

DEPOSITORY AGREEMENT
U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public Reporting Burden Statement: This collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of the requested information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to: U.S. Department of Housing and Urban Development, Office of the Chief Data Officer, R, 451 7th St SW, Room 8210, Washington, DC 20410-5000. Do not send completed forms to this address. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. This agency is authorized to collect this information under Section 102 of the Department of Housing and Urban Development Reform Act of 1989. The information you provide will enable HUD to carry out its responsibilities under this Act and ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. This information is required to obtain the benefit sought in the grant program. Failure to provide any required information may delay the processing of your application and may result in sanctions and penalties including the administrative and civil money penalties specified under 24 CFR §4.38. This information will not be held confidential and may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. §552). The information contained on the form is not retrieved by a personal identifier, therefore it does not meet the threshold for a Privacy Act Statement.

Brokers/Dealers

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 “Broker/Dealer”) 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 contract (herein called “Guarantee Contract”);

Whereas, the Recipient may invest Indian Housing Block Grant funds in Investments prescribed by HUD through an insured Broker/Dealer for the purpose of carrying out affordable housing activities under NAHASDA;

Whereas, the Recipient is required to hold funds for investment in an account subject to an

agreement in a form prescribed by HUD;

Whereas, the Recipient may establish and maintain a separate reserve account only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities under NAHASDA;

Whereas, the Recipient may invest funds in a reserve account only in Investments prescribed by HUD subject to an agreement in a form prescribed by HUD;

Whereas, the Recipient must ensure that any interest or dividends earned on funds in a reserve account that is deemed non-program income in accordance with 24 C.F.R. §1000.239 are tracked and accounted for separately from the Indian Housing Block Grant funds deposited in the reserve account;

Whereas, the Recipient may only invest in the following (herein collectively called “Investments 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.

Whereas, the Broker/Dealer warrants and represents that it is registered as a broker-dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) with the Securities and Exchange Commission and shall be a member of the Securities Investor Protection Corporation (SIPC); and

Whereas, the Broker-Dealer desires to perform certain brokerage services for the Recipient in accordance with the terms of this Agreement.

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

1. Investments prescribed by HUD must be purchased through an insured Broker/Dealer who is registered with the Securities and Exchange Commission and is covered by Securities Investor Protection Corporation (SIPC) insurance. The Broker/Dealer shall ensure that its brokerage accounts are continuously insured by the SIPC or an insurance organization specifically approved by the Secretary of the U.S. Treasury Department under Title 31, CFR, Part 226 (each, a Federal Insurance Organization).

2. All monies deposited by the Recipient with the Broker/Dealer shall be credited to the Recipient in a separate interest-bearing deposit or interest-bearing accounts,

designated: [enter account name(s) and/or accounts number(s)] (herein called the "Accounts"). Any portion of the Recipient's funds not insured by a Federal Insurance Organization shall be fully (100%) and continuously collateralized with specific and identifiable investments prescribed by HUD. The Broker/Dealer agrees, for the purpose of insuring and guaranteeing any portion of the Recipient's funds not insured by a Federal Insurance Organization, to pledge and, at all times while in custody of such funds, maintain the pledge of collateral security of the classes described, and under the terms and conditions set forth, in paragraph 5 of PIH Notice 96-33, Required HA Cash Management and Investment Policies and Procedures, issued June 30, 1997, and extended on August 2, 2002, indefinitely.

2a. The Broker/Dealer agrees that, in the event of its failure to pay, when due, the whole or any part of the funds deposited in the Account(s), or in the event of the failure for any reason of the Recipient or HUD to receive promptly funds to be transmitted or otherwise handled by the Broker/Dealer in the performance of its duties under this Agreement, or in the event that the Broker/Dealer shall otherwise violate or fail to perform any of the terms of this agreement, or in the event of the insolvency of the Broker/Dealer, or the Broker/Dealer shall be closed for business by law or by proper corporate action, or in the event that a receiver, or conservator, or liquidator or any other officer shall be appointed for the purpose of terminating the business of the Broker/Dealer, HUD, without prior notice or demand, through such agents as it may designate for the purpose, may forthwith redeem or sell the pledged collateral, and any addition thereto or substitution therefore, or any part thereof, at either public or private sale or sales, and apply the proceeds of such redemption or sale or sales, after deducting all necessary or proper expense of such redemption or sale or sales, to the payment of funds deposited in the Account(s) or the repayment of funds received by the Broker/Dealer for transmission or handling, or both, or any other indebtedness of the Broker/Dealer to HUD by reason of this Agreement, any surplus remaining from the proceeds of the redemption or sale or sales of such investments after payment or repayment in full has been made, to be paid to the Broker/Dealer.

3. Except as stated in paragraph 5, the Broker/Dealer shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase Investments prescribed by HUD with monies from the Accounts or to sell the investments, 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 Broker/Dealer in its obligation, the Recipient shall furnish the Broker/Dealer with a certified copy of the resolution.

4. Any investments received for the Recipient or investments purchased with the Recipient's funds by the Broker/Dealer with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Broker/Dealer in

safekeeping for the Recipient until sold. Dividends, interest, and distributions on such investments and proceeds from the sale thereof shall be used to purchase additional shares or remitted directly to the Recipient. Where Dividends, interest, and distributions are earned from the Recipient's funds in reserve accounts, the Recipient must ensure that such amounts may be tracked and accounted for separately from the Indian Housing Block Grant funds deposited in the reserve account. Where such funds cannot be tracked and accounted for separately, such Dividends, interest, and distributions earned on the investment of funds in reserve accounts must be either remitted directly to the Recipient, or shall be held by the Broker/Dealer in safekeeping for the Recipient until sold to ensure that funds with different Federal requirements are not commingled;

5. Notwithstanding any other provision of this Agreement to the contrary, if the Broker/Dealer receives written notice from HUD that no withdrawals by the Recipient from the Accounts are to be permitted, the Broker/Dealer shall not honor any check or other order to pay from the Accounts or directive to purchase or sell investments, or permit any withdrawals by the Recipient until the Broker/Dealer is authorized to do so by written notice from HUD. In addition, upon written demand from HUD, the Broker/Dealer 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 §1000.532 or if timely payment is not made on the note or other obligation in accordance with the Guarantee Contract.

6. The Broker/Dealer is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the NAHASDA Grant Agreement and Guarantee Contract, and shall be under no duty to investigate or determine whether any actions taken by either the Recipient or HUD are consistent with or are authorized by the NAHASDA Grant Agreement or Guarantee Contract or whether either the Recipient is in default or noncompliance with the NAHASDA Grant Agreement or Guarantee Contract. The Broker/Dealer 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 Broker/Dealer 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 Broker/Dealer under this Agreement shall not be transferred or assigned by the Broker/Dealer 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 Broker/Dealer hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Broker/Dealer 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 certain provisions of this Agreement are for the benefit of HUD and HUD may sue to enforce its provisions and to recover damages for failure to carry out its terms.
9. The Recipient shall submit a fully executed copy of this Agreement to HUD within 30 business days of the Agreement's execution.
10. The Broker/Dealer shall promptly notify the Recipient of the deposit or credit of any monies to the Accounts.
11. The provisions of this Agreement may not be modified by either party without the prior written approval of HUD.
12. For purposes of notification or submission of this Agreement or other documentation to HUD, HUD shall be the Area Office of Native American Programs to which the recipient submitted its Indian Housing Plan pursuant to 24 CFR § 1000.214.

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:

Broker/Dealer

By: _____

Title:

Authorized representative

[SEAL]
ATTEST:
