RESOLUTION NO. 2018-144
RESOLUTION NO. 2018-08 (PPSC-NPC)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AND THE BOARD OF DIRECTORS OF THE PRESTON PARK SUSTAINABLE COMMUNITY NON-PROFIT CORPORATION APPROVING THE AN AMENDED MANAGEMENT AGREEMENT BETWEEN THE CITY OF MARINA AND ALLIANCE RESIDENTIAL COMPANY INC. FOR PRESTON PARK AND AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, In September 2015, the City of Marina purchased Preston Park from the Fort Ord Reuse Authority. In taking ownership of the property, the City signed an Assignment and Assumption of Services Contract and accepted the Property Management Services Contract with Alliance Communities Inc.; and,

WHEREAS, at the regular meeting of December 15, 2015, the City Council adopted Resolution No. 2015-145 and Resolution No. 2016-03 (PPSC-NPC), approving the Management Agreement between City of Marina, and Alliance Communities Inc., for Preston Park Housing Area expiring December 31, 2016; and,

WHEREAS, at the regular meeting of December 15, 2016, the City Council adopted Resolution No. 2016-156 and Resolution No. 2016-01 (PPSC-NPC) approving Amendment No. 1 to the Management Agreement between City of Marina, and Alliance Communities Inc., for Preston Park Housing Area expiring December 31, 2017; and,

WHEREAS, at the regular meeting of December 19, 2017, the City Council adopted Resolution No. 2017-123 and the Preston Park Sustainable Community Non-Profit Corporation Board adopted Resolution No. 2017-04 (NPC) which approved Amendment No. 2 to the Management Agreement between City of Marina, and Alliance Communities Inc., for Preston Park Housing Area expiring December 31, 2018. Amendment No. 2 made numerous changes that were clean up or clarification in nature and eliminated the bonus and incentive program for Alliance employees; and,

WHEREAS, Staff is proposing the contract with Alliance Communities Inc. be amended and extended through December 31, 2019 for the management of Preston Park. ("Exhibit A"); and,

WHEREAS, Under the contract, Alliance Communities Inc. is to keep the City property informed through regular contact and periodic formal meetings as to the current status of all operations so that the City may make proper and timely decisions on all strategic matters; and,

WHEREAS, If Council does not extend the contract, there will be no third party under contract to collect rents and administer the property on and after January 1, 2019; and,

WHEREAS, the proposed contract does not change the compensation to Alliance Communities Inc. under the Management Agreement and rental revenue will continue to be collected on and after January 1, 2019.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Marina and the Board of Directors of the Preston Park Sustainable Community Non-Profit Corporation does hereby:

1. Approving the Amended Management Agreement between City of Marina, and Alliance Communities Inc., for Preston Park Housing Area expiring December 31, 2019; and,

2. Authorize City Manager to execute Agreement on behalf of the City and the Non-Profit Corporation subject to final review and approval by the City Attorney/Non-Profit Corporation Legal Counsel.
3. Direct the City Manager to conduct a performance review of the management of the property and report back to the City Council by June 30, 2019.

PASSED AND ADOPTED by the City Council of the City of Marina and the Board of Director of the Preston Park Sustainable Community Nonprofit Corporation at a regular meeting duly held on the 4^{h} day of December 2018 by the following vote:

AYES: COUNCIL/BOARD MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado
NOES: COUNCIL/BOARD MEMBERS: None
ABSENT: COUNCIL/BOARD MEMBERS: None
ABSTAIN: COUNCIL/BOARD MEMBERS: None

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Bruce C. Delgado, Mayor/President

ATTEST:

____
Anita Sharp, Deputy City Clerk/Secretary

AMENDED MANAGEMENT AGREEMENT
FOR
PRESTON PARK

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into on December __, 2018, by and between the Preston Park Sustainable Nonprofit Corporation, a California nonprofit public benefit corporation, ("Owner" or "City") and Alliance Communities, Inc., a Delaware corporation, ("Operator"), as follows:

RECITALS

1. City is the owner of a certain improved real property and the improvements thereon commonly known as Preston Park Sustainable Community Non-profit Corporation consisting of 354 units ("Units") located at 682 Wahl Court, Marina, CA 93933 (the "Property").

2. Preston Park Sustainable Non-Profit Corporation has obtained certain financing secured by its leasehold interest, with Berkeley Point Capital, LLC serving as the credit enhancer, on the Property.

3. Operator has the requisite skill, training and experience to properly perform the services specified herein.

4. Operator holds through an authorized officer a real estate brokerage license as required by the laws of the State of California.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner, Operator and Agent agree as follows:

ARTICLE I

APPOINTMENT OF OPERATOR

Owner hereby appoints Operator and Operator hereby accepts appointment on the terms and conditions set forth below as Owner's exclusive agent to manage, operate, supervise, and cause the Property to be leased and to perform those actions necessary to fulfill Owner's obligations.

ARTICLE II

TERM

2.1 TERM. The term of this Agreement shall commence on January 1, 2019, unless an earlier date is agreed to by City, the current operator and Operator, and shall continue to and include December 31, 2019, unless terminated as provided herein or extended in writing by mutual agreement thereto.

2.2 EARLY TERMINATION. Notwithstanding the provisions of Section 2.1 above to the contrary, this Agreement and the obligations of the parties hereunder shall cease, upon the occurrence of any of the following:

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

(b) If either party defaults in the performance of any of its obligations hereunder and such default continues for thirty (30) days after written notice to the defaulting party specifying such default, the party not in default may terminate this Agreement immediately. If such breach is a failure to pay money, such cure period shall be five (5) days after written notice to the defaulting party with no additional period thereafter.

(c) Owner or Operator may terminate this Agreement without 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 by it pursuant to this Agreement and do all that is reasonably necessary to facilitate the orderly transition of management of the Property;

(c) Operator shall render to Owner an accounting of all funds 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.

ARTICLE III

COMPENSATION

3.1 In addition to other reimbursements to Operator provided for elsewhere in this Agreement, Owner shall pay Operator on a monthly basis for its services hereunder a management fee of 2.5% of the total monthly gross revenue, as defined in Section 3.2 below, received. Fees shall be paid in monthly installments at the beginning of each month, or as incurred, and shall be deductible from the Trust Account as part of the operating expenses of the Property on or before the 10^{th} of each month from collection of said gross revenue. In the event of commencement or termination of this Agreement other than on the first or last day of a month, respectively, the compensation of Operator shall be prorated to the effective date of such commencement or termination.

3.2 **Gross Revenue**. The entire amount of all revenue, determined on a cash basis, from (a) tenant rentals collected pursuant to tenant leases of apartment units, for each month during the Term hereof; provided that there shall be excluded from tenant rentals any tenant security deposits (except as provided below); (b) those funds forfeited by the tenants for cleaning, damages, and/or repairs that exceed the actual cost of cleaning, damages and/or repairs for such period; (c) any and all other revenue from the operation of the Property received and relating to the period in question; (d) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (e) any other sums and charges collected in connection with termination of the tenant leases. Gross Revenue does not include the proceeds of (i) any 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).

3.3 **Capital Improvement Management Fee**. Owner will pay to Operator a construction management fee equal to 6% of the total cost set forth in an executed written proposal or agreement, as approved by Owner, as increased or decreased by all change orders relating thereto, for improvement to each of parking/paving, fence/gates, exterior lighting, site drainage, sidewalks, courts of all types, landscaping, retaining walls, foundation, termite treatment, carpentry and masonry repair, gutter/downspout, exterior paint, ventilation/chimney, site upgrade, mail boxes, interior carpentry/cabinet, plumbing and electrical improvements, exterior mechanical, electrical and plumbing, office, community room improvements, American Disability Act improvements, signage and storm and fire disaster repairs to all interior, exterior and common areas of the Property within thirty (30) calendar days from the time of completion and acceptance of work by the construction manager and Owner. Approval of the construction manager by Owner or Owner's designee shall be obtained by Operator prior to commencement of any capital improvements as defined in this Section 3.3. Operator shall provide construction management relating thereto pursuant to a separate written agreement prior to Operator providing such services. Owner will pay such fee within fifteen (15) days after completion of the agreed upon scope of work.

3.4 **Transactions With Affiliates**. With the prior approval and direction of Owner, (which approval is implicitly granted to the extent obtained in the Budget as defined herein), Operator may obtain services and materials, including, but not limited to, advertising, consulting, computer hardware and software, forms for use at the Property, contract services, accounting and bookkeeping services and building materials, through the organization subsidiaries or affiliates of Operator for the benefit of the Property, provided the quality of service and the price thereof is competitive with comparable prices and services offered by third parties, and the costs therefore shall be reimbursed by Owner. All discounts, rebates and other savings realized as a result of such services being supplied by an affiliate of Operator shall inure solely to the benefit of Owner.

3.5 Owner hereby authorizes Operator to pay from the Trust Account all fees, reimbursements and other amounts payable to Operator or any third party hereunder.

ARTICLE IV

DUTIES AND RESPONSIBILITIES

4.1 GENERAL RESPONSIBILITIES OF OPERATOR. Subject to the provisions of this Agreement, Operator is hereby authorized to manage, operate and cause the Property to be leased in accordance with the standards of practice of professional managers of similar properties in the location of the Property and to provide other customary management services at the Property for the ordinary and usual business and affairs of the Property as are consistent with the management, operation, leasing, and maintenance of a building or buildings of the type located on the Property. Said services shall include but not be limited to the Scope of Services described in Exhibit "A" hereto. Operator shall provide and implement a mutually agreeable overall business plan and shall operate within the annual budget as approved by Owner (the "Budget"). If Owner requests Operator to perform services beyond the ordinary and usual business and affairs of the Property, Operator shall be entitled to additional compensation for same, which shall be negotiated by the parties.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to do the following:

(a) Collection of Monies. Operator shall use commercially reasonable efforts and means to collect the rents and other charges due from tenants, parking charges, and all other charges, and revenues, and, when deemed economically appropriate by Operator, to institute legal proceedings on behalf of Owner for collection in connection with the operation of the Property. 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. Counsel shall not be used for actions taken in small claims court. 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 such expenditures have been approved in writing by Owner.

(b) Books, Records, and Documentation.

(i) 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 all contracts, original 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, correspondence with federal, state, county, and municipal authorities, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documents"). Books and records of account shall be prepared in conformity with generally accepted accounting principles consistently applied at Operator's sole expense. Except as approved in writing by Owner, all accounting functions shall be performed by those personnel of Operator whose compensation is payable solely by Operator without reimbursement by Owner. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office at reasonable times and upon reasonable notice to Operator. Extraordinary requests of Operator's accountants made by Owner or audits of the Books, Records and Documents required by Owner, shall be at Owner's sole cost and expense, except as otherwise provided in this Agreement.

(ii) Upon prior reasonable request, Operator shall make all Books, Records and Documents available for examination, audit, inspection and copying by duly authorized representatives of any public housing agency or authority with regulatory power and/or jurisdiction over the Property to the extent required by federal or state law.

(iii) Operator shall provide a standard Financial Reporting Package to Owner by the fifteenth (15th) day of each month during the Term for the preceding month. The Financial Reporting Package shall include: Operations Summary, Variance Analysis, Market Survey, Profit & Loss, Balance Sheet, Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, and Aged Receivables. All reporting will utilize Operator's standard chart of accounts and Operator’s standard accounting software. An additional reporting fee may be charged to Owner, if Owner requires any additional reporting other than the Financial Reporting Package described above.

(iv) On or before fifteen (15) days following the end of each calendar month, Operator shall deliver or cause to be delivered to Owner (i) an unaudited income and expense statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date; (ii) a comparison of actual income and expenses with the income and expenses projected in the Budget; and (iii) cash balances for reserves and the Trust Account as of the last day of such month. Operator shall at its option (a) preserve all invoices for a period of four (4) years, or (b) at the expiration of each Fiscal Year deliver all invoices to Owner. Such statements and computations shall be prepared from the books of account of the Property.

(c) Annual Audit. At the end of the term as described in Section 2.1 herein and as of the date of termination, Operator shall arrange and coordinate 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 Budget.

(d) 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 reasonably necessary and known repairs. Operator's maintenance duties shall include making all reasonably necessary and known repairs for the Property and trash removal. Consistent with provisions of City of Marina ordinances and policies on local hire and prevailing wages, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contracts over $20,000 per year for an item which is not covered within the 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, but Operator shall inform Owner of the expense, reason and amount of expense within fifteen (15) days of incurring the same. 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.

(e) Rental of Housing Units. Operator's renting of the Units shall be done in conformance with the terms and conditions of this Agreement, including the following:

(i) The Units shall be rented on a six-month or 12-month lease term or month-to-month basis.

(ii) Rents shall be established through the Budget. . Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

(iii) Applicants for the Units must qualify based upon the applicant's ability to pay, credit report, previous rental history, and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. The Affordable Units shall be rented in accordance with the Regulatory Agreements, or an amendment to those Agreements herein. The Affordable Rents are set in compliance with state law and approved through the annual Budget approval process by Owner. Any increase in the Affordable Rents shall be subject to the approval of Owner and in accordance with the terms of the Regulatory Agreements. 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.

(iv) 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 30% 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 thirty-five (35) hours per week in a business or agency with a physical location within the City of Marina. Business owners, consultants or individuals who do business in Marina, but who do not have a physical location in the City of Marina will not be considered as working in the City of Marina.

(C) **Second Preference:** To employees of City of Marina including reserve police officers and volunteer firefighters who work at least thirty-five (35) hours per week.

(D) **Third Preference:** To thirty-five (35) hour per week public and private employees working in Marina including but not limited to schools and businesses.

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(E) **Fourth Preference:** Thirty-five (35) hour per week employees of entities located on property known as "the former Fort Ord." The entities must be within the boundaries of the City of Marina. 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, Operator will manage locations of Affordable Units when possible to best integrate said Units throughout the property.

(G) **Rental Agreements.** Operator shall prepare and submit to Owner for its approval, and Owner shall approve said rental agreement prior to their use 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. The rental agreements shall provide that the tenancy of a person selected for occupancy of a Unit because of one of the preferences indicated above may be terminated if such person ceases to be in the class of persons described in the applicable preference. Owner and Operator shall be responsible for monitoring the status of Affordable Unit tenants in order to ensure affordable designated units are reserved for those fitting the income qualifications.

(H) **Tenant Compliance.** Operator shall enforce tenant compliance with all applicable rental agreement provisions including, without limitation, the collection of rents, late fees and other charges. Operator shall take all legal steps necessary, including, but not limited to eviction and court action, of any tenant, occupant, visitor or guest who disrupts or prevents the quiet enjoyment of the other tenant, legal occupant, visitor or guest of a tenant.

(f) <u>Insurance.</u>

(i) Operator shall obtain and keep in force "Special Form" fire and extended coverage insurance and other customary property insurance for the Property in accordance with Lender and/or Fannie Mae requirements and flood insurance for the Property in the amount of 100% of the replacement cost unless Owner notifies Operator in writing that Owner has obtained said insurance or that said insurance is not required, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

(ii) Operator shall obtain and keep in force business income coverage equal to 12 months gross income/rents or Actual Loss Sustained, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

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(iii) Operator shall obtain and keep in force a Commercial General Liability (CGL) insurance policy, with respect to the Property and its operations, and in amounts no less than $2,000,000 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 on a 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 thirty (30) days prior written notice of cancellations or material change in coverage.

(iv) 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 thirty (30) days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iv) shall be at the expense of Operator.

(v) 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 per occurrence), coverage shall include owned, hired, leased and non-owned vehicles including uninsured motorists coverage, the cost of insurance coverage on any vehicles owned by the Owner shall be paid out of the Trust Account as approved by the Budget.

(vi) 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 $1,000,000. Such insurance shall provide Owner with thirty (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.

(vii) 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.

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 any one 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 Owner and Operator as named insureds and the Lender and Fannie Mae as additional insureds; 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 appropriate certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

(g) Debt Service, Taxes and Assessments.

(i) On Owner's behalf, Operator may process payments of Owner's debt service on the Property as directed in writing by Owner, subject to funds being available in the Trust Account.

(ii) On Owner's behalf, Operator shall also 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. The parties agree, however, that such advice and assistance go 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.

(iii) Operator shall annually make a review of, and submit a report on, all real estate, personal property and other taxes and all assessments affecting the Property.

(iv) Prior to executing this Agreement, Operator shall execute and provide to Owner the Assignment of Management Agreement in substantially the form of Exhibit "B" hereto.

(h) 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 use commercially reasonable efforts to comply with the material terms of the Regulatory Agreement to the extent same is applicable to the Operator, 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 material compliance with the applicable terms of the Regulatory Agreement.

(i) Energy and Water Conservation. Operator shall use commercially reasonable efforts 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.

(j) Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the Budget or Owner's prior written approval.

(k) Employment of Personnel.

(i) 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 Budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of F.I.C.A., unemployment compensation and other 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. Any litigation costs or expenses, including attorneys' fees and costs and wage penalties relating to the employment of on-site personnel by Operator are payable by Operator. 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.

(ii) The salaries, wages, other compensation, benefits (including in part, social security, taxes, worker's compensation insurance), travel, training and other Property-related expenses of all on-site, field, or maintenance employees of Operator working on or with respect to the Property shall be expenses of the Property and included in the approved Budget for the Property. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, wages and other compensation of employees 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. Operator shall solicit and receive approval from Owner to utilize the services of a roving maintenance supervisor prior to services being rendered.

(iii) The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses shall be non-reimbursable expenses of Operator with respect to the following persons working on or in respect to the Property:

(A) executive personnel of Operator charged with general administration of Operator's performance of this Agreement; and

(B) record-keeping personnel (off-site).

(l) 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.

(m) Management Structure. Operator's management structure, roles and assurances as to the frequency of management visits to the Property is attached as Exhibit "C" hereto.

(n) Tenant Grievance Procedure. Operator's Tenant Grievance Procedure is attached as Exhibit "D" hereto.

(o) Prior to executing this Agreement, Operator shall obtain and thereafter maintain, at its expense, a business license from the City of Marina.

ARTICLE V

EXPENSES OF OWNER

5.1 Except as otherwise provided in this Agreement, all contractual obligations incurred by Operator to third parties in the course of managing the Property pursuant to this Agreement shall be obligations of Operator. All expenses incurred by Operator shall be commercially reasonable in the rental housing industry for similar properties and shall be reimbursable or otherwise payable by Owner as described in section 4.2(d). All reasonable expenses incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner, subject to pre-approval as described in this Agreement. Such expenses and reimbursables shall be paid with funds drawn from the Trust Account in accordance with Article VII hereof. Owner's responsibility for such expenses and reimbursables relating to issues which arose during the term of this Agreement remain in full force and effect until resolved even if this Agreement is terminated before such resolution.

5.2 Operator may pay the following expenses directly from the Trust Account subject to the conditions and limitations set forth elsewhere in this Agreement:

a) Cost of on-site computer hardware and telecommunications equipment;
b) Cost of forms, papers, ledgers, and other supplies and equipment used by Operator at the Property, and postage, messenger and overnight delivery services;
c) Cost to correct any violation of law that is not the result of Operator's gross negligence or an intentional act of Operator relative to the leasing, management, use, operation, repair, maintenance or occupancy of the Property, or costs relative to the rules, regulations or orders of any national or local Board of Fire Underwriters or other similar body that are not the result of Operator's gross negligence or an intentional act of Operator;
d) Actual cost of making all repairs, decorations and alterations of the Property;
e) Third party costs of collection of delinquent rentals, including a collection agency;
f) Legal fees of attorneys, not related to employment matters, in accordance with this Agreement;
g) Cost of capital expenditures, to the extent approved in the Budget or otherwise allowed by this Agreement;
h) Cost of printed checks for each bank account maintained by Operator relating to the Property;
i) Intentionally deleted;
j) Cost of service contracts and agreements;
k) Cost of utilities;
l) Cost of advertising as to the extent set forth in the Budget;

m) Cost of property taxes, improvement assessments and other like charges;
n) Fee(s) as provided in Section 3.1 through 3.4 hereof;
o) Periodic payments on account of any debts and liability of Owner pursuant to Subparagraph (g) titled <u>Debt Service, Taxes and Assessments</u> of Section 4.2 hereof;
p) Costs of Owner's Liability Insurance and workers' compensation insurance;
q) Costs of the property management software package that is utilized for management of the Property and Operator training class and related travel expenses for the use of such and software; and
r) Employee-related costs as set forth in Section 4.2(k) hereof.

The foregoing enumeration of reimbursable expenses is not intended to be exclusive, and subject to the conditions and limitations set forth elsewhere in this Agreement, Operator shall be entitled to make disbursements from the Trust Account for other expenses incurred or paid by Operator to the extent those expenses are related to operation of the Property, except to the extent Section 6.1 prohibits reimbursement.

ARTICLE VI

EXPENSES OF OPERATOR

6.1 Operator agrees to pay all salaries, wages and other compensation and fringe benefits of all personnel of Operator described in Section 4.2(k)(ii) of this Agreement as an expense of Operator 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.

ARTICLE VII

BANK ACCOUNTS

7.1 ESTABLISHMENT OF ACCOUNTS.

(a) 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 of $20,000 to be retained within the Trust Account to make up for operating shortfalls. Any such reserve shall be replenished to its starting level on a monthly basis, unless Owner determines otherwise. Operator will be reimbursed by Owner within one (1) month of the effective date of this Agreement for Owner approved and reasonable pre-transition expenses incurred by Operator.

(b) Where law requires that tenant security deposits in respect of the Property be separately maintained, a separate bank account for the Property will be opened by Operator 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.

(c) The designated broker for Operator shall be an authorized signer on the Trust Account and the Security Deposit Trust Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. For purposes of this Section 7.1 (c), 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 in accordance with this Article VII, only upon the signature of at least two (2) individuals who have been granted that authority by Operator. All persons who are authorized signatories or who in any way handle funds for the Property (on-site or off-site) shall be insured for dishonesty in the minimum account of $1,000,000.00 per occurrence or loss with not more than a $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.

(d) Operator may also maintain a petty cash fund from money in the Trust Account and make payments there from in a manner consistent with the usual course of dealing with such funds in the property management business. Such petty cash fund shall be maintained subject to the Operator’s policies and procedures.

(e) Pursuant to other provisions contained in this Agreement and provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15^{th}) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

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 authorized 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.

ARTICLE VIII

ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by April 30 of each year: (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 made assuming accrual basis accounting 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 the Marina City Council 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 an itemized salary or wage description for every on-site employee, which shall include the General Manager and Regional Manager employees pertaining to Property, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. Subject to notation in Section 8.5 below, if Owner does not approve in writing to Operator's proposed budgets before July 1st of each year, the proposed budgets shall be deemed disapproved. If an annual budget has not been approved by said date, Operator shall continue to operate the Property under the approved budget for the previous fiscal year until Operator and Owner can agree on the new Budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. Said budgets, after approval by Owner, shall be used by Operator as a guide for the actual operation of the Property. Approval 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.

ARTICLE IX

GENERAL PROVISIONS

9.1 RELATIONSHIP. It is understood and agreed that all contracts and obligations entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner and subject to Section 9.4 of this Agreement, Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims thereof: with counsel of Owner's choice, and 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.

(a) Operator shall indemnify, hold harmless and defend Owner, its officers, employees and agents, 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 pursuant to Section 4.2(f)(iii), 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(a) shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2(f)(iii), unless Operator has engaged in gross negligence or willful misconduct.

(b) 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.

(c) 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: PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION

Attention: City Manager
City Hall
211 Hillcrest Avenue
Marina, California 93933

TO OPERATOR: ALLIANCE COMMUNITIES, INC.
2525 East Camelback Road, Suite 500
Phoenix, Arizona 85016
Attn: Chief Executive Officer

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 itself.

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. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association, provided, however, that nothing contained in this Agreement shall require the parties to use the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

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 ATTORNEY'S FEES. If any controversy, claim, dispute or litigation between the parties arises out of this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, costs and expenses.

9.12 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.

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

9.14 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 affect the purpose of the parties and this Agreement.

9.15 COUNTERPARTS**.** This Agreement may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same document. Facsimile signatures are binding on the party providing them.

[Signature page immediately follows]

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

OWNER:

PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION

By: ________________________________
Name: Layne Long,
Title: City Manager

Date: ___________________________, 2018

By: ________________________________
, City Clerk

Approved as to Form

____
City Attorney

OPERATOR:

ALLIANCE COMMUNITIES, INC.

By: ____________________________________
Name: Brad Cribbins
Title: Chief Operating Officer
Date: ____________________________________,

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 rental and/or lease agreements 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 the Owner.

3. Maintain community standards of physical and social environment, while keeping within Budget guidelines. Respond to requests for maintenance by tenants and/or Owner promptly, but under no circumstances in excess of twenty-four (24) hours. Schedule and conduct annual unit inspections and follow up annual inspections with corrective work where required. Operator shall provide tenants with a minimum of two weeks written notice of the annual inspection and follow up thereto. Said inspection shall be conducted in the presence of the tenant unless the tenant waives, in writing, her/his right to be present.

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 multi-lingual 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 wait list of prospective renters. Accept applications for rental units and maintain eligibility standards. Maintain preference lists as specified. Use commercially reasonable efforts 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. Operator representative(s) shall meet with the Tenant Association representative(s) and Owner representative(s) as reasonably requested Owner.

8. 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. Recommend multi-year capital improvements plans to Owner.

9. Develop and implement written office procedures; train and supervise office and leasing personnel.

10. 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 requested periodic reports to Owner.

11. 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.

12. Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Owner approval. Continually inspect property, recording deficiencies and taking reasonably necessary action within budgetary allocations.

13. Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter. Participate in meetings and events with tenants and/or Tenants Association representatives as requested by Owner.

EXHIBIT B

Preston Park Management Agreement

ASSIGNMENT OF MANAGEMENT AGREEMENT

THIS ASSIGNMENT OF MANAGEMENT AGREEMENT (this **“Assignment”**) datged as of **_______________** is executed by and among (i) PRESTON PARK SUSTAINABLE COMMUNITY NON-PROFIT CORPORATION, a California nonprofit public benefit corporation (**“Borrower”**), (ii) BERKELEY POINT CAPITAL, LLC, a Delaware limited liability company (**“Lender”**), and (iii) ALLIANCE COMMUNITIES, INC., a Delaware corporation (**“Manager”**).

RECITALS:

A. Borrower is the owner of a leasehold interest in a multifamily project known as Abrams Park Apartments and located in Marina, Monterey County, California (the **“Mortgaged Property”**).

B. Manager is the managing agent of the Mortgaged Property pursuant to a Management Agreement dated **__________________**, between Borrower (as successor-in-interest) and Manager (the **Management Agreement”**).

C. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the (**“Loan Agreement”**), Lender has agreed to make a loan to Borrower in the original principal amount of Thirty Five Million Nine Hundred Fifty Thousand Dollars ($35,950,000.00) (the “**Mortgage Loan**”) as evidenced by that certain Multifamily Note dated as of the date hereof, executive by Borrower and made payable to the order of Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”).

D. The Loan is being made with the proceeds of the Issuer’s $14,360,000 Multifamily Housing Revenue Bonds (Abrams B Apartments Financing) Series 2006 (the **“Bonds”**). The Bonds are being issued pursuant to a Trust Indenture, dated as of the date hereof (the **“Indenture”**), between the Issuer and Union Bank of California, N.A., as trustee (the **“Trustee”**).

E. Borrower is willing to assign its rights under the Management Agreemetn to Lender as additional security for the Mortgage Loan.

F. Manager is willing to consent to the assignment and to attorn to Lender upon receipt of notice of the occurrence of an Event of Default(as hereinafter defined) by Borrower under the Loan Documents, and perform its obligations under the Management Agreement for Lender, or its successors in interest, or to permit Lender to terminate the Management Agreement without liability.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Lender and Manager agree as follows:

Section 1. Recitals.

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Assignment.

Section 2. Assignment.

Borrower hereby transfers, assigns and sets over to Lender, its successors and assigns, all right, title and interest of Borrower in and to the Management Agreement. Manager hereby consents to the foregoing assignment. The foregoing assignment is being made by Borrower to Lender as collateral security for the full payment and performance by Borrower of all of its obligations under the Loan Documents. Although it is not the intention of the parties that the assignment hereunder is a present assignment, until the occurrence of any default or failure to perform or observe any obligation, condition, covenant, term, agreement or provision required to be performed or observed by Borrower or any other party under any of the Loan Documents beyond any applicable grace or cure period provided for therein (an "Event of Default"), Borrower may exercise all rights as owner of the Mortgaged Property under the Management Agreement, except as otherwise provided in this Assignment. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall automatically terminate upon the release of the Security Instrument as a lien on the Mortgaged Property.

Section 3. Representations and Warranties.

Borrower and Manager represent and warrant to Lender that (a) the Management Agreement is unmodified and is in full force and effect, (b) the Management Agreement is a valid and binding agreement enforceable against the parties in accordance with its terms, and (c) neither party is in default in performing any of its obligations under the Management Agreement. Borrower further represents and warrants to Lender that it has not executed any prior assignment of the Management Agreement, nor has it performed any acts or executed any other instrument which might prevent Lender from operating under any of the terms and conditions of this Assignment, or which would limit Lender in such operation. Manager further represents and warrants to Lender that (1) Manager has not assigned its interest in the Management Agreement, (2) Manager has no notice of any prior assignment, hypothecation or pledge of Borrower's interest under the Management Agreement, (3) as of the date hereof, Manager has no counterclaim, right of set-off, defense or like right against Borrower, and (4) as of the date hereof, Manager has been paid all amounts due under the Management Agreement.

Section 4. Lender's Right to Cure.

In the event of any default by Borrower under the Management Agreement, Lender shall have the right, but not the obligation, upon notice to Borrower and Manager and until such default is cured, to cure any default and take any action under the Management Agreement to preserve the same. Borrow hereby grants to Lender the right of access to the Mortgaged Property for this purpose, if such action is necessary. Borrower hereby authorizes Manager to accept the performance of Lender in such event, without question. Any advances made by Lender to cure a default by Borrower under the Management Agreement shall become part of the indebtedness and shall bear interest at the Default Rate under the Loan Agreement and shall be secured by the Security Instrument.

Section 5. Covenants.

(a) Borrowers Covenants.

Borrower hereby covenants with Lender that, during the term of this Assignment:

(1) Borrower shall not assign Borrower's interest in the Management Agreement or any portion thereof, or transfer the responsibility for management of the Mortgaged Property from Manager to any other person or entity without the prior written consent of Lender;

(2) Borrower shall not cancel, terminate, surrender, modify or amend any of the terms or provisions of the Management Agreement without the prior written consent of Lender;

(3) Borrower shall not forgive any material obligation of the Manager or any other party under the Management Agreement, without the prior written consent of Lender;

(4) Borrower shall perform all obligations of Borrower under the Management Agreement in accordance with the provisions thereof, any failure of which would constitute a default under the Management Agreement; and

(5) Borrower shall give Lender written notice of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Mortgaged Property.

Any of the foregoing acts done or suffered to be done without Lender's prior written consent shall constitute an Event of Default.

(b) Reserved.

Section 6. Lender's Rights Upon Event of Default

(a) Upon receipt by Manager of written notice from Lender that an Event of Default has occurred and is continuing, Lender shall have the right to exercise all rights as owner of the Mortgaged Property under the Management Agreement.

(b) Borrower agrees that after Borrower receives notice (or otherwise has actual knowledge) of an Event of Default, it will not make any payment of fees under or pursuant to the Management Agreement without Lender's prior written notice.

Section 7. Termination of Management Agreement.

After the occurrence of an Event of Default, Lender (or its nominee) shall have the right at any time thereafter to terminate the Management Agreement, without cause and without liability, by giving written notice to Manager of its election to do so. Lender's notice shall specify the date of termination, which shall not be less than 30 days after the date of such notice.

Section 8. Books and Records.

On the effective date of termination of the Management Agreement, Manager shall turn over to Lender all books and records relating to the Mortgaged Property (copies of which may be retained by Manager, at Manager's expense), together with such authorizations and letters of direction addressed to tenants, suppliers, employees, banks and other parties as Lender may reasonably require. Manager shall cooperate with Lender in the transfer of management responsibilities to Lender or its designee. A final accounting of unpaid fees (if any) due to Manager under the Management Agreement shall be made within 60 days after the effective date of termination, but Lender shall not have any liability or obligation to Manager for unpaid fees or other amounts payable under the Management Agreement which accrue before Lender (or its nominee) acquires title to the Mortgaged Property, or Lender becomes a mortgagee in possession.

Section 9. Notice.

(a) Process of Serving Notice.

All notices under this Assignment shall be:

(1) in writing and shall be:

(A) delivered, in person:

(B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;

(C) sent by electronic mail with originals to follow overnight courier;

(2) addressed to the intended recipient at its respective address set forth at the end of this Assignment; and

(3) deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects deliver, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address

Any party to this Assignment may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Assignment in accordance with this Section 9.

(c) Default Method of Notice

Any required notice under this Assignment which does not specify how notices are to be given shall be given in accordance with this Section 9.

(d) Receipt of Notices.

Borrower, Manager and Lender shall not refuse or reject delivery of any notice given in accordance with this Assignment. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

Section 10. Counterparts.

This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes, provided, however, that all such counterparts shall constitute one and the same instrument.

Section 11. Governing Law; Venue and Consent to Jurisdiction

(a) Governing Law

This Assignment may be governed by the laws of the jurisdiction in which the Mortgaged Property is located (the "**Property Jurisdiction"),** without regard to the application of choice of law principles.

(b) Venue; Consent to Jurisdiction.

Any controversy arising under or in relation to this Assignment shall be litigated exclusively in the Property Jurisdiction without regard to conflicts of laws principles. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Assignment. Borrower irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

Section 12. Severability; Amendments.

The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provision of this Assignment, all of which shall remain in full force and effect. This Assignment contains the complete and entire agreement among the parties as to the matters covered, rights granted, and the obligations assumed in this Assignment. This Assignment may not be amended or modified except by written agreement signed by the parties hereto.

Section 13. Construction.

(a) The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construction this Assignment.

(b) Any reference in this Assignment to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Assignment or to a Section or Article of this Assignment. All exhibits and schedules attached to or referred to in this Assignment, if any, are incorporated by reference into this Assignment.

(c) Any reference in this Assignment to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(d) Use of the singular in this Assignment includes the plural and use of the plural includes the singular.

(e) As used in this Assignment, the term "including" means "including, but not limited to" or "including, without limitation," and is for example only and not a limitation.

(d) Whenever Borrower's knowledge is implicated in this Assignment or the phrase "to Borrower's knowledge" or a similar phrase is used in this Assignment, Borrower's knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower's knowledge after reasonable and diligent inquiry and investigation.

(f) Unless otherwise provided in this Assignment, if Lender's approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender's sole and absolute discretion.

(g) All references in this Assignment to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(i) "Lender may" shall mean at Lender's discretion but shall not be an obligation.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower, Lender and Manager have signed and delivered this Assignment under seal (where applicable) or have caused this Assignment to be signed and delivered under seal (where applicable), each by its duly authorized representative. Where applicable law so provides, Borrower, Lender and Manger intend that this Assignment shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION, a California nonprofit public benefit corporation

By: ____
Layne Long, Executive Director

Notice Address:

211 Hillcrest Avenue
Marina, CA 93933
Attention: Layne Long, Executive Director
Email: llong@cityofmarina.org

[SIGNATURES TO CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

LENDER:

BERKELY POINT CAPITAL, LLC, a Delware limited liability company

By:____
Name:
Title:

By:____
Name:
Title:

Notice Address:

Attention:
One Beacon Street, 14th Floor
Boston, Massachusetts 02108
Email: Servicing.Requests@BerkPoint.com

[SIGNATURES TO CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

MANAGER:

ALLIANCE COMMUNITIES, INC., a Delaware corporation

By:____

Brad Cribbins
Chief Operating Officer

Notice Address:

2525 East Camelback Road, Suite 500
Phoenix, Arizona 85016
Attention: Brad Cribbs
Email:

EXHIBIT C
Preston Park Management Agreement

MANAGEMENT STRUCTURE

<u>The Senior Management Team for Preston Park and Abrams Park:</u>

Regional Manager
Director of Facilities
Regional Performance Director
Regional Marketing Director
Regional Vice President of Operations

Regional Manager, has an office at Schoonover Park. She will be at the communities at least two days a week and will have the capacity to spend additional time as needed. She will be responsible for all compliance training related to the approved below market rate rental program.
Director of Facilities, will perform monthly site inspections in addition to overseeing any capital projects that require completion. Christopher will spend no less than two days per month at the community and possibly more depending on the capital project requirements.

Regional Performance Director and Regional Marketing Director, will spend no less than one day each month at the site providing leasing and customer service training and marketing resources. Amy and Marita are also available on an as needed basis for one-on-one training.

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

The team above is available to meet with the Owner 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 the Owner, Alliance Communities Inc., and State and Federal Fair Housing Laws.

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 Operator'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 the Owner to hear grievances and render a decision. The Owner 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, the Owner 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 Communities, Inc. ("Alliance Residential") or its predecessor(s).

E. Management: The property management company for Preston Park 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 the Owner.

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 Owner staff representative ("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 the Owner. Such requests may be made to the designated 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 the Owner. 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 the Owner 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 Owner policy or regulation.

A decision by the Hearing Officer or the Owner 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: _______________________

RESOLUTION NO. 2018-143
RESOLUTION NO. 2018-08 (NPC)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN AMENDED MANAGEMENT AGREEMENT BETWEEN THE CITY OF MARINA, CITY OF MARINA ABRAMS B NON-PROFIT CORPORATION AND ALLIANCE COMMUNITIES INC., FOR ABRAMS B HOUSING AREA, SUBJECT TO FINAL APPROVAL BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, AUTHORIZING CITY MANAGER TO EXECUTE AMENDMENT NO. 12 TO MANAGEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at a regular meeting of October 16, 2007, the City Council adopted Resolution No. 2007-249 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2007-01 (NPC) approving the Management Agreement with Alliance Residential LLC (which became Alliance Communities Inc. in May 2009) for management of the Abrams B housing area, and the term of the Agreement was for three (3) years, from January 1, 2008 to December 31, 2011; and,

WHEREAS, on December 27, 2007, Amendment No. 1 to the Management Agreement for Abrams Park was executed by the City Manager on behalf of the City and the Executive Officer on behalf of the Abrams B Non-Profit Corporation and the Amendment modified the term of the Agreement to two (2) years to December 31, 2010, with an option for extension of an additional one-year term from January 1, 2011 to December 31, 2011, and added an early termination clause; and,

WHEREAS, at a regular meeting of July 7, 2010, the City Council adopted Resolution No. 2010-199 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2010-1 (NPC) which approved Amendment No. 2 to the Management Agreement for Abrams B, which was requested by the Finance Director to amend the audit requirements to permit a two (2) year audit instead of an annual audit, resulting in cost savings; and,

WHEREAS, at a special meeting on December 14, 2010, the City Council adopted Resolution No. 2010-199 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2010-05 (NPC) which approved Amendment No. 3 to the Management Agreement, which exercised the option provided by Amendment No. 1 and extended the term of the Agreement from January 1, 2011 to December 31, 2011; and,

WHEREAS, at a regular meeting of February 15, 2011, the City Council adopted Resolution No. 2011-27 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2011-01 (NPC) which approved Amendment No. 4 to the Management Agreement, which deleted the Incentive Fee clause, amended the Capital Improvements Management Fee, revised record keeping and monthly reporting requirements, defined affordable rents, revised the requirements for bank accounts and their signatories, updated the priority preferences for resident selection, amended the Grievance Procedure; and,

WHEREAS, at a regular meeting of December 6, 2011, the City Council adopted Resolution No. 2011-206 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2011-10 (NPC) which approved Amendment No. 5 to the Management Agreement, which extended the term of the Management Agreement from January 1, 2012 to December 31, 2012; and, WHEREAS, at a regular meeting of December 4, 2012, the City Council adopted Resolution No. 2012-184 and the Abrams B Non-Profit Corporation Boar adopted Resolution No. 2012-15 (NPC) which approved Amendment No.6 to the Management Agreement. Amendment No. 6 extended the term of the Agreement from December 31, 2012 to December 31, 2013; and,

WHEREAS, at a regular meeting of December 17, 2013, the City Council adopted Resolution No. 2013-191 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2013-08 (NPC) which approved Amendment No. 7 to the Management Agreement. Amendment No. 7 extended the term of the Agreement from December 31, 2013 to December 31, 2014; and,

WHEREAS, at a regular meeting of December 16, 2014, the City Council adopted Resolution No. 2014-130 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2015-04 (NPC) with approved Amendment No. 8 to the Management Agreement. Amendment No. 8 extended the term of the Agreement from December 31, 2014 to December 31, 2015; and,

WHEREAS, at a regular meeting of December 15, 2015, the City Council adopted Resolution No. 2015-144 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2015-03 (NPC) with approved Amendment No. 9 to the Management Agreement. Amendment No. 9 extended the term of the Agreement from December 31, 2015 to December 31, 2016; and,

WHEREAS, at the regular meeting of December 12, 2016, the City Council adopted Resolution No. 2016-155 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2016-156 (NPC) with approved Amendment No. 10 to the Management Agreement. Amendment No. 10 extended the term of the Agreement from December 31, 2016 to December 31, 2017; and,

WHEREAS, at a regular meeting of December 19, 2017, the City Council adopted Resolution No. 2017-122 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2017-04 (NPC) which approved Amendment No. 11 to the Management Agreement. Amendment No. 11 made numerous changes that were clean up or clarification in nature and eliminated the bonus and incentive program for Alliance employees; and,

WHEREAS, pursuant to the Assignment Agreement, the Management Agreement may not be terminated or amended without the prior written consent of the Federal National Mortgage Association (“Fannie Mae”); and,

WHEREAS, the current Management Agreement terminates on December 31, 2018; and,

WHEREAS, Item 10 in the Scope of Services of the Abrams Park Management Agreement states that Alliance is required to make periodic reports to the City “through regular contact and formal meetings as to the current status of all operations so that the Agent City may make proper and timely decisions on all strategic matters,” and while Item 10 of the Scope of Services of the Abrams Park Management Agreement states that the City may review Alliance’s performance at any time, the City Council may direct staff to conduct a performance review within a specific timeframe; and,

WHEREAS, Staff is proposing the contract with Alliance Communities Inc. be amended and extended through December 31, 2019 for the management of Abrams Park. The contract has modified slightly to be consistent with the contract which the City has with Alliance Communities Inc. for the management of Abrams Park (“Exhibit A”); and, WHEREAS, the Amended Management Agreement does not change the compensation to Alliance under the Management Agreement and rental revenue would continue to be collected on and after January 1, 2018 until December 31, 2019.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marina does hereby:

1. Approve the Amended Management Agreement between the City of Marina, the City of Marina Abrams B Non-Profit Corporation and Alliance Communities Inc. for Abrams B Housing Area (Exhibit A) extending the term of the Management Agreement to December 31, 2019, subject to final approval by the Federal National Mortgage Association; and,
2. Authorize the City Manager to execute an Amended Management Agreement for Abrams B on behalf of the City, subject to final review and approval by Fannie Mae and the City Attorney; and,
3. Direct the City Manager to conduct a performance review of the management of the property and report back to the City Council by June 30, 2018.

PASSED AND ADOPTED by the City Council at a regular meeting duly held on the 4th day of December 2018, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Brown, Delgado
NOES, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None
ABSTAIN, COUNCIL MEMBERS: None

____
Bruce C. Delgado, Mayor

ATTEST:

____
Anita Sharp, Deputy City Clerk

EXHIBIT A

AMENDED MANAGEMENT AGREEMENT
FOR
ABRAMS PARK

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into on December __, 2018, by and between the Abrams B Non-Profit Corporation, a California nonprofit public benefit corporation hereinafter referred to as "Abrams B Non-Profit Corporation," collectively referred to as "Owner," and Alliance Communities, Inc., a Delaware corporation, hereinafter referred to as "Operator, as follows:

RECITALS

1. City is the owner of and Abrams B Non-Profit Corporation is the lessee of certain improved real property and the improvements thereon commonly known as Abrams Park consisting of 194 units ("Units") located at 682 Wahl Court, Marina, CA 93933 (the "Property").

2. Abrams B Non-Profit Corporation has obtained certain financing secured by its leasehold interest, with Fannie Mae serving as the credit enhancer, on the Property.

3. Operator has the requisite skill, training and experience to properly perform the services specified herein.

4. Operator holds through an authorized officer a real estate brokerage license as required by the laws of the State of California.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner, Operator and Agent agree as follows:

ARTICLE I

APPOINTMENT OF OPERATOR

Owner hereby appoints Operator and Operator hereby accepts appointment on the terms and conditions set forth below as Owner's exclusive agent to manage, operate, supervise, and cause the Property to be leased and to perform those actions necessary to fulfill Owner's obligations.

ARTICLE II

TERM

2.1 TERM. The term of this Agreement shall commence on January 1, 2019, unless an earlier date is agreed to by City, the current operator and Operator, and shall continue to and include December 31, 2019 unless terminated as provided herein or extended in writing by mutual agreement thereto.

2.2 EARLY TERMINATION. Notwithstanding the provisions of Section 2.1 above to the contrary, this Agreement and the obligations of the parties hereunder shall cease, upon the occurrence of any of the following:

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

(b) If either party defaults in the performance of any of its obligations hereunder and such default continues for thirty (30) days after written notice to the defaulting party specifying such default, the party not in default may immediately terminate this Agreement. If such breach is a failure to pay money, such cure period shall be five (5) days after written notice to the defaulting party with no additional period thereafter.

(c) Owner or Operator may terminate this Agreement without 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 by it pursuant to this Agreement and do all that is reasonably necessary to facilitate the orderly transition of management of the Property;

(c) Operator shall render to Owner an accounting of all funds 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.

ARTICLE III

COMPENSATION

3.1 In addition to other reimbursements to Operator provided for elsewhere in this Agreement, Owner shall pay Operator on a monthly basis for its services hereunder a management fee of 2.5% of the total monthly gross revenue, as defined in Section 3.2 below, received. Fees shall be paid in monthly installments at the beginning of each month, or as incurred, and shall be deductible from the Trust Account as part of the operating expenses of the Property on or before the 10th of each month from collection of said gross revenue. In the event of commencement or termination of this Agreement other than on the first or last day of a month, respectively, the compensation of Operator shall be prorated to the effective date of such commencement or termination.

3.2 **Gross Revenue**. The entire amount of all revenue, determined on a cash basis, from (a) tenant rentals collected pursuant to tenant leases of apartment units, for each month during the Term hereof; provided that there shall be excluded from tenant rentals any tenant security deposits (except as provided below); (b) those funds forfeited by the tenants for cleaning, damages, and/or repairs that exceed the actual cost of cleaning, damages and/or repairs for such period; (c) any and all other revenue from the operation of the Property received and relating to the period in question; (d) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (e) any other sums and charges collected in connection with termination of the tenant leases. Gross Revenue does not include the proceeds of (i) any 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).

3.3 **Capital Improvement Management Fee**. Owner will pay to Operator a construction management fee equal to 6% of the total cost set forth in an executed written proposal or agreement, as approved by Owner, as increased or decreased by all change orders relating thereto, for improvement to each of parking/paving, fence/gates, exterior lighting, site drainage, sidewalks, courts of all types, landscaping, retaining walls, foundation, termite treatment, carpentry and masonry repair, gutter/downspout, exterior paint, ventilation/chimney, site upgrade, mail boxes, interior carpentry/cabinet, plumbing and electrical improvements, exterior mechanical, electrical and plumbing, office, community room improvements, American Disability Act improvements, signage and storm and fire disaster repairs to all interior, exterior and common areas of the Property within thirty (30) calendar days from the time of completion and acceptance of work by the construction manager and Owner. Approval of the construction manager by Owner or Owner's designee shall be obtained by Operator prior to commencement of any capital improvements as defined in this Section 3.3. Operator shall provide construction management relating thereto pursuant to a separate written agreement prior to Operator providing such services. Owner will pay such fee within fifteen (15) days after completion of the agreed upon scope of work.

3.4 **Transactions With Affiliates**. With the prior approval and direction of Owner, (which approval is implicitly granted to the extent obtained in the Budget, as defined herein), Operator may obtain services and materials, including, but not limited to, advertising, consulting, computer hardware and software, forms for use at the Property, contract services, accounting and bookkeeping services and building materials, through the organization subsidiaries or affiliates of Operator for the benefit of the Property, provided the quality of service and the price thereof is competitive with comparable prices and services offered by third parties, and the costs therefore shall be reimbursed by Owner. All discounts, rebates and other savings realized as a result of such services being supplied by an affiliate of Operator shall inure solely to the benefit of Owner.

3.5 Owner hereby authorizes Operator to pay from the Trust Account all fees, reimbursements and other amounts payable to Operator or any third party hereunder.

ARTICLE IV

DUTIES AND RESPONSIBILITIES

4.1 GENERAL RESPONSIBILITIES OF OPERATOR. Subject to the provisions of this Agreement, Operator is hereby authorized to manage, operate and cause the Property to be leased in accordance with the standards of practice of professional managers of similar properties in the location of the Property and to provide other customary management services at the Property for the ordinary and usual business and affairs of the Property as are consistent with the management, operation, leasing, and maintenance of a building or buildings of the type located on the Property. Said services shall include but not be limited to the Scope of Services described in Exhibit “A” hereto. Operator shall provide and implement a mutually agreeable overall business plan and shall operate within the annual budget as approved by Owner (the “Budget”). If Owner requests Operator to perform services beyond the ordinary and usual business and affairs of the Property, Operator shall be entitled to additional compensation for same, which shall be negotiated by the parties.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to do the following:

(a) Collection of Monies. Operator shall use commercially reasonable efforts and means to collect the rents and other charges due from tenants, parking charges, and all other charges, and revenues, and, when deemed economically appropriate by Operator, to institute legal proceedings on behalf of Owner for collection in connection with the operation of the Property. 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. Counsel shall not be used for actions taken in small claims court. 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 such expenditures have been approved in writing by Owner.

(b) Books, Records, and Documentation.

(i) 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 all contracts, original 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, correspondence with federal, state, county, and municipal authorities, brochures, and accounts held or maintained by Operator (all such books, records, and documents being referred to herein as "Books, Records, and Documents"). Books and records of account shall be prepared in conformity with generally accepted accounting principles consistently applied at Operator's sole expense. Except as approved in writing by Owner, all accounting functions shall be performed by those personnel of Operator whose compensation is payable solely by Operator without reimbursement by Owner. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at Operator's principal office at reasonable times and upon reasonable notice to Operator. Extraordinary requests of Operator's accountants made by Owner or audits of the Books, Records and Documents required by Owner, shall be at Owner's sole cost and expense, except as otherwise provided in this Agreement.

(ii) Upon prior reasonable request, Operator shall make all Books, Records and Documents available for examination, audit, inspection and copying by duly authorized representatives of any public housing agency or authority with regulatory power and/or jurisdiction over the Property to the extent required by federal or state law.

(iii) Operator shall provide a standard Financial Reporting Package to Owner by the fifteenth (15th) day of each month during the Term for the preceding month. The Financial Reporting Package shall include: Operations Summary, Variance Analysis, Market Survey, Profit & Loss, Balance Sheet, Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, and Aged Receivables. All reporting will utilize Operator's standard chart of accounts and Operators standard accounting software. An additional reporting fee may be chared to Owner, if Owner requires any additional reporting other than the Financial Reporting Package described above.

(iv) On or before fifteen (15) days following the end of each calendar month, Operator shall deliver or cause to be delivered to Owner (i) an unaudited income and expense statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date; (ii) a comparison of actual income and expenses with the income and expenses projected in the Budget; and (iii) cash balances for reserves and the Trust Account as of the last day of such month. Operator shall at its option (a) preserve all invoices for a period of four (4) years, or (b) at the expiration of each Fiscal Year deliver all invoices to Owner. Such statements and computations shall be prepared from the books of account of the Property.

(c) Annual Audit. At the end of the term as described in Section 2.1 herein and as of the date of termination, Operator shall arrange and coordinate 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 Budget.

(d) 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 reasonably necessary and known repairs. Operator's maintenance duties shall include making all reasonably necessary and known repairs for the Property and trash removal. Consistent with provisions of FORA and City of Marina ordinances and policies on local hire and prevailing wages, Operator may employ independent contractors and other employees necessary to properly maintain, manage and operate the Property. Any contracts over $20,000 per year for an item which is not covered within the 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, but Operator shall inform Owner of the expense, reason and amount of expense within fifteen (15) days of incurring the same. 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.

(e) Rental of Housing Units. Operator's renting of the Units shall be done in conformance with the terms and conditions of this Agreement and the Regulatory Agreement between the City of Marina, as the housing successor to the Redevelopment Agency of the City of Marina, and the City of Marina Abrams B Non-Profit Corporation ("Regulatory Agreement"), including the following:

(i) The Units shall be rented on a six-month lease term or a 12-month lease term or month-to-month basis except as may otherwise be required by the Regulatory Agreement.

(ii) Rents shall be established through the annual Budget approval process by owner. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.

(iii) Applicants for the Units must qualify based upon the applicant's ability to pay, credit report, previous rental history, and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. The Affordable Units shall be rented in accordance with the Regulatory Agreements, or an amendment to those Agreements herein. The Affordable Rents are set in compliance with state law and approved through the annual Budget approval process by Owner. Any increase in the Affordable Rents shall be subject to the approval of Owner and in accordance with the terms of the Regulatory Agreements. 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.

(iv) Operator shall select tenants for available Units as follows:

(A) Not withstanding the provisions of Section 6.2 of the Regulatory Agreement, 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 30% of the housing units shall be rented 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.

(B) **First Preference:** People who work at least thirty-five (35) hours per week in a business or agency with a physical location within the City of Marina. Business owners, consultants or individuals who do business in Marina, but who do not have a physical location in the City of Marina will not be considered as working in the City of Marina.

(C) **Second Preference.** To employees of City of Marina including reserve police officers and volunteer firefighters who work at least 35 hours per week.

(D) **Third Preference.** To thirty-five (35) hour per week public and private employees working in Marina including but not limited to schools and businesses.

(E) **Fourth Preference.** Thirty-five (35) hour per week employees of entities located on property known as "the former Fort Ord." The entities must be within the boundaries of the City of Marina. 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), Cc) and (D) will be subordinate to the affordability requirements contained in paragraph (iii) above. In addition, Operator will manage locations of Affordable Units when possible to best integrate said Units throughout the property.

(G) **Rental Agreements.** Operator shall prepare and submit to Owner for its approval, and Owner shall approve said rental agreement prior to their use 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. The rental agreements shall provide that the tenancy of a person selected for occupancy of a Unit because of one of the preferences indicated above may be terminated if such person ceases to be in the class of persons described in the applicable preference. Owner and Operator shall be responsible for monitoring the status of Affordable Unit tenants in order to ensure affordable designated units are reserved for those fitting the income qualifications.

(H) **Tenant Compliance.** Operator shall enforce tenant compliance with all applicable rental agreement provisions including, without limitation, the collection of rents, late fees and other charges. Operator shall take all legal steps necessary, including, but not limited to eviction and court action, of any tenant, occupant, visitor or guest who disrupts or prevents the quiet enjoyment of the other tenant, legal occupant, visitor or guest of a tenant.

(f) Insurance.

(i) Operator shall obtain and keep in force “Special Form” fire and extended coverage insurance and other customary property insurance for the Property in accordance with Lender and/or Fannie Mae requirements and flood insurance for the Property in the amount of 100% of the replacement cost unless Owner notifies Operator in writing that Owner has obtained said insurance or that said insurance is not required, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

(ii) Operator shall obtain and keep in force business income coverage equal to 12 months gross income/rents or Actual Loss Sustained, the cost of insurance to be paid out of the Trust Account as approved by the Budget.

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(iii) Operator shall obtain and keep in force a Commercial General Liability (CGL) insurance policy, with respect to the Property and its operations, and in amounts no less than $2,000,000 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 on a 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 thirty (30) day prior written notice of cancellations or material change in coverage.

(iv) 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 thirty (30) days of the date of this Agreement, and notwithstanding any other provision herein, all costs of insurance under this Section 4.2(f)(iv) shall be at the expense of Operator.

(v) 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 per occurrence), coverage shall include owned, hired, leased and non-owned vehicles including uninsured motorists coverage, the cost of insurance coverage on any vehicles owned by the Owner shall be paid out of the Trust Account as approved by the Budget.

(vi) 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 $1,00,000. Such insurance shall provide Owner with thirty (30) days 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 Budget for the Property.

(vii) 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.

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 any one 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 Owner and Operator as named insureds and the Lender and Fannie Mae as additional insureds; 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 appropriate certificates of insurance and certified copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

(g) Debt Service, Taxes and Assessments.

(i) On Owner's behalf, Operator may process payments of Owner's debt service on the Property as directed in writing by Owner subject to funds being available in the Trust Account.

(ii) On Owner's behalf, Operator shall also 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. 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.

(iii) Operator shall annually make a review of, and submit a report on, all real estate, personal property and other taxes and all assessments affecting the Property.

(iv) Prior to executing this Agreement, Operator shall execute and provide to Owner the Assignment of Management Agreement in substantially the form of Exhibit "B" hereto.

(h) <u>Compliance with Legal Requirements.</u> 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 use commercially reasonable efforts to comply with the material terms of the Regulatory Agreement to the extent same is applicable to the Operator, 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 material compliance with the applicable terms of the Regulatory Agreement.

(i) Energy and Water Conservation. Operator shall use commercially reasonable efforts 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.

(j) Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the Budget or Owner's prior written approval.

(k) Employment of Personnel.

(i) 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 Budget for the Property. The term "fringe benefits" as used herein shall mean and include the employer's contribution of F.I.C.A., unemployment compensation and other 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. Any litigation costs or expenses, including attorneys' fees and costs and wage penalties relating to the employment of on-site personnel by Operator are payable by Operator. 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.

(ii) The salaries, wages, other compensation, benefits (including in part social security, taxes, worker's compensation insurance), travel, training and other Property-related expenses of all on-site, field, or maintenance employees of Operator working on or with respect to the Property shall be expenses of the Property and included in the Budget for the Property. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, wages and other compensation of employees 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. Operator shall solicit and receive approval from Owner to utilize the services of a roving maintenance supervisor prior to services being rendered.

(iii) The salaries, wages, other compensation, benefits, travel, entertainment, and other expenses shall be non-reimbursable expenses of Operator with respect to the following persons working on or in respect to the Property:

(A) executive personnel of Operator charged with general administration of Operator's performance of this Agreement; and

(B) record-keeping personnel (off-site).

(l) 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.

(m) Management Structure. Operator's management structure, roles and assurances as to the frequency of management visits to the Property is attached as Exhibit "C" hereto.

(n) Tenant Grievance Procedure. Operator's Tenant Grievance Procedure is attached as Exhibit "D" hereto.

(o) Prior to executing this Agreement, Operator shall obtain and thereafter maintain, at its expense, a business license from the City of Marina.

ARTICLE V

EXPENSES OF OWNER

5.1 Except as otherwise provided in this Agreement, all contractual obligations incurred by Operator to third parties in the course of managing the Property pursuant to this Agreement shall be obligations of Operator. All expenses incurred by Operator shall be commercially reasonable in the rental housing industry for similar properties and shall be reimbursable or otherwise payable by Owner as described in section 4.2(d). All reasonable expenses incurred by Operator in performance of its obligations under this Agreement described as reimbursable shall be reimbursed by Owner, subject to pre-approval as described in this Agreement. Such expenses and reimbursables shall be paid with funds drawn from the Trust Account in accordance with Article VII hereof. Owner's responsibility for such expenses and reimbursables relating to issues which arose during the term of this Agreement remain in full force and effect until resolved even if this Agreement is terminated before such resolution.

5.2 Operator may pay the following expenses directly from the Trust Account subject to the conditions and limitations set forth elsewhere in this Agreement:

a) Cost of on-site computer hardware and telecommunications equipment;
b) Cost of forms, papers, ledgers, and other supplies and equipment used by Operator at the Property, and postage, messenger and overnight delivery services;
c) Cost to correct any violation of law that is not the result of Operator's gross negligence or an intentional act of Operator relative to the leasing, management, use, operation, repair, maintenance or occupancy of the Property, or costs relative to the rules, regulations or orders of any national or local Board of Fire Underwriters or other similar body that are not the result of Operator's gross negligence or an intentional act of Operator;
d) Actual cost of making all repairs, decorations and alterations of the Property;
e) Third party costs of collection of delinquent rentals, including a collection agency;
f) Legal fees of attorneys, not related to employment matters, in accordance with this Agreement;
g) Cost of capital expenditures, to the extent approved in the Budget or otherwise allowed by this Agreement;
h) Cost of printed checks for each bank account maintained by Operator relating to the Property;
i) Cost of service contracts and agreements;
j) Cost of utilities;
k) Cost of advertising as to the extent set forth in the Budget;
l) Cost of property taxes, improvement assessments and other like charges;
m) Fee(s) as provided in Section 3.1 through 3.4 hereof;
n) Periodic payments on account of any debts and liability of Owner pursuant to Subparagraph (g) titled Debt Service, Taxes and Assessments of Section 4.2 hereof;
o) Costs of Owner's Liability Insurance and workers' compensation insurance;
p) Costs of the property management software package that is utilized for management of the Property and Operator training class and related travel expenses for the use of such and software; and
q) Employee-related costs as set forth in Section 4.2(k) hereof.

