

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

DEPOSITORY AGREEMENT

This **Agreement**, entered into this ____ day of _____, 20____,

between _____

(herein called the "Recipient"), [a [federally recognized or state recognized] Indian tribe; an Indian Housing Authority created under [tribal or state] law; or an entity created under [tribal or state] law providing for housing authorities or housing entities for Indians]

and _____

(herein called the "Depository") located at

_____.

Witnesseth:

Whereas, the United States Department of Housing and Urban Development (herein called "HUD") has entered into one or more grant agreements (herein called "NAHASDA Grant Agreement") with the Recipient for the purpose of funding affordable housing activities under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (herein called "NAHASDA");

Whereas, the Recipient may borrow funds for affordable housing activities which HUD guarantees under the Title VI of NAHASDA pursuant to a guarantee agreement (herein called "Guarantee Agreement");

Whereas, the Recipient is required to hold funds for investment in an account subject to an agreement in a form prescribed by HUD; and

Whereas, the Recipient may only invest in the following (herein collectively called “Securities prescribed by HUD”): obligations of the United States; obligations issued by United States Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States.

Now Therefore, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.
2. All monies deposited by the Recipient with the Depository shall be credited to the Recipient in a separate interest bearing deposit or interest bearing accounts, designated: **[enter account name(s) and/or account number(s)]**

(herein called the “Accounts”). Any portion of Recipient funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable Securities prescribed by HUD. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. An independent custodian or an independent third party shall have possession of the securities on behalf of the Recipient as bailee (evidenced by safe keeping receipt and a written bailment for hire contract) for the full term of deposit. The Depository may substitute other Securities prescribed by HUD as collateral to equal or increase the value. If Recipient is an Indian tribe or an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.
3. Except as stated in paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase Securities prescribed by HUD with monies from the Accounts or to sell the securities, if such order or directive is in writing and signed on behalf of the Recipient by an authorized representative who is designated by resolution of the governing body of Recipient to have such authority. To assist the Depository in its obligation, the Recipient shall furnish the Depository with a certified copy of the resolution.

4. Any securities received for the Recipient or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safekeeping for the Recipient until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Accounts upon receipt.
5. If the Depository receives written notice from HUD that no withdrawals by the Recipient from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the Recipient from the Accounts until the Depository is authorized to do so by written notice from HUD. In addition, upon written demand from HUD, the Depository shall pay to HUD funds from the Accounts, which may be the entire amount in the Accounts. HUD may only demand funds in accordance with the requirements of 24 CFR §1000.538 or in the event of default pursuant to the Guarantee Agreement.
6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the NAHASDA Grant Agreement and Guarantee Agreement, and shall be under no duty to investigate or determine whether any actions taken by either the Recipient or HUD in respect of the Accounts are consistent with or are authorized by the NAHASDA Grant Agreement or Guarantee Agreement or whether either the Recipient is in default or noncompliance with the NAHASDA Grant Agreement or Guarantee Agreement. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate, notice, or demand furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.
7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the Recipient and HUD. This Agreement may be terminated by either party hereto upon thirty days written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in paragraph 5.
8. HUD is intended to be a third party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall promptly notify the Recipient of the deposit or credit of any monies to the Accounts.
10. The provisions of this Agreement may not be modified by either party without the prior written approval of HUD.
11. (For use only in those states that have laws prohibiting the Recipient from implementing paragraph 2.)

At no time shall the Recipient's funds in the Accounts be permitted to exceed the amount insured by federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the Recipient, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the Recipient, or (b) on behalf of the Recipient, purchase Securities prescribed by HUD. Such securities shall not be considered to be a part of the Accounts pursuant to paragraph 5 hereof but shall be held by the Depository as custodian or trustee for the Recipient in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated:

[enter account name and/or account number]

Income or other proceeds from securities held in the Securities Account shall, as directed by the Recipient, upon receipt, be paid to or on behalf of the Recipient; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this section, be deposited in the Account. If the Depository receives written notice from HUD pursuant to paragraph 6 hereof that no withdrawals by the Recipient from the Account are to be permitted, the Depository shall not honor any directive from the Recipient to sell securities, or permit any withdrawals by the Recipient, from the Securities Account until the Depository is authorized to do so by written notice from HUD. During the pendency of such restrictions on the Account and the Securities Account, the Depository, except as directed in writing from HUD, shall not remit any payment to the Recipient for the purpose of limiting the amount of funds in the Account to the insured amount but shall instead purchase Securities prescribed by HUD and hold such securities in the Securities Account.

NOTE: Strike paragraph 11 if not applicable.

In Witness Whereof, the Recipient and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

Recipient

By: _____

Title: _____
Authorized representative

[SEAL]
ATTEST:

Depository

By: _____

Title: _____

[SEAL]
ATTEST: