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July 18, 1996

Lawrence M. Noble, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: Advisory Opinion Request

Dear Sir:

On behalf of the American Seniors Housing Association ("ASHA"), we hereby request an advisory opinion pursuant to the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 437f, and Federal Election Commission ("FEC" or "the Commission") regulations, 11 C.F.R. § 112. Specifically, we respectfully request that the Commission confirm that a political committee to be formed by members of the ASHA Executive Board will not be considered to have either ASHA or the National Multi Housing Council ("NMHC") as a connected organization.

Statement of Facts

The American Seniors Housing Association is an unincorporated association of businesses involved in the development, construction, financing and management of multifamily housing for senior citizens. ASHA members include sole proprietorships, partnerships, joint ventures and corporations, as well as individuals employed by each of the aforementioned types of business organizations.

ASHA's goal is to improve the financial, legislative and regulatory environment that affects the ability of ASHA members to provide quality housing to the nation's senior citizens. To achieve that end, individual members of the Executive Board of ASHA are contemplating the formation of a political committee, tentatively named the Seniors Housing Political Action Committee ("Seniors Housing PAC"), to support candidates for federal office.

ASHA was originally constituted as the Seniors Housing Committee of the National Multi Housing Council. The NMHC is an incorporated trade association representing the interests of the multifamily housing industry. NMHC members are involved in all

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Lawrence M. Noble, Esq.  
July 18, 1996  
Page 2

aspects of the development and operation of rental housing, including the ownership, building, financing, management, and conversion to condominiums of such projects. As an incorporated trade association, the NMHC has established a separate segregated fund, the National Multi Housing Council Political Action Committee ("NMHC PAC"), pursuant to 2 U.S.C. § 441b.<sup>1/</sup>

For the first several years of its existence, the NMHC Seniors Housing Committee functioned as any other committee of the NMHC, seeking to achieve the broad goals established by the NMHC Board of Directors. By 1992, however, it was apparent that the needs and goals of the seniors housing community were more specialized than those of the more general multifamily housing community. The Board of Directors of the NMHC and the Executive Board of ASHA agreed in June 1992 to reconstitute ASHA as a separate organization affiliated with the NMHC. The two organizations are governed by separate boards and pursue separate legislative and regulatory agendas.

Members of ASHA are also members of the NMHC. Annual dues payments are made to the NMHC, which then uses the funds to support the activities of both organizations. There is no structural requirement that members of the NMHC Board of Directors also sit on the ASHA Executive Board. From time to time, however, individuals have served on both boards simultaneously. Seven of the 110 members of the NMHC Board of Directors currently sit on the 25-member ASHA Executive Board. The Executive Director of ASHA (ASHA's only full-time staff member) is an employee of the NMHC.

The ASHA Executive Board has been informed by counsel that, as an unincorporated association, ASHA may not establish a separate segregated fund pursuant to 2 U.S.C. § 441b. California Medical Association v. Federal Election Commission, 641 F.2d 619, 630-31 (9th Cir. 1980), aff'd, 453 U.S. 182 (1981). See also Advisory Opinion 1984-24, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5824. In light of this statutory prohibition, individual members of the ASHA Executive Board have asked whether they, as a separate group, may instead form a political committee, to be

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<sup>1/</sup> The organizers of the Seniors Housing PAC intend to operate the committee separate and apart from NMHC PAC. The organizers assume, however, that because they are members of both ASHA and NMHC, the Seniors Housing PAC and NMHC PAC will be deemed to be affiliated committees as that term is defined by FEC regulations. 11 C.F.R. § 100.5(g)(4)(ii)(A)-(J). As affiliated committees, the two entities will share contribution limits. 11 C.F.R. § 110.3.

Lawrence M. Noble, Esq.  
July 18, 1996  
Page 3

called the Seniors Housing Political Action Committee, pursuant to 2 U.S.C. § 431(4)(A).

The members of the ASHA Executive Board who have expressed an interest in forming a political committee intend to pay the initial costs of organizing the Seniors Housing PAC from their own personal funds. Thereafter, all of the operational expenses will be paid solely from contributions received by the Seniors Housing PAC. Neither ASHA nor NMHC will provide any direct or indirect financial support for the establishment, administration, or operation of the Seniors Housing PAC.

The organizational structure of the Seniors Housing PAC will be designed to ensure that the committee is operationally independent of both ASHA and NMHC. The Seniors Housing PAC bylaws will provide for the election of a board of directors by contributors to the political committee. This board will decide which candidates will receive assistance. All Seniors Housing PAC contributors will be eligible to vote in elections for the Seniors Housing PAC board of directors, regardless of whether or not they are members of ASHA or the NMHC. The bylaws will not require that members of the Seniors Housing PAC board of directors be members of either the ASHA Executive Board or the NMHC Board of Directors.

For ease of administration, the organizers of the Seniors Housing PAC would like to appoint the Executive Director of ASHA to be treasurer of the Seniors Housing PAC. As noted above, the Executive Director of ASHA is an employee of the NMHC. Accordingly, the Seniors Housing PAC would share office space with the NMHC. In order to prevent the use of the NMHC's facilities from constituting impermissible financial support for a nonconnected political committee, the organizers of the Seniors Housing PAC plan to reimburse the NMHC for the actual cost of all administrative expenses, including rent, photocopying, and telephone charges.

Rental costs will be determined using an allocation method whereby the amount of time the space is devoted to Seniors Housing PAC activities will be compared to the total amount of time the space is used for all business and political activities. Photocopying charges will be paid at a fixed amount per page that reflects the NMHC's actual cost of providing photocopying machines and supplies. Telephone charges will be reimbursed by paying the NMHC the actual cost of any long distance charges plus a portion of the base monthly charge determined by the same allocation method used to determine rent. As noted above, all of the administrative expenses will be paid solely from contributions received by the Seniors Housing PAC.

Lawrence M. Noble, Esq.  
July 18, 1996  
Page 4

Discussion of Authority

Members of the ASHA Executive Board Can Only Provide  
Their Collective Financial Support for Federal  
Candidates by Creating an Independent Political  
Committee

At the outset, it should be noted that if the members of the ASHA Executive Board are denied the opportunity to establish a political committee that is independent of the NMHC, they, as a group, will be effectively precluded from exercising their First Amendment right to collectively support candidates of their choice for federal office. The Commission has long held that an unincorporated association may not establish a separate segregated fund pursuant to 2 U.S.C. § 441b. Advisory Opinion 1984-24, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5824. Moreover, the Commission has specifically ruled that an unincorporated division of an incorporated membership organization cannot establish a separate segregated fund. Advisory Opinion 1976-73, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5233.

The federal courts have upheld this interpretation of FECA, ruling that Congress created a statutory scheme that deliberately distinguished between incorporated membership organizations and unincorporated associations by allowing only the former to establish separate segregated funds, while allowing the latter to create independent political committees. California Medical Association v. Federal Election Commission, 641 F.2d 619, 630-31 (9th Cir. 1980), aff'd, 453 U.S. 182 (1981); Bread Political Action Committee v. Federal Election Commission, 635 F.2d 621, 630-631 (7th Cir. 1980) (en banc), rev'd on-juris. grounds, 455 U.S. 577 (1982).

Public Policy Favors the Creation of Political  
Committees When the Creation of a Separate Segregated  
Fund is Not Possible

The constitutionality of restrictions on solicitations by trade association separate segregated funds has been upheld, in part, because FECA allows trade association members to form their own independent political committees. "The same individuals who form these [trade association] political committees are free to establish a political committee independent of, rather than merely segregated from, the corporate treasury and corporate funds and thereby be free to solicit 'the world.'" Bread Political Action Committee, 635 F.2d at 630.

Lawrence M. Noble, Esq.  
July 18, 1996  
Page 5

Moreover, the Commission has specifically encouraged the formation of political committees in circumstances where the creation of a separate segregated fund was not possible. See, e.g. Advisory Opinion 1984-12, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5765 (tax exempt organization could not establish a separate segregated fund, but members of its board of directors could establish a nonconnected political committee); Advisory Opinion 1982-63, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5704 (law firm partnership which included professional corporations could not establish separate segregated fund, but could establish a nonconnected political committee on firm premises and operated by firm personnel); Advisory Opinion 1981-56, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5646 (partnership composed of corporations could not establish a separate segregated fund, but employees of the partnership could establish a nonconnected political committee); Advisory Opinion 1981-54, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5644 (partnership composed of corporations could not establish a separate segregated fund, but a group of executive employees of the partnership could establish a nonconnected political committee).

**The Commission Has Consistently Approved the Creation of Political Committees in Similar Circumstances**

The Commission has long recognized that neither FECA nor FEC regulations "prescribe qualifications on the individuals who may establish, organize, and direct a nonconnected political committee; nor do they necessarily prohibit individuals who have some association with a corporation, labor organization, or trade association from such activity." Advisory Opinion 1984-12, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5765. See also Advisory Opinion 1995-38, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6173; Advisory Opinion 1991-37, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6040. But see Advisory Opinion 1977-2, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5302.

Unlike the Commission's most recent series of advisory opinions on this subject, AO 1977-2 found that determining whether a political committee was "connected" to a trade association required "a review of the operational interaction between the trade association and political committee as well as analysis of the extent to which individuals having a relationship with the trade association or its members are also involved in 'directly or indirectly' establishing, administering or financially supporting the political committee in question." Id. (Emphasis added).

AO 1977-2 then went on to conclude that the political committee in question was "connected" to the trade association

Lawrence M. Noble, Esq.  
July 18, 1996  
Page 6

because individuals and separate segregated funds affiliated with trade association members made 42% of all the contributions the committee received in a given year. The Commission apparently concluded that these contributions constituted trade association financial support for the committee.

Congress repudiated this interpretation in 1979 when it codified, for the first time, the definition of "connected organization." The legislative history of the 1979 amendments states clearly that "the words 'financially supports' do not refer to organizations which make contributions to the political committee. Rather, the phrase "financially supports' refers to the entity which [pays] the establishment, administrative, and solicitation costs of such committee." H.R. Rep. No. 422, 96th Cong., 2nd Sess. 6, reprinted in 1979 U.S. Code Cong. & Admin. News 2860, 2866. (Emphasis in original).

The Commission amended its regulations defining the term "connected organization" shortly thereafter. 11 C.F.R. § 100.6 (1995) See also Explanation and Justification of Regulations Concerning January 8, 1980 Amendments to Federal Election Campaign Act of 1971, 45 Fed. Reg. 15080 (March 7, 1980) ("[O]nly an entity that pays for the establishment, administration or solicitation costs of the committee will be regarded as a connected organization.").

Since the 1979 amendments, Commission advisory opinions regarding the formation of nonconnected committees have looked solely at the issue of whether or not the alleged connected organization was using its funds to establish or administer the political committee in question.