The foregoing enumeration of reimbursable expenses is not intended to be exclusive, and subject to the conditions and limitations set forth elsewhere in this Agreement, Operator shall be entitled to make disbursements from the Trust Account for other expenses incurred or paid by Operator to the extent those expenses are related to operation of the Property, except to the extent Section 6.1 prohibits reimbursement.

ARTICLE VI

EXPENSES OF OPERATOR

6.1 Operator agrees to pay all salaries, wages and other compensation and fringe benefits of all personnel of Operator described in Section 4.2(k)(ii) of this Agreement as an expense of Operator 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.

ARTICLE VII

BANK ACCOUNTS

7.1 ESTABLISHMENT OF ACCOUNTS.

(a) 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 of $20,000 to be retained within the Trust Account to make up for operating shortfalls. Any such reserve shall be replenished to its starting level on a monthly basis, unless Owner determines otherwise. Operator will be reimbursed by Owner within one (1) month of the effective date of this Agreement for Owner approved and reasonable pre-transition expenses incurred by Operator.

(b) Where law requires that tenant security deposits in respect of the Property be separately maintained, a separate bank account for the Property will be opened by Operator 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.

(c) The designated broker for Operator shall be an authorized signer on the Trust Account and the Security Deposit Trust Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. For purposes of this Section 7.1 (c), 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 in accordance with this Article VII, only upon the signature of at least two (2) individuals who have been granted that authority by Operator. All persons who are authorized signatories or who in any way handle funds for the Property (on-site or off-site) shall be insured for dishonesty in the minimum account of $1,000,000.00 per occurrence or loss with not more than a $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.

(d) Operator may also maintain a petty cash fund from money in the Trust Account and make payments there from in a manner consistent with the usual course of dealing with such funds in the property management business. Such petty cash fund shall be maintained subject to the Operator’s policies and procedures.

(e) Pursuant to other provisions contained in this Agreement and provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15^{th}) day of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

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 authorized 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.

ARTICLE VIII

ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by April 30^{th} of each year: (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 made assuming accrual basis accounting 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 the Marina City Council 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 an itemized salary or wage description for every on-site employee, which shall include the General Manager and Regional Manager employees pertaining to Property, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. Subject to notation in Section 8.5 below, if Owner does not approve in writing Operator's proposed budgets before July 1st of each year, the proposed budgets shall be deemed disapproved. If an annual budget has not been approved by said date, Operator shall continue to operate the Property under the approved Budget for the previous fiscal year until Operator and Owner can agree on the new budget or the termination of this Agreement.

8.4 COMPLIANCE WITH BUDGETS. Said budgets, after approval by Owner, shall be used by Operator as a guide for the actual operation of the Property. Approval 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 the Budget and the operation of the Property is subject to the terms and conditions of that certain Implementation Agreement dated May 1, 2001 ("Implementation Agreement") by and between the Fort Ord Reuse Authority ("FORA") and the City of Marina. 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.

ARTICLE IX

GENERAL PROVISIONS

9.1 RELATIONSHIP. It is understood and agreed that all contracts and obligations entered into by Operator with respect to the Property as provided for, and consistent with, this Agreement shall be the obligations of Owner and subject to Section 9.4 of this Agreement, Owner agrees to indemnify, defend and hold harmless Operator from any liability or claims thereof: with counsel of Owner's choice, and 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 an 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.

(a) Operator shall indemnify, hold harmless and defend Owner, its officers, employees and agents, 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 pursuant to Section 4.2(f)(iii), 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(a) shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2(f)(iii), unless Operator has engaged in gross negligence or willful misconduct.

(b) 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.

(c) 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: CITY OF MARINA
Attention: City Manager
City Hall
211 Hillcrest Avenue

Marina, California 93933

TO OPERATOR: ALLIANCE RESIDENTIAL, LLC
2525 East Camelback Road, Suite 500
Phoenix, Arizona 85016
Attn: Chief Executive Officer

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 itself.

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. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association, provided, however, that nothing contained in this Agreement shall require the parties to use the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty (30) days after issuance of the arbitrator's written decision, either party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

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 ATTORNEY'S FEES. If any controversy, claim, dispute or litigation between the parties arises out of this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, costs and expenses.

9.12 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.

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

9.14 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 affect the purpose of the parties and this Agreement.

9.15 COUNTERPARTS**.** This Agreement may be executed in multiple counterparts, all of which, when taken together, shall constitute one and the same document. Facsimile signatures are binding on the party providing them.

[Signature page immediately follows]

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

OWNER:

CITY OF MARINA

By: ________________________________
Name: Layne Long,
City Manager

Date: ,2018

CITY OF MARINA ABRAMS B NON-PROFIT CORPORATION

By: ________________________________
Name: Layne Long,
Title: Executive Officer
Date:

Attest:

By: ______________________________
City Clerk

Approved as to Form

____
City Attorney

OPERATOR:

ALLIANCE COMMUNITIES, INC.

By: ____________________________________
Name: Brad Cribbins
Title: Chief Operating Officer
Date: ____________________________________

EXHIBIT A
Abrams Park Management Agreement

SCOPE OF SERVICES

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

1. Placement of residents in residential apartment homes with appropriate rental and/or lease agreements 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 the Owner.

3. Maintain community standards of physical and social environment, while keeping within Budget guidelines. Respond to requests for maintenance by tenants and/or Owner promptly, but under no circumstances in excess of twenty-four (24) hours. Schedule and conduct annual unit inspections and follow up annual inspections with corrective work where required. Operator shall provide tenants with a minimum of two weeks written notice of the annual inspection and follow up thereto. Said inspection shall be conducted in the presence of the tenant unless the tenant waives, in writing, her/his right to be present.

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 multi-lingual 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 wait list of prospective renters. Accept applications for rental units and maintain eligibility standards. Maintain preference lists as specified. Use commercially reasonable efforts 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. Operator representative(s) shall meet with the Tenant Association representative(s) and Owner representative(s) as reasonably requested by Owner

8. 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. Recommend multi-year capital improvements plans to Owner.

9. Develop and implement written office procedures; train and supervise office and leasing personnel.

10. 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.

11. 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.

12. Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Owner approval. Continually inspect property, recording deficiencies and taking reasonably necessary action within budgetary allocations.

13. Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter. Participate in meetings and events with tenants and/or Tenants Association representatives as requested by Owner.

EXHIBIT B

Abrams Park Management Agreement

ASSIGNMENT OF MANAGEMENT AGREEMENT

THIS ASSIGNMENT OF MANAGEMENT AGREEMENT (this **"Assignment"**) is made and entered into as of **______________________** by and among (i) CITY OF MARINA ABRAMS B NON-PROFIT CORPORATION, a California nonprofit public benefit corporation (**"Borrower"**), (ii) FANNIE MAE, a corporation duly organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C., §1716 et seq., its successors, transferees and assigns (**"Credit Enhancer"**), and (iii) ALLIANCE RESIDENTIAL, LLC, an Arizona Limited Liability Company, (the **"Manager"**).

RECITALS:

A. Borrower is the owner of a leasehold interest in a multifamily project known as Abrams Park Apartments and located in Marina, Monterey County, California (the **"Mortgaged Property"**).

B. Manager is the managing agent of the Mortgaged Property pursuant to a Management Agreement dated **________________**, between The City of Marina, the fee owner of the premises (**"Owner"**) and Manager (the **Management Agreement"**), as assigned to Borrower pursuant to that certain Ground Lease made by and between Owner and Borrower effective November 1, 2006 (as so amended, renewed, restated or otherwise modified, the **"Ground Lease"**).

C. This Assignment is being executed in connection with the mortgage loan being made to Borrower by the Marina Joint Powers Financing Authority, a joint exercise of powers agency organized and existing under the laws of the State of California (the **"Issuer"**), in the original principal amount of $14,360,000 (the **"Loan"**).

D. The Loan is being made with the proceeds of the Issuer's $14,360,000 Multifamily Housing Revenue Bonds (Abrams B Apartments Financing) Series 2006 (the **"Bonds"**). The Bonds are being issued pursuant to a Trust Indenture, dated as of the date hereof (the **"Indenture"**), between the Issuer and Union Bank of California, N.A., as trustee (the **"Trustee"**).

E. The Loan is evidenced by a Multifamily Note in the principal amount of $14,360,000, dated as of the date hereof, and made by Borrower in favor of the Issuer (including any addenda, the **"Note"**). The Note is secured by, among other things, a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (including any riders, the **"Security Instrument"**), dated as of the date hereof, made by Borrower for the benefit of Issuer and Credit Enhancer and granting a lien on Borrower's leasehold interest in the Mortgaged Property.

F. At the request of Borrower, Credit Enhancer is executing and delivering a Credit Enhancement Instrument dated October 26, 2006 (the **"Credit Facility"**) for the benefit of the Trustee pursuant to which Credit Enhancer has agreed to provide credit enhancement and liquidity support for the Bