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September 20, 2000

AOR 2000-28

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

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 25 3 18 PM '00

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., ss 437f, and Federal Election Commission ("FEC" or "the Commission") regulations, 11 C. F. R. ss 112. Specifically, we respectfully request that the Commission confirm that as a result of the impending formal and legal separation between ASHA and the National Multi Housing Council ("NMHC") neither they nor their PACS will be affiliated as of January 1, 2001.

In 1996-38, the Commission analyzed the application of the Act to ASHA, which at that time was an unincorporated association of businesses involved in the development, construction, financing and management of multifamily housing for senior citizens. In 1996, ASHA had a relationship with the National Multi Housing Council ("NMHC"), an incorporated trade association representing the interests of the multifamily housing industry. In its previous opinion, the Commission noted that the personnel of ASHA could establish a PAC, to be called the Seniors Housing PAC. The Commission found that because of the relationship between ASHA and NMHC, the Seniors Housing PAC would be "affiliated" with NMHC's PAC. Because NMHC would possibly be paying for the administrative and solicitation costs of the Seniors Housing PAC, NMHC would be connected to the Seniors Housing PAC.

These facts have now significantly changed. Over the past several months, NMHC and ASHA engaged in substantial discussions regarding the clear and express separation of these two entities. Those discussions have resulted in formal and legal steps being taken which will result, as of December 31, 2000, in these two organizations functioning as separate entities.

On August 7, 2000, ASHA received a Certificate of Incorporation from the Department of Consumer and Regulatory Affairs of the District of Columbia (attached hereto as Exhibit A). The Articles of Incorporation of the American Seniors Housing Association, Inc., ("ASHA, Inc.") provide that it is a IRC 501(c)(6) nonprofit corporation. Its purposes are, among others, to serve as a forum for executives in the seniors housing industry, to study issues of concern to that industry and to engage in advocacy on those issues before governmental agencies and other organizations. ASHA, Inc. is currently completing an application for tax exempt status under 501(c)(6), which will be filed shortly with the IRS.

ASHA, Inc. and NMHC have also entered into a formal Separation Agreement (which calls ASHA, Inc. the New ASHA), (attached hereto as Exhibit B), which sets forth the terms and conditions related to severing the organizational, operational and formal ties between NMHC and ASHA. As of December 31, 2000, NMHC and ASHA Inc., "shall be separate and independent legal entities. The parties as of such time shall not be deemed agents of the other and are not authorized to make any representation, contract, or commitment on behalf of the other". . . 10.1 of the Separation Agreement. The Board of Directors of ASHA, Inc. is comprised of approximately fifty individuals, the vast majority of whom have no relationship whatsoever with NMHC.

ASHA, Inc., NMHC and the NMHC PAC wish to ensure that the Seniors Housing PAC is disconnected to NMHC and disaffiliated with the NMHC PAC. The Commission has examined, in several instances, various factors in relationships between various entities to determine whether one entity is an affiliate of another, and therefore whether their PACs are affiliated with one another. The factors considered by the Commission include: A) ownership by one sponsoring organization of a controlling interest in another; B) participation of an organization in the governance of another; C) the authority or ability to hire or otherwise control the decision makers of the other organization; D) whether a sponsoring organization or committee has common or overlapping membership;

E) common or overlapping officers or employees indicating a formal or ongoing relationship between the sponsoring organizations.

A review of each of these factors and their application to ASHA, Inc. and NHMC justifies the conclusion that the two organizations are no longer affiliated, and therefore that their PAC's are no longer affiliated. In this case, NHMC will no longer have the right to participate in the governance of ASHA Inc. NHMC will play no role in the hiring, appointing or demoting of the officers of ASHA, Inc. While there may be some overlapping membership, it appears to be minimal. Rather, this case is indistinguishable from the facts considered by the Commission in Advisory Opinion 96-50, where the Commission concluded that the relationship between the two organizations and their PACS did not fall within the parameters of the definition of "affiliated" organizations or PACs. In that instance, the Commission permitted the PACs to amend their Statements of Organization so that they were no longer affiliated. Also see Advisory Opinion 89-16.

We respectfully request that the Commission determine that under the facts set forth above, ASHA Inc. and NHMC are not connected organizations, that the Seniors Housing PAC and the NHMC PAC are no longer affiliated, and that the Seniors Housing PAC is not connected to NHMC. Both PACs would amend their Statements of Organization accordingly. While the Seniors Housing PAC could not, as the Commission noted in 1996, be a separate segregated fund of ASHA since ASHA was an unincorporated association, it would now be a separate segregated fund of ASHA, Inc. ASHA, Inc. would pay the administration and solicitation costs for the Seniors Housing PAC. Solicitations for contributions to the Seniors Housing PAC would now be limited to the executive and administrative personnel of ASHA Inc. (and their families). In addition, we understand that permission granted to NHMC PAC for solicitations of contributions by corporations who are members of both organizations would not extend to ASHA Inc.

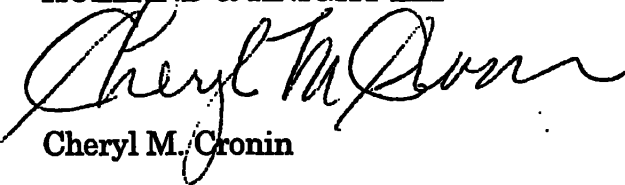
As the Commission has noted, affiliation is not a discretionary act in the first instance; rather affiliation results from the structural or organizational relationship of establishing entities. Where, however, such as in this instance, the organizations have "disconnected," a disaffiliation under the Act is

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appropriate. Also see Advisory Opinion 90-10 (the parent/subsidiary relationship must be legally severed for disaffiliation to occur).

Please contact me if you need any additional information regarding this matter.

Very truly yours,
HOLLAND & KNIGHT LLP

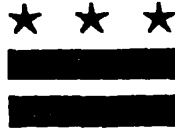


Cheryl M. Cronin

CMC/jam
Enclosures

BOS1 #1073442 v1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



C E R T I F I C A T E

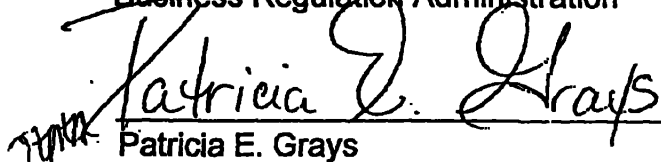
THIS IS TO CERTIFY that all applicable provisions of the District of Columbia NonProfit Corporation Act have been complied with and accordingly, this **CERTIFICATE OF INCORPORATION** is hereby issued to:

AMERICAN SENIORS HOUSING ASSOCIATION, INC.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of this office to be affixed as of the 7th day of August, 2000.

Lloyd J. Jordan
Director

Patricia E. Grays
Acting Administrator
Business Regulation Administration


Patricia E. Grays
Superintendent of Corporations
Corporations Division

Anthony A. Williams
Mayor

**ARTICLES
OF
INCORPORATION
OF
AMERICAN SENIORS HOUSING ASSOCIATION, INC.**

I.

The name of this corporation is American Seniors Housing Association, Inc. ("Corporation").

II.

- A.** This Corporation is a nonprofit corporation organized as a trade association under Title 29, Chapter 5 of the District of Columbia Code. The purposes of this Corporation are (1) to engage in any lawful act or activity for which a corporation may be organized under such law; and (2) to conduct its activities as a trade association in accordance with Section 501(c)(6) of the Internal Revenue Code, as amended. Its duration shall be perpetual, unless and until dissolved pursuant to these Articles, the Bylaws, and applicable law.
- B.** The primary specific purposes for which the Corporation is formed are:
- (1) to serve as a forum for high-level executives with major companies doing business in the seniors housing and seniors housing-based services industry (the "industry") and for other professionals involved with the industry,
 - (2) to foster the exchange of ideas and expertise in the development and operation of seniors housing and seniors housing-based services programs,
 - (3) to advocate before and influence governmental bodies and agencies and other organizations on behalf of the interests of seniors housing and services developers and providers and their residents,
 - (4) to study issues of interest to the industry and publish information and analyses emanating from such studies,

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- (5) to act as a liaison with other organizations that have an interest in or are affiliated with the industry,
- (6) to educate and inform the public, the government, and other organizations about the industry,
- (7) to promote high standards of quality for the industry, and
- (8) to engage in such other activities and transactions that the Board of Directors deems to be in furtherance of or related to the primary purposes of the Corporation.

III.

The name and address in the District of Columbia of this Corporation's initial agent for service of process is: David Schless, c/o National Multi Housing Council, 1850 M Street, N.W., Suite 540, Washington, DC 20036-5803.

IV.

This Corporation shall not be operated for profit, and no part of its net earnings shall inure to the benefit of any private shareholder or individual.

V.

The Corporation shall be operated in compliance with section 501(c)(6) of the Internal Revenue Code, as amended. The Corporation shall not engage in any activities or exercise any powers, whether express or implied, so as to disqualify the Corporation from exemption from federal income tax under section 501(a) of the Internal Revenue Code by reason of being an organization described in section 501(c)(6) of the Code

VI.

The Corporation shall have Members as set forth in the Bylaws. Only those Members who qualify for participation on the Board of Directors, by reason of the payment of applicable dues, and upon such other criteria as the Board may establish, shall be entitled to appoint directors (one director per qualified Member). The initial Board of Directors shall consist of the following persons:

1. Mark J. Schulte
Brookdale Living Communities, Inc.
77 West Wacker Drive, Suite 4400
Chicago, IL 60601-1690
2. William B. Kaplan
Senior Lifestyle Corporation
111 East Wacker Drive, Suite 2400
Chicago, IL 60601

3. **Edward R. Kenny**
Life Care Services Corporation
800 Second Avenue, Suite 200
Des Moines, IA 50309-1380
4. **Karen M. Anderson**
Cordia Senior Living
101 Arch Street, 16th Floor
Boston, MA 02110-1106
5. **David S. Schless**
American Seniors Housing Association
1850 M Street, NW, Suite 540
Washington, DC 20036-5803

Additional directors shall be appointed in accordance with the Bylaws. No Member shall have the right to vote, except insofar as directors appointed by qualified members may vote in the Member's interest.

VII.

- A. The liability of directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under District of Columbia law.**
- B. The Corporation shall have the power to indemnify any director, officer, employee or agent of the Corporation for liability incurred by such person in the exercise of his or her duties with respect to the Corporation to the fullest extent permitted by District of Columbia law.**
- C. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection of a director or agent of the Corporation existing at the time of such repeal or modification.**

VIII.

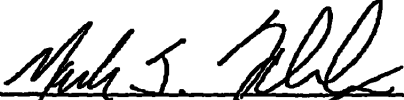
- A. In the event of liquidation, dissolution, termination, or winding up of the Corporation (whether voluntary, involuntary, or by operation of law), the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, distribute the remaining assets as determined by the Board of Directors and in compliance with section 501(c)(6) of the Internal Revenue Code.**
- B. No part of the net earnings of this Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons, except that this Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make**

payments and distributions in furtherance of the purposes set forth in these articles.

IX.


Notwithstanding any of the above statements of purposes and powers, this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this Corporation.

Incorporators:




Mark J. Schulte, Incorporator
Brookdale Living Communities, Inc.
77 West Wacker Drive, Suite 4400
Chicago, IL 60601-1690

Date: July 31, 2000



David S. Schless, Incorporator
American Seniors Housing Association
1850 M Street, NW, Suite 540
Washington, DC 20036-5803

Date: August 2, 2000



Paul A. Gordon, Incorporator
Hanson, Bridgett, Marcus, Vlahos, & Rudy, LLP
333 Market Street, Suite 2300
San Francisco, CA 94105

Date: August 4, 2000

STATE OF CALIFORNIA

COUNTY OF San Francisco

On this 4th day of August, 2000, before me, the undersigned Notary Public, personally appeared Paul A. Gordon personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature Tracy L. Hohe
Name Tracy L. Hohe
(typed or printed)

(This area for official notarial seal)

STATE OF Illinois

COUNTY OF Cook

On this 31 day of July, 2000, before me, the undersigned Notary Public, personally appeared Mark J. Schulte personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature Catherine S. De Nardo
Name Catherine S. De Nardo
(typed or printed)

(This area for official notarial seal)

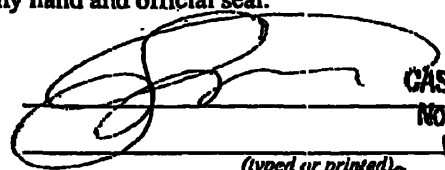
STATE OF washington DC

COUNTY OF _____

On this 2 day of August, 2000, before me, the undersigned Notary Public, personally appeared David S. Schles personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature
Name



CASSANDRA GOODMAN
Notary Public in and for
Washington, D.C.
My Commission Expires 5-31-2004



(This area for official notarial seal)

Exhibit B



8/29/00

SEPARATION AGREEMENT

SEPARATION AGREEMENT

This Separation Agreement ("Agreement") is entered into as of August 25, 2000 by and between the National Multi Housing Council, a District of Columbia nonprofit corporation ("NMHC") and the American Seniors Housing Association, Inc., a District of Columbia nonprofit corporation ("NEW ASHA").

Background

- A. NMHC is a nonprofit corporation, exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code, that provides leadership on legislative and regulatory matters, as well as research and strategic business information, for members of the multi-housing industry.
- B. In 1991, NMHC created what is now known as the American Seniors Housing Association ("ASHA") within NMHC to address the unique challenges of housing the growing population of older adults. ASHA provides leadership for the seniors housing industry on legislative and regulatory matters as well as research and strategic business information for NMHC members.
- C. The NMHC Board of Directors and the ASHA Executive Board in 1999 approved a new membership structure under which NMHC members currently elect to (i) participate in NMHC activities other than ASHA activities ("NMHC Members"), (ii) participate in ASHA activities only ("ASHA Members"), or (iii) participate in all NMHC activities and ASHA activities.
- D. The NMHC Board of Directors and the ASHA Executive Board have mutually determined that ASHA should be spun off as a separate organization, subject to the terms and conditions contained in this Agreement.
- E. The ASHA Executive Board has formed NEW ASHA for the purpose of serving as the new, separate legal entity for ASHA. Prior to the date of Closing, NEW ASHA will have filed with the Internal Revenue Service an application for exempt status under Section 501(c)(6) of the Internal Revenue Code and it is anticipated that such tax-exempt status will have been obtained from the Internal Revenue Service.

A G R E E M E N T

For and in consideration of the mutual representations, warranties, covenants, and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree:

1. SEPARATION

On and subject to the terms and conditions of this Agreement, as of the Effective Time (hereinafter defined), NMHC agrees that all ASHA organizational, operational and formal ties with NMHC shall be terminated (the "Separation"). As of the Effective Time, NEW ASHA shall be the independent legal entity for all ASHA activities and shall, inter alia, receive the Licensed Assets and the Documents, and assume the Assumed Liabilities (such terms as hereinafter defined).

2. ASSUMPTION OF LIABILITIES; LICENSE OF ASSETS

2.1 Assumption of Liabilities. On and subject to the terms and conditions of this Agreement, at the Effective Time, NMHC will assign, and NEW ASHA will assume and agree to pay, defend, discharge, and perform when due, the liabilities, contingencies and obligations set forth on Schedule 2.1 hereto (collectively, the "Assumed Liabilities"). Except as provided in Schedule 2.1 or elsewhere in this Agreement, NEW ASHA will not assume or be or become liable for any liabilities or obligations of NMHC relating to the operations and activities of ASHA prior to the Effective Time or for any liabilities for which NMHC is indemnifying NEW ASHA under this Agreement.

2.2 License of Certain Assets. On and subject to the terms and conditions of this Agreement, at the Effective Time, NMHC will grant to NEW ASHA a license (the "License") to use certain assets of NMHC associated with the operations and activities of ASHA (the "Licensed Assets"). The Licensed Assets, royalty payments ("Royalty Payments"), default provisions, restrictions and other terms and conditions of the License shall be set forth in a License Agreement between NMHC and NEW ASHA substantially in the form attached hereto as Exhibit A (the "License Agreement").

2.3 Transfer of Licensed Assets. Upon receipt by NMHC of the final installment of the Royalty Payments as defined in the License Agreement and the full repayment of the NMHC Loan (defined in Section 4.1 below), NEW ASHA shall own the Licensed Assets free and clear of all claims and encumbrances arising through NMHC.

2.4 Copies of Documents. Subject to the terms of this Agreement, NMHC will provide NEW ASHA with copies of the documents and records set forth on Schedule 2.4 hereto (the "Documents") as soon as reasonably practicable after the execution of this Agreement. NEW ASHA shall be entitled to use the Documents in the course of its regular nonprofit activities for a duration of time reasonably deemed necessary by NEW ASHA, provided that (i) NEW ASHA's use of the Documents shall be subject to any applicable copyrights held by NMHC or third parties; (ii) confidential information contained in the Documents shall be deemed proprietary to NMHC and remain confidential at all times in accordance with Section

10.12; and (iii) NEW ASHA shall prohibit, and take reasonable steps to prevent, the use of the Documents by any party contrary to the terms of this Agreement.

2.5 Excluded Assets. Except for the Licensed Assets and the Documents, NEW ASHA shall not be entitled to use and/or possess any NMHC asset.

3. EFFECTIVE TIME

Subject to the satisfaction or appropriate waiver of all conditions precedent thereto, the consummation (the "Closing") of the Separation will be held as of the close of business on December 31, 2000 (the "Effective Time ") and shall be deemed effective as of such time. The Closing may also be conducted through facsimile, courier, mail or escrow procedures agreed to by the parties. At the Closing, each party will sign and deliver to the other all instruments of conveyance and other documents and deliveries as described in this Agreement.

4. LOAN TO NEW ASHA

4.1 Loan. NMHC hereby agrees to provide NEW ASHA with a one time loan in the amount of up to Two Hundred Thousand Dollars (\$200,000) at any time, with 60 days written notice, during the period from October 1, 2000 to December 31, 2001 upon the request of NEW ASHA (the "NMHC Loan"). The NMHC Loan will have a term of up to thirty-six (36) months, bear interest at a rate of six percent (6%) per annum, and require monthly payment of accrued interest only. The NMHC Loan shall be evidenced by a promissory note substantially in the form attached hereto as Exhibit B ("Promissory Note"). Concurrent with the delivery of the Promissory Note, NEW ASHA shall execute and deliver to NMHC a Pledge and Security Agreement substantially in the form attached hereto as Exhibit C ("Pledge Agreement").

4.2 Default on the NMHC Loan. As provided under the License Agreement, Promissory Note and Pledge Agreement, in the event NEW ASHA defaults in the payment of the NMHC Loan, NMHC shall be entitled to terminate the License Agreement, and seek any appropriate legal and/or equitable remedies under the Promissory Note and the Pledge Agreement.

5. REPRESENTATIONS AND WARRANTIES OF NMHC

For the purpose of inducing NEW ASHA to enter into this Agreement, NMHC represents and warrants to NEW ASHA that:

5.1 Organization and Qualification. NMHC is a nonprofit corporation duly organized and validly existing under the laws of the District of Columbia and has all corporate power and authority to own, lease or operate its properties in the places where such properties are owned, leased, or operated and to carry on its business as it is now being conducted.

5.2 Authority and Validity. NMHC has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and has the full and sole unencumbered title to and ownership of the Licensed Assets, except for certain publications or compilations that are subject to copyrights held by third parties. The execution, delivery, and performance of this Agreement by NMHC has been authorized and approved by all necessary

action on the part of NMHC and this Agreement is the valid and binding obligation of NMHC enforceable against NMHC in accordance with its terms, except as enforceability may be limited by applicable equitable principles or by applicable laws. Neither the execution and delivery of this Agreement by NMHC, nor the consummation by NMHC of the transactions contemplated hereby will (i) violate NMHC's Articles of Incorporation, or Bylaws, (ii) violate any provisions of law or any order of any court or any governmental unit to which NMHC is subject, or (iii) violate any indenture, mortgage, lease, agreement, or other instrument to which NMHC is a party, the violation of which would have a material adverse effect on NMHC's ability to perform its obligations under this Agreement.

5.3 Third Party Consents and Approvals. No consent, approval, authorization or action by any third party or any court, administrative agency or other governmental authority is required in connection with the execution and delivery by NMHC of this Agreement or the consummation by NMHC of the transactions contemplated herein.

5.4 Material Contracts. A list of all of the material contracts and agreements of NMHC ("Contracts") in connection with ASHA is set forth on Schedule 5.4. Each Contract is in full force and effect and is valid, binding and enforceable in accordance with its terms, except as enforcement may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and to the exercise of judicial discretion in accordance with general equitable principles.

5.5 Non-competition; Referral. During the term of the License Agreement, NMHC will not (i) establish or create a division or committee within NMHC that focuses on representing organizations or individuals in the seniors housing industry or (ii) represent for compensation the interests of senior housing on behalf of other associations (other than NEW ASHA). During the term of the License Agreement, in the event that a NMHC Member or prospective NMHC member inquires about or otherwise expresses an interest in seniors housing to NMHC, NMHC will make reasonable efforts to refer such NMHC Member or prospective NMHC member to NEW ASHA by giving NEW ASHA's address and telephone number.

6. REPRESENTATIONS AND WARRANTIES OF NEW ASHA

6.1 Organization and Qualification. NEW ASHA is a nonprofit corporation duly organized and validly existing under the laws of the District of Columbia and has all corporate power and authority to own, lease, or operate its properties in the places where such properties are owned, leased, or operated and to carry on its business as it is now being conducted.

6.2 Authority and Validity. NEW ASHA has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of the Agreement by NEW ASHA has been authorized and approved by its Board of Directors by all necessary action on the part of NEW ASHA, and the Agreement is the valid and binding obligation of NEW ASHA enforceable against NEW ASHA in accordance with its terms, except as enforceability may be limited by applicable equitable principles or by applicable laws. Neither the execution and delivery of the Agreement by NEW ASHA nor the consummation by NEW ASHA of the transactions contemplated hereby will (i) violate NEW ASHA's Articles of Incorporation or Bylaws, (ii) violate any provisions of law

including but not limited to any provisions of the Internal Revenue Code, or any order of any court or any governmental unit to which NEW ASHA is subject, or by which its assets may be bound, or (iii) violate any indenture, mortgage, lease, agreement, or other instrument to which NEW ASHA is a party or by which its assets or properties may be bound, the violation of which would have a material adverse effect on the NEW ASHA's ability to perform its obligations under this Agreement.

6.3 Third-Party Consents and Approvals. No consent, approval, authorization or action by any third party or any court, administrative agency or other governmental authority is required in connection with the execution and delivery by NEW ASHA of this Agreement or the consummation by NEW ASHA of the transactions contemplated herein.

6.4 NMHC Membership Database. No employee, staff member or agent of NEW ASHA will retain after the Effective Time any hard copies or electronic copies of, the NMHC membership database, or any portion thereof, except with respect to the database for ASHA members and prospective ASHA members denoted "s" on such database.

7. CONDUCT OF BUSINESS PRIOR TO EFFECTIVE TIME

7.1 NMHC's Operation of ASHA. NMHC covenants that prior to the Effective Time, NMHC will allow ASHA (a) to operate in the usual, regular and ordinary manner, and (b) to the extent consistent with such operation, to preserve its present relationship with ASHA Members and others having dealings with ASHA, take all steps to maintain the goodwill associated with ASHA, and maintain ASHA books and records in the usual, regular and ordinary manner, and on a basis consistent with present practices.

7.2 Communications. Prior to the Effective Time, and for such period after the Effective Time mutually deemed necessary by the parties, the parties will cooperate with the other and provide reasonable assistance in communicating to members and other parties with dealings or associations with NMHC or ASHA regarding the Separation with the object of minimizing any disruptions to the continued operation of NMHC and the continued operation of ASHA under NEW ASHA. Each party must approve in advance all written communications and any verbal communications to the press or media or a public audience relating to the relationship between or among NMHC, ASHA and/or NEW ASHA, which approval will not be unreasonably withheld. The terms of this Agreement may not be disclosed and must be kept confidential, except for disclosures required by law and except for disclosures as are needed to directors, officers, employees and agents in order to carry out each parties' obligations hereunder.

7.3 Certain Personnel.

(a) Prior to the Effective Time, David Schless, Ken Preede and Doris Kerr (the "NEW ASHA Employees") will continue to be employed by NMHC with medical coverage and such other employee benefits currently provided to them by NMHC (including bonuses at an amount no less than the amount received for 1999), subject to any current and existing employment policies of NMHC; provided, however, that each of the NEW ASHA Employees will not be terminated without cause unless with the prior consent of the ASHA Executive Board.

(b) Notwithstanding Section 7.3(a) above, NMHC agrees that, prior to the Effective Time, each of the NEW ASHA Employees may from time to time perform certain duties and enter into certain transactions as an officer or agent of NEW ASHA in connection with the formation, organizational and planning activities of NEW ASHA. NEW ASHA agrees that, while the NEW ASHA Employees may engage in these activities prior to the Effective Time, the NEW ASHA Employees will continue to operate and administer ASHA on behalf of NMHC prior to the Effective Time.

(c) NEW ASHA Employees may solicit and receive non-dues revenue for the benefit of NEW ASHA (such as "founding member" contributions) which, except as provided below, shall remain the property of NEW ASHA in their entirety. NEW ASHA Employees may also incur startup expenses prior to October 1, 2000 on behalf of NEW ASHA, which expenses will be advanced by NMHC, except as provided under paragraphs (d), (e), (f) and (g) below.

(d) The aggregate maximum amount of startup expenses to be advanced by NMHC under paragraph (c) above shall not exceed \$60,000.

(e) In the event NEW ASHA receives non-dues revenue for the benefit of NEW ASHA, (i) NEW ASHA will pay for its startup expenses from such revenue prior to requesting an advancement from NMHC, and (ii) NEW ASHA will immediately reimburse NMHC for expenses already advanced and paid by NMHC pursuant to paragraph (c) above from the non-dues revenue collected.

(f) All amounts advanced by NMHC under paragraph (c) above and not otherwise reimbursed by NEW ASHA under paragraph (e) above shall be repaid by NEW ASHA at the time the proceeds of the NMHC Loan are paid to NEW ASHA by NMHC under Section 4.1 of this Agreement.

(g) As of the Effective Time, the NEW ASHA Employees will no longer be employed by NMHC.

7.4 NEW ASHA Office Space. Prior to the Effective Time, NEW ASHA will use its best efforts to seek and secure new office space for its operations. In the event that NEW ASHA is unable to relocate its offices on or prior to the Effective Time, NMHC agrees to permit NEW ASHA to remain in the space currently occupied by ASHA and to continue receiving office support services as currently received by ASHA, on a week-to-week basis as needed, until and in no event later than January 31, 2001 (the "Extended Period"). During the Extended Period, NEW ASHA shall pay NMHC a weekly amount equal to no less than the fair market rental as reasonably determined by NMHC (the "Weekly Payment"). NEW ASHA shall pay the Weekly Payment on the Friday prior to commencement of each weekly period (commencing on Monday and ending on Sunday). NMHC may, at its option, elect to reconcile the Weekly Payment on the True-Up Schedule in accordance with Section 10.9 or to automatically deduct the Weekly Payment from the Fourth Quarter Payment payable to NEW ASHA under Section 7.5 of this Agreement.

7.5 ASHA Membership Dues Prior to the Effective Time.

(a) ASHA Membership Dues (as hereinafter defined) first invoiced during the last three fiscal quarters of year 2000 and collected at any time shall be shared by NMHC and NEW ASHA as follows:

(i) For ASHA Membership Dues first invoiced during the period April 1, 2000 through June 30, 2000 and collected at any time by NMHC: 25% of the ASHA Membership Dues shall be payable to NEW ASHA ("Second Quarter Payment"), and the remaining 75% of the ASHA Membership Dues shall be payable to NMHC;

(ii) For ASHA Membership Dues first invoiced during the period July 1, 2000 through September 30, 2000 and collected at any time by NMHC: 50% of the ASHA Membership Dues shall be payable to NEW ASHA ("Third Quarter Payment"), and the remaining 50% of the ASHA Membership Dues shall be payable to NMHC;

(iii) For ASHA Membership Dues first invoiced during the period October 1, 2000 through December 31, 2000 and collected at any time by NMHC: 75% of the ASHA Membership Dues shall be payable to NEW ASHA ("Fourth Quarter Payment"), and the remaining 25% of the ASHA Membership Dues shall be payable to NMHC;

(iv) For all ASHA Membership Dues first invoiced after December 31, 2000: 100% of the ASHA Membership Dues shall be payable to NEW ASHA ("Post 2000 Payments"), except as provided under the terms of the License Agreement.

(b) "ASHA Membership Dues" shall mean the aggregate of all membership dues invoiced for ASHA or NEW ASHA. Membership dues are deemed "invoiced" on the day ASHA dues notices are first sent, regardless of when actual monetary sums or other consideration is received by NMHC or NEW ASHA.

(c) Due Dates for Payments. The Second Quarter Payment and Third Quarter Payment shall be made to NEW ASHA on or before November 15, 2000 and the Fourth Quarter Payment shall be made on or before February 15, 2001, provided, however, that in the event any ASHA Membership Dues for the applicable payment period have not been collected by the due date, then such payment shall be made within seven (7) business days from the date of receipt. The Post 2000 Payments shall be made to the proper party (either NMHC or NEW ASHA) within seven (7) business days from the date of receipt. NMHC may, under certain circumstances, deduct the Weekly Payment due NMHC under Section 7.4 and any reimbursements due NMHC under Section 10.9(c) from the Fourth Quarter Payment.

(d) NEW ASHA Recruitment of Members. NEW ASHA covenants that prior to the Effective Time and during the first fiscal quarter of 2001, NEW ASHA will market for, recruit and invoice new members in ASHA's usual, regular and ordinary manner, and to the extent consistent with such operation, preserve its present relationship with ASHA Members, prospective ASHA members, and other parties having dealings with ASHA. In the event NEW ASHA receives an ASHA membership dues payment for a dues notice first sent to an ASHA Member or prospective ASHA Member prior to the Effective Time, NEW ASHA shall, within seven (7) days of receipt, forward the collected membership dues payment to NMHC less that portion payable to NEW ASHA under Section 7.5(a) above.

7.6 Use of ASHA Name Prior to the Effective Time. NMHC hereby authorizes NEW ASHA to use the name "American Seniors Housing Association," "ASHA" and the ASHA logo prior to the Effective Time solely in connection with the formation, organizational and planning activities of NEW ASHA prior to the Effective Time. After the Effective Time, the use of the names and the logo shall be governed by the License Agreement. In the event this Agreement is terminated or the parties otherwise fail to consummate the transactions contemplated by this Agreement, NEW ASHA shall immediately cease use of the names and logo.

8. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF NEW ASHA

The obligations of NEW ASHA under this Agreement are subject to the satisfaction, at or prior to the Effective Time, of each of the following conditions, any or all of which may be waived in writing, in whole or in part by NEW ASHA:

8.1 Accuracy of Representations and Warranties. Each and every representation, warranty and statement of NMHC contained in this Agreement will have been correct in all material respects at the Effective Time, and NEW ASHA will have received the certificate of an officer of NMHC to such effect.

8.2 Litigation. There will not be any action, proceeding, regulation or legislation pending which seeks to enjoin, restrain or prohibit the consummation of the transactions contemplated under this Agreement, or to obtain damages from NEW ASHA in respect of the consummation of such transactions.

8.3 Departure of David Schless Prior to the Effective Time. Mr. Schless shall not have departed or resigned from his current employment with NMHC and/or prospective employment with NEW ASHA prior to the Effective Time.

8.4 NEW ASHA Board Approval. NEW ASHA's Executive Board (or Board of Directors) will have approved this Agreement and the transactions contemplated by this Agreement, to the extent required.

8.5 License Agreement. NEW ASHA and NMHC will, as of the Effective Time, have executed and delivered the License Agreement.

8.6 Loan Advances. NMHC will have delivered to NEW ASHA proceeds of the NMHC Loan, if requested by NEW ASHA and with 60 days written notice to NMHC.

9. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF NMHC

The obligations of NMHC under this Agreement are subject to the satisfaction, at or prior to the Effective Time, of each of the following conditions, any or all of which may be waived in writing, in whole or in part by NMHC:

9.1 Accuracy of Representations and Warranties. Each and every representation, warranty and statement of NEW ASHA contained in this Agreement will have been true, complete and correct in all material respects at the Effective Time, and NMHC will have received the certificate of an officer of NEW ASHA to such effect.

9.2 Departure of David Schless Prior to the Effective Time. Mr. Schless shall not have departed or resigned from his current employment with NMHC and/or prospective employment with NEW ASHA prior to the Effective Time.

9.3 License Agreement. NEW ASHA and NMHC will, as of the Effective Time, have executed and delivered the License Agreement.

9.4 Promissory Note. In the event the NMHC Loan is made to NEW ASHA prior to the Effective Time, NEW ASHA will have executed and delivered to NMHC the Promissory Note as of the date the NMHC Loan was made.

9.5 Pledge Agreement. NEW ASHA and NMHC will have executed and delivered, as of the Effective Time, the Pledge Agreement.

9.6 Litigation. There will not be any action, proceeding, regulation or legislation pending which seeks to enjoin, restrain or prohibit the consummation of the transactions contemplated under this Agreement, or to obtain damages from NMHC in respect of the consummation of such transactions.

9.7 NMHC Board Approval. NMHC's Board of Directors will have approved this Agreement and the transactions contemplated by this Agreement, to the extent required.

9.8 NEW ASHA Board Approval. NEW ASHA's Executive Board (or Board of Directors) will have approved this Agreement and the transactions contemplated by this Agreement, to the extent required.

9.9 NEW ASHA Office Space. Except as provided in Section 7.4 above, NEW ASHA shall have relocated its operations and administrative offices from its current space in NMHC to a new location.

9.10 Status. NEW ASHA will have filed and diligently pursued with the Internal Revenue Service an application for exempt status under Section 501(c)(6) of the Internal Revenue Code with the intent of obtaining exempt status by the Effective Time or as soon thereafter as reasonably possible.

9.11 Return of NMHC Materials and Property. The NEW ASHA Employees shall have returned to NMHC all NMHC materials and/or property which he or she used or prepared in the course of his or her employment with NMHC, including, but not limited to, the NMHC Employee Handbook, NMHC databases, except for materials that are the subject of the License Agreement or Schedule 2.4 hereto and being removed from NMHC's premises on behalf of NEW ASHA.

9.12 Employee Acknowledgement. Each of the NEW ASHA Employees shall have acknowledged to NMHC (i) his or her termination of employment with NMHC as of the Effective Time, (ii) the return of NMHC materials and property provided in Section 9.11 above, and (iii) the assumption by NEW ASHA of all obligations for vacation and sick leave accrued but not used by him or her with NMHC through and including the Effective Time, substantially in the form of the Employee Acknowledgement attached hereto as Exhibit D.

10. POST-CLOSING OBLIGATIONS BETWEEN THE PARTIES

10.1 Relationship. As of the Effective Time, ASHA shall effectively be separated from NMHC, and NMHC and NEW ASHA shall be separate and independent legal entities. The parties as of such time shall not be deemed agents of the other and are not authorized to make any representation, contract, or commitment on behalf of the other unless specifically requested or authorized to do so by an authorized representative of the other party. Notwithstanding the foregoing, given the previous relationship between the parties and the amicable nature of the Separation, the parties will use their reasonable best efforts to maintain a cooperative relationship, and may in the ordinary conduct of business, when deemed appropriate in a party's sole discretion, call upon the other party to share information and to join in coalition when deemed by the parties to be in their best interests.

10.2 ASHA Membership Dues. As of the Effective Time, subject to the terms and conditions of this Agreement, the License Agreement and the Pledge Agreement, NEW ASHA shall be entitled to all NEW ASHA membership dues first invoiced after the Effective Time.

10.3 Communications. After the Effective Time, the parties will cooperate with each other and provide reasonable assistance in communicating to NMHC Members and ASHA Members and other parties with dealings or associations with NMHC or ASHA regarding the Separation as set forth under Section 7.2 of this Agreement.

10.4 Business Dealings between the Parties. In the event a party desires to retain the other party to conduct advisory, research, advocacy or other activities on its behalf (such as, for illustrative purposes only, representation on a specific issue or advocacy project), the parties will in good faith negotiate an appropriate and arms-length fee for such activities.

10.5 Location of NEW ASHA Annual Meetings. The parties acknowledge that prior to this Agreement, NMHC has contracted with certain hotels and conference centers to serve as locations or venues for future NMHC annual meetings, which had accounted for space and accommodations for future ASHA annual meetings anticipated to be held in conjunction with the NMHC annual meetings. Accordingly, the parties may at the applicable time after the Effective Time mutually agree to hold their respective annual meetings in conjunction with the other and be subject to terms and conditions as mutually agreed upon.

10.6 State of Seniors Housing Survey. As of the Effective Time, NEW ASHA shall have ownership and control of and receive all sponsorship funds collected as of such time, and be responsible for all expenses incurred as of such date, for the "State of Seniors Housing," an annual survey of operational and financial performance and statistical indicators prepared by ASHA.

10.7 Separation of Political Action Committees. As of the Effective Time, the NMHC political action committee ("NMHC PAC"), a political action committee formed by NMHC to support political candidates who further the interests of multi family housing, and the Seniors Housing Political Action Committee ("SH PAC"), a political action committee formed by ASHA to support political candidates who further the interests of seniors housing, shall be deemed as separate and unaffiliated political action committees. As a result of the separation, NEW ASHA

shall have ownership and control of and receive all unexpended funds in the SH PAC, and shall expeditiously take all necessary action to, and assume all costs associated with, formally and legally separating the SH PAC from the NMHC PAC, including obtaining an advisory opinion from the Federal Elections Commission to the effect that the SH PAC and NMHC PAC are no longer deemed affiliated. NEW ASHA will provide copies of the advisory opinion and copies of all formal correspondence with the Federal Election Commission relating to the separation of the NMHC PAC and the SH PAC. In lieu of obtaining an advisory opinion from the Federal Elections Commission, NEW ASHA may elect to terminate the SH PAC after notice to NMHC of such election.

10.8 Employee Benefits

(a) NEW ASHA shall extend an offer of employment to the NEW ASHA Employees, effective as of the Effective Time, whether then actively employed or on any type of leave. Such offers of employment shall be on terms and conditions that are similar to those in effect with NMHC for each NEW ASHA Employee immediately prior to the Effective Time.

(b) As soon as practicable after the Effective Time, NEW ASHA will establish its own retirement plan qualified under Section 401(a) of the Internal Revenue Code. As soon as practicable thereafter, NMHC will directly transfer and NEW ASHA will cause such plan to accept assets consisting of cash or publicly traded securities or instruments from NMHC's retirement plan qualified under Section 401(a) of the Internal Revenue Code, and to assume the corresponding obligations, attributable to the account balances of the NEW ASHA Employees who accept employment with NEW ASHA; provided, however, that NEW ASHA shall have no obligation to cause its tax-qualified retirement plan to accept any such transfer unless NEW ASHA is provided reasonable documentation of the tax-qualified status of NMHC's retirement plan, such as a favorable determination letter issued by the Internal Revenue Service. NEW ASHA shall design its tax-qualified plan as necessary to preserve any and all protected benefits that any NEW ASHA Employee has accrued by reason of his or her participation in the NMHC tax-qualified retirement plan.

(c) As soon as practicable after the Effective Time, NEW ASHA will establish its own retirement plan qualified under Section 457 of the Internal Revenue Code. As soon as practicable thereafter, but not before January 1, 2001, NMHC will directly transfer and NEW ASHA will cause such plan to accept assets consisting of cash or publicly traded securities or instruments from NMHC's retirement plan qualified under Section 457 of the Internal Revenue Code, and to assume the corresponding obligations, attributable to any account balances of the NEW ASHA Employees who accept employment with NEW ASHA. NMHC and NEW ASHA each agree to design or amend, as the case may be, its own retirement plan necessary to comply on a timely basis with the requirements of Internal Revenue Code Section 457(e)(10) and Treasury Regulations 1.457-2(k) promulgated thereunder, for a transfer between Section 457 plans; provided, however, that should NMHC reasonably determine that such compliance is not practicable because of the failure of NEW ASHA to establish a new Section 457 plan that would permit a compliant transfer, the contemplated transfer of assets and assumption of obligations shall not take place and NMHC shall take such action with respect to the account balance(s) of NEW ASHA Employees under its Section 457 plan as it reasonably determines to be consistent with applicable law.

(d) Effective immediately after the Effective Time, NEW ASHA shall offer to each NEW ASHA Employee who accepts its offer of employment group health plan (within the meaning of 29 U.S.C. 1167(1)) coverage(s) to such NEW ASHA Employees and their dependents of a nature that, if elected by any such NEW ASHA Employee and his or her dependents, such coverage(s) would constitute an event under 42 U.S.C. Section 300bb-2(2)(D) for purposes of determining any health continuation coverage rights of any such employee, and his or her dependents, under the group health plans of NMHC. NEW ASHA will waive any waiting periods and pre-existing condition limitations under its group health plan(s) with respect to such NEW ASHA Employees who have group health plan coverage(s) with NMHC immediately prior to the Effective Time. To the extent the annual period of coverage under an ASHA group health plan is not co-extensive with the annual period of coverage of the corresponding group health plan in which the NEW ASHA Employee participated immediately prior to the Effective Time, for purposes of applying deductible and out-of-pocket limitations under any ASHA group health plan, ASHA shall cause the group health plan to give each such employee credit for health expenses incurred by such employee during the annual period of coverage under the corresponding NMHC group health plan through 11:59 p.m. on the date of the Closing.

(e) NEW ASHA shall assume all obligations for vacation and sick leave accrued with NMHC under current NMHC policies through 11:59 p.m. on the date of Closing that is not used by NEW ASHA Employees who commence employment with NEW ASHA at any time within three months of the date of Closing. Notwithstanding the foregoing, in the event either or both types of accruals must be paid to NEW ASHA Employees under applicable law as a result of their terminations of employment with NMHC, then NEW ASHA shall reimburse NMHC within seven (7) days of the Effective Time for the cost of such payments, such reimbursement to be paid in cash in a lump sum.

(f) NEW ASHA shall reimburse to NMHC within seven (7) days after the transfer of account balances contemplated by this Section 10.8(f) a cash lump sum amount equal to the unvested portions of those account balances transferred to the retirement Plan maintained by NEW ASHA under Section 401(a) of the Internal Revenue Code.

10.9 Reimbursements; "True-Up" Schedule.

(a) ASHA shall reimburse NMHC for all out-of-pocket expenses paid by NMHC prior to the Effective Time, from which NEW ASHA will directly benefit after the Effective Time. Except for reimbursements that may arise under Section 10.8(f) or otherwise provided in this Agreement, such expenses shall be listed in the True-Up Schedule attached as Schedule 10.9. The True-Up Schedule contains all such items known to the parties as of the date of this Agreement. NMHC's costs of operating ASHA in NMHC space prior to the Effective Time and its costs of implementing this Agreement and the License Agreement will not be reimbursable.

(b) The parties will in good faith add any additional items to the True-Up Schedule by mutual agreement no later than thirty (30) days prior to the Effective Time (the "Initial True-Up"), and in any event complete the True-Up Schedule no later than February 15, 2001 (the "Final True-Up").

(c) NEW ASHA shall reimburse NMHC for all agreed charges on the Initial True-Up within seven (7) days after the Effective Time, and shall reimburse NMHC for all agreed charges on the Final True-Up no later than February 22, 2001. NMHC shall be entitled to retain any amounts owed by NEW ASHA to NMHC under this Section 10.9 out of the Fourth Quarter Payment collected by NMHC and to be paid to NEW ASHA under Section 7.5 of this Agreement.

10.10 NEW ASHA Website. NMHC and NEW ASHA agree that NMHC will have caused its ASHA website, www.asha.nmhc.org, to cease operations as of the close of business on December 31, 2000. Prior to the Closing, NMHC will reasonably cooperate with NEW ASHA and its vendors in facilitating a prompt transition of the ASHA website content to NEW ASHA's independent website.

10.11 Further Assurances. From and after the Effective Time, NMHC and NEW ASHA agree, without further consideration, to execute and deliver promptly to the other party such further consents, waivers, assignments and other documents and instruments, and to take all such further actions, as a party may from time to time reasonably request with respect to the transactions contemplated by this Agreement.

10.12 Confidentiality.

(a) NEW ASHA and NMHC each agree to hold all Confidential Materials (hereinafter defined) received from the other in strictest confidence and to use the Confidential Materials only in connection with its ordinary conduct of activities. Confidential Materials means all information, documents and materials, whether in physical, electronic or oral form, disclosed to either NEW ASHA or NMHC by the other and identified by the disclosing party as confidential.

(b) Confidential Materials shall not include (i) information that is already in the public domain when first received, or thereafter enters the public domain through no fault of the receiving party, (ii) information that was in the receiving party's lawful possession without confidentiality restrictions before it was disclosed to the receiving party by the disclosing party; (iii) information independently developed by the receiving party without any use of or reference to the Confidential Materials; and (iv) information the receiving party becomes legally compelled or is required by a regulatory body to disclose even if prohibited or otherwise constrained by this Agreement.

11. INDEMNIFICATION AND THIRD PARTY CLAIMS

11.1 Agreement of NMHC to Indemnify NEW ASHA. NMHC will indemnify, defend, and hold harmless NEW ASHA and its directors, agents, employees and attorneys from, against, and in respect of any and all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including without limitation, interest, penalties, and reasonable attorneys' and other professional fees and expenses (collectively, "Losses"), but excluding any indirect, consequential or punitive damages suffered by NEW ASHA, by reason of, resulting from, based upon or arising out of NMHC's material breach of any representation, warranty, covenant, or agreement of NMHC contained in this Agreement.

11.2 Agreement of NEW ASHA to Indemnify NMHC. NEW ASHA will indemnify, defend, and hold harmless NMHC and its directors, agents, employees and attorneys from, against, for, and in respect of any and all Losses, but excluding any indirect, consequential or punitive damages suffered by NMHC, by reason of, resulting from, based upon or arising out of NEW ASHA's material breach of any representation, warranty, covenant, or agreement of NEW ASHA contained in this Agreement.

11.3 Procedures for Indemnification. As used herein, the term "Indemnitor" means the party against whom indemnity hereunder is sought, and the term "Indemnitee" means the party seeking indemnification hereunder.

(a) A claim for indemnification hereunder ("Indemnification Claim") must be made by Indemnitee by delivery of a written declaration to Indemnitor requesting indemnification and specifying the basis on which indemnification is sought and the amount of asserted Losses and, in the case of a Third Party Claim (as defined in Section 11.4 hereof), containing such other information as Indemnitee has concerning such Third Party Claim.

(b) If the Indemnification Claim involves a Third Party Claim, the procedures set forth in Section 11.4 hereof must be observed by Indemnitee and Indemnitor.

(c) If the Indemnification Claim involves a matter other than a Third Party Claim, the Indemnitor will have thirty (30) business days to object to such Indemnification Claim by delivery of a written notice of such objection to Indemnitee specifying in reasonable detail the basis for such objection. Failure to timely so object will constitute acceptance of the Indemnification Claim by the Indemnitor and the Indemnification Claim will be paid in accordance with Section 11.3(d) hereof. If an objection is timely interposed by the Indemnitor and the dispute is not resolved within fifteen (15) business days from the date Indemnitee receives such objection, such dispute may be resolved by arbitration in accordance with the rules and procedures of the American Arbitration Association in Washington, D.C.

(d) Upon a final determination of the amount of an Indemnification Claim, whether by agreement between Indemnitor and Indemnitee or by an arbitration award, Indemnitor will pay the amount of such finally determined Indemnification Claim within ten (10) days of the date such amount is determined.

11.4 Defense of Third Party Claims. Should any claim be made, or suit or proceeding (including, without limitation, a binding arbitration or an audit by any taxing authority) be instituted against Indemnitee which, if prosecuted successfully, would be a matter for which Indemnitee is entitled to indemnification under this Agreement (a "Third Party Claim"), the obligations and liabilities of the parties hereunder with respect to such Third Party Claim will be subject to the following terms and conditions:

(a) The Indemnitee must give the Indemnitor written notice of any such claim promptly after receipt by the Indemnitee of actual notice thereof, and the Indemnitor will undertake the defense thereof by representatives of its own choosing reasonably acceptable to the Indemnitee. If, however, the Indemnitor fails or refuses to undertake the defense of such claim within thirty (30) days after written notice of such claim has been given to the Indemnitor by the

Indemnitee, the Indemnitee will have the right to undertake the defense, compromise and, subject to Section 11.5, settlement of such claim with counsel of its own choosing. In the circumstances described in the preceding sentence, the Indemnitee will, promptly upon its assumption of the defense of such claim, make an Indemnification Claim as specified in Section 11.3(a).

(b) The Indemnitee and Indemnitor will cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such claim and furnishing, without expense to the Indemnitor, management employees of the Indemnitee as may be reasonably necessary for the preparation of the defense of any such claim or for testimony as witness in any proceeding relating to such claim.

11.5 Settlement of Third Party Claims. No settlement of a Third Party Claim involving the asserted liability of Indemnitor under this Article 11 may be made without the prior written consent by or on behalf of Indemnitor, which consent will not be unreasonably withheld or delayed. Consent will be presumed in the case of settlements of \$10,000 or less where the Indemnitor has not responded within thirty (30) business days of notice of a proposed settlement. In the event of any dispute regarding the reasonableness of a proposed settlement, the party that will ultimately bear the larger financial loss resulting from such settlement will make the final determination in respect thereto, which determination will be final and binding on all involved parties.

11.6 Limitations of Liability

(a) NMHC will not be deemed liable under Section 11.1 and NEW ASHA will not be deemed liable under Section 11.2 until the aggregate amount of all indemnification claims under such section exceeds \$5,000.

(b) No claims for indemnification under Sections 11.1 or 11.2 will be made after the third anniversary of (i) the termination of the License Agreement or (ii) full payment of the Promissory Note, whichever is later; provided, however, that such time limit will not apply to any tax claims.

12. TERMINATION; REMEDIES

12.1 Termination Prior to the Effective Time. On or prior to the Effective Time, this Agreement may be terminated only as follows:

(a) At any time by the mutual written agreement of the parties; or

(b) By NEW ASHA or NMHC upon notice to the other party if the other party is in breach or default of any material representation, warranty, covenant or obligation contained in this Agreement to be made or performed by it and the breach or default is not cured to the reasonable satisfaction of the non-breaching party within 15 days (but prior to the Effective Time) after notice to the breaching party describing the breach or default in reasonable detail or the Effective Time, whichever is earlier.

12.2 Effect of Termination. Except as provided in this Section 12.2 and in Section 13.13, if this Agreement is terminated pursuant to Section 12.1 ("Termination") above, this Agreement will be of no further force or effect. Upon Termination, without any further notice, NEW ASHA shall immediately reimburse to NMHC all payments made by NMHC to NEW ASHA under Section 7.5 hereto, and in the event the NMHC Loan was made to NEW ASHA prior to the Effective Time, the entire outstanding principal and accrued interest shall at once become due and payable.

13. GENERAL PROVISIONS

13.1 Expenses. All expenses incurred by the parties hereto in connection with or related to the authorization, preparation, and execution of this Agreement and the transaction contemplated hereby, including all fees and expenses of agents, representatives, counsel, and accountants employed by any such party, will be borne solely and entirely by the party that incurred such expense.

13.2 Separation Expenses. Except as provided in this Agreement, each party shall be solely responsible for its own expenses relating to the Separation.

(a) In NEW ASHA's case, such expenses will include, but not be limited to, removal of the ASHA logo and repairs of any damages beyond normal wear and tear to NMHC as a result of such removal, new office set-up expenses at NEW ASHA's offices (such as those associated with computers, telephone, furniture, supplies) and legal and accounting fees.

(b) In NMHC's case, except those costs set forth in Section 10.8, Schedule 10.9 or Section 13.2(a), such expenses shall include all costs associated with operation of ASHA consistent with its past operations in NMHC space prior to the Effective Time, any expenses associated with this Agreement, all expenses incurred in terminating the employment of ASHA personnel and reconfiguring and re-deploying their office space and furnishings, fixtures (except with respect to the ASHA logo) and equipment for NMHC use, costs of communications with NMHC and ASHA members, prospective members and others, legal and accounting fees of NMHC, and salaries and benefits of NMHC and ASHA personnel.

In the event either party incurs charges and is entitled to reimbursement from the other, an accounting of the reimbursement will be made in the True-Up Schedule.

13.3 Notices. All notices and other communications pursuant to this Agreement must be in writing and delivered personally, sent by fax with electronic confirmation of receipt, sent by nationally-recognized, overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

- (a) If to NMHC, to:
National Multi Housing Council
1850 M Street, N.W., Suite 540
Washington, DC 20036-5803
Attention: Jonathan L. Kempner, President
Fax: (202) 775-0112

With a copy, to:
Powell, Goldstein, Frazer & Murphy LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attention: Michael Chanin, Esq.
Fax: (202) 624-7222

(b) If to NEW ASHA, to:
American Seniors Housing Association, Inc.

Washington, D.C. _____
Attention: David Schless, President
Fax: (202) _____

With a copy, to:
Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attention: Paul Gordon, Esq.
Fax: (415) 541-9366

All such notices and other communications will be deemed to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of a fax, the time of electronic confirmation of receipt, (c) in the case of delivery by nationally-recognized, overnight courier, on the second business day following dispatch and (d) in the case of mailing, on the fifth business day following such mailing. Any notice sent by fax must also be sent by hard copy by first class U.S. mail or other means for delivery of notices stated above on the same day as the fax transmission.

13.4 Assignment. This Agreement and the respective rights and obligations of the parties may not be assigned or delegated by either party without the prior written consent of the other.

13.5 Headings. The section, subsection, and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not a part of this Agreement.

13.6 Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one counterpart has been signed by each party and delivered to the other party hereto.

13.7 Entire Agreement; Amendment. This Agreement and all schedules and exhibits hereto constitute the entire and exclusive agreement between the parties relating to the subject matter hereof, and all other prior negotiations, representations, understandings and agreements are expressly superseded hereby. No agreements amending or supplementing the terms hereof shall be effective except by means of a written document signed by the duly authorized representatives of both parties.

13.8 Amendments and Modifications. This Agreement, or any provision hereof, may not be changed, waived, discharged, supplemented, or terminated orally, but only by an agreement in writing signed by the party against which the enforcement of such change, waiver, discharge, or termination is sought.

13.9 Governing Law. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the District of Columbia, excluding any conflict of law principles. Further, the parties stipulate that this Agreement is deemed to have been made and entered into by them in the District of Columbia.

13.10 Partial Invalidity. Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision or provisions had never been contained herein unless the deletion of such provision or provisions would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

13.11 Limitations on Damages. Notwithstanding any other provision in this Agreement, with respect to claims between the parties, neither party, nor their respective directors, agents, employees or attorneys, shall be liable for any lost or prospective profits or any other indirect, consequential or punitive losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or on account of any failure or performance related hereto howsoever caused.

13.12 Third Party Beneficiary. This Agreement is intended solely for the benefit of each party hereto and their respective successors or permitted assigns and it is not the intention of the parties to confer any rights or benefits upon any third person other than any party entitled to indemnity under Section 11 of this Agreement.

13.13 Survival. All representations, warranties, covenants of NMHC and NEW ASHA, and all liability therefor, will survive for one (1) year after the Effective Time. Claims for indemnification by either party are subject to the time limitations under Section 11.6(b).

[SIGNATURE PAGE BEGINS ON THE NEXT PAGE]

IN WITNESS WHEREOF, each party hereto has executed this Agreement, all as of the day and year first above written.

NATIONAL MULTI HOUSING COUNCIL

By: _____
Name: Jonathan L. Kempner
Title: President

**AMERICAN SENIORS HOUSING
ASSOCIATION, INC.**

By: _____
Name: David Schless
Title: President

[SIGNATURE PAGE TO SEPARATION AGREEMENT]

Schedule 2.1

Assumed Liabilities

1. All expenses and liabilities incurred as of the date of Closing relating to the State of Seniors Housing survey as provided under Section 10.6 of this Agreement.

2. Vacation and sick leave accrued but not used by NEW ASHA Employees with NMHC through 11:59 p.m. on the date of Closing as provided under Section 10.8(e) of this Agreement.

Schedule 2.4

Documents

1. Copies of all NMHC meeting binders from 1991 through 1999 for each meeting where ASHA also held a meeting.
2. Copies of all ASHA meeting binders for 2000.
3. Copies of all NMHC Update newsletters and ASHA Updates from 1993 through 2000, including Washington Updates, Seniors Housing Updates, Property Management Updates, Tax Updates, Environmental Updates, Technology Updates, Building Codes Updates, ASHA State Policy Updates, Market Trends, and Research Notes.
4. Copies of all substantive legislative and regulatory memos and guidances issued to the NMHC membership in the yellow folders organized by the Joint Legislative Staff (roughly 1996 to present).
5. Copies of the following publications:
Apartment Living in America
A Reevaluation of Residential Rent Controls - (Anthony Downs)
High cost of Rent Control
Safety Begins with You
Choosing Your Home
Apartments are Vital
Growing Smarter with Apartments: Toward More Livable and Prosperous Communities
The Future of the Apartment Industry
Toward a More Balanced Housing Policy
6. Copies of NMHC meeting contracts with hotels where ASHA also met at those meetings from 1999 – January 2000.
7. A list of NMHC members who were solicited in 1999 by ASHA for membership in ASHA in 2000 and are labeled “non-hardcore” senior members. Also, a copy of the solicitation letter.
8. Copies of NMHC correspondence that relates to ASHA from NMHC “chron” files from 1995 – 2000, using reasonable efforts of collection of this correspondence.
9. Copies of ASHA correspondence from ASHA “chron” files from 1996-2000.
10. A copy of the ASHA shared directory from the NMHC computers.
11. A copy of the individual directories for David Schless, Ken Preede, and Doris Kerr.

12. The individual rolodex cards for David Schless, Ken Preede, and Doris Kerr.
13. A copy of the NMHC annual reports from 1991 – 1999, if available for each year.
14. A copy of NMHC 990 forms for 1997 – 1999.
15. Copies of “ASHA 25” electronic and hard copy files from 1993 – 1999, which are available.
16. Copies of the NMHC/NAA Joint Legislative Program agreements for 1991, 1997 and 2000.
17. Copies of the NMHC retirement fund documents and retirement fund records pertaining to ASHA employees from 1991 – 2000 using reasonable efforts to collect.
18. Copies of ASHA publication sales records from 1991-2000 to the extent they have been maintained in the NMHC accounting system and are readily available.
19. Copies of ASHA PAC records, FEC filings, financial records, solicitation agreements, and all other documents and related correspondence from 1997 – 2000.
20. Complete inventory of ASHA speaker and prospect gifts.
21. Complete inventory (originals, if available, or if not, photocopies) of ASHA publications, reports, and newsletters, except for 3 copies of each for NMHC's library.
22. Copies of ASHA meeting and research sponsors and sponsorship amounts from 1991-2000 to the extent they are available in the NMHC accounting system.
23. ASHA content on the NMHC Website, www.asha.nmhc.org.
24. Copies of present and former contracts exclusively related to ASHA.
25. Copies of all subscriptions to publications paid for exclusively for ASHA, i.e., Modern Healthcare.
26. All printed materials, stationery and other items exclusively bearing the ASHA name or logo.
27. All books, reports, newsletters, magazines, and other printed documents pertaining exclusively to seniors housing.

Schedule 5.4

Material Contracts

None.

Schedule 10.9

True-Up Schedule

(subject to amendment up to 30 days before the Effective Time and a final True-Up no later than February 15, 2001.)

Item Prepaid by NMHC for the Benefit of NEW ASHA	Amount to be Reimbursed to NMHC
Subscription to the following periodical for the outstanding period after the Effective Time: Modern Healthcare	\$67.50
State Net Contract	\$1,000
Costs of repairs due to removal of the ASHA Logo	\$180 (estimated)
Startup legal fees and expenses incurred by ASHA for NEW ASHA and advanced by NMHC pursuant to Section 7.3(c)	\$2,303.62
Undepreciated amount of ASHA printer	\$1,400 (estimated)

Schedule 10.9(b)

Exhibit A
Form of License Agreement

LICENSE AGREEMENT

This License Agreement ("Agreement") dated as of January 1, 2001 ("Effective Date"), is entered into by and between National Multi Housing Council, a District of Columbia nonprofit corporation, having its principal place of business at 1850 M Street, N.W., Suite 540, Washington DC 20036 ("NMHC") and American Seniors Housing Association, Inc., a District of Columbia nonprofit corporation, having its principal place of business at _____, Washington, DC _____ ("NEW ASHA").

RECITALS

WHEREAS, NMHC and NEW ASHA have entered into a Separation Agreement, dated as of August 24, 2000 ("Separation Agreement"), pursuant to which NMHC agreed, subject to the terms and conditions therein, to the separation of the activities of the American Seniors Housing Association ("ASHA") from the current activities of NMHC;

WHEREAS, pursuant to the Separation Agreement, NMHC has agreed to provide NEW ASHA with a loan in the amount up to \$200,000 to be evidenced by a Promissory Note ("Promissory Note") and secured by a Pledge and Security Agreement (the "Pledge Agreement") substantially in the forms attached as Exhibit B and Exhibit C to the Separation Agreement; and

WHEREAS, pursuant to the Separation Agreement, NMHC agreed to license to NEW ASHA certain assets formerly used by NMHC in connection with ASHA, subject to the terms and conditions of the Separation Agreement and the terms and conditions contained herein.

NOW, THEREFORE, the parties agree:

AGREEMENT

In consideration of the above and the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.**

(a) "Licensed Assets" shall mean the following NMHC assets:

1. The name "American Seniors Housing Association", the name "ASHA", the ASHA logo, and all goodwill attached thereto and all benefits associated therewith.
2. Database (electronic, if available, or if not, hard copy) of ASHA Members, former members, prospective members, courtesy members, and invitees in effect from

ASHA's inception in May of 1991 to December 31, 2000 as the same exists at the close of business on December 31, 2000 and denoted "s" (collectively, "ASHA Membership Database").

3. Research and collected works developed by ASHA and related exclusively to activities of ASHA as of December 31, 2000 (collectively, "ASHA Collected Works").

4. ASHA meeting binders, ASHA updates, directories, rolodex cards, files, website content, records, and printed materials referenced in Section 2, 3 (with respect to the Seniors Housing Updates and the ASHA State Policy Updates only), 11, 12, 15, 19, 20, 21, 23, 24, 25 and 27 of Schedule 2.4 of the Separation Agreement (collectively, "ASHA Documents").

(b) "Updated Assets" shall mean any and all additions and modifications to the ASHA Membership Database, ASHA Collected Works and ASHA Documents by NEW ASHA.

2. License of Assets. Subject to all of the terms and conditions of this Agreement, NMHC hereby grants to NEW ASHA a license to use the Licensed Assets for the sole and exclusive purpose of operating the nonprofit activities of NEW ASHA.

3. Royalty Payments.

(a) Royalty Payments. The parties hereto agree that NEW ASHA shall pay to NMHC, by delivery of checks payable to NMHC, the following royalty payments ("Royalty Payments") for the use of the Licensed Assets, a portion of which are calculated based on a percentage of ASHA Gross Membership Dues (as hereinafter defined):

(i) \$25,000, and 5% of the remainder after subtracting ASHA's Gross Membership Dues collected in year 2000 from NEW ASHA's Gross Membership Dues collected in year 2001, such total amount to be paid in 4 equal payments on January 15, 2002, April 15, 2002, July 15, 2002, and October 15, 2002.

(ii) \$25,000, and 5% of the remainder after subtracting ASHA's Gross Membership Dues collected in year 2000 from NEW ASHA's Gross Membership Dues collected in year 2002, such total amount to be paid in 4 equal payments on January 15, 2003, April 15, 2003, July 15, 2003, and October 15, 2003.

(iii) \$25,000, and 5% of the remainder after subtracting ASHA's Gross Membership Dues collected in year 2000 from NEW ASHA's Gross Membership Dues collected in year 2003, such total amount to be paid in 4 equal payments on January 15, 2004, April 15, 2004, July 15, 2004, and October 15, 2004.

(iv) \$25,000, and 5% of the remainder after subtracting ASHA's Gross Membership Dues collected in year 2000 from NEW ASHA's Gross Membership Dues collected

in year 2004, such total amount to be paid in 4 equal payments on January 15, 2005, April 15, 2005, July 15, 2005, and October 15, 2005.

(v) \$25,000, and 5% of the remainder after subtracting ASHA's Gross Membership Dues collected in year 2000 from NEW ASHA's Gross Membership Dues collected in year 2005, such total amount to be paid in 4 equal payments on January 15, 2006, April 15, 2006, July 15, 2006, and October 15, 2006.

(b) **"Gross Membership Dues" Defined.** "Gross Membership Dues" shall mean the aggregate of all sums or other consideration received by NMHC or by NEW ASHA as membership dues for ASHA or NEW ASHA.

(c) **Annual Membership Update.** As soon as practicable, but no later than forty-five (45) days after the end of each calendar year during the term of this Agreement, NEW ASHA shall, at its own expense, provide NMHC with all changes, updates and additions to the ASHA Membership Database, including all data fields for the ASHA Membership Database as the same exists on December 31, 2000 ("Annual Membership Update") in electronic format or other mutually agreed format.

(d) **Annual Membership Dues Report; Federal Tax Return.** As soon as practicable, but no later than forty-five (45) days after the end of each calendar year during the term of this Agreement, NEW ASHA shall, at its own expense, provide to NMHC a report of its Gross Membership Dues for the previous fiscal year ("Annual Membership Dues Report"), certified by an officer of NEW ASHA. The Annual Membership Dues Report shall include the amount of Royalty Payment owe to NMHC, and the calculation used for the portion of the Royalty Payment based on the percentage of ASHA Gross Membership Dues for the applicable year. Within five (5) days of filing with the Internal Revenue Service, NEW ASHA shall furnish NMHC with a copy of its federal annual tax return (Form 990) for the corresponding year in which a Royalty Payment is due and an Annual Membership Dues Report is required to be provided to NMHC.

(e) **Acknowledgement.** NMHC hereby agrees and acknowledges that the Annual Membership Update and the Membership Dues Report will not be used for any purpose other than in connection with the accounting and collection of Royalty Payments provided herein.

4. **Term.** This Agreement shall commence on the Effective Date, and unless sooner terminated under Section 9 below, shall remain in effect until all Royalty Payments set forth under Section 3 above have been paid (the "Termination Date"). Upon receipt by NMHC of the final installment of the Royalty Payment, this Agreement shall automatically terminate and NEW ASHA shall own the Licensed Assets free and clear of all claims and encumbrances arising through NMHC, except that NMHC shall be entitled to keep copies of the Licensed Assets for reference.

5. **Prohibition.** During the term of this Agreement, NEW ASHA shall not change alter or modify in any manner the ASHA logo as licensed hereunder. The foregoing prohibition shall not apply to the creation of a new NEW ASHA logo by NEW ASHA.

6. **Ownership.** During the term of this Agreement, NMHC retains all right, title and interest in and to the Licensed Assets and all copies and portions thereof, except to the extent licensed hereunder.

7. **Sub-License.** NEW ASHA may sub-license the use of a Licensed Asset to its members, vendors or other third parties in connection with the regular and usual nonprofit activities of NEW ASHA, to be used in a manner consistent with, and subject to, this Agreement. Except as provided in this Section 7, NEW ASHA shall not reproduce, distribute, license or sub-license the Licensed Assets or otherwise permit access to any Licensed Asset to any third party.

8. **Warranty and Indemnification.**

(a) NMHC represents and warrants that it has full right, title and authority to transfer the Licensed Assets to NEW ASHA free of any encumbrances or third-party claims.

(b) Except as provided in Section 8(c) below, NMHC shall indemnify, hold harmless and defend NEW ASHA and its directors, employees, agents and attorneys respecting any and all claims by any person or entity of any right to ownership or use of any or all of the Licensed Assets.

(c) Notwithstanding the foregoing, in no event shall NMHC be liable to NEW ASHA or any member or customer of NEW ASHA, or any person claiming any right by or through NEW ASHA, under any contract, negligence or other legal or equitable theory, for any special, consequential, indirect, punitive, exemplary, or incidental damages of NEW ASHA.

9. **Termination.**

(a) **Termination Events.** This Agreement shall terminate on the Termination Date, unless sooner terminated by any one of the following termination events (each, a "Termination Event"):

(i) by mutual agreement of the parties;

(ii) by either party on notice to the other that it has materially breached this Agreement, the Separation Agreement or the Pledge Agreement ;

(iii) by either party immediately upon (1) the filing by the other party of a petition of bankruptcy, suspension of payments or insolvency; (2) the entering or enforcement of any order, judgment or decree by any court of competent jurisdiction adjudicating the other party as bankrupt or insolvent, or suspending payments, approving a petition seeking reorganization, appointing a receiver, trustee or liquidator of all or a part of the other party's assets; (3) consent by the other party to an involuntary petition of bankruptcy or the

failure to vacate, within sixty (60) days from the date of entry thereof, any order approving an involuntary petition by the other party; (4) the establishment of any other arrangement for the benefit of creditors of the other party; or (5) upon any other event of liquidation or dissolution of the other party, whether voluntary or involuntary.

(iv) by NMHC in the event NEW ASHA, without the prior written consent of NMHC, merges with, sells, transfers all or substantially all of its assets to, or acquires all or substantially all of the assets of, an association, organization or corporation.

(v) by NMHC in the event NEW ASHA, without the prior written consent of NMHC, enters into an agreement affiliating with another association, organization or corporation providing NEW ASHA benefits or payments in excess of \$500,000 per annum.

(vi) by NMHC in the event NEW ASHA fails to pay any Royalty Payment when due or to make any payment under the Promissory Note when due.

(vii) by NEW ASHA upon payment of the Accelerated Payment (defined in Section 9(c) below) and the outstanding balance of principal and accrued interest under the Promissory Note.

(b) Return of Licensed Assets and Provision of Updated Assets. Upon termination of this Agreement, all obligations of NMHC and all rights granted to NEW ASHA hereunder shall immediately cease and terminate except as provided in this Agreement. If the termination of this Agreement is due to a Termination Event that is caused by the act or omission of NEW ASHA, or by the mutual agreement of the parties, NEW ASHA shall immediately return to NMHC all Licensed Assets, and all copies thereof in whatever form, in its possession or control, including the Updated Assets. In the event NEW ASHA terminates pursuant to Section 9(a)(vii), it shall receive title to the Licensed Assets as provided in Section 9(c). If the termination is due to a Termination Event caused by the act or omission of NMHC, NMHC shall promptly refund to NEW ASHA any Royalty Payments it has received from NEW ASHA; provided, however, that NMHC may offset the amount of the Royalty Payments to be refunded against the outstanding principal and any accrued interest under the Promissory Note. To induce NMHC to enter into this Agreement, NEW ASHA has executed and delivered to NMHC the Pledge Agreement in order to secure NMHC's right to the Updated Assets in the event NEW ASHA defaults on the Royalty Payments.

(c) Accelerated Royalty Payments upon Termination. In the event NEW ASHA defaults in the payment of all or a portion of the Royalty Payments or in the event this Agreement is terminated under a Termination Event, NMHC shall be entitled to accelerate the aggregate Royalty Payments due under this Agreement. For purposes of this Section 9(c), NEW ASHA and NMHC agree that the amount of the accelerated payment ("Accelerated Payment") shall equal \$175,000, less any Royalty Payments previously paid by NEW ASHA. Upon receipt by NMHC of (i) the Accelerated Payment; and (ii) any outstanding balance of principal and accrued interest under the Promissory Note, all Royalty Payments due under this Agreement shall be deemed fully paid and NEW ASHA shall own the Licensed Assets free and clear of all

claims and encumbrances arising through NMHC, except that NMHC shall be entitled to keep copies of the Licensed Assets for reference.

(d) The provisions of Sections 5, 8(c), 9(b) and 9(c) of this Agreement shall survive the termination of this Agreement.

10. Quality Standards. During the term of this Agreement and in the course of using the Licensed Assets, NEW ASHA will maintain and adhere to commercially prudent standards of quality that are consistent with industry standards.

11. Equitable Remedies. In view of the proprietary nature of the Licensed Assets, the parties agree that monetary damages alone will be an inadequate remedy for any breach of the provisions of Sections 5, 9(b) and 9(c) of this Agreement, and that, in the event of any breach by either party, the other party, in addition to all other remedies available to it, shall be entitled to obtain an injunction, specific performance or other equitable relief with respect to any such breach or threatened breach.

12. Miscellaneous.

(a) Assignment. This Agreement and the respective rights and obligations of the parties may not be assigned or delegated by either party without the prior written consent of the other.

(b) Notices. All notices and other communications pursuant to this Agreement must be in writing and delivered personally, sent by fax with electronic confirmation of receipt, sent by nationally-recognized, overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

If to NMHC, to:
National Multi Housing Council
1850 M Street, N.W., Suite 540
Washington, DC 20036-5803
Attention: Jonathan L. Kempner, President
Fax: (202) 775-0112

With a copy, to:
Powell, Goldstein, Frazer & Murphy LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attention: Michael Chanin, Esq.
Fax: (202) 624-7222

If to NEW ASHA, to:
American Seniors Housing Association, Inc.

Washington, D.C. _____
Attention: David Schless, President
Fax: (202) _____

With a copy, to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attention: Paul Gordon, Esq.
Fax: (415) 541-9366

All such notices and other communications will be deemed to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of a fax, the time of electronic confirmation of receipt, (c) in the case of delivery by nationally-recognized, overnight courier, on the second business day following dispatch and (d) in the case of mailing, on the fifth business day following such mailing. Any notice sent by fax must also be sent by hard copy by first class U.S. mail or other means for delivery of notices stated above on the same day as the fax transmission.

(c) Governing Law. This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the District of Columbia, excluding any conflict of law principles. Further, the parties stipulate that this Agreement is deemed to have been made and entered into by them in the District of Columbia.

(d) Waiver. The failure of NMHC or NEW ASHA to enforce a right under this Agreement shall not act as a waiver of that right or the ability to assert that right relative to the particular situation involved. The waiver by either party of a breach of any provision contained in this Agreement shall be effective only if set forth in a writing signed by both parties and shall in no way be construed as a waiver of any succeeding breach of such provision, the waiver of the provision itself, or the waiver of any other provision or breach of this Agreement.

(e) Headings. The section, subsection, and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not a part of this Agreement.

(f) Partial Invalidity. Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision or provisions had never been contained herein unless the deletion of such provision or provisions would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

(g) No Third Party Beneficiary. This Agreement is intended solely for the benefit of each party hereto and their respective successors or permitted assigns and it is not the intention of the parties to confer any rights or benefits upon any third person.

(h) Entire Agreement; Amendment. This Agreement and the provisions of the Separation Agreement, Promissory Note and Pledge Agreement referenced herein constitute the entire and exclusive agreement between the parties relating to the subject matter hereof, and all other prior negotiations, representations, understandings and agreements are expressly superseded hereby. No agreements amending or supplementing the terms hereof shall be effective except by means of a written document signed by the duly authorized representatives of both parties.

(i) Counterparts. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one counterpart has been signed by each party and delivered to the other party hereto.

[SIGNATURE PAGE BEGINS ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date first set forth above.

NATIONAL MULTI HOUSING COUNCIL

By: _____
Name: Jonathan L. Kempner
Title: President

AMERICAN SENIORS HOUSING ASSOCIATION, INC.

By: _____
Name: David Schless
Title: President

[SIGNATURE PAGE TO LICENSING AGREEMENT]

Exhibit A. – Form of License Agreement

Exhibit B
Form of Promissory Note

PROMISSORY NOTE

\$200,000

[_____, 20__]

FOR VALUE RECEIVED, the undersigned AMERICAN SENIORS HOUSING ASSOCIATION, a District of Columbia nonprofit corporation ("Borrower") hereby promises to pay to the order of NATIONAL MULTI HOUSING COUNCIL ("Lender") the principal sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) or so much thereof has been advanced, together with interest thereon as provided below.

1. **Interest.** (a) Interest will accrue on the outstanding principal amount of this Promissory Note at the rate of six percent (6%) per annum from the date of advance, and until all amounts outstanding under this Promissory Note have been paid in full. Interest will be calculated on the basis of a year consisting of 360 days and will be charged on the basis of the actual number of calendar days that the principal amount advanced remained unpaid to Lender. Interest will accrue on the outstanding principal amount of this Note.

2. **Payments.** Interest, principal and all other sums payable hereunder (collectively, the "Obligations") shall be payable, without any offset, reduction, counterclaim or recoupment whatsoever, in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, and shall be due and payable as follows:

(a) Accrued interest shall be paid monthly on the first day of each consecutive month.

(b) If not sooner paid (whether by acceleration or otherwise), the entire balance of the Obligations shall be due and payable on [_____, 20__] (the "Maturity Date").

Lender will furnish borrower with its current Taxpayer Identification Number so that Borrower may file any forms regarding the payment of interest as may be required by law.

3. **Default Interest.** Overdue payments of interest and/or principal hereunder, and all other sums advanced or expended by Lender for Borrower's account and not repaid, shall bear interest during the period of any default hereunder at the rate of eighteen percent (18%) simple interest per annum, or if such per annum rate shall not be permitted by law, then the highest interest rate permitted by law.

4. **Application of Payments.** All payments shall be applied first to Lender's costs of collection (including, without limitation, reasonable attorneys' fees and expenses), if any, then, to accrued and unpaid interest, and the balance to the reduction of principal. For purposes of computing interest on the debt evidenced hereby, interest shall be calculated on the basis of a year consisting of three hundred sixty (360) days, and shall be charged on the basis of the actual number of calendar days that the principal amount advanced remains unpaid to Lender.

5. **Default; Remedies.**

(a) Upon the happening of any of the following events, or if default be made in the performance of any term, condition or covenant in this Promissory Note or any other agreements or instruments concerning any obligation of Borrower to Lender, and such default shall not have been cured under any cure provisions applicable to such default, or if any representation or warranty contained in this Promissory Note shall be untrue, then and in any such event, the Obligations, in their entirety, shall at once become due and payable at the option of Lender without further notice and Lender may exercise any or all additional remedies provided under this Note:

(i) if Borrower shall fail to make payment when due of any obligation hereunder within ten (10) days after the due date; or

(ii) if any warranty or representation made by Borrower in this Promissory Note or any other agreement between the Borrower and Lender shall be false or misleading in any material adverse respect; or any financial statement, information or certification submitted to Lender shall be false or misleading in any material adverse respect; or Borrower shall fail to comply with any material term, condition or covenant contained in this Promissory Note or any other agreement between the Borrower and Lender, if the circumstances giving rise to any false or misleading condition or such failure to comply shall continue for a period of fourteen (14) days after Lender shall have given Borrower written notice thereof; or

(iii) if Borrower shall have a judgment entered against it and the same shall not be stayed, vacated, bonded, paid or discharged within thirty (30) days of entry unless the judgment is fully covered by insurance and the insurer has accepted, by written instrument, liability therefor; or Borrower shall have any tax lien filed against it and such lien is not discharged or bonded off to the satisfaction of Lender within fourteen (14) days of filing, unless the same is being challenged with the prior written consent of Lender; or

(iv) if Borrower shall make a general assignment for the benefit of creditors or call a meeting of creditors for the purpose of obtaining any financial accommodation or concession; or if a receiver or trustee shall be appointed for all or any portion of Borrower's assets; or if there shall be filed by Borrower any petition or application for relief under the Bankruptcy Code; or

(v) if there shall be filed against Borrower any petition or application for relief under the Bankruptcy Code which is not discharged or bonded off to the satisfaction of Lender within sixty (60) days, or if Borrower consents to any order for relief; or

(vi) if NEW ASHA, without the prior written consent of NMHC, merges with, sells, or transfers all or substantially all of its assets to, or acquires all or substantially all of the assets of, an association, organization or corporation; or

(vii) if NEW ASHA, without the prior written consent of NMHC, enters into an agreement affiliating with another association, organization or corporation providing NEW ASHA benefits or payments in excess of \$500,000 per annum; or

(viii) if the parties terminate the Separation Agreement and/or the Separation is not consummated by the Effective Time.

(b) Failure of the Lender to exercise the option to accelerate payment or exercise other remedies in the event of any default shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

6. Representations, Warranties, and Covenants of Borrower. Borrower represents, warrants and covenants to Lender as follows:

(a) Corporate Organization and Good Standing. Borrower is a nonprofit corporation duly organized and validly existing under the laws of the District of Columbia and has all corporate power and authority to own, lease, or operate its properties in the places where such properties are owned, leased, or operated and to carry on its business as it is now being conducted. Borrower is qualified and in good standing to do business in all jurisdictions where its business or ownership or leasing of property or assets requires such qualification.

(b) Authority. Borrower has full power and authority to execute and deliver this Promissory Note. The execution, delivery, and performance of the Promissory Note by Borrower has been authorized and approved by its Board of Directors and by all necessary action on the part of Borrower, and the Promissory Note is the valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms, except as enforceability may be limited by applicable equitable principles or by applicable laws.

(c) Actions and Proceedings. There is no claim, charge, arbitration, grievance, action, suit, investigation, bankruptcy, insolvency, rearrangement or similar actions or proceedings, whether voluntary or involuntary, by or before any court, arbiter, administrative agency or other governmental authority now pending or threatened against Borrower, or which involves any of the business, properties or assets of Borrower that, if adversely resolved or determined, would have a material adverse effect on Borrower. Borrower has no intention of filing or commencing any such actions or proceedings.

7. Prepayment. The privilege is reserved to Borrower to prepay the indebtedness evidenced hereby, in whole or in part, at any time or from time to time, without prepayment

premium or penalty, provided, however, that Borrower shall provide prior written notice to Lender of the intent to prepay ten (10) business days in advance of the intended prepayment.

8. **Attorneys' Fees.** In the event, after any default by Borrower hereunder, counsel is employed by Lender to collect this obligation, Borrower hereby agrees to pay upon demand reasonable attorneys' fees so incurred by Lender, and all other reasonable costs and expenses connected with the collection of the indebtedness evidenced hereby.

9. **Waivers.** The undersigned Borrower hereby waives presentment, protest and demand, notice of protest, notice of demand and of dishonor and non-payment of this Note.

10. **Security.** This Promissory Note is secured by the Security and Pledge Agreement.

11. **Notices.** All notices hereunder shall be given in writing and mailed by first class certified or registered mail, return receipt requested, with proper postage prepaid, addressed, if to Lender at 1850 M Street, N.W., Suite 540, Washington, DC 20036; attention: Jonathan L. Kempner, President, with a copy to Powell, Goldstein, Frazer & Murphy LLP, 1001 Pennsylvania Avenue, NW, Suite 600, Washington, DC 20004, attention: Michael Chanin, Esquire, and if to Borrower at _____ Washington, DC ____; attention: David Schless, President, or in either case to such other address as either party may from time to time designate to the other by like written notice given at least ten (10) days prior to the date such change becomes effective.

12. **Severability.** In the event any provision (or any part of any provision) contained in this Promissory Note shall for any reason be finally held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Promissory Note; but this Promissory Note shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

13. **Successors and Assigns.** This Promissory Note shall apply to and bind Borrower and Lender and each of their respective successors and permitted assigns. This Promissory Note and/or rights hereunder shall be assignable by Lender, without the consent of Borrower, subject only to compliance with applicable securities laws, including, without limitation, to any public entity selected by Lender.

14. **Commercial Purpose.** Borrower warrants that the loan evidenced by this Promissory Note is being incurred by Borrower solely for the purposes of carrying on the activities of NEW ASHA, and not for personal, family or household purposes.

15. **Choice of Law.** The validity and construction of this Promissory Note and all matters pertaining thereto are to be determined and construed according to the laws of the District of Columbia, excluding its conflicts of law principles.

16. **Waiver of Jury Trial.** BORROWER HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS PROMISSORY NOTE. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS PROMISSORY NOTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY AND THAT BORROWER HAS BEEN REPRESENTED IN THE SIGNING OF THIS PROMISSORY NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

WITNESS the execution hereof by Borrower on the date first hereinabove written, with the intent that this shall be deemed an instrument under seal.

BORROWER:

WITNESS/ATTEST:

AMERICAN SENIORS HOUSING
ASSOCIATION, INC.

Name:

By: _____ (SEAL)

Name: David Schless
Title: President

Exhibit C

Form of Pledge and Security Agreement

PLEDGE AND SECURITY AGREEMENT

This Pledge and Security Agreement (this "Agreement"), dated as of [_____, _____], is made by and between the American Seniors Housing Association, Inc., a District of Columbia nonprofit corporation ("Pledgor"), and National Multi Housing Corporation, a District of Columbia nonprofit corporation ("Lender").

WITNESSETH:

WHEREAS, Lender and Pledgor have entered into a Separation Agreement, dated August 24, 2000 ("Separation Agreement"), pursuant to which Lender agreed, subject to the terms and conditions therein, to the separation of the activities of the American Senior Housing Association ("ASHA") from the current activities of Lender; and

WHEREAS, in connection with the execution and delivery of the Separation Agreement, Lender and Pledgor entered into a License Agreement, of even date herewith, pursuant to which Lender agreed to license certain assets to Pledgor and Pledgor agreed to pay certain Royalty Payments for the use of such assets, subject to the terms and conditions of the License Agreement.

WHEREAS, pursuant to the Separation Agreement, Lender agreed to provide Pledgor with a loan in the amount of up to \$200,000 at any time during the period from October 1, 2000 to December 31, 2001 for a term of up to 36 months and bearing interest at the rate of 6% per annum ("NMHC Loan"). The NMHC Loan will be evidenced by a promissory note (the "Promissory Note").

WHEREAS, as inducement to Lender to enter into the License Agreement and to provide the NMHC Loan, Pledgor has agreed to pledge and assign to Lender all of Pledgor's right, title and interest in certain of its assets as described herein.

NOW, THEREFORE, for and in consideration of the premises, the direct benefits to be realized by Pledgor from the License Agreement and NMHC Loan, the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor hereby covenants and agrees with Lender as follows:

A. AGREEMENT

Pledgor hereby assigns, pledges and grants to Lender a security interest in and lien upon all of Pledgor's right, title and interest in all of its assets including (i) the Licensed Assets and the Updated Assets (as such terms are defined in the Licensed Agreement), and (ii) the Pledgor's

membership dues (collectively, the "Collateral") to secure the payment and the performance of the Obligations (as hereinafter defined).

B. OBLIGATIONS

The following obligations (the "Obligations") are secured by this Agreement:

1. The NMHC Loan and the Promissory Note.
2. Royalty Payments (as defined and provided under the License Agreement).
3. All costs incurred by Lender to obtain and enforce this Pledge and Security Agreement and security interest, collect the Obligations and maintain, preserve, collect and enforce the Collateral, including attorney's fees and legal expenses.

C. PLEDGOR'S REPRESENTATIONS AND WARRANTIES

Pledgor represents and warrants as follows:

1. Financing Statements. Pledgor shall not pledge the Collateral for the benefit of any other lender without notifying such lender that the pledge is subordinate to this pledge in favor of Lender.
2. Ownership. Pledgor owns or has the right to own the Collateral absolutely and free from any setoff, claim, restriction, lien, security interest or encumbrance except for the security interest hereunder and the terms and conditions of the License Agreement.
3. Power and Authority. Pledgor has full power and authority to make this Agreement.
4. Right to Pledge. Pledgor has the unencumbered and unrestricted right to pledge the Collateral and no consent or approval of any governmental authority or other person which has not been obtained was or is necessary to the validity of this pledge.
5. Binding Agreement. This Security Agreement constitutes the valid and legally binding obligation of the Pledgor, enforceable in accordance with its terms.

D. PLEDGOR'S COVENANTS

1. Obligations and Agreements. Pledgor shall perform promptly all of its agreements herein and in any other agreements between it and Lender.
2. Ownership of Collateral. Pledgor will not transfer sell, assign or encumber any of the Collateral, but may utilize the Collateral as it deems appropriate in the course of its business operations.

3. **Lender's Costs.** Pledgor, at its expense, will defend the Collateral against any claims or demands adverse to Lender's security interests and will promptly pay, when due, all taxes or assessments levied against Pledgor on the Collateral. Pledgor shall pay all costs necessary to obtain, preserve, perfect, defend and enforce the security interests represented by this Pledge and Security Agreement, and preserve, defend, enforce and collect the Collateral.

4. **Liens.** Pledgor shall keep the Collateral free from all liens, claims and encumbrances and security interests except the security interest hereby created and will preserve the priority of all security interests in the Collateral in favor of Lender therefor. Lender shall have no duty to preserve such security, but may do so at the expense of Pledgor, without waiving Pledgor's default.

5. **Power of Attorney.** Pledgor appoints Lender as Pledgor's attorney-in-fact with full power in Pledgor's name and behalf to do every act which Pledgor is obligated to do or may be required to do hereunder; however, nothing in this paragraph shall be construed to obligate Lender to take any action hereunder. The power of attorney hereby created is a power coupled with an interest, and shall be irrevocable.

6. **Waivers by Pledgor.** Pledgor waives notice of the creation, advance, increase, existence, extension or renewal of, and of any indulgence with respect to, the Obligations; waives presentment, demand, notice of dishonor, and protest; waives notice of the amount of the Obligations outstanding at any time, notice of any change in financial condition of any person liable for the Obligations or any part thereof, notice of any event of default, and all other notices respecting the Obligations; and agrees that maturity of the Obligations and any part thereof may be accelerated, extended or renewed one or more times by Lender in its discretion, without notice to Pledgor (including notice of intent to accelerate and notice of acceleration).

7. **Other Parties and Other Collateral.** The obligations of Pledgor under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against any other person or entity (including the Borrower) nor against the security or liens or encumbrances available to Lender or any of its successors and assigns. Pledgor hereby waives any right to require that an action be brought against any other person or entity or to require that resort be had to any security or to any balance of any account or credit on the books of Lender in favor of any other person or entity prior to any exercise of rights or remedies hereunder. No renewal or extension of or any other indulgence with respect to the Obligations or any part thereof, no release of any security, no release of any person (including any maker, endorser, guarantor or surety) liable on the Obligations, no delay in enforcement of payment, and no delay or admission or lack of diligence or care in exercising any right or power with respect to the Obligations or any security therefor or guaranty thereof or under this Agreement shall in any manner impair or affect the rights of Lender under the law, hereunder or under any other agreement pertaining to security for the Obligations. Pledgor waives any right to the benefit of or to require or control application of any other security or proceeds thereof, and agrees that Lender shall have no duty or obligation to Pledgor to apply to the Obligations any such other security or proceeds thereof.

8. **Indemnification.** In any suit, proceeding or action brought by or against Lender relating to the Collateral, Pledgor will save, indemnify and hold Lender harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of any obligor thereunder, arising out of a breach by Pledgor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such obligor or its successors from Pledgor, and all such obligations of Pledgor shall be and shall remain enforceable against and only against Pledgor and shall not be enforceable against Lender. The foregoing obligation of Pledgor to indemnify Lender shall not extend to any suit, proceeding or action arising out of Lender's gross negligence or willful misconduct.

E. SECURITY AGREEMENT.

This Agreement shall constitute a security agreement under the Uniform Commercial Code as in effect in the District of Columbia ("UCC").

F. DEFAULT

1. **Events of Default.** The following shall be deemed Events of Default hereunder:

(a) default in the performance or observance of the other terms and conditions herein and, except as otherwise provided below, the failure to cure such default within ten (10) days after written notice thereof;

(b) an event of default under the Promissory Note;

(c) a Termination Event under the License Agreement arising from the act or omission of Pledgor;

(d) any warranty, representation or statement made or furnished to Lender by Pledgor proves to have been false in any material respect when made or furnished;

(e) substantial change in any fact warranted or represented in this Agreement or in any other agreement between Pledgor and Lender or in any statement, schedule, or other writing furnished in connection therewith;

(f) (1) the filing by Pledgor of a petition of bankruptcy, suspension of payments or insolvency; (2) the entering or enforcement of any order, judgment or decree by any court of competent jurisdiction adjudicating Pledgor as bankrupt or insolvent, or suspending payments, approving a petition seeking reorganization, appointing a receiver, trustee or liquidator of all or a part of Pledgor's assets; (3) consent by Pledgor to an involuntary petition of bankruptcy or the failure to vacate, within sixty (60) days from the date of entry thereof, any order approving an involuntary petition by Pledgor; (4) the establishment of any other arrangement for the benefit of creditors of Pledgor; or (5) upon any other event of liquidation or dissolution of Pledgor, whether voluntary or involuntary.

(g) levy on, seizure or attachment of the Collateral by any person or entity.

2. **Remedies of Lender Upon Default.** When an Event of Default occurs, and at any time thereafter, Lender without notice or demand may declare the Obligations in whole or part immediately due and may enforce payment of the same and exercise any rights under the UCC, rights and remedies of Lender under this Agreement, or otherwise. Pledgor shall be entitled to any surplus after payment of the Obligations. The proceeds of any disposition after an Event of Default, available to satisfy the Obligations shall be applied to the Obligations in such order and in such manner as Lender in its discretion shall decide. Failure of the Lender to exercise any of the above rights, powers and remedies ("Rights") in the event of any default shall not constitute a waiver of the right to exercise the same in the event of any such default or any subsequent default. No failure by Lender hereof to exercise, and no delay in exercising any Right, shall be deemed a waiver or modification of any Right.

G. **GENERAL**

1. **Parties Bound.** Lender's rights hereunder shall inure to the benefit of its successors and assigns, and in the event of any assignment or transfer of any of the Obligations or the Collateral, Lender thereafter shall be fully discharged from any responsibility with respect to the Collateral so assigned or transferred, but Lender shall retain all rights and powers hereby given with respect to any of the Obligations or Collateral not so assigned or transferred. All representations, warranties and agreements of Pledgor are joint and several, and all shall be binding upon the personal representatives, heirs, successors and assigns of Pledgor.

2. **Waiver.** No delay of Lender in exercising any power or right shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right. No waiver by Lender of any right hereunder or of any default by Pledgor shall be binding upon Lender unless in writing, and no failure by Lender to exercise any power or right hereunder or waiver of any default by Pledgor shall operate as a waiver of any other or further exercise of such right or power or of any further default.

3. **Agreement Continuing.** This Agreement shall constitute a continuing agreement, applying to all future as well as existing transactions, whether or not of the character contemplated at the date of this Agreement, and if all transactions between Lender and Pledgor shall be closed at any time, shall be equally applicable to any new transactions thereafter. Provisions of this Agreement, unless by their terms exclusive, shall be in addition to other agreements between the parties.

4. **Definitions.** Unless the context indicates otherwise, definitions in the UCC apply to words and phrases in this Agreement; if UCC definitions conflict, Chapter 9 definitions in the UCC apply.

5. **Notices.** All notices and other communications pursuant to this Agreement must be in writing and delivered personally, sent by fax with electronic confirmation of receipt, sent

by nationally-recognized, overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as will be specified by like notice):

(a) If to Lender, to:

National Multi Housing Council
1850 M Street, N.W.
Suite 540
Washington, DC 20036-5803
Attention: Jonathan L. Kempner, President
Fax: (202) 775-0112

With a copy, to:

Powell, Goldstein, Frazer & Murphy LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attention: Michael Chanin, Esq.
Fax: (202) 624-7222

(b) If to Pledgor, to:

American Seniors Housing Association, Inc.

Washington, D.C. _____
Attention: David Schless, President
Fax: (202) _____

With a copy, to:

Hanson, Bridgett, Marcus, Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, CA 94105-2173
Attention: Paul Gordon, Esq.
Fax: (415) 541-9366

All such notices and other communications will be deemed to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of a fax, the time of electronic confirmation of receipt, (c) in the case of delivery by nationally-recognized, overnight courier, on the second business day following dispatch and (d) in the case of mailing, on the fifth business day following such mailing. Any notice sent by fax must also be sent by hard copy by first class U.S. mail or other means for delivery of notices stated above on the same day as the fax transmission.

6. **Modifications.** No provision hereof shall be modified or limited except by a written agreement expressly referring hereto and to the provisions so modified or limited and signed by the Pledgor and Lender. No modification or limitation may be accomplished by course of conduct, usage of trade, or by the law merchant.

7. **Severability.** In the event any provision (or any part of any provision) contained in this Agreement shall for any reason be finally held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision, or application of the provision to other circumstances) but this Agreement shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had never been contained herein, but only to the extent it is invalid, illegal or unenforceable.

8. **Applicable Law.** This Agreement shall be construed according to the laws of the District of Columbia (without regard to conflict of laws principles).

9. **Financing Statement.** A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Collateral shall be sufficient as a financing statement.

10. **Further Assurances.** Pledgor shall execute and deliver, or cause to be executed and delivered, such further assurances as Lender from time to time may reasonable request, to effect the provisions of and to carry out the intent of this Agreement.

11. **Limitations of Law.** If any law prohibits or limits any charge or expense provided for in this Agreement in connection with any Obligations secured hereby, such charge or expense will not be made or incurred in connection with such Obligations beyond the limits permitted by such law.

[SIGNATURE PAGE BEGINS ON THE NEXT PAGE]

WITNESS THE FOLLOWING SIGNATURES AND SEALS THIS ____ DAY OF _____, 2000.

PLEDGOR:

WITNESS:

AMERICAN SENIORS HOUSING ASSOCIATION, INC.

By: _____

Name: David Schless

Title: President

NOTARY PUBLIC

STATE OF _____

CITY/COUNTY OF _____

TO WIT:

On this _____ day of _____, 20__, before me, _____, the undersigned notary public, personally appeared David Schless, who acknowledged himself to be the President of American Seniors Housing Association, Inc., a nonprofit corporation, and on behalf of said corporation, acknowledged that he, as such President, being authorized so to do, executed the foregoing Instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

IN WITNESS HEREOF, I hereunto set my hand and official seal.

Notary Public

[NOTARIAL SEAL]

My Commission Expires: _____

Exhibit D
Form of Employee Acknowledgement

EMPLOYEE ACKNOWLEDGEMENT

I hereby acknowledge my understanding and agreement with the following:

1. I am furnishing this Acknowledgement to NMHC in connection with the consummation of the legal separation of ASHA from NMHC.
2. In connection with the separation, I have terminated my employment with NMHC as of the close of business on December 31, 2000. I have received and accepted an employment offer from NEW ASHA.
3. I have returned to NMHC (attn.: Jayne Somes-Schloesser) and have not made any electronic or hard copies of, all NMHC materials and/or property which I have used or prepared in the course of my employment with NMHC, including, but not limited to, the NMHC Employee Handbook, the NMHC membership database, except for materials that are deemed Licensed Assets or Documents and are removed by me from NMHC's premises on behalf of NEW ASHA.
4. NEW ASHA has agreed to assume any vacation and sick leave accrued during my employment with NMHC under then current NMHC policies and not used as of the date hereof. Accordingly, NMHC will not be obligated to reimburse me for such accrued vacation and sick leave on my termination of employment.
5. NEW ASHA has agreed to assume my account balance as of the date hereof, and assume the corresponding obligations attributable to my account balance, in NMHC's retirement plan qualified under Section 401(a) of the Internal Revenue Code.
6. NEW ASHA has requested from NMHC, and I agree with and acknowledge the furnishing to NEW ASHA of, information on my salary and bonus history with NMHC.
7. I hereby release NMHC from any and all claims associated with my former employment with NMHC and any and all claims associated with my agreements in this Employee Acknowledgement.
8. With respect to David Schless only: NEW ASHA has agreed to assume my account balance as of the date hereof, and assume the corresponding obligations attributable to my account balance, in NMHC's retirement plan qualified under Section 457 of the Internal Revenue Code. In the event NMHC reasonably determines that such a transfer would not comply with the requirements of Internal Revenue Code Section 457(e)(10) and Treasury Regulations 1.457-2(k) because of the failure of NEW ASHA to establish a new Section 457 plan that would permit a compliant transfer, NMHC will take such action with respect to my account balance as it reasonably determines to be consistent with applicable law.

9. All defined terms used in this Acknowledgement have been explained to me.

Date: _____

David Schless

Date: _____

Ken Preede

Date: _____

Doris Kerr