

**PRESTON PARK  
MANAGEMENT AGREEMENT**

**Attachment A to Item 8e**  
FORA Board Meeting, 12/12/2014

THIS MANAGEMENT AGREEMENT ("Agreement") is dated for reference on \_\_\_\_\_, 2014. It is made by and between the Fort Ord Reuse Authority, a California public entity, ("Owner") and Alliance Communities, Inc., a Delaware corporation, ("Operator").

**RECITALS**

1. Owner holds exclusive title to certain improved real property commonly known as Preston Park consisting of 354 units ("Units") at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. Owner requires the services of a professional management company to perform administrative and financial services. Owner has determined that Operator has the requisite skill, training experience and legal authority, including a California real estate brokerage license, needed to manage the Property.
3. The purpose of this Agreement is to articulate the terms under which Owner and Operator will share responsibilities for the Property.

**AGREEMENT**

In consideration of the promises in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, Operator and Owner agree as follows:

1. APPOINTMENT OF OPERATOR. Owner appoints Operator and Operator hereby accepts appointment as Owner's exclusive agent to manage, operate, supervise, and lease the Property and to perform those actions necessary to fulfill Operator's obligations to the Owner except as provided herein.

2. TERM

2.1 TERM. This Agreement shall commence on January 1, 2015, and shall continue to midnight, December 31, 2015 or until the Fort Ord Reuse Authority ("FORA") transfers title to the Property in which case the new owner can assume the contract.

2.2 EARLY TERMINATION. This Agreement is terminable on the occurrence of any of the following:

(a) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority. In that event, Operator may terminate this Agreement upon thirty (30) days written notice to Owner unless Owner is in good faith contesting same, under Section 4.2(g).

(b) If either party defaults in the performance of a material obligation and such default continues for thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying such default. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30-day period then the party not in default shall not affect the termination.

(c) Owner or Operator may terminate this Agreement with cause upon sixty (60) days written notice to the other party. It is understood that the respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon the effective date of termination of this Agreement for any reason:

(a) Operator shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(b) Operator will immediately deliver to Owner all Books, Records, and Documents (as herein defined) maintained under this Agreement and do all that is reasonably necessary to facilitate the orderly transition of Property management;

(c) Operator shall render to Owner an accounting of all funds (i. e. bank accounts) of Owner held by Operator relating to property and shall immediately cause such funds to be paid to Owner; and

(d) Operator shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

### 3. COMPENSATION

3.1 Management Fee. In addition to other reimbursements to Operator provided for in this Agreement, Owner shall pay Operator a monthly management fee equal to 2.5% of the Gross Revenue, as defined in Section 3.2. Owner shall pay Management Fees in monthly installments at the beginning of each month. These fees shall be paid from the Trust Account as part of the operating expenses of the Property.

3.2 Gross Revenue. For purposes of computing the Management Fee, the term "Gross Revenue" means all revenue derived from the Property, determined on a cash basis, from (a) tenant rentals for each month during the Term of this Agreement; excluding tenant security deposits (except as provided below); (b) forfeited cleaning, security and damage deposits; (c) laundry and vending machines receipts; (d) other revenue from the operation of the Property received during the Term of this Agreement; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) charges collected in connection with termination of the tenant's right of occupancy. Gross Revenue does not include the proceeds of (i) sale, exchange, refinancing, condemnation, or other disposition of all or any part of the Property, (ii)

any loans to Owner whether or not secured by all or any part of the Property, (iii) any capital expenditures or funds deposited to cover costs of operations made by Owner, and (iv) any insurance policy (other than rental interruption insurance or proceeds from third-party damage claims).

3.3 Distribution of net profits to City of Marina and FORA. As provided in Government Code section 67678(b)(2), Operator shall distribute net profit from operation of the Property as follows

Fifty percent (50%) to the City of Marina, and

Fifty percent (50%) to FORA.

3.4 Capital Improvement Management Fee. **On or before March 31, 2015** Operator shall submit to Owner an annual Capital Improvement Program ("CIP"). The CIP shall describe recommended capital improvements. The Owner shall approve in writing the Capital improvement projects to be undertaken each year. Owner will pay to Operator a construction management fee for Capital Improvements managed by Operator. That fee shall be equal to six percent (6%) of the total project cost as set forth in an executed written proposal or agreement. Each project must be approved in writing by Owner. Operator's fee will be increased or decreased by all change orders approved by Owner. Operator's CIP management fee shall be computed and paid based on monthly construction invoices. Such fees and capital projects will be paid from Reserve Account. 3.5. Definitions For Section 3:

3.5.1. Capital Improvements and Maintenance. For purposes of this Section 3.4, a capital item is distinguished from maintenance in that a capital improvement is intended to extend the useful life of a fixed asset, whereas repairs and maintenance keep the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not capital improvements. Replacement of structural elements, even costing more than Five Thousand Dollars (\$5,000), caused by normal wear and tear, are maintenance and not a capital improvement. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately.

3.5.2. Routine maintenance: Simple, small-scale activities (usually requiring only minimal skills or training) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a building, equipment, machine, plant, or system against normal wear and tear. Examples: Those items listed in the budget classified as general Repairs and Maintenance.

3.5.3. Non-routine maintenance: Activities that require specialized skills or training that are associated with irregular or out of the ordinary upkeep of a building, equipment, machine, plant, or system. Examples: Slurry seal, carpet and flooring replacements, appliance replacements,

minor roof and gutter repairs, dryer vent cleaning.

3.5.4. Capital items/construction: Complex or larger scale activity associated with buildings, structures, or other improvements including alterations, painting, remodeling, transportation of construction and furnishing goods and material etc. Examples: Replacement of windows, exterior building repaint, interior unit remodeling or remediation, re-plumbing projects, signage development, roof replacement.

#### 4. DUTIES AND RESPONSIBILITIES

4.1 OPERATOR'S RESPONSIBILITIES. Operator is responsible for management of the Property in accordance with the standards of practice of professional managers of similar properties in the Monterey Peninsula area. Operator will provide other customary management services related to the ordinary business affairs of the Property consistent with the standards of management, operation, leasing, and maintenance of similar property in the area. Those services shall include but not be limited to the Scope of Services described in Exhibit "A.". Operator shall also establish and implement a mutually agreeable business plan and shall operate within the annual budget as approved by Owner. Operator acknowledges and shall continue, unless given new instructions, the commingling of staff, space for maintenance and administrative staff, and equipment and supplies for property management of the Preston Park (FORA-owned property) and Abrams B (City of Marina-owned property) on a 60/40 basis.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to undertake the functions described in this section.

4.2.1 Collections Practice. Operator shall use commercially reasonable efforts and means to collect rents and other charges due from tenants. When deemed a sound business practice, Operator will institute legal proceedings on behalf of Owner to collect unpaid debts. Owner hereby authorizes Operator to request, demand, collect, and receive funds for collection thereof in accordance with all applicable laws, regulations, ordinances or administrative grievance procedures and for the lawful dispossession of tenants, guests, and other persons from Property. Owner agrees to reimburse Operator's expenses of collection, provided such expenditures have been approved in writing by Owner.

##### 4.2.2 Books, Records, and Documentation.

4.2.2.1. Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation contracts, leases, amendments, extensions and agreements relating to contracts and leases, annual contributions contracts, files, correspondence with tenants and prospective tenants, documentation of tenant eligibility, computations of rental adjustments, maintenance and preventive maintenance programs, schedules and logs, tenant finish and construction records, inventories of personal property and equipment, correspondence with vendors,

job descriptions, business correspondence, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documentation"). Operator shall maintain all financial books and records in conformance with generally accepted accounting principles at Operator's sole expense. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office with two day's written advance notice to Operator.

4.2.2.2. Upon request, Operator shall make financial books and records available for examination, audit, inspection and copying by public officials with regulatory authority over the Operator or Property to the extent required by law. Since the City of Marina obtains 50% of the proceeds, the City of Marina will have the same inspection rights as FORA.

4.2.2.3. On or before fifteen (15) days following the end of each calendar month, Operator shall deliver or cause to be delivered to Owner a standard Financial Reporting Package. The Financial Reporting Package shall include an unaudited financial statements and various reports as follows: Summary of Management Activities including summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question, Variance Analysis, Market Survey, Income statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date, and comparison of actual income and expenses with the income and expenses projected in the Budget, Balance Sheet, Trial Balance, General Ledger detail report of all transactions in all accounts, summary of Account Receivable and Account Payable, Bank Reconciliation and Bank Statements for all three bank accounts, Capital Expenditures Statement, and Request for Reserves Withdrawal. All reporting will use Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.

4.2.3 Annual Audit. At the end of the term as described in Section 2.1 herein and as of the date of termination, Owner shall arrange and coordinate with Operator on an audit of the books and records of the Property made by a firm of certified public accountants as approved by Owner. Operator shall also have said accountants prepare for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audit is a cost of the Property that shall be reflected in the annual budget approved by Owner.

4.2.4 Repairs and Maintenance. Operator will use commercially reasonable efforts to maintain the condition of the Property in the condition prescribed by Owner, will regularly inspect the readily accessible areas of Property, will take commercially reasonable efforts against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. Operator's maintenance duties shall include making all necessary repairs for the Property and trash removal. Consistent with provisions of FORA and FORA ordinances and policies on local hire, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contract over \$20,000 per year for an item which is not covered within the approved annual budget shall be presented to Owner for approval in advance of the execution of such a contract by Operator, unless the expenditure is for emergency repairs that

are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Furthermore, approval shall be required to incur any Property expense pertaining to operations that exceeds the budgeted annual amount for that line item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval. Any expense which does require approval shall be either put out to bid by Operator or Operator shall have obtained at least three quotes for the cost of such item, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary services to the Property, or to avoid criminal or civil liability to Owner or Operator.

4.2.5 Rental of Housing Units. Operator's renting of the Units shall conform to this Agreement and the following policies:

4.2.5.1. The Units shall be rented on a six-month lease term or month-to-month.

4.2.5.2 Rents established Exhibit "B" will be applied until changed by Owner. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

4.2.5.3. Applicants for the Units must qualify based upon the applicant's ability to pay and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Fifty one (51) of the Units are to be rented at below market rate affordable rents ("Affordable Rents") of which thirty two (32) of the Units shall be considered low and nineteen (19) of the units shall be considered very low, as defined in the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B and may be amended annually. Any increase in the Affordable Rents shall be subject to the approval of Owner and in accordance with the terms of the Regulatory Agreement. Applicants of units to be rented at the Affordable Rents must meet the same requirements as above, as well as qualify based upon maximum income limits and minimum occupancy guidelines according to rules and regulations promulgated by the State of California.

4.2.5.4. Operator shall select tenants for available units as follows:

(A) Operator shall first offer and rent available units to applicants on the basis of the following preferences, which have been determined by Owner and for which an applicant must qualify at the time of initial occupancy of a unit. No more than a total of 35% of the housing units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E)

below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner's tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant's employer verifying the applicant's eligibility will be required when submitting the application. Incomplete applications will not be accepted.

(B) **FIRST PREFERENCE:** People who work at least twenty five (25) hours per week in a business or agency with a physical location within the City of Marina. Sales people or consultants who do business in Marina, but who do not have a physical location in Marina will not be considered as working in Marina.

(C) **SECOND PREFERENCE:** Employees of public safety departments, including police, fire, and public works employees of government jurisdictions in Monterey County.

(D) **THIRD PREFERENCE:** Employees of public or private education facilities, including colleges and universities located in Marina, on the former Fort Ord, and employees of the Monterey Peninsula Unified School District.

(E) **FOURTH PREFERENCE:** Employees of entities located on property known as "the former Fort Ord." A letter from the employer stating that the physical location where the applicant works is in this area must be provided."

(F) **Affordable Units.** Notwithstanding the foregoing, preferences (B), (C), (D) and (E) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, said preferences will be subordinate to the requirement that, on average, twenty percent (20%) of the housing units at the Property will be affordable units."

(G) **Rental Agreements.** The prior Operator prepared and submitted to Owner for its approval and Owner has approved said rental agreements which shall be used by Operator for the property. If Operator desires to change the approved rental agreements, Operator shall seek Owner's comments and approval of the terms and conditions thereof. Owner's approval of the proposed rental agreements shall not be unreasonably withheld.

#### 4.2.6. Insurance.

4.2.6.1 Fire Coverage. Operator shall obtain and keep in force fire and extended coverage insurance and other customary property insurance for the Property, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

4.2.6.2. Comprehensive General Liability Coverage. Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy to cover Owner and Operator, in amounts no less than \$1,000,000 per occurrence of bodily injury and property

damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with 30-day prior written notice of cancellations or material change in coverage. Operator shall be named as an additional insured on such CGL policy.

4.2.6.3. E and O Coverage. Operator shall obtain and keep in force Error and Omission insurance in amount of at least \$1,000,000 per wrongful act and \$1,000,000 in the aggregate. Operator shall obtain such insurance within 30 days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iii) shall be at the expense of Operator.

4.2.6.4 Automobile Coverage. Operator shall obtain and keep in force commercial automobile liability insurance (where applicable) in an amount not less than \$1,000,000 (combined single limit), coverage shall include leased, hired and non-owned vehicles, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

4.2.6.5 Minimizing Insurance Cost. Operator shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss there under uncollectible.

4.2.6.6 Workers' Comp. Operator shall cause to be placed and kept in force workers' compensation insurance up to the statutory limit, including broad form, all-states coverage and employer's liability of at least \$500,000. Such insurance shall provide Owner with 30-day prior written notice of cancellations or material change in coverage. Workers' compensation insurance expenses associated with employees employed for the direct benefit of Owner or the Property shall be included in the approved budget for the Property.

4.2.6.7 Selection of Carrier. All of the insurance policies required by this Agreement shall (a) be written by insurance companies which are licensed to do business in California, or obtained through a duly authorized surplus line insurance agent or otherwise in conformity with the laws of California, with a rating of not less than the third (3rd) highest rating category by anyone of the Rating Agencies or with an A.M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than VI; (b) specifically identify the Owner and Operator as insureds and Lender as an additional insured; mortgagee; loss payee and additional insured with the Owner as the named insured; and (c) include a provision requiring the insurance company to notify the Lender and the Owner in writing no less than thirty (30) days prior to any cancellation, non-renewal or material change in the terms and conditions of coverage. In addition, the Operator shall provide the Owner and Lender with certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

#### 4.2.7 Taxes and Assessments.



4.2.7.1 Operator shall process payments of all taxes, impositions, or assessments relating to the ownership or operation of the Property, including, without limitation, improvement assessments, possessory interest and real estate taxes, personal property taxes, taxes on income or rents, or any charges similar to or in lieu of any of the foregoing. Prior to payment, Operator shall verify bills for possessory interest and real estate, personal property or other taxes, improvement assessments, and other similar charges which are due or may become due against the Property on the basis of ownership or operation of the Property. If requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. The parties agree, however, that such advice and assistance goes beyond the ordinary management responsibilities contemplated by this Agreement and, as such, if Operator provides such services, they shall be at an additional cost to Owner.

4.2.7.2 Operator shall annually review, and submit to Owner a report on, real estate, personal property and other taxes and all assessments affecting the Property.

4.2.8 Compliance with Legal Requirements. Operator shall use reasonable means to become aware of, and shall take such actions as Operator deems prudent and necessary to comply with any laws, orders, public housing agency plans or requirements affecting the use or operation of the Property by any federal, state, county, or municipal agency of authority, including but not limited to compliance with and participation in administrative grievance procedures, provided that if the cost of compliance in any instance exceeds \$10,000.00, Operator shall not expend funds for compliance without Owner's prior written consent. Operator shall promptly notify Owner in writing of all such orders, notices, plans or requirements requiring expenditure of non-budgeted amounts. Operator, however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order, plan or requirement. Operator shall prepare, execute, and, after obtaining the written approval of Owner, thereby file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement and shall be an additional cost to Owner. Operator covenants and agrees to obtain and maintain all licenses and permits necessary for the conduct of its business as Operator of the Property. Amounts expended by Operator for use of non-employee consultants or experts, including attorneys, in the performance of these duties shall be reimbursed by Owner provided that such amounts are approved in writing by Owner prior to Operator incurring such expenses. Operator shall comply with the terms of the Regulatory Agreement, a copy of which has been provided previously to Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

4.2.9 Energy and Water Conservation. Operator shall use prudent and customary means to use and control utilities and water use at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.

4.2.10 Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the annual budget approved or Owner's prior written approval.

4.2.11 Employment of Personnel.

4.2.11.1. Operator will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Operator and not of Owner. Owner shall have no right to supervise or direct such employees. All costs associated with the employment of personnel necessary for the on-site operation of the Property, including, but not limited to, salaries, wages, the costs of hiring, termination, training, uniforms, educational and motivational programs, other compensation and fringe benefits will be included in the approved budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of employment taxes, worker's compensation, group life and accident and health insurance premiums, 401K contributions, performance bonuses, and disability and other similar benefits paid or payable by Operator to its employees in other apartment properties operated by Operator subject to the annual budget approved by the Owner. The expenses of the Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Any litigation costs or expenses, including reasonable attorneys' fees and costs and wage penalties relating to the employment of on-site personnel are reimbursable to Operator by Owner, unless Operator has been negligent in its employment practices. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature.

4.2.11.2. Operator may treat Property-related expenses of on-site, field, or maintenance as compensable business expenses. These expenses include worker's compensation insurance, travel and training. Such management expenses must be included in the approved budget for the Property. The property related expenses of Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, employee compensation of workers performing services for Operator at properties other than the Property, shall be reimbursed to Operator *pro rata* based on the portion of working hours involved in services to the Property and such other properties; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget). Operator shall solicit and receive approval from Owner to use the services of a roving maintenance supervisor prior to services being rendered.

4.2.11.3. Non-compensable Salaries. The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses of Operator's executive personnel charged with general administration of this Agreement and off-site record-keeping personnel are

non-reimbursable expenses of Operator.

4.2.11.4. Leasing. Operator shall make diligent efforts to secure and/or retain tenants for the Property consistent with the character and status of the Property as outlined in the established Resident Selection Criteria. Operator shall make diligent efforts to assure that all leases and leasing practices conform to all laws, ordinances, regulations, public housing agency plans or annual contributions contracts applicable to the Property. Prior to the execution of a new lease by a tenant, Operator shall in good faith conduct such investigations of the financial responsibility and general reputation of the prospective tenant as are ordinarily and customarily performed by the managers of similar properties in the location of the Property.

4.2.11.5 Management Structure. Operator has previously provided an oral description of its management structure, roles and assurances as to the frequency of management visits to the Property and said description is attached as Exhibit "C" hereto.

4.2.11.6. Tenant Grievance Procedure. Operator has previously provided an oral description of its tenant grievance procedure and said procedure is attached as Exhibit "D."

## 5 OWNER'S EXPENSES

5.1 Except as otherwise provided in this Agreement, all reasonable expenses incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner such expenses and reimbursables shall be paid with funds drawn from the Trust Account. Owner's responsibility for such expenses and reimbursables, including future attorneys' fees and costs relating to issues which arose during the term of this Agreement survive termination of this Agreement. Owner's expenses shall be limited to the amount included in the annual budget as approved by the Owner.

5.2 Operator may pay the following expenses directly from the Trust Account subject to other conditions in this Agreement:

a) Reasonable Administrative expenses of the Owner devoted to oversight of the Agreement limited to the amount included in the approved annual budget.

## 6. OPERATOR'S EXPENSES

6.1 Operator agrees to pay all salaries, wages and other compensation and benefits of personnel described in Section 4.2.11 of this Agreement as an Operator's expense without reimbursement by Owner, except as otherwise provided therein. Operator shall pay other expenses which are expressly (a) payable by Operator or (b) not reimbursable hereunder. Operator shall also pay (without reimbursement) any costs of providing corporate office facilities and supplies for such off-site corporate personnel and other expenses incurred by Operator which are not incurred in the performance of duties and obligations required by this Agreement.

## 7. BANK ACCOUNTS

### 7.1 ESTABLISHMENT OF ACCOUNTS.

7.1.1 Trust Account. Operator shall establish a separate bank account for the Property in such Name as Owner shall designate and at a bank selected by Operator (the "Trust Account"). Operator shall promptly deposit all rents and other funds collected by Operator at least monthly in respect of the Property, including, without limitation, any and all advance rents, into the Trust Account and shall not deposit funds attributable to any other property into the Trust Account. Operator shall inform such bank in writing that the funds deposited in the Trust Account are held in trust for Owner. Operator shall use funds in the account to pay the operating expenses of the Property and any other payments relative to the Property as allowed by the terms of this Agreement. Operator shall establish a working capital reserve equal to \$20,000 to be retained within the Trust Account to make up for operating shortfalls.

7.1.2 Security Deposit Trust Account. Operator shall establish a separate bank account for tenant security deposits at a bank designated by Operator (the "Security Deposit Trust Account") into which such security deposits shall be deposited. The Security Deposit Trust Account will be (a) maintained in accordance with applicable law and (b) used only for maintaining tenant security deposits for the Property. Operator shall inform the bank in writing that the funds are held in trust for Owner. Operator shall maintain detailed records of all security deposits deposited in the Security Deposit Trust Account, and such records will be open for inspection by Owner's employees or appointees.

7.1.3. Reserve Account. Operator shall establish a separate bank account ('Reserve Account') at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5., Division 2., Part 1., Chapter 4., Article 2., Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.

7.1.4. Cash. Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business.

7.1.5. Distributions from Trust Account. Provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15<sup>th</sup>) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing. On the 15<sup>th</sup> of the month, Operator will also

wire disbursement of Marina's 50% share to the City of Marina , as a continuation of current practice of simultaneous distribution.

7.1.6. Broker / Insurance. The designated broker for Operator shall be an authorized signer on the Trust Account, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. The name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have authority to make disbursements from such accounts for the purpose of fulfilling Operator's obligations hereunder. Funds over Five Thousand Dollars (\$5,000.00) may be withdrawn from such accounts only upon the signature of at least two (2) individuals who have been granted that authority by Operator. Authorized signatories or persons who handle funds for the Property, whether on or off site, shall be insured for dishonesty in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date."

7.2 FUNDS PROVIDED BY OWNER. If the funds collected by Operator from operation of the Property are not sufficient to pay authorized expenses incurred in operation of the Property and to make all reimbursements to Operator pursuant hereto, Operator shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall release reserve funds sufficient to pay same to the Operator.

## 8. ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by March 31 for Owner's approval proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties. The proposed budgets will be maintained under accrual accounting procedures or such basis as prescribed, in writing, by Owner. Operator will provide an explanation for the numbers used in such budgets. Operator shall make available executive personnel to discuss the proposed budget at a minimum of one meeting of FORA Board of Directors and other meetings as requested.

8.2 SUBMISSION OF OTHER REPORTS. When submitting such proposed budgets, Operator shall also include: rental rate recommendations with analysis if appropriate; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period; a payroll analysis including a salary or wage description for every on-site employee, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. If Operator submits a timely budget recommendation, and Owner does not disapprove it in writing before July 1, Operator's proposed budget is deemed approved. If an annual budget has not been approved by that date, Operator shall continue to operate the Property under the approved budget for the previous year until Operator and Owner can agree on the new budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. Approved budgets shall be used by Operator as a guide for the actual operation of the Property. Written approval from Owner's Executive Officer or such other person as Owner's Executive Officer may designate shall be required to exceed any expense which exceeds the budgeted annual amount for that line item. Notwithstanding the foregoing, any increase in a Property expense which does not increase the budgeted amounts for such expense by more than 5% and which, when combined with any decreases in budgeted amounts made by Operator, does not cause an increase in the overall budget, shall not require approval.

8.5 SUBJECT TO IMPLEMENTATION AGREEMENT. Owner and Operator acknowledge that lease revenues from the Property are subject to the Implementation Agreement dated May 1, 2001 ("Implementation Agreement") by and between FORA and the City of Marina. Operator acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall notify Owner of changed financial conditions to allow Owner to determine compliance with the Implementation Agreement. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of the Implementation Agreement as set forth in this Section 8.5.

## 9. GENERAL PROVISIONS

9.1 RELATIONSHIP. Contracts entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner. Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims arising from such contracts. Operator agrees that to the extent Operator deems it necessary or prudent to have separate counsel from that of Owner, Operator shall bear all fees, costs, and expenses associated therewith.

Operator and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Operator understands and agrees that the relationship with Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Notwithstanding the foregoing, Operator acknowledges and understands that it is acting as agent of Owner and as such owes Owner the duties a reasonable investor would expect if managing his own property.

9.2 ASSIGNMENT. This agreement shall not be assigned by Operator without the prior written approval of Owner which approval may be withheld in Owner's sole and absolute discretion.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 INDEMNIFICATION.

9.4.1 Operator shall indemnify, hold harmless and defend Owner, its officers, and employees, with counsel reasonably satisfactory to Owner, for, from and against any and all liabilities, claims, causes of action, losses, demands and expenses whatsoever including, but not limited to attorneys' fees, court costs and other litigation expenses and costs arising out of or in connection with the maintenance or operation of the Property or this Agreement (collectively the "Claims"), except to the extent arising directly from the gross negligence or willful misconduct of Owner and the loss of use of property following and resulting from damage or destruction. The indemnification by Operator contained in this Section 9.4 is in addition to any other indemnification obligations of Operator contained in this Agreement. Owner shall approve the liability insurance coverage procured by Operator, and, once approved, Owner shall not be entitled to assert the inadequacy, in any respect, of the coverage. Operator's defense and indemnity obligation set forth in this Section 9.4.1 shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2.6.2 of this Agreement unless Operator has engaged in gross negligence or willful misconduct.

9.4.2 Owner shall indemnify Operator (and Operator's affiliates, partners, directors, shareholders, officers, employees and agents) with counsel for, from and against any and all Claims which arise out of the gross negligence or willful misconduct of Owner.

9.4.3 The indemnification and hold harmless obligations of the parties in this Section 9.4 shall survive the expiration or earlier termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: FORT ORD REUSE AUTHORITY  
Attention: Executive Officer  
920 2<sup>nd</sup> Ave., Suite A  
Marina, California 93933

TO OPERATOR: ALLIANCE RESIDENTIAL, LLC  
Attn: James M. Krohn  
2415 East Camelback Road, Suite 600  
Phoenix, Arizona 85016

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No alteration, modification, or interpretation of

this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

9.8 DISPUTE RESOLUTION. Disputes arising under this agreement shall be resolved as follows:

9.8.1. *Prevention of Claims: Meet and confer (10 days)*

The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within ten calendar days of the initial written request. If the parties are unable to amicably resolve such disagreements or misunderstandings, they agree to enlist the informal assistance of a third party (who is mutually acceptable to both parties) to help them reach an accord. The cost of engaging any third party for the informal assistance described in the preceding sentence shall be shared equally by the parties. If any disagreement remains unresolved for ten days after delivery of the written request to engage in face-to-face discussions, the parties agree to submit it to mediation in accordance with the provisions set forth in Section 9.8.2.

9.8.2. *Mediation (60 days)*

Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection (a). Mediation shall commence not more than thirty (30) days after the initial mediation demand and must be concluded not more than sixty (60) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration.

Mediation shall be submitted first to a mediator with at least ten years experience in real estate management or related field. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. The cost of the mediator shall be shared equally by the parties. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at



the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

### 9.8.3. *Arbitration* (90 days)

If mediation fails to resolve the dispute, the mediator shall become the arbitrator, and shall proceed to dispose of the case under such rules or procedures as he or she shall select. If the mediator is unable or unwilling to serve as arbitrator, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation. The cost of the arbitrator shall be shared equally by the parties.

Arbitration shall be commenced within sixty (60) days of the arbitration demand and concluded within ninety (90) days of arbitration demand.

With respect to monetary disputes only, arbitration shall follow the so-called “baseball arbitration” rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator’s award in any court of competent jurisdiction.

**NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.**

**BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.**

ALLIANCE'S' INITIALS \_\_\_\_\_

FORA'S: INITIALS \_\_\_\_\_

9.8.4. *Attorney's Fees.*

If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

9.9 APPLICABLE LAW. This agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall take place in the County of Monterey, State of California.

9.10 OPERATOR. The term "Operator" as used in this Agreement shall include any corporate subsidiaries or affiliates of Operator who perform service, in, on or about the Property in connection with this Agreement.

9.11 NON-WAIVER. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in this Agreement.

9.12 HEADINGS. All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

9.13 INTERPRETATION. This Agreement has been negotiated by and between representatives of the parties hereto and their staffs, all persons knowledgeable in the subject matter

of this Agreement, which was then reviewed by the respective legal counsel of each party. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

FORT ORD REUSE AUTHORITY

---

Michael A. Houlemard Jr.  
Executive Officer

Alliance Residential, LLC, an Arizona Limited Liability Company

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By

DRAFT

**EXHIBIT A**  
Preston Park Management Agreement

**SCOPE OF SERVICES**

Manage, direct and supervise using commercially reasonable efforts, all aspects of property management for Preston Park which includes, but is not limited to:

- 1 Placement of residents in residential apartment homes with appropriate leases and addendums as prudent or required by law.
- 2 Collect all monthly rents and fees. Institute legal action for the collection of monies owed. Administer rent increases in close cooperation with FORA.
- 3 Maintain community standards of physical and social environment, while keeping within budget guidelines. Respond to requests for maintenance by tenants and FORA promptly. Schedule and conduct annual unit inspections and follow-up annual inspections with corrective work where required.
- 4 Hire, train and supervise all staff needed to effectively manage the community and provide a description of the staffing plan to Owner. Maintain access to multilingual resources to assist with applicants and tenants of Limited English Proficiency, said access may be accomplished through a "language hotline" or similar service so long as it's responsive to the needs of Owner, applicants and tenants.
- 5 Develop and maintain a list of qualified prospective renters. Develop and maintain a list of backup renters. Accept applications for apartment homes and maintain eligibility standards. Maintain preference lists as specified. Seek to maintain full occupancy with a minimum of vacancies.
- 6 Prepare an affirmative fair housing marketing plan. Prepare and circulate marketing materials; e.g. advertisements, brochures, displays, disclosure documents, contracts and program web site. Participate in community meetings as requested.
- 7 Analyze and review financial requirements for operations with Owner; prepare annual budget recommendations for Owner. Work within the approved budget; obtain Owner authorization for variances from the budget. Analyze and prepare multi-year capital improvements plan and make recommendations to Owner about financing and implementation of the plan.
- 8 Develop and implement written office procedures; train and supervise office and leasing personnel.
- 9 Maintain financial records including, but not limited to, the tracking of receipts and deposits, journal entries, bank deposits, accounts payable and accounts receivable.

Generate monthly financial reports. Prepare required periodic reports to Owner.

- 10 Report periodically to Owner to ensure that Owner is properly informed (through regular contact and periodic formal meetings) as to the current status of all operations so that the Owner may make proper and timely decisions on all strategic matters.
- 11 Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Board approval. Continually inspect property, recording deficiencies and taking necessary action within budgetary allocations.
- 12 Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter, in format and content approved by the Owner. Participate in meetings and events with tenants as requested.
- 13 Explore opportunities for coordination/joint programs with housing developments at California State University-Monterey Bay.
- 14 Other duties as needed.

DRAFT

**EXHIBIT B**

**AFFORDABLE RENTAL RATES**

Rates may be established each year.

DRAFT

EXHIBIT "C"  
Preston Park Management Agreement

MANAGEMENT STRUCTURE

Every year on June 1, Alliance will provide the names of the people associated with the management positions as described on the organization chart.

**The Senior Management Team for Preston Park:**

**Corinne Carmody, Regional Manager**  
**Steve Keller, Regional Maintenance Supervisor**  
**Amy Corcoran, Regional Training Manager**  
**Jennifer Barrett, Regional Marketing Manager**  
**Annette Thurman, Vice President of Operations**

**Corinne Carmody**, Regional Manager, has an office in Walnut Creek, California. She will be at the communities at least two days a week or to the extent mutually agreed upon by Owner and Operator. Corinne will be responsible for all compliance training related to the approved below market rate rental program.