In AO 1984-12, the Commission allowed individual members of the board of directors of an incorporated association to establish an independent political committee. The incorporated association was a tax exempt organization under 26 U.S.C. § 501(c)(3) and could not establish a separate segregated fund without losing its tax exempt status.

The Commission found that members of the board of directors could establish a political committee that would not be considered connected to the incorporated association, provided that (1) the committee was established by board members acting in their individual capacity, (2) the political committee would be operated and governed independently of the incorporated association, and (3) the political committee would not be financially supported by the incorporated association. Id.

Lawrence M. Noble, Esq.  
July 18, 1996  
Page 7

The proposed Seniors Housing PAC appears to be materially indistinguishable from the political committee approved in AO 1984-12. Moreover, ASHA's status as an unincorporated association affiliated with an incorporated trade association ensures that any potential corporate influence over the proposed Seniors Housing PAC will be even more attenuated than the political committee approved in AO 1984-12.

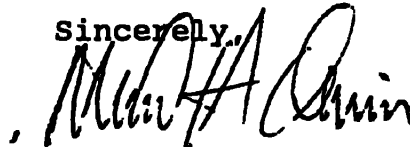
Moreover, the fact that the proposed treasurer of the Seniors Housing PAC is also the Executive Director of ASHA and an employee of the NMHC does not mean that either ASHA or the NMHC should be construed as connected with the Seniors Housing PAC. The Commission has repeatedly ruled that nothing in FECA or FEC regulations prohibits an individual associated with a corporation or trade association from acting as the treasurer of a nonconnected political committee.

In Advisory Opinion 1991-37, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6174, the Commission allowed the president of an incorporated accounting firm to establish and act as the treasurer of a nonconnected political committee that was formed for the express purpose of purchasing accounting services from the treasurer's accounting firm. Similarly, in Advisory Opinion 1995-38, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6173, the Commission allowed the president of an incorporated association management firm to establish and act as the treasurer of a nonconnected political committee that would purchase management and fundraising services from the treasurer's management company.

Accordingly, we believe that FECA, applicable FEC regulations, and the Commission's long line of advisory opinions demonstrate that neither ASHA nor the NMHC should be considered a connected organization of the proposed Seniors Housing PAC.

If you require any additional information to respond to this request, please do not hesitate to contact me.

Sincerely,



Michael H. Chanin  
for POWELL, GOLDSTEIN, FRAZER & MURPHY

POWELL, GOLDSTEIN, FRAZER & MURPHY

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August 19, 1996

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COUNSEL

N. Bradley Litchfield, Esq.  
Associate General Counsel for Policy  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: ASHA Advisory Opinion Request

Dear Mr. Litchfield:

As you requested, enclosed please find the current bylaws of the National Multi Housing Council, Inc. ("NMHC"). The American Seniors Housing Association ("ASHA") has no formal bylaws. I have, however, enclosed a redacted copy of the minutes of the first ASHA quarterly meeting in June 1992 as well as a press release announcing the formation of ASHA. I hope that these materials will provide you with all the information you need in order to process ASHA's advisory opinion request.

In our telephone conversation following ASHA's original request, you asked for our views on the impact on solicitations by the proposed Seniors Housing PAC of a series of Commission advisory opinions regarding the relationship between a nonconnected committee affiliated with a separate segregated fund. In these advisory opinions, the Commission established a line of precedent (the "Solicitation Rule") that a nonconnected committee affiliated with a separate segregated fund could, in some circumstances, be subject to the rules on solicitations that normally only apply to separate segregated funds. 2 U.S.C. § 441b(b)(4); 11 C.F.R. § 114.5.

We do not believe that these advisory opinions provide a basis for the Commission to find that the Seniors Housing PAC should be subject to the solicitation rules applicable to the separate segregated fund established by the NMHC. These advisory

<sup>1/</sup> Advisory Opinion 1994-11, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6115; Advisory Opinion 1992-17, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6060; Advisory Opinion 1989-8, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5959; Advisory Opinion 1983-49, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5749.

\* On Aug. 2, 1996.  
RL



N. Bradley Litchfield, Esq.  
August 19, 1996  
Page 2

opinions do not establish, as a general rule, that whenever a nonconnected committee is affiliated with a separate segregated fund, the committee must comply with the solicitation rules applicable to the separate segregated fund.

Instead, the relevant holdings of these opinions create a very narrow rule for nonconnected committees established by partnerships when those partnerships are part of a larger corporate enterprise. Under that rule, a corporation controlling a partnership could pay the administration and solicitation costs of that partnership's committee (and vice versa) and the partnership committee could only solicit the solicitable class of the corporation in addition to its own eligible personnel. This rule is based on two key factors relating to control -- the parent corporation legally and operationally controls the partnership and the partnership in effect controls the committee. Another key factor is that the parent corporation can support the partnership's committee.

For example, in Advisory Opinion 1994-11, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6115, the Commission held that a corporation could solicit the eligible personnel of a limited partnership legally and operationally controlled by that corporation and that the limited partnership could assist in those solicitations. Similarly, in Advisory Opinion 1992-17, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 6060, the Commission held that a committee of a partnership equally controlled by two corporations was affiliated with the separate segregated funds of the two corporations, noting that the partnership was controlled by a board equally appointed by each corporation. The corporations were allowed to pay the administration and solicitation costs of the partnership committee.

In Advisory Opinion 1989-8, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5959, the Commission held that a corporation's separate segregated fund may solicit the members of a partnership controlling the corporation in the same way that a fund created by a subsidiary could solicit its parent's eligible personnel. Finally, in Advisory Opinion 1983-49, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5749, the Commission held that a corporation could solicit the eligible personnel of partnerships controlled by the corporation<sup>2/</sup>.

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<sup>2/</sup> See also, Advisory Opinion 1981-55, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5635, holding that the separate segregated fund of an incorporated membership organization may solicit the members of another incorporated membership corporation which the first organization controlled; and Advisory Opinion 1987-34,

N. Bradley Litchfield, Esq.  
August 19, 1996  
Page 3

None of these advisory opinions are applicable to the facts presented by our request. First, the NMHC does not exercise operational control over ASHA. ASHA's directors set ASHA's policies separate and apart from the NMHC. Although members of ASHA must be members of the NMHC, members of ASHA individually choose to be members. Although the NMHC provides staff support, office space and administration for ASHA, these costs are paid from the total budget of the NMHC which includes the dues of ASHA members. However, the provision of this support and overlapping membership do not grant the NMHC control over ASHA or its policies and activities. The assent of NMHC is not required for major decisions of ASHA.

Second, and more importantly, the decisions of the proposed Seniors Housing PAC will be completely independent of the NMHC or ASHA. The board of the Seniors Housing PAC will be elected by its contributors and it will make its own decisions on contributions to committees and, if the Commission agrees, on solicitations. Neither ASHA nor NMHC will control the Seniors Housing PAC.

Third, the costs of administering and operating the proposed Seniors Housing PAC will not be paid by the NMHC or ASHA, but will be paid from the contributions to the Seniors Housing PAC.

Fourth, although we assume that the NMHC PAC and the proposed Seniors Housing PAC will be deemed to be affiliated and, thus, subject to common limits on contributions pursuant to 2 U.S.C. § 441a, it does not necessarily follow that they are subject to the solicitation rules established by 2 U.S.C. § 441b. The application of a common contribution limit depends upon whether two organizations are affiliated, while the application of the solicitation rules depends upon whether two organizations are connected. Whether an organization is connected to another has to do with the control by one organization over the other and support of one organization for the committee of the other. 11 C.F.R. § 100.6. In the situation presented in our advisory opinion request, neither the NMHC nor ASHA will have control or provide support to the proposed Seniors Housing PAC. As a truly nonconnected committee, therefore, the Seniors Housing PAC should

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2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5920, holding that a corporate separate segregated fund may solicit the eligible personnel of the corporation's joint venture parent and that the joint venture's committee would be affiliated with the separate segregated funds of the two corporations equally controlling the joint venture parent.

N. Bradley Litchfield, Esq.  
August 19, 1996  
Page 4

be free of the solicitation restrictions of 2 U.S.C. § 441b. See Advisory Opinion 1984-12, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5765.

Finally, the Commission will be making extremely fine distinctions if it applies the Solicitation Rule to the circumstances presented in our request. For example, the Commission will be opening the possibility that a nonconnected committee will be deemed to be affiliated for solicitation purposes to a separate segregated fund of an incorporated membership organization solely on the basis that some variable number of the board members of that nonconnected committee happen to be members of the incorporated membership organization or an organization affiliated with that incorporated membership organization.

Conversely, application of the rule could make a nonconnected committee subject to the limitations applicable to a separate segregated fund even if a majority of the directors of the independent committee were *not* members of the incorporated membership organization or its affiliated unincorporated membership organization. This is, in fact, a possible result for a committee like the Seniors Housing PAC, the directors of which are elected by its contributors.

From a policy perspective, there is no justification for extending the reasoning of these advisory opinions to a factual situation where one organization does not control the second organization, neither organization controls the nonconnected committee and the nonconnected committee created by individual members of the second organization will not be looking to the first organization for administration and solicitation support.

In particular, the most important objective -- preventing a circumvention of contribution limits -- can be accomplished by aggregating the contributions of the separate segregated fund and the nonconnected committee under 2 U.S.C. § 441a without applying the solicitation limits of 2 U.S.C. § 441b. This allows greater participation in the process for individual citizens with differing concerns while protecting contribution limits.

Also, there is significant legal authority for not applying the Solicitation Rule to these facts. It has long been recognized that FECA established different regulatory schemes for corporations (including incorporated trade associations) and individuals (including unincorporated associations of individuals). "The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions

N. Bradley Litchfield, Esq.  
August 19, 1996  
Page 5

and corporations, on the other, reflect a judgment by Congress that these entities have different structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process." California Medical Association v. Federal Election Commission, 453 U.S. 182, 201 (1981).

Absent control by the first organization over the second organization, control by either over the nonconnected committee or support by either of the costs of the committee, to apply the solicitation rules applicable to incorporated trade associations to a nonconnected committee established by individual members of an unincorporated association would impermissibly blur the distinction between the two different regulatory schemes. As we pointed out in our original advisory opinion request, the courts have determined that the constitutionality of the trade association solicitation rules turns, at least in part, on maintaining the separation between these two regulatory schemes. Bread Political Action Committee v. Federal Election Commission, 635 F.2d 621, 630-31 (7th Cir. 1980) (en banc), rev'd on juris. grounds, 455 U.S. 577 (1982).

Although we believe that applying a rule established in greatly different circumstances to our request is not justifiable, if the Commission determines that the Seniors Housing PAC will be subject to the solicitation rules applicable to the NMHC PAC, we then request the Commission's confirmation of the following:

- The Seniors Housing PAC will be able to seek solicitation permission from all corporate members of NMHC and ASHA which have not granted such permission to NMHC or the separate segregated fund of any other incorporated trade association.
- Payment by the NMHC of the administration and solicitation costs of the Seniors Housing PAC will not be impermissible contributions<sup>3/</sup>.

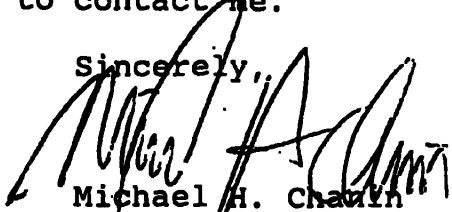
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<sup>3/</sup> See footnote 1, supra.

N. Bradley Litchfield, Esq.  
August 19, 1996  
Page 6

We hope that this letter and the enclosed materials will answer any remaining questions you may have. If you require any additional information or would like to discuss the matter further, please do not hesitate to contact me.

Sincerely,



Michael H. Chazin

for POWELL, GOLDSTEIN, FRAZER & MURPHY

encs.

00573366

As last amended 9/19/95

BYLAWS

OF

NATIONAL MULTI HOUSING COUNCIL, INC.

a corporation chartered under the non-profit laws  
of the District of Columbia

ARTICLE I

NAME, SEAL AND PRINCIPAL OFFICE

Section 1.01 Name. The name of the corporation shall be the NATIONAL MULTI HOUSING COUNCIL, INC. (hereinafter referred to as the "Corporation"). [Amended July 11, 1980]

Section 1.02 Seal. The seal of the Corporation shall contain the name of the Corporation and be of such design as the Board of Directors shall approve.

Section 1.03 Principal Office. The Corporation shall maintain its principal office in Washington, D.C. The Board of Directors shall designate the precise location in that city at which the Corporation shall maintain its principal office, and may alter such location or designate locations for additional offices of the Corporation.

Section 1.04 Registered Office and Agent. The Corporation shall maintain a registered office and agent in the District of Columbia.

ARTICLE II

NATURE OF THE CORPORATION

Section 2.01 Non-Profit. The Corporation is not organized for pecuniary gain or profit, incidental or otherwise, and no part of the income of the Corporation may inure to the benefit of any individual, except that reasonable compensation may be paid for services rendered.

## ARTICLE III

### MEMBERS

Section 3.01 Classes of Members. The Corporation shall have two (2) classes of members. The designation of such classes and the qualifications of the members of such classes shall be as follows:

Class I -- Those class II members duly elected to the Board of Directors of the Corporation shall constitute the entire Class I membership. Class I members so elected shall be entitled to vote on all appropriate corporate matters as set forth by law and in these by-laws.

Class II -- Associate non-voting members shall be those persons, corporations, firms, partnerships, associations, unions or others who contribute to the Corporation pursuant to Article IX below.

Section 3.02 Election of Class I Members. Class I membership shall be granted by the election to the Board of Directors and upon such approval, notice shall be given to each such member. Each Board member shall be responsible for obtaining qualified members.

Section 3.03 Termination of Membership. The Board of Directors, by affirmative vote of two-thirds (2/3) of all of the members of the Board of Directors, may suspend or expel a member, and, by a majority vote of those present at any meeting, may terminate the membership of any member who becomes ineligible for membership, or suspend or expel any member who shall be in default in the payment of dues for the period fixed in Article IX of these by-laws.

Section 3.04 Resignation. Any member may resign by filing a written resignation with the secretary.

Section 3.05 Transfer of Membership and Property Rights of Members. Membership in this Corporation is not transferable or assignable. No member shall possess any property right in or to the property of the Corporation. In the event all memberships are terminated or in the event the Corporation owns or holds any property upon its dissolution and winding up, after paying or adequately providing for the debts and obligations of the Corporation, the Board of Directors shall dispose of the remaining property in accordance with the provisions of the

Articles of Incorporation. In no event shall any earnings or other property of the Corporation be distributed to or inure to the benefit of any member, former member, director, or officer of the Corporation, or other private individual, either directly or indirectly.

Section 3.06 Advisory Committees. The Board of Directors may establish such advisory committees as it deems appropriate to maintain liaison with other corporations, associations, unions or organizations having objectives compatible with those of the Corporation. The Board of Directors may designate a chairman of any such committee to assist the Corporation in promotional or organizational activities.

Section 3.07 Dues. The Board of Directors may establish dues for Membership and may establish different rates of dues for the various classes of members or of such appropriate subclassifications of members as it shall determine from time to time. Such subclassifications may be based on members' size, scope of activities, type of activities or such other criteria as the Board of Directors shall determine.

#### ARTICLE IV

##### MEETINGS OF MEMBERS

Section 4.01 Annual Meeting. An annual meeting of Class I members shall be held, at such time and place during the months of December or January as may reasonably be designated by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors shall not be held on the date designated for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of Class I members as soon thereafter as conveniently possible. A plurality of all votes cast at an election at which a quorum of Class I members is present shall be sufficient to elect directors. Such annual meeting may be continued at another location for the convenience of the members. [Amended June 1, 1983]

Section 4.02 Special Meetings. Special meetings of Class I members may be called by the Chairman of the Board, a majority of the Board of Directors, or at the written request of not less than one-half (1/2) of the Class I members.



Section 4.03 Place of Meeting. The Board of Directors shall designate the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made by the Board of Directors, the Chairman shall so designate such meeting place.

Section 4.04 Notice of Meeting. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail by the Secretary or his agent, to each Class I member, not less than seven (7) nor more than ninety (90) days before the date of such meeting. In case of a special meeting or when required by statute or by these By-laws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the Corporation, with postage thereon prepaid. [Amended September 15, 1981]

Section 4.05 Action by Written Consent of Members. Any action permitted or required by law to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a majority of the Class I members entitled to vote with respect to the subject matter thereof.

Section 4.06 Quorum. The presence, in person or by proxy, of one-fourth (1/4) of the Class I members at any meeting shall constitute a quorum at such meeting.

Section 4.07 Proxies. At any meeting of members, any Class I member may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact.

Section 4.08 Voting By Mail. Where directors or officers are to be elected by members, such election may be conducted by mail in such manner as the Board of Directors shall determine.

## ARTICLE V

### BOARD OF DIRECTORS

Section 5.01 General Powers. The affairs of the Corporation shall be managed by its Board of Directors (hereinafter the "Board"); the Board shall act only as a Board, and individual members shall have no power as such. The Board may appoint an executive committee of not more than thirty (30) members. [Amended July 11, 1980; January 12, 1989; January 10, 1991; October 1, 1991]

Section 5.02 Number, Tenure and Qualifications. The number of directors shall be not less than three (3) nor more than one hundred, twenty-five (125). Each director shall hold office until the next annual meeting of members and until his successor shall have been elected and qualified. The President shall serve as one of the Directors ex officio. Each director must be an individual who is a paid-up member, or must be an individual occupying a seniorlevel position with a paid-up member, and may serve only so long as he occupies such position. [Amended July 11, 1980; September 15, 1981; January 11, 1990; June 12, 1990; September 18, 1990; June 25, 1991; January 9, 1992; September 15, 1992; June 22, 1993; January 13, 1994; June 28, 1994; September 19, 1995]

Section 5.03 Regular Meeting. A regular annual meeting of the Board shall be held without other notice than this by-law, immediately after, and at the same place as, the annual meeting of Class I members. The Board may provide by resolution the time and place for the holding of additional regular meetings of the Board without other notice than such resolution.

Section 5.04 Special Meetings. Special meetings of the Board may be called by or at the request of the Chairman of the Board or any four (4) directors. Unless approved by the Chairman for an alternative location, the place will be the office of the Corporation.

Section 5.05 Notice. Notice of any special meeting of the Board shall be given at least seven (7) days previously thereto by written notice delivered personally or sent by mail or telegram to each director at his address as shown by the records of the Corporation. If mailed, or telegraphed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid or delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting. [Amended September 15, 1981]

Section 5.06 Quorum. One-third (1/3) of the directors holding office from time to time shall constitute a quorum. [Amended July 11, 1980]

Section 5.07 Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by law or these by-laws. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board shall individually or collectively

consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 5.08 Vacancies. Any vacancy occurring on the Board and any directorship to be filled by reason of an increase in the number of directors shall be filled by a majority of the remaining directors, though less than a quorum, or a sole remaining director. A director elected to fill a vacancy shall hold office during the unexpired term of his predecessor in office and until his successor is elected. [Renumbered September 15, 1981]

Section 5.09 Compensation. Directors shall not receive any salaries or expenses for their services as directors but may be employed as officers or consultants by the Corporation, for which services they may receive compensation and reimbursement of expenses. [Renumbered September 15, 1981]

Section 5.10 No Interest in Assets. No director shall possess any property right in or to the property of the Corporation. In the event the Corporation owns or holds any property upon its dissolution and winding up, after paying or adequately providing for its debts and obligations, the directors shall dispose of the remaining property in accordance with the provisions of the articles of incorporation. [Renumbered September 15, 1981]

Section 5.11 Executive Committee.

a. The Executive Committee provided for in Section 5.01 of the By-Laws shall be designated and appointed by the Board of Directors through a resolution adopted by a majority of the Directors in office. The Executive Committee shall consist of no more than thirty (30) members, all of whom shall be members of the Board of Directors.

b. When the Executive Committee has been so designated by the Board of Directors, said Executive Committee may exercise all the authority of the Board of Directors, except that said Executive Committee shall not have such authority in reference to amending the Articles of Incorporation, adopting a plan of merger or consolidation, the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation, a voluntary dissolution of the corporation or a revocation thereof, or amending the By-laws of the corporation.

c. The provisions of Article V of these By-Laws regarding tenure, notices of meetings and vacancies shall apply to said Executive Committee. A majority of the members of the Executive Committee shall constitute a quorum.

[Added April 20, 1982; Amended January 10, 1991; October 1, 1991]

## ARTICLE VI

### OFFICERS OF THE CORPORATION

Section 6.01 Officers. The officers of the Corporation shall be the Chairman of the Board (which office may be held by two persons acting as co-chairmen), a Vice Chairman, a President, a Secretary, a Treasurer and such other officers as may be elected to offices created by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary. [Amended September 15, 1981]

Section 6.02 Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the regular annual meeting of the Board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible. The term of office of all officers of the Board shall be for a 2-year period. The Vice Chairman shall ascend to the Chairmanship of the Board at the end of his/her 2-year term. New offices may be created and filled by any meeting of the Board. Each officer shall hold office until a successor shall have been elected. [Amended January 12, 1989]

Section 6.03 Removal. Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Corporation would be served thereby.

Section 6.04 Duties of Officers. The Chairman of the Board shall be the principal executive officer and shall in general supervise and control all of the business and affairs of the Corporation. He may delegate any and all authority for the day-to-day operations of the Corporation, including the power to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation relating to such day-to-day operations, to the President or such appropriate official of the Corporation. The Secretary shall perform those normal duties of a corporate secretary under District of Columbia law. [Amended April 20, 1982]

## ARTICLE VII

### CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 7.01 Contracts. Beyond the authority relating to day-to-day operations set forth in Section 6.04, the Board may authorize any officer or officers, agent or agents, of the Corporation, in addition to the Chairman, to enter into any other contract or execute and deliver any other instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. [Amended April 20, 1982]

Section 7.02 Checks, Drafts, Etc. All checks, drafts of orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Chairman of the Board or the President.

Section 7.03 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

Section 7.04 Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Corporation.

## ARTICLE VIII

### BOOKS AND RECORDS

Section 8.01 Books and Records. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members and the Board and shall keep at the principal office a record giving the names and addresses of all members. All books and records of the Corporation may be inspected by any voting member, or his agent or attorney for any proper purpose at any reasonable time.

## ARTICLE IX

### DUES

Section 9.01 Annual Dues. The Board may determine from time to time the annual dues payable to the Corporation by members.

Section 9.02 Payment of Dues. Dues shall be payable in advance and on the same day of the year annually thereafter. The Board may provide for payment of dues on a semi-annual basis, or otherwise.

Section 9.03 Default and Termination of Membership. When any member shall be in default in the payment of annual dues for a period of three (3) months, his membership may thereupon be terminated by the Board in the manner provided in Article III of these by-laws.

## ARTICLE X

### WAIVER OF NOTICE

Section 10.01 Waiver of Notice. Whenever any notice is required to be given under the provisions of the non-profit laws of the District of Columbia or under the provisions of the articles of incorporation or the by-laws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

## ARTICLE XI

### INDEMNIFICATION

Section 11.01 a. The Corporation shall indemnify to the extent of its available assets, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and

amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, except in such cases as involve gross negligence or willful misconduct. The foregoing right of indemnification shall not be exclusive of other rights to which he may be entitled.

b. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Article.

c. The Board may authorize the appropriate officers of the Corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article.

**American Seniors Housing Association**  
of the National Multi Housing Council

**Quarterly Meeting Minutes**

The Sheraton Palace Hotel  
San Francisco, CA

June 23, 1992

The American Seniors Housing Association met on June 23, 1992, at The Sheraton Palace Hotel, San Francisco, CA. Chairman William H. Elliott presided. Mr. Elliott called the meeting to order at 1:35 PM. Present were:

Robert Amberg, RETIREMENT HOUSING FOUNDATION  
Michael G. Boehm, SENIOR LIVING VALUATION SERVICES, INC.  
Ronald Cates, RETIREMENT CORPORATION OF AMERICA  
Christopher J. Coates, NATIONAL RETIREMENT COMPANY, L.P.  
Kyle P. Diekmann, RETIREMENT CORPORATION OF AMERICA  
Frank C. Dunbar, MINNESOTA MULTI HOUSING ASSOCIATION  
John J. Durso, KATTEN MUCHIN & ZAVIS  
James E. Eden, MARRIOTT CORPORATION  
William H. Elliott, ANGELES CORPORATION  
Gary W. Fisher, WYNDHAM SENIOR LIVING SERVICES  
Lee Haris, MARCUS & MILLICHAP  
William C. Kelly, Jr., LATHAM & WATKINS  
Paul Gordon, HANSON, BRIDGETT, MARCUS, VLAHOS & RUDY  
Jonathan L. Kempner, NATIONAL MULTI HOUSING COUNCIL  
Duncan L. Matteson, MATTESON INVESTMENT CORPORATION  
Shekar Narasimhan, WASHINGTON MORTGAGE FINANCIAL GROUP, LTD.  
David Narramore, ARTHUR SHUSTER, INC.  
Scott D. Peters, VALUATION COUNSELORS GROUP, INC.  
Donald P. Quinn, GOODWIN, PROCTER & HOAR  
Deborah Ratner-Salzberg, FOREST CITY RESIDENTIAL DEVELOPMENT, INC.  
Gerald W. Reinert, JMB PROPERTIES COMPANY  
Mark J. Schulte, THE PRIME GROUP, INC.  
Cynthia Schneider, TRI CAPITAL CORPORATION  
Karen A. Struve, WALKER METHODIST  
Bill Szymczak, TRI CAPITAL CORPORATION  
Fred W. Tanner, CENTRAL PARK LODGES RETIREMENT COMMUNITIES  
William E. Tuthill, ANGELES HOUSING CONCEPTS  
James Valentine, CLASSIC RESIDENCE BY HYATT  
Leonard A. Zax, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

Staff

W. Donald Campbell, Senior Vice President of Government Affairs  
Robert G. Josephs, Vice President  
David S. Schless, Director of Seniors Housing  
Lawrence B. Simons, General Counsel (POWELL, GOLDSTEIN, FRAZIER & MURPHY)

Guests

Bill Berdan, FPI MANAGEMENT INC.  
Andrew Bradley, Jr., HILLSDALE GROUP  
Campbell Brown, HARDAWAY MANAGEMENT CO., INC.  
John Connolly, CONNOLLY BROTHERS REALTY GROUP  
Hallidie Grant, GATX REALTY ADVISORS  
Sam Grinels, AGIO  
Ken Holland, LIFE STYLE SERVICES WEST, INC.  
Charles S. Lytle, LEISURE CARE INC.



Pam Negrelli, LIFE STYLE SERVICES, INC.  
Laura Rowley, MULTI-HOUSING NEWSLETTER

#### I. OPENING REMARKS

William H. Elliott, Chairman of the American Seniors Housing Association, welcomed attendees to the meeting and provided an overview of the program. He briefly reported on the luncheon meeting of the Executive Board, which had just concluded. Mr. Elliott reported that the NMHC Board of Directors had voted earlier in the day to change the name of the Seniors Housing Committee to the "American Seniors Housing Association." The name change will help the organization's lobbying efforts with Congress and executive agencies and will eliminate confusion with NMHC's new committee structure. The Association's letterhead will maintain its ongoing relationship as part of the National Multi Housing Council.

Mr. Elliott welcomed John J. Durso of Katten Muchin & Zavis, Chicago, to the Executive Board of the American Seniors Housing Association. He advised members of the dates and location of future meetings. The next meeting of the Association will take place at the Ritz Carlton Hotel in Washington, DC on Tuesday afternoon, September 15 in conjunction with the NMHC Quarterly Meeting. On January 13, 1993, the Association will meet at the La Costa Resort and Spa in Carlsbad/San Diego, California during the NMHC Annual Meeting, January 13-15, 1993. Following the NMHC Annual Meeting, the Association will meet on March 16, 1993 at the Ritz Carlton (Pentagon City) Hotel in Washington, DC/Pentagon City, VA. On June 22, 1993, the Association will meet during the NMHC Quarterly Meeting at the Four Seasons Hotel and Resort at Las Colinas, Dallas, TX, June 21-22, 1993.

#### II. LEGISLATIVE BRIEFING

#### III. PROJECT STATUS REPORT



IV. FUTURE ACTION PRIORITIES


V. ROUNDTABLE DISCUSSION

Attendees of the American Seniors Housing Association meeting participated in a roundtable discussion which featured specific observations about the financing, development, acquisition, management, and regulation of seniors housing.

VI. ADJOURNMENT

The meeting of the American Seniors Housing Association was adjourned at 3:40 PM. A reception for meeting attendees followed from 4:00 - 6:00 PM at the offices of Hanson, Bridgett, Marcus, Vlahos & Rudy.

Respectfully submitted,

  
David S. Schless  
Executive Director



# **NEWS RELEASE**

**National Multi Housing Council • Suite 620 • 1250 Connecticut Avenue, N.W. • Washington, D.C. 20036 • (202) 659-3381**

**FOR IMMEDIATE RELEASE  
July 7, 1992**

**Contact: David S. Schless  
Director of Seniors Housing  
(202) 659-3381**

## **AMERICAN SENIORS HOUSING ASSOCIATION FORMED**

**The National Multi Housing Council (NMHC) today announced formation of the American Seniors Housing Association to improve the quality and availability of affordable housing for America's growing population of older adults. The NMHC Board of Directors approved the action at its recent Quarterly Meeting in San Francisco.**

**The American Seniors Housing Association will enable leading industry professionals to improve the financial, legislative and regulatory environment that affects their ability to provide seniors housing. The need for this new national organization was clearly demonstrated during the past year.**

**The seniors housing industry has been rapidly maturing in recent years as major firms have developed sophistication in meeting the housing needs of the elderly population. Founding membership of the American Seniors Housing Association includes many of the country's leading owners, developers, managers, and financiers of multifamily housing for seniors.**

**According to William H. Elliott, Chairman of the Association, "The great strength of this new organization is its uniquely proactive orientation. It enables senior level professionals in seniors housing to take action together, to get things done, to influence decisions that have previously been left to fate. That's a first in the history of this young industry." Elliott is Chairman and CEO of Angeles Corporation, a publicly owned real estate company that owns and operates 17 congregate seniors housing projects nationally.**

**The American Seniors Housing Association (ASHA) has already begun work on a number of important industry projects. It is pressing the Department of Housing and Urban Development to clarify aspects of the Fair Housing Amendments Act and Americans With Disabilities Act to avoid significant new threats to the operation of housing for older Americans. It is carrying out a project to improve the industry's understanding of fair housing advertising. The Association is also developing a position paper to identify the most effective regulatory framework for assisted living facilities.**

**-OVER-**

July 7, 1992

Page Two

A special ASHA task force of industry professionals is developing the nation's first comprehensive database on seniors housing, which will greatly improve understanding of seniors housing operations and finance.

A separate task force is developing related qualitative analysis of highly successful seniors housing projects. The report will be used to educate older adults and the public about the different housing options that are available.

Finally, ASHA is producing a report that will assess the status of seniors housing finance and identify the most promising avenues for financing today and in the future.

The American Seniors Housing Association meets on a quarterly basis, providing industry executives an opportunity to interact face-to-face in working sessions. The Association creates special task forces to achieve specific objectives throughout the year.

In addition to the biweekly NMHC Washington Update, quarterly Tax Update and Environmental Update, the National Multi Housing Council produces through the American Seniors Housing Association a bimonthly Seniors Housing Update, a substantive newsletter of concise information about the most important legislative, regulatory, and business developments. News requiring the immediate attention of Association members is sent within minutes via fax.

David S. Schless, NMHC's Director of Seniors Housing, has been named Executive Director of the American Seniors Housing Association. Before joining NMHC in May 1991, Schless was Manager of Communications and Research at the National Association for Senior Living Industries. He received his undergraduate degree from the Travelers Center on Aging at the University of Connecticut and his Master of Science from the University of North Texas, Center for Studies in Aging.

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Based in Washington, DC, the National Multi Housing Council (NMHC) represents the interests of the larger and most respected firms in the multifamily housing industry. NMHC's members are engaged in all aspects of the development and operation of rental housing, including the ownership, building, financing, management, and conversion to condominium of such properties.

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