortgagor and any Subcontractor, or (in those cases where the General Contractor is required to certify his actual costs) between the General Contractor and any Subcontractor, then (a) such Subcontractor will agree to submit to the Commissioner (unless specifically waived in writing by the Commissioner) a certificate of the actual cost of providing the material and/or services after deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof, and (b) such Subcontractor will join in the execution and submission of the FHA form for Contractor's, Subcontractor's and Mortgagor's Certifications. The Subcontractor's certificate of actual cost will be supported by the certification of an independent Certified Public Accountant or an Independent Public Accountant in form acceptable to the Commissioner. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless the Commissioner has in advance granted approval in writing of the subcontract and has approved a specific dollar amount or a specific percentage for profit and/or general overhead.

(10) Mortgagor agrees that if there comes into being any identity of interest between the Mortgagor and the Architect or between the General Contractor and the Architect, the Architect will immediately be relieved of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be \$ _____* for design services only. No fee will be allowed to the identity of interest Architect for supervision.

(11) Mortgagor agrees that, if there is any identity of interest between the Mortgagor and the General Contractor, the construction contract will be on a cost plus fee basis with a maximum upset price, provided, however, that in lieu of the contractor's fee, the Mortgagor shall be entitled to include in its certificate of actual cost an allowance for Builder's and Sponsor's profit and risk. The allowance for Builder's and Sponsor's profit and risk shall be determined by applying the profit and risk percentage, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto and which was in effect on the date the Commitment was issued, to the actual cost, as accepted by the Commissioner, of those items which, under the provisions of the National Housing Act, shall be included in computing the allowance. Mortgagor further agrees that for the purpose of determining actual cost, no general overhead expense in excess of \$ _____* will be allowed by the Commissioner as actual costs.

(12) Mortgagor agrees that in the event there is no identity of interest between the Mortgagor and the General Contractor, the Builder's and Sponsor's profit and risk allowance provided for in paragraph (11) herein shall not be applicable, but the Mortgagor shall be entitled to include in its certificate of actual cost a Sponsor's profit and risk allowance which shall be determined by applying the profit and risk percentage, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto and which was in effect on the date Commitment was issued, to the actual cost, as accepted by the Commissioner, of those items which, under the provisions of the National Housing Act, shall be included in computing the allowance. (The National Housing Act specifically exclude, among other items, the amount of the construction contract in computing the allowance).

(13) Mortgagor agrees that if there is any identity of interest between the Mortgagor and the General Contractor and more than 50 per cent of the actual cost of construction is subcontracted with any one contractor or subcontractor, or more than 75 percent with three or less contractors or subcontractors, the Builder's and Sponsor's profit and risk allowance provided for in paragraph (11) herein shall not be permitted as an actual cost and the Mortgagor shall be limited to the inclusion of the Sponsor's profit and risk allowance, provided for in paragraph (12) herein, on its certificate of actual cost. For the purpose of this paragraph, it is further agreed that (a) the terms contractor and subcontractor include material suppliers and equipment lessors and (b) any two or more contractors or subcontractors having an identity of interest or common ownership shall be considered as one contractor or subcontractor.

(14) Mortgagor further agrees that if there comes into being an identity of interest between the Mortgagor and the General Contractor following the execution by the parties of a lump sum contract, the allowable costs to the Mortgagor of the construction contract and the profit and risk allowance shall be determined in accordance with the applicable provisions of paragraphs (11), (12) and (13) herein.

(15) Mortgagor and Mortgagee understand and agree that the foregoing agreements and certifications were made by them for the purpose of influencing an official action of the Federal Housing Commissioner, and may be relied upon by the Commissioner as true.

IN WITNESS WHEREOF of the parties hereto duly executed this agreement the day and year first above written:

ATTEST:

(Mortgagor)

By _____

(Mortgagee)

By _____

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
ACTING BY AND THROUGH THE FEDERAL HOUSING COMMISSIONER

By _____
(Authorized Agent)

* Enter amounts from appropriate items on FHA Form 2204
134526-P Rev. 7/69