AGREEMENT AND CERTIFICATION

(Purpose in Insures of Advance Loans which include Profit and Risk Allocations)

This Agreement made this ____________ day of ____________ , 19__, by and between the ____________, ____________ (hereinafter called Mortgagor), and ____________, ____________ (hereinafter called Mortgagee), and Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner).

WHEREAS, Mortgagor has applied to Mortgagee for a mortgage loan for the purpose of creating a lending 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 THE AGREEMENT WITNESSETH:

(1) That in consideration of the agreement by the Mortgagor 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 by the Commissioner, a fully executed and accepted Mortgagor's Certificate of Actual Cost and, if required, a fully completed and executed Contractor's Certification of Actual Cost as forms prescribed by the Commissioner and/or the FHA form for Contractor's, Subcontractor's and Mortgagor's Certifications. The Commissioner understands and agrees that each of the certifications of cost shall be supported by the certification of an independent public accountant in form acceptable to the Commissioner.

(2) The Mortgage and Mortgagor agree that the total advances of mortgage proceeds 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 Mortgagor notice in advance of any permitted advances under the National Housing Act and the Regulations promulgated pursuant thereto, it will pay upon demand or at the Mortgagor's request for application to the Commissioner in the reduction of the amount, of any principal balance of the mortgage, Mortgagee agrees that upon receipt of each advance the amount of mortgage insurance is reduced by the amount of each advance.

(4) The Mortgagee further agrees that if the Commissioner, for cost certification purposes, accepts estimates of cost for any items, the Mortgagee will submit a written certification of actual cost, dated in a form satisfactory to the Commissioner, including certification of actual cost which shall be reduced by the net amount of actual cost over and above estimates of cost certified by the Commissioner, and that if the certification of actual cost for the costs of items which were used at final endorsement would have reduced a reduction of mortgage amounts, the Mortgagee will, on demand, pay such reduction to the Mortgagee to the amount of such reductions for application to the then outstanding principal balance of the Mortgage or for deposit in the Reserve Fund for Replacement or Diversion as directed by the Commissioner. Provided that the Commissioner determines that such payments may be divided between application against the mortgage and deposit in said Reserve Fund.

(5) The Mortgagee undertakes that amounts allowed to the cost certifications which are not required to be paid to the Mortgagee in advance of the costs are paid to the Mortgagee in accordance with the terms of the mortgage agreement and no disbursements are made unless such disbursements are made only with the written consent of the Commissioner.

(6) The Mortgagee certifies that the financial interest in family relationships which exist between Mortgagor or any of its officers, owners, or stockholders with the Architect and with the General Contractor, subcontractor, supplier, or equipment lessor are: (If none, so stated).

(7) Mortgagor 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 Mortgagor 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 to be certificated 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.

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

(9) Mortgagee agrees that, where this agreement and certification raises any identity of interest between the Mortgagor and the General Contractor, Mortgagee, and in the event that the performance of the construction of the project or a provision requiring the General Contractor, upon completion of the project, is made to Mortgagee for delivery to the Commissioner for certification of all actual costs of labor and materials and necessary services as required by paragraph (2) above, Mortgagor further agrees to include in the contract the requirement that the Contractor shall maintain adequate records of all costs of work, and make such records, documents, statements and accounts available for certification upon request by the Federal Housing Commissioner.

* Insert appropriate mortgage, e.g., "Individual", "Partnership", "Lessor 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 include material suppliers and equipment lessors) a provision that if there is, or become less 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 arrangement in the nature thereof, and (b) each Subcontractor will join in the execution and submission of the FHA form for Contractor's, Subcontractor's and Mortgagor's Certifications. The Subcontractor's certification 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 is an absence 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 fee allowable for cost certification purposes will be $125,000 for design services only. He has been allowed in 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, agreed upon, provided, however, that in lieu of the contractor's fee, the Mortgagor will 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 $125,000,000 will be allowed by the Commissioner as actual cost.

(12) Mortgagor agrees that in the event there is an 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) hereof 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, as presently 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 subcontractor, or subcontractors, or more than 50 percent with three or less subcontractors or subcontractors, the Builder's and Sponsor's profit and risk allowance provided for in paragraph (11) hereof shall not be permitted on actual cost and the Mortgagor shall be limited to the inclusion of the Sponsor's profit and risk allowance, provided for in Section 227 of the National Housing Act and the Regulations adopted pursuant thereto, on actual cost. For the purpose of this paragraph, it is further agreed that (a) the same 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 of the portion 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) hereof.

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

ATTACH:

(Mortgagor)

By


(Mortgagor)

By


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

By

(Attached)

*Enter amounts from appropriate items on FHA form 246A

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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

________________________________________

(Hereinafter called Mortgagor),

and

________________________________________

(Hereinafter called Commissioner); and

Mortgagor, and Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner);

WHEREAS, Mortgagor has applied to Mortgagor 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, Mortgagor 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 issue 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 Mortgagor to make said mortgage loan and as an inducement to the Commissioner to issue said loan, the Mortgagor agrees to submit to the Commissioner prior to endorsement of the loan for insurance the Certificate of Actual Cost and, if required, the Commissioner's Certificate of Actual Cost, or the FHA loan for the Commissioner's, Subcontractor's and Mortgagor's Certifications. Mortgagor 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 certificaiton purposes, accepts estimates of cost for any name the Mortgagor 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 the loan) of settlement of claims against bonding companies or others, and that if the certification of such actual costs for the estimate of cost which were paid at final settlement would have required a reduction of the insured mortgage, the reduction so required shall be made pro-rated that the entire amount, or any part thereof, may, with the consent of the Commissioner, be deposited in the Reserve Fund for Replacements.

(2) Mortgagor and Mortgagor agree that, prior to endorsement of the loan for insurance, the mortgage loan and the commitment will be adjusted to comply with the provisions of Section 207 of the National Housing Act, as amended, and Regulations issued pursuant thereto.

(3) Mortgagor, by the execution of this Agreement, agrees to the acceptance of the mortgage loan reduced by the amount, if any, required by Section 207 of the National Housing Act, as amended, and the applicable Regulations, and Mortgagor and Mortgagor further agree to execute such instruments as may be required to legally accomplish such reduction, and Mortgagor agrees that the amount of insurance will likewise be reduced by the amount the mortgage and commitment are so reduced.

(4) The mortgagor understands that whether or not the mortgage is to be reduced pursuant to the provisions of Section 207 of the National Housing Act, as amended, amounts allowed pursuant to such provisions but not required to be paid in cash by reason of value of work performed or the acceptance of such payment in the form of a note, may result in an excess of the cash proceeds of the mortgage over actual cash disbursements necessary to complete the project. The mortgagor 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) Mortgagor certifies that the financial interests or family relationships which exist between Mortgagor or any of its officers, directors, or stockholders with the Architect and with the General Contractor, subcontractors, suppliers, or equipment lessor are:

(If none, so stated).

(6) Mortgagor 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 result in an indentity of interest of the Mortgagor with the General Contractor or any subcontractor, supplier, or equipment lessor, in which case the Mortgagor'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 certifications of actual cost by each subcontractor, supplier, or equipment lessor. It is agreed that the absence of such notice may be deemed by the Commissioner as a representation that no change in relationship has occurred which creates any such identity of interest.

(7) Mortgagor 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.
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 (a) actual costs of labor and materials and necessary services as required by paragraph (h) 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.

Mortgagor agrees that it will require in the general contract and in all agreements with subcontractors (which come for the purposes of this paragraph) that it 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 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 actual costs of providing the material and/or services after delivery of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof, and (b) each Subcontractor will join in the execution and submission of the FRA form for Contractor's Subcontractor's and Mortgagor's Certifications. The Subcontractor's certificates of actual costs will be submitted 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 purchases 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.

Mortgagor agrees that if it should come into being any identity of interest between the Mortgagor and the Architect or the General Contractor and the Architect, the Architect will immediately be relieved of inspection duties and the maximum Architect's fees allowable for such certification purposes will be $20,000 for design services only. No fee will be allowed to the identity of interest Architect for supervision.

Mortgagor agrees that, if there is no identity of interest between the Mortgagor and the General Contractor, the construction contract will be on a cost plus fee basis with a maximum lump sum, provided, however, that in lieu of the contractor's fee, the Mortgagor shall be entitled to include in his certificate of actual costs an allowance for Building's and Sponsor's profit and risk. The allowance for Building's and Sponsor's profit and risk shall be determined by applying the sum of 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 Certificate 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.

Mortgagor agrees that if there is any identity of interest between the Mortgagor and the General Contractor or the General Contractor and more than 50 per cent of the actual cost of construction or subcontracted with any one contractor or subcontractor, or more than 75 per cent with three or less contractors or subcontractors, the Building's and Sponsor's profit and risk allowance provided for in paragraph (11) hereof shall be determined as actual costs, and the Mortgagor shall be limited to the inclusion of the Sponsor's profit and risk allowance, provided for in paragraph (12) hereof, as its certificate of actual costs. 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 no identity of interest or common ownership shall be considered as one contractor or subcontractor.

Mortgagor further agrees that if there is no identity of interest between the Mortgagor and the General Contractor and the parties of a loan or construction contract and the profit and risk allowance shall be determined in accordance with the applicable provisions of paragraphs (11), (12) and (13) hereof.

Mortgagor and Mortgagor understand and agree that the foregoing agreements and certifications were made by them for the purpose of influencing or effectuating the discharge of the Federal Housing Commissioner, and may be relied upon by the Commissioner as true.

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

ATTEST:

[Signature]

Mortgagor

By

[Signature]

Secretary of Housing and Urban Development

Acting By and Through the Federal Housing Commissioner

By

[Signature]