**Steve Keller**, Regional Maintenance Supervisor, will perform monthly site inspections in addition to overseeing any capital projects that require completion. Steve will spend no less than one day per month at the community and possibly more depending on the capital project requirements.

**Amy Corcoran and Jennifer Barrett**, Regional Training Manager and Regional Marketing Manager, shall provide leasing and customer service training and marketing resources. Amy and Jennifer are also available on an as needed basis for one-on-one training.

**Annette Thurman**, Vice President of Operations, will be at the site no less than once per month.

The team above is available to meet with FORA as needed. Owner is to provide operator with an annual calendar of expected meetings during transition period.

## **EXHIBIT D**

### **Preston Park Management Agreement**

#### **TENANT GRIEVANCE PROCEDURE**

Note: All resident issues will be resolved within the guidelines set by FORA, Alliance Communities Inc., and State and Federal Fair Housing Laws.

**12-15-10**

**PRESTON PARK**

**GRIEVANCE PROCEDURE**

#### ***I. Definitions applicable to the grievance procedure***

- A. **Grievance:** Any dispute pertaining to a lease violation, maintenance charge or other disagreements with respect to Management's action or failure to act in accordance with the individual Tenant's lease or Management's Policies or regulations that adversely affects the individual Tenant's rights, duties, welfare or status.
- B. **Elements of due process:** An eviction action or a termination of tenancy in a State court in which the following procedural safeguards are required:
  - 1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
  - 2. Right of the Tenant to be represented by counsel;
  - 3. Opportunity for the Tenant to refute the evidence presented by Management, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
  - 4. A decision on the merits of the case.
- C. **Hearing Officer:** A neutral party selected by FORA to hear grievances and render a decision. FORA has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at Preston Park. If the Mediation Center of Monterey County is not available for the Grievance Hearing, FORA shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at Preston Park and has experience and knowledge of management practices and procedures for comparable properties and has experience in mediation.
- D. **Tenant:** The adult person (or persons other than a live-in aide) who resides in the unit at Preston Park and who executed the lease with Alliance Residential or its predecessor(s).
- E. **Management:** The property management company for Preston Parks is Alliance Residential.
- F. **Management Policies:** Rules and/or regulations contained within the Tenant's valid and most



recent lease and any subsequent amendments thereto.

- G. Working days: For the purpose of these procedures, working days means the scheduled working days of FORA.
- H. Tenant's designated representative: A person that the Tenant has designated in writing to represent him/her in this grievance procedure or a legal document naming a person that represents the Tenant in such matters. The written designation along with the address and contact information for designated representative shall be placed in the Tenant's file. All correspondence related to this grievance procedure shall be distributed to both the Tenant and the designative representative.

## ***II. Applicability of this grievance procedure***

The purpose of this Grievance Procedure is to set forth the requirements, standards and criteria to assure that Tenants of Preston Parks have a procedure to dispute an act or failure to act by Management (see above for definition of grievance). The Grievance Procedure only applies to grievances lodged by Tenants who lived at Preston Park at the time the alleged dispute occurred.

This grievance procedure shall be applicable to all individual grievances (as defined in Section I above) between a Tenant and Management. The right to a grievance shall apply to disputes over the application of Management's policies to the detriment of a Tenant but shall not apply to the Management policies, class action lawsuits or evictions. Management policies may be discussed with the designated FORA staff representative. Class action lawsuits and evictions are heard in a court of law and receive due process in that manner.

The grievance procedure may not be used as a forum for initiating or negotiating policy changes between a group or groups of tenants and FORA. Such requests may be made to the designated FORA staff representative.

## ***III. Filing a Grievance and Informal Meeting***

Any grievance must be made in writing at the Alliance Residential Management Office, located at 682 Wahl Court, Marina, CA 93933, **within twenty (20) working calendar days after the grievable event.**

As soon as the grievance is received it will be reviewed by Management to be certain that neither of the exclusions in Paragraph II applies to the grievance. Should one of the exclusions apply, the Tenant or designated representative will be notified in writing that the matter raised is not subject to this grievance procedure, with the reason(s), that the grievance is dismissed and appropriate venue for the Tenant or designated representative to contact.

If neither of the exclusions cited above apply, the Tenant or designated representative will be contacted **within ten (10) working days** to arrange a mutually convenient time to meet so the grievance may be discussed informally and resolved. Management will assign a Staff Representative

(usually the Business Manager) to meet with Tenant or designated representative to discuss the grievance informally and attempt to resolve the matter without a further hearing. At this informal meeting the Tenant or designated representative will present the grievance and the Staff Representative will attempt to resolve the grievance to the satisfaction of both parties.

Within **five (5) working days following the informal meeting**, Management shall prepare and either hand deliver or mail to the Tenant or designated representative a summary of the discussion that must specify: the names of the Tenant(s) and all participants at the meeting, the date(s) of meetings, the nature of the grievance, the proposed disposition of the grievance and the specific reasons, and the Tenant's rights to a Grievance Hearing, and, if not satisfied with the disposition of the grievance, the procedure to either respond and have comments placed in the Tenants file or request a Grievance Hearing. A copy of this summary shall also be placed in the Tenant's file. A receipt signed by the Tenant or designated representative or return receipt for delivery of certified mail, whether signed or unsigned, will be sufficient proof of time of delivery for the summary of the informal discussion.

#### ***IV. Grievance Hearing***

If the Tenant is dissatisfied with the proposed disposition of the grievance arrived in the informal meeting, the Tenant or designated representative may submit a written request for a Grievance Hearing no **later than ten (10) working days after the summary of the informal meeting is received**.

A Tenant's request for a Grievance Hearing shall be addressed to the Regional Manager c/o Alliance Residential, 682 Wahl Court, Marina, CA 93933. The written request shall specify:

- The factual basis for the grievance, including any sections of the Tenant's lease or written Management policies allegedly violated;
- The action of relief sought from Management; and
- Several dates and times **in the following fifteen (15) working days** when the Tenant or designated representative can attend a grievance hearing.

If the Tenant or designated representative requests a Grievance Hearing in a timely manner, Management shall schedule a hearing on the grievance at the earliest time possible for the Tenant or designated representative, Management and the Hearing Officer. A written notice specifying the time, place and procedures governing the hearing will be either hand delivered or mailed to the Tenant or designated representative.

If the Tenant or designated representative fails to request a Grievance Hearing **within ten (10) working days** after receiving the proposed disposition of the grievance, Management's decision rendered at the informal meeting becomes final and Management is not obligated to offer the Tenant or designated representative a Grievance Hearing unless the Tenant or designated representative can show good cause why s/he failed to proceed in accordance with the procedure. Failure to request a Grievance Hearing does not affect the Tenant's right to contest the Management's decision in court.

## ***V. Scheduled hearing***

When a or designated representative submits a timely request for a grievance hearing, Management will, **within three (3) working days**, contact the Hearing Officer to schedule the hearing on one of the dates and times indicated by the Tenant or designated representative. If the Hearing Officer is not available for one or more of the times provided by the Tenant or designated representative during those ten working days, Management will schedule a convenient time for the Grievance Hearing for all parties as soon as possible.

## ***VI. Procedures governing the Grievance Hearing***

The Tenant shall be afforded a fair hearing, which shall include:

- A. The opportunity to examine before the hearing any Management documents, including records and regulations, that are directly relevant to the hearing.
- B. The Tenant or designated representative shall be allowed to copy any such documents. If Management does not make the document available for examination, Management cannot rely on such document at the grievance hearing.
- C. The Tenant may be represented by counsel or other person chosen as the Tenant's representative, at the Tenant's expense. Management may be represented by counsel. The Tenant, or the designated representative, must be present at the scheduled hearing.
- D. The right to present evidence and arguments in support of the Tenant's complaint and to controvert evidence relied on by Management and to confront and cross examine all witnesses upon whose testimony or information Management relies; and
- E. A decision based solely and exclusively upon the facts presented at the hearing.

The hearing shall be conducted informally by the Hearing Officer. Oral or documentary evidence pertinent to the facts and issues raised by the Tenant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings provided that such information is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs.

The Hearing Officer shall require Management, the Tenant or designated representative, counsel and other participants to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer to maintain order may result in exclusion from the proceedings.

The Hearing Officer will hear evidence provided by both the Tenant or designated representative and Management and will review appropriate policies, regulations, lease, etc.

**VII. Failure to appear at the hearing**

If either the Tenant or designated representative or Management fails to appear at the scheduled hearing, the Hearing Officer may postpone the hearing **for another date not to exceed five (5) working days**. In the event that Management fails to appear at the re-scheduled hearing, the Hearing Officer shall make his/her decision based on the record including anything submitted by the Tenant or designated representative. In the event that the Tenant or designated representative fails to appear at the re-scheduled hearing, the Tenant is deemed to have waived his/her right to a hearing.

Both the Tenant or the designated representative and Management shall be notified of the determination by the Hearing Officer; provided, that a determination that the Tenant has waived his/her right to a hearing shall not constitute a waiver of any right the Tenant may have to contest Management’s disposition of the grievance in court.

**VIII. Decision of the Hearing Officer**

The Hearing Officer shall prepare a written decision, together with the reasons for the decision **within fifteen (15) working days after the hearing**. Any delay on the part of the Hearing Officer in submitting the written decision will not invalidate this process. A copy of the decision shall be sent to the Tenant or designated representative, Management and FORA. Management shall retain a copy of the decision in the Tenant’s folder.

The decision of the Hearing Officer shall be binding on Management, which shall take all actions, or refrain from actions, necessary to carry out the decision unless FORA determines **within ten (10) working days** after receiving the written decision, and promptly notifies the Tenant or the designated representative of its determination that:

- A. The grievance does not involve Management’s action or failure to act in accordance with the Tenant’s lease or the property’s policies, which adversely affect the Tenant’s rights, duties, welfare or status.
- B. The decision of the Hearing Officer is contrary to applicable Federal, State or local law or FORA policy or regulation.

A decision by the Hearing Officer or FORA which denies the relief requested by the Tenant in whole or in part shall not constitute a waiver of, nor affect in any way, the rights of the Tenant to judicial review in any court proceedings which may be brought in the matter later.

This Grievance Procedure does not preclude the Tenant from exercising his/her rights, including those rights pertaining to alleged discrimination on the basis of race, color, creed, religion, sex, age, disability, sexual orientation, familial or marital status, ancestry or national origin.

I acknowledge that I have received a copy of this Grievance Procedure.

\_\_\_\_\_ Date \_\_\_\_\_ Signature

Print Name Address