

HUD Project No. _____
Project Name _____
Project Location _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPOSIT AGREEMENT FOR MINIMUM CAPITAL INVESTMENT
(Under Section 202 of the National Affordable Housing Act)

THIS AGREEMENT made this _____ day of _____, 19____, by and between _____, the "Depositor," and _____, the "Depository," located at No. _____.

WHEREAS the Depositor has entered into a capital advance agreement with the United States of America, Secretary of Housing and Urban Development, "HUD," dated the _____ day of _____, 19____, providing for the construction of a housing project to be financed by capital advance secured by a mortgage, (the "mortgage"), to HUD; and

WHEREAS, in order to assure HUD of the Depositor's continuing commitment to the development, management and operation of the project it is necessary (24 CFR Part 889) for the Depositor to make a Minimum Capital Investment of _____ (0.5% of the capital advance amount but not to exceed \$25,000) for a period of three years from the date of initial occupancy as that date is established by HUD, which shall be deposited with the Depository under the terms of this Agreement;

NOW, THEREFORE, that for and in consideration of the mutual covenants set forth and for the purposes of inducing HUD to disburse the capital advance for the construction of the project, the parties agree as follows:

1. The sum of _____ dollars (\$) in the form of cash is deposited and the Depository acknowledges receipt of the same.
2. The Depository is and shall continue to be a member of the Federal Deposit Insurance Corporation as long as this Agreement is in force and effect.
3. All monies deposited by the Depositor with the Depository under the terms of this Agreement shall be credited to the Depositor in a separate account, designated "_____ Account," which shall not be a timed certificate account.
4. The Depositor shall not deposit, nor shall the Depository accept for deposit, more than the amount which the Federal Deposit Insurance Corporation may be authorized to insure in one account pursuant to federal law.
5. Depository shall hold these funds and any disbursement from them shall be made only at the express direction of HUD. It is not contemplated that it will be necessary that any of these funds will be used, as the project should generate sufficient operating income to meet all expenses and avoid deficits. If operating expenses or deficits do occur, then HUD may, in its sole discretion, use so much of these funds as it deems advisable to pay operating expenses and deficits; however, there is no obligation on HUD's part to use any of these funds for such purposes. In case there should be a default under the mortgage, HUD shall have the absolute right and power to apply these funds (or whatever funds are remaining) to any sum due under the mortgage.

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6. Any unexpended balance remaining in this Minimum Capital Investment at the end three years from the HUD established date of initial occupancy shall be returned to the Depositor, subject to 24 C.F.R. § 889.250, upon application made by the Depositor to the Depository on Form 9.1G - EH5(a), Request for Approval of Advance of Escrow Funds for Minimum Capital Investment, in quadruplicate.

If the project involves substantial rehabilitation and the rehabilitation is being done on a phased basis with some occupancy occurring immediately or schedule to occur within less than two-thirds of the construction period, the HUD Field Office Director shall increase the escrow period, as deemed necessary.

The date of initial occupancy is defined as the date the local office HUD Director of Housing, or his designate or an authorized agent signs the first FHA Form 2485, Permission to Occupy.

7. Interest on the funds deposited hereunder will be paid by the Depository for any period of time that they are deposited in accordance with the terms of the account. All interest payments shall be added to the deposited fund and disbursed in accordance with the terms of this Agreement.

8. The Depositor agrees to pay all costs or expenses incurred by the Depository, (including court costs and reasonable attorneys' fees) by reason of acting as Depository of the said fund. Because the Depository shall act solely at all times on instructions from HUD with respect to the funds deposited, the Depositor expressly releases and relieves the Depository of any and all liability or claims of any nature.

9. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

IT IS UNDERSTOOD AND AGREED that whenever used herein the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

This Agreement shall be binding upon and inure to the benefit of the respective successors/and assigns of the parties hereto and upon the legal representatives of the Depositor. The word "HUD" shall be deemed to include the successor or successors of that agency.

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

Depositor

By: _____

Depository

By: _____

PRESIDENT

NOTE: If Sponsor has advanced funds to the Depositor for the purpose of making this deposit, the Depositor may, to the extent of such advance, give a Residual Receipts Note, FHA Form 1710.