

AGREEMENT BETWEEN  
COUNTY OF SAN MATEO  
(HUMAN SERVICES AGENCY  
OFFICE OF HOUSING)  
AND

NATIONAL CHURCH RESIDENCES

TO ASSIST WITH THE DEVELOPMENT OF AFFORDABLE HOUSING IN PACIFICA



HSA Contact Person:  
Jack D. Marquis  
HCD Specialist III  
802-5035

AGREEMENT BETWEEN COUNTY OF SAN MATEO ("County"),  
AND  
NATIONAL CHURCH RESIDENCES ("Contractor"),  
TO ASSIST WITH THE DEVELOPMENT OF  
AFFORDABLE HOUSING IN PACIFICA

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the County and Contractor as named above.

WITNESSETH

WHEREAS, pursuant to Title 24 CFR §570.201 of the Code of Federal Regulations regarding the Community Development Block Grant (CDBG) Program, funding assistance may be used for eligible activities to be carried out by private non-profit entities which are duly organized to undertake community development activities or public agencies; and

WHEREAS, pursuant to the National Affordable Housing Act of 1990, Public Law 101-625, enacted November 28, 1990, federal funds through the HOME Investment Partnership Act may be used to assist eligible housing development activities; and

WHEREAS, Contractor applied for funding assistance for assistance in the development of affordable housing in Pacifica; and

WHEREAS, County wishes to support the development of this affordable housing;

IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

CONTRACT TERM

CONTRACT AMOUNT            \$977,000.00

Start Date :            April 1, 2002

End Date :            December 31, 2004

COUNTY REPRESENTATIVE

Steve Cervantes  
Director Office of Housing  
262 Harbor Blvd., Bldg A  
Belmont, CA 94002  
(650) 802-5050

CONTRACTOR REPRESENTATIVE

John Stock  
Vice President of Development  
2335 North Bank Drive  
Columbus, OH 43220  
(614) 451-3541

1. **EXHIBITS** - The following exhibits are attached hereto and incorporated by reference:

Exhibit A: Program/Project Description

Exhibit B: Method and Rate of Payment to Contractor

Exhibit C: 504 Assurances

Exhibit D: Monitoring

Exhibit E: Program Specific Requirements

In the event there is a conflict between the language in this Agreement and that in the Exhibits, the language in the Exhibits control.

2. **DEFINITIONS** - See Exhibit A for any definitions

3. **SERVICES TO BE PERFORMED**

In consideration of the payments hereinafter set forth in Exhibit B, Contractor, under the general direction of the Director of Human Services Agency (the "Director"), or her authorized representative, with respect to the product or result of Contractor's services, shall perform services as described in Exhibit A.

4. **PAYMENTS**

A. **Maximum Amount.** In full consideration of Contractor's performance of the services described in Exhibit A, the amount that the County shall be obligated to pay under this Agreement shall not exceed \$977,000.00.

B. **Method and Rate of Payment.** The method and rate of payment shall be as specified in Exhibit B. Any rate increase is subject to the approval of the Director or her authorized representative, and shall not be binding on County unless so approved in writing. In no event may the rates established in Exhibit B be increased to the extent that the maximum County obligation shall exceed the total specified in paragraph 4A above. Each payment shall be conditioned on the performance of the services described in Exhibit A to the full satisfaction of the Director or her representative.

C. **Time Limit for Submitting Invoices.** As applicable, Contractor shall submit an invoice for services to County for payment in accordance with the provisions of Exhibit B. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one-hundred twenty (120) days after the date services were rendered, or more than ninety (90) days after this Agreement terminates, whichever is earlier.

D. **Availability of Funds.** Payment for all services provided pursuant to this Agreement are contingent upon the availability of County, State, and Federal funds. In the event the State or Federal government does not appropriate the necessary funds as part of either or both of their budgets, the County shall not be liable for any payment whatsoever; including, but not limited to, payments that are based on County funds. The County may terminate the Agreement due to the unavailability of Federal, State or County funds.

## 5. RELATIONSHIP OF PARTIES

It is expressly understood that this is an agreement between two (2) independent contractors and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement. The intent by both County and Contractor is to create an independent contractor relationship. Contractor expressly acknowledges and accepts his/her tax status as, and the tax consequences of, an independent contractor. Further, as an independent contractor, Contractor expressly acknowledges and accepts that he/she has no rights, benefits, privileges and/or claims in any form whatsoever under, from through and/or pursuant to the San Mateo County Civil Services Rules.

## 6. HOLD HARMLESS

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor; (B) damage to any property of any kind whatsoever and to whomever belonging; or (C) any other loss or cost, including but not limited to, the concurrent active or passive negligence of County, its officers, agents, employees, or servants resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

## 7. INSURANCE

A. The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by the Director, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Human Services Agency Office of Housing with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' advanced notice must be given, in writing, to the Human Services Agency Office of Housing of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.

(1) **Workers' Compensation and Employee's Liability Insurance.** The Contractor shall have in effect during the entire life of this Agreement, Workers' Compensation and Employer's Liability Insurance providing full coverage as required by the California Labor Code. In signing this Agreement, the Contractor makes the following certification, required by Section 1861 of the California Labor Code:

"I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

(2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

(a) Comprehensive General Liability	\$1,000,000
(b) Motor Vehicle Liability Insurance	\$1,000,000
(c) Professional Liability	\$ -0-

After one (1) years from the date this Agreement is first executed, the County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar county agreements by giving sixty (60) days notice to Contractor. The County and its officers, agents, employees and servants shall be named as additional insured on all such policies of insurance required under this Agreement, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County, or its officers and employees have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

B. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, and not replaced by Contractor, the County at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement or terminate the Agreement.

## 8. NON-DISCRIMINATION

Contractor shall comply with the non-discrimination requirements described below:

### A. Section 504 of the Rehabilitation Act of 1973

(1) Pursuant to Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), the Contractor agrees that no otherwise qualified disabled individual shall, solely by reason of a disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination in the performance of this Agreement.

(2) Contractor understands and agrees that compliance with Section 504 of the Rehabilitation Act, requires that all benefits, aids and services be made available to disabled persons on an equivalent basis with those received by non-disabled persons. Contractor agrees to: a) sign the Letter of Assurance, attached and incorporated herein as Exhibit C; or b) by developing a plan for compliance to be submitted to the Section 504 Coordinator, Department of Health Services, as soon as possible but not later than by the end of the current Fiscal Year.

B. **Non-Discrimination - General.** No person shall, on the grounds of age (over 40), ancestry, creed, color, disability, marital status, medical conditions, national origin, political or religious affiliation, race, sex, sexual orientation or any other non-job-related criteria be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Agreement.

With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which, among other things, prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

C. **Non-Discrimination - Employment.** Contractor shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Agreement. Contractor's equal opportunity employment policies shall be made available to County upon request.

D. **Penalty for Violation of the Non-Discrimination Provisions.** Violation of the non-discrimination provisions contained in this Section of this Agreement shall be considered a material breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, at his sole discretion, including but not limited to any or all of the following:

- (1) Termination of this Agreement;
- (2) Disqualification of the Contractor from bidding on or being awarded future County contract for a period of up to 3 years from the date of such breach;
- (3) Liquidated damages of up to \$2,500 per violation;
- (4) Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section of this Agreement, the County Manager shall have the authority to:

- (1) Examine Contractor's employment records with respect to compliance with this Section of this Agreement;
- (2) Set off all or any portion of the amount described in this Section of this Agreement against amounts due to Contractor under the Agreement or any other agreement between the Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the United States Equal Employment Opportunity Commission, the California Fair Employment and Housing Commission or any other entity charged with the investigation of allegations of discrimination within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstances. Contractor shall provide County with a copy of their response to any complaint when filed.

## 9. CHILD ABUSE PREVENTION AND REPORTING

Contractor agrees to ensure that all known or suspected instances of child abuse or neglect are reported to a child protective agency. Contractor agrees to fully comply with the Child Abuse and Neglect Reporting Act, California Penal Code §11164 et seq. Contractor will ensure that all known or suspected instances of child abuse or neglect are reported to an agency (police department, sheriff's department, county probation department if designated by the county to receive mandated

reports, or the county welfare department) described in Penal Code Section §11165.9. This responsibility shall include:

A. A requirement that all employees, consultants, or agents performing services under this Agreement who are required by Penal Code Section §11166(a), to report child abuse or neglect, sign a statement that he or she knows of the reporting requirement and will comply with it.

B. Establishing procedures to ensure reporting even when employees, consultants, or agents who are not required to report child abuse under Penal Code Section §11166(a), gain knowledge of, or reasonably suspect that a child has been a victim of abuse or neglect.

C. Contractor agrees that its employees, subcontractors, assignees, volunteers, and any other persons who provide services under this Agreement and who will have supervisory or disciplinary power over a minor or any person under his or her care (Penal Code Section §11105.3) will be fingerprinted in order to determine whether they have a criminal history which would compromise the safety of children with whom Contractor's employees, subcontractors, assignees or volunteers have contact. All fingerprinting services will be at County's sole discretion and Contractor's sole expense.

## 10. ASSIGNMENT AND SUBCONTRACT

A. Without the written consent of the Director of Human Services or her representative, this Agreement is not assignable in whole or in part. Any assignment of this Agreement by Contractor without the written consent of the Director or her authorized representative violates this and shall be considered a breach of the Agreement and the County may, at its option terminate this Agreement.

B. Contractor shall not employ subcontractors or consultants to carry out the responsibilities undertaken pursuant to this Agreement without the written consent of the Director or her authorized representative.

C. All assignees, subcontractors, or consultants approved by the Director of Human Services or her representative shall be subject to the same terms and conditions applicable to Contractor under this Agreement, and the Contractor shall be liable for the assignee's, subcontractor's or consultant's acts and/or omissions.

D. All agreements between Contractor and subcontractor and/or assignee for services pursuant to this Agreement shall be in writing and shall be provided to County upon request.

## 11. RECORDS

A. Contractor agrees to provide to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, regulations, and ordinances, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

B. Contractor shall maintain and preserve all records relating to this Agreement in its possession of any third party performing work related to this Agreement for a period of three (3) years from the

termination date of this Agreement, or until audit findings, if any, are resolved, whichever time period is greater.

## **12. COMPLIANCE WITH APPLICABLE LAWS**

All services performed under this Agreement shall be performed in accordance with all applicable Federal, State, County and Municipal laws, ordinances, regulations, and funding mandates, including but not limited to appropriate licensure, certification regulations, and requirements pertaining to confidentiality, civil rights, and quality assurance. Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **13. MONITORING**

All services performed and payments made pursuant to this Agreement shall be monitored according to the protocols set forth in Exhibit D.

## **14. PROGRAM SPECIFIC REQUIREMENTS**

Program specific requirements are contained in Exhibit E.

## **15. ALTERATION OF AGREEMENT**

This Agreement is entire and contains all the terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

The Director of the Human Services Agency shall be authorized to execute subsequent amendments and modifications to his Agreement during the term of the Agreement, provided however, that such authority is limited to (a) reducing or increasing the County's maximum fiscal obligation in the event that there is a commensurate reduction or increase in funding received by the County, provided, however, that such increases shall be limited to a total of \$25,000 per funding source; and (b) making changes in the types of services and activities provided by Contractor, provided that the changes have no impact on the County's maximum fiscal obligation to the Contractor.

## **16. INTERPRETATION AND ENFORCEMENT**

A. Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to the appropriate Representative as specified on page 1 hereof.

B. Controlling Law. The validity of this Agreement and of its terms and provisions, as well as the rights and duties of the parties hereunder, and the interpretation and performance of this Agreement shall be governed by the laws of the State of California.

## **17. TERM OF THE AGREEMENT**

Subject to compliance with the terms and conditions of this Agreement, the term of this Agreement shall be as specified on page 1 hereof, unless otherwise modified in Exhibit A.



IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
Jerry Hill, President  
Board of Supervisors

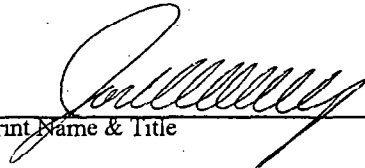
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of Said Board

Date: \_\_\_\_\_

NATIONAL CHURCH RESIDENCES

By:   
\_\_\_\_\_  
Print Name & Title

Joseph Kasberg Vice President/ CFO  
\_\_\_\_\_  
Signature

Date: February 5, 2002  
\_\_\_\_\_

Tax ID #: 31-0651750  
\_\_\_\_\_

1. **Funded Activity**

The funds provided pursuant to this Agreement shall be used to assist with the development of 10 units of affordable rental housing (the "Project") at 199 Lakeside Avenue, Pacifica (the "Property"). The units shall meet criteria intended to make them affordable to households making 60% or less of the median income for San Mateo County.

The funds provided shall come from two sources: \$747,000 from CDBG funds and \$230,000 from HOME funds. Expenses for which CDBG and HOME funds may be used include, but are not limited to, land acquisition, architecture and engineering fees, financing fees, appraisals, legal fees, construction period interest, construction period taxes, title and escrow expenses, tax credit application fees, environmental assessments, demolition and site preparation costs, construction of required off-site improvements, marketing expenses, and direct costs associated with the construction of the units.

2. **Definitions**

- a. **High HOME Rent** is rent that does not exceed the lesser of (1) the Section 8 Fair Market Rents (FMRs), as established by the United States Department of Housing and Urban Development ("HUD") under 24 CFR Part 888, for existing housing minus tenant paid utilities, or (2) 30% of annual income for households at the HOME income limit for San Mateo County, adjusted for family size, less tenant paid utilities. This rental amount is calculated by San Mateo County at 120% of the Low HOME Rent as defined below.

If tenant is paying any utilities, a "utility allowance" must be deducted from the rent figures below. This allowance is calculated by HUD under 24 CFR Part 880 - 886 and may be obtained by contacting the San Mateo County Housing Authority.

The current High HOME Rents (assuming landlord paid utilities) as of the date of this agreement are:

<u>studio</u>	<u>1-BR</u>	<u>2-BR</u>	<u>3-BR</u>	<u>4-BR</u>
\$891	\$955	\$1,147	\$1,326	\$1,478

- c. **Low HOME Rent** is rent that is 30% of annual income for households at the Very Low Income limit for San Mateo County, adjusted for family size, minus tenant paid utilities. This rental amount is calculated by HUD and adjusted from time to time.

**Exhibit A - Page 2**  
**PROGRAM/PROJECT DESCRIPTION**

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If tenant is paying any utilities, a "utility allowance" must be deducted from the above rent figures. This allowance is calculated by HUD under 24 CFR Part 880 - 886 and may be obtained by contacting the San Mateo County Housing Authority.

The current Low HOME Rents (assuming landlord paid utilities) as of the date of this agreement are:

<u>studio</u>	<u>1-BR</u>	<u>2-BR</u>	<u>3-BR</u>	<u>4-BR</u>
\$743	\$796	\$956	\$1,105	\$1,232

- d. Very Low Income is the qualifying income with adjustments for family size, for very low income households as established by HUD pursuant to Section 8 of the United States Housing Act of 1937, as amended. These income limits are adjusted from time to time.

The Very Low Income limits as of the date of this agreement are:

Fam. Size	1	2	3	4	5	6
Income	\$29,750	\$34,000	\$38,250	\$42,500	\$45,900	\$49,300

- e. HOME Income is income at 120% of the Very Low Income adjusted for family size as calculated by HUD and adjusted from time to time.

The HOME Income limits as of the date of this agreement are:

Fam. Size	1	2	3	4	5	6
Income	\$35,700	\$40,800	\$45,900	\$51,000	\$55,080	\$59,160

### 3. Rent and Occupancy Restriction

**At least 2 of the assisted units** must be occupied by households whose income does not exceed the Very Low Income limit as specified above, as such limit may be adjusted from time to time by HUD or any successor agency. The rent on said units, including tenant paid utilities, may not exceed the Low HOME Rent specified above, as such rent may be adjusted from time to time by HUD or any successor agency.

**The remaining 8 assisted units** must be occupied by households whose income does not exceed the HOME Income Limit as specified above, as such limit may be adjusted from time to time by HUD or any successor agency. The rent on said units, including tenant paid utilities, may not exceed the High HOME Rent, as such rent may be adjusted from time to time by HUD or any successor agency.

The specific units affected by this agreement shall be "floating" units, that is, there shall be no specified for Very Low Income or for HOME Income limit as long as there are a minimum number of units in compliance with the HOME requirements specified above.

In the event that the income of a qualifying tenant increases so that the tenant no longer meets the income criteria, the Developer will be allowed to be "out of compliance" with the income criteria of this restriction until such time as said tenant vacates the unit, or another comparable unit in the project becomes available, at which time that unit must be rented to a qualifying tenant and the restriction shall transfer to the new unit. Once the restriction transfers to another unit, the existing unit shall be restricted in such manner as to assure that the minimum number of units remain in each income category.

#### **4. Deed Restriction**

In compliance with the requirements of the HOME Program which is providing funding for this project, a Deed Restriction shall be recorded against the property to which this Agreement pertains. The term of said Deed Restriction shall be 15 years, and shall stand independent of this Agreement and of the Promissory Note and Deed of Trust.

#### **5. Security**

Contractor shall execute and deliver a promissory note (the "Note") and deed of trust (the "Deed of Trust") in favor of County in the amount of \$977,000 to secure the performance of all terms and conditions of this Agreement, and shall be executed prior to any disbursement of funds under this Agreement.

The Note shall bear interest at the rate of three percent (3%) per annum. The Note and Deed of Trust shall be for a term of fifteen (15) years from the date of their execution. Payments on the Note shall be made annually and shall equal 50% of the annual Surplus Cash generated by the Project, and will be due 90 days from the end of the Project's fiscal year. The payments will be first applied to outstanding interest and then to principal until the debt represented by the Note is paid in full. In the event this Payment is less than the unpaid accumulated interest plus current interest, any unpaid amount shall carry over to the following year. Interest shall not compound on this interest carry-over. The entire outstanding principal balance plus any unpaid accrued interest shall be due and payable fifteen (15) years from the date of execution of the Note and Deed of Trust.

**Exhibit A - Page 4**  
**PROGRAM/PROJECT DESCRIPTION**

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Surplus Cash shall mean all rental and incidental income from the Project, but excluding tenant security deposits (and any interest earned on said deposits), less the following to the extent consistent with an annual independent audit to be provided by the Contractor: All actual project operating expenses; utilities; maintenance expenses; real estate taxes; required reserve deposits; debt service on superior liens; and GP Partnership Management fees if any; Depreciation will not be allowed as an operating expense for purposes of calculating Surplus Cash. Operating and Replacement Reserves shall only be allowed as a project expense in the amount of funds actually set aside in a separate account at a reputable financial institution. All withdrawals from such accounts shall be documented as to the use of the funds so withdrawn.

The terms of repayment of this Note may be modified by the Director of the Office of Housing as deemed necessary to ensure the continuing affordability of the Project.

**6. Due on Sale, Refinance or Transfer of Title**

Contractor shall not sell or refinance the Property (other than a refinancing to secure a permanent loan to repay any interim loans taken out to complete construction of the Project), or assign its rights under this Agreement without obtaining prior written consent of the County Director of the Office of Housing. In the event of a sale or transfer of the Property or any interest therein by Contractor without such consent, the entire amount of the Note plus any accrued interest shall be immediately due and payable.

**7. Acceleration of Note**

In the event Contractor breaches any of the terms and conditions of this Agreement after notice and an opportunity to cure, the Contractor will be in default of the terms and conditions of the Note, and County may demand immediate and full payment of the principal amount of the Note, plus any accrued interest, and/or may initiate foreclosure proceedings under the Deed of Trust.

**8. Title Policy**

Contractor shall open an escrow with a mutually acceptable title company and shall secure at the close of escrow the issuance of a CLTA policy of title insurance in the amount of not less than \$977,000, clear of any title defects which would prevent the operation of the proposed project. County shall submit into escrow instructions and documents for execution.

**9. Fire and Extended Coverage**

Contractor, at its cost, shall maintain on the improvements that are the subject of this Agreement, a policy of standard fire and extended coverage during the life of the Note and Deed of Trust securing performance of this Agreement, or any subsequently executed documents which replaces the Note and Deed of Trust, with vandalism and malicious mischief endorsements, to the extent of at least the full replacement value of the improvements which are part of the premises. The insurance policy shall be issued in the names of Contractor and County as their interests appear. The insurance policy shall contain a lender loss payable endorsement, providing that any proceeds shall be payable to the County as its interests appear.

In the event that Contractor shall undertake to restore the damaged improvements or to reconstruct the destroyed improvements within a period of sixty (60) days, such insurance proceeds shall be released to Contractor as payments are required for purposes, and upon completion of such restoration or reconstruction, any balance thereof remaining shall be paid to Contractor forthwith, subject to the rights of senior lenders.

In the event Contractor shall fail to undertake the restoration or reconstruction of such improvements within sixty (60) days following any such damage or destruction, there shall be paid and released to the County from such insurance proceeds a sum equal to the costs of clearing the premises in the event Contractor does not at its own expense clear the premises within said period. The balance shall be held to compensate the parties to this Agreement as if the premises were sold. Contractor shall also sell the vacant land on the open market and the proceeds of said land sale shall be distributed to the parties to this Agreement pursuant to the terms hereof.

**Exhibit B - Page 1**  
**METHOD AND RATE OF PAYMENT TO CONTRACTOR**

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Contractor acknowledges that County is the beneficiary of an existing Note in the amount of \$328,750 secured by a Deed of Trust on the Property. The initial payment to Contractor shall be made by allowing the assumption of this debt by Contractor with the proviso that the terms of repayment shall be modified as specified in Exhibit A. The existing Deed of Trust shall be reconveyed and the \$328,750 shall be included in the new Note and Deed of Trust.

All remaining payments by County shall be made on a reimbursement basis upon claims for reimbursement being submitted by Contractor to County. Requests for reimbursement shall include copies of invoices paid together with warrants, canceled checks, or other proof that the invoices have been paid.

Upon written request to the Director of Housing, payments may be made directly to authorized third parties; Contractor must submit original invoices with the request.

Contractor shall certify in writing that the specific services for which reimbursement or payment is being requested have been satisfactorily completed, that the payments are proper and that all funds to be expended are on behalf of and exclusively for the project. County reserves the right to verify such completion prior to payment to Contractor.

None of the funds shall be used for salary, fringe benefits or other compensation of employees of Contractor or its affiliates.

**Exhibit C - Page 1**  
**ASSURANCE OF COMPLIANCE WITH SECTION 504**  
**OF THE REHABILITATION ACT OF 1973**  
**(Required only from Contractors who provide services**  
**directly to the Public on the County's behalf)**

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The Contractor hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.\*

The Contractor gives this assurance in consideration of and for the purpose of obtaining contracts after the date of this assurance. The Contractor recognizes and agrees that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor.

The Contractor: (check a or b)

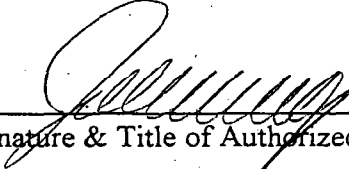
- a.  employs fewer than 15 persons
- b.  employs 15 or more persons and, pursuant to section 84.7(a) of the regulation (45 C.F.R. 84.7(a)), has designated the following person to coordinate its efforts to comply with the DHHS regulations.

Pamela S. Pulfer

Name of 504 Person (type or print)

I certify that the above information is complete and correct to the best of my knowledge.

Date: 02/05/02

By:   
Signature & Title of Authorized Official

- \* DHHS regulations have provided that if a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with the facility accessibility regulations other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible



**Exhibit D - Page 1**  
**PROGRAM MONITORING**

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Contractor shall provide to County on demand, all requested income and demographic data about the recipients of services under this Agreement. This data may include race, family size, income, sex and handicap status, if any, of the head of household.

In accordance with Paragraph 11 of this Agreement, upon reasonable notice, County, HUD, the Comptroller General of the United States, or any other relevant monitoring agencies, or any of their duly authorized representatives shall be provided access to any books, documents, papers, records of Contractor which are directly pertinent to this Project, for the purpose of making audits, examinations, excerpts and transcriptions, Contractor shall further provide County and relevant monitoring agencies reasonable access to the physical premises covered under this Agreement for inspections from time to time for compliance with the terms of this Agreement.

Contractor shall provide County with an Annual Audit Report each year during the term of this Agreement. The Audit report must include a statement of compliance with OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations".

**Exhibit E - Page 1**  
**PROGRAM SPECIFIC REQUIREMENTS**  
**HOUSING & COMMUNITY DEVELOPMENT**

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**1. BREACH OF AGREEMENT**

This Agreement is governed by applicable federal statutes and regulations, as referred to elsewhere herein. Any material deviation by Contractor for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of County or upon the direction of HUD. County may terminate this Agreement for cause after giving Contractor notice of any breach or default and 30 days to cure said breach or default. In the event of termination by whatever means, all finished and unfinished work shall become the property of County, and the County shall have the right to direct Contractor's actions with respect to access to materials.

County reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of all previous or subsequent breaches. In the event County chooses to waive a particular breach of this Agreement, it may condition same on payment by Contractor of actual damages occasioned by such breach of Agreement and shall make every effort to resolve the same quickly and amicably.

**2. AGREEMENT TERMINATION**

In the event Contractor is unable to fulfill its responsibilities under this Agreement for any reason whatsoever, including circumstances beyond its control, County may terminate this Agreement in whole or in part in the same manner as for breach hereof.

**3. CONFLICT OF INTEREST**

No members, officers, or employees or agents of County, no member of the County's Board of Supervisors, and no other public official who exercises any function or responsibility with respect to this program during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or a related subcontract, or the proceeds thereof.

No members, officers, or employees or agents of Contractor, no member of the Board of Directors of Contractor, and no other official who exercises any function or responsibility with respect to this program during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in the Agreement or a related contract, or the proceeds thereof.

Contractor shall incorporate the above provisions into all contracts awarded in connection with this Agreement.

**4. LOBBYING PROHIBITED**

Federal funds shall not be used by Contractor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government. Federal funds shall not be used by Contractor to influence an officer or employee of any agency, a Member of Congress,

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**PROGRAM SPECIFIC REQUIREMENTS**  
**HOUSING & COMMUNITY DEVELOPMENT**

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and officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract.

**5. INFLUENCING PROHIBITED**

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and

C. The language of paragraphs 5A and 5B shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**6. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS**

Contractor, to the extent applicable to this Agreement, shall comply with the following Federal laws and regulations as set forth in 24 CFR §§570.600-612:

A. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, including community development funds, on the grounds of race, color, or national origin.

B. Public Law 90-284, Fair Housing Act (42 U.S.C. §§3601- 20), which provides that it is the policy of the United States to provide, within constitutional limitations, fair housing throughout the United States and prohibits any person from discriminating in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin handicap or familial status. The Fair Housing Act, as amended in 1988, also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities. Multifamily dwelling units in buildings containing 4 or more units served by one or more elevators, or ground floor dwellings units with 4 or more units, constructed for first occupancy after March 13, 1991, must be designed and constructed in a manner that the public and common use portions of such dwellings are readily accessible to and usable by disabled persons. All premises within such dwellings must incorporate features of adaptive design regarding accessibility routes into and

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through the dwelling and design features within the units. (Regarding accessibility design issues, State accessibility requirements will prevail if they are stricter than federal requirements.)

C. Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services, programs or benefits supported by Federal funds.

D. Rehabilitation Act of 1973, Section 504, which prohibits discrimination against otherwise qualified handicapped persons in the provision of programs, facilities and employment supported by Federal funds.

In the case of multifamily rental housing, projects of five or more units must be designed and constructed to be readily accessible to and usable by persons with disabilities. For new construction involving five or more units, and substantial rehabilitation projects of 15 or more units (with substantial rehabilitation defined as rehabilitation costs representing 75 percent or more of the replacement costs of the completed facility), the following requirements must be followed - a minimum of 5 percent of the dwelling units must be accessible to individuals with mobility impairments and an additional 2 percent accessible to individuals with sensory impairments. At the minimum, one unit shall be made accessible to mobility-impaired individuals and one unit accessible to sensory impaired individuals. When less than substantial rehabilitation is undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of 5 percent of the dwelling units (but not less than one unit) are accessible to persons with mobility impairments; for this category of less than substantial rehabilitation, the additional 2 percent of the units for persons with sensory impairments does not apply. Also for this category of rehabilitation, if undertaking accessibility alterations imposes undue financial and administrative burdens on the operation of the multifamily housing project, the alterations are not required.

In the case of non-housing facilities involving new construction, the facilities shall be designed and constructed to be readily accessible to and usable by persons with disabilities. For facilities involving alterations, to the extent possible, the alterations should ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible, if doing so, would impose undue financial and administrative burdens on the operation of the recipient program or activity. (However, State law will prevail if State accessibility requirements are stricter than federal 504 requirements.) Recipients are still required to take other actions that would ensure that persons with disabilities receive the benefits and services of the program.

E. Davis-Bacon Act, which requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with Federal funds shall be paid prevailing wages of the locality as determined by the Secretary of Labor.

F. Flood Disaster Protection Act of 1973, which provides that no federal financial assistance for acquisition or construction purposes may be approved for an area having special flood hazards unless the community in which the area is located is participating in the National Flood Insurance Program.

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**PROGRAM SPECIFIC REQUIREMENTS**  
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G. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which provides for relocation assistance for any family, individual, business, non-profit organization or farm displaced as a result of acquisition of property with federal funds.

H. Executive Order 11246, amended by Executive Order 12086, Equal Employment and Contracting Opportunities, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally assisted construction contracts.

I. Housing and Urban Development Act of 1968, Section 3, which requires that, in the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to low and moderate income persons residing within the unit of local government in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same unit of local government as the project.

J. Lead-Based Paint Poisoning Act, which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance.

## **7. UNIFORM ADMINISTRATIVE REQUIREMENTS**

A. Contractor, if a governmental entity or public agency, shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations", and applicable sections of 24 CFR §85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as set forth in 24 CFR §570.502(a).

B. Contractor, if a non-profit organization, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations, OMB Circular A-133 Audits of State, Local Governments and Non-Profit Organizations", and applicable Attachments to OMB Circular No. A-110, as set forth in 24 CFR §570.502(b).

Fingerprinting Certification

AGREEMENT BETWEEN  
COUNTY OF SAN MATEO  
("County")  
AND  
NATIONAL CHURCH RESIDENCES  
("Contractor")

Contractor agrees that its employees, subcontractors, assignees, volunteers, and any other persons who provide services under this Agreement and who will have supervisory or disciplinary power over a minor or any person under his or her care (Penal 11105.3) will be fingerprinted in order to determine whether they have a criminal history which would compromise the safety of children with whom Contractor's employees, subcontractors, assignees or volunteers have contact. All fingerprinting services will be at County's sole discretion and Contractor's sole expense.

  
\_\_\_\_\_  
Signature

Joseph Kasberg  
\_\_\_\_\_  
Name (please print)

Vice President/ Chief Financial Officer  
\_\_\_\_\_  
Title (please print)

February 5, 2002  
\_\_\_\_\_  
Date

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: National Church Residences

Contact Person: John E. Stock

Address: 2335 North Bank Drive

Columbus, Ohio 43230

Phone Number: (614) 451-2151 Fax Number: (614) 451-0351

II Employees

Does the Contractor have any employees? X Yes \_\_\_ No

Does the Contractor provide benefits to spouses of employees? X Yes \_\_\_ No

III Equal Benefits Compliance (Check one)

- Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
No, the Contractor does not comply.
The Contractor is under a collective bargaining agreement which began on (date) and expires on (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 5th day of Feb., 2002 at Columbus, Ohio (City) (State)

Signature: [Handwritten Signature]
Vice President/ CFO
Title

Joseph Kasberg
Name (please print)
31-0651750
Contractor Tax Identification Number

COUNTY OF SAN MATEO  
MEMORANDUM

DATE: February 12, 2002

TO: Priscilla Harris Morse, Risk Manager

FROM: Jack D. Marquis, HCD Specialist III

FAX 802-5049

PONY HSA 209

SUBJECT: Contract Insurance Approval

CONTRACTOR NAME: National Church Residences

DO THEY TRAVEL: no

PERCENT OF THE TIME: n/a

DUTIES (SPECIFIC): Development of affordable housing for low income households

COVERAGE:	Amount	Approve	Waive	Modify
Comprehensive General Liability	\$2,000,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Motor Vehicle Liability	\$1,000,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Professional Liability	na	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Worker's Compensation	\$1,000,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS/COMMENTS:

Request approval of insurance as stated above.

*Priscilla Morse*  
SIGNATURE

PONY EPS 163 SUBMIT TO RISK MANAGEMENT OR FAX 363-4864



# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
1/23/02

**PRODUCER**

BERWANGER OVERMYER ASSOC.  
A HILB, ROGAL AND HAMILTON CO.  
2245 NORTH BANK DRIVE  
COLUMBUS OH 43220  
(614) 457-7000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**COMPANIES AFFORDING COVERAGE**

- COMPANY  
**A** TRANSPORTATION INSURANCE CO
- COMPANY  
**B** CONTINENTAL CASUALTY CO.
- COMPANY  
**C**
- COMPANY  
**D**

**INSURED**

NATIONAL CHURCH RESIDENCES  
CENTRAL OFFICE  
2335 NORTH BANK DRIVE  
COLUMBUS, OH 43220-5499

**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	159437888	11/01/01	11/01/02	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 50,000 MED EXP (Any one person) \$ 10,000
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	T159437907	11/01/01	11/01/02	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL	159437941	11/01/01	11/01/02	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 1,000,000 EL DISEASE-POLICY LIMIT \$ 1,000,000 EL DISEASE-EA EMPLOYEE \$ 1,000,000
	<b>OTHER</b>				

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**

REGARDING: LAKESIDE APARTMENTS, SAN MATEO COUNTY, CALIFORNIA.

**CERTIFICATE HOLDER**

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Kimberly M. Reser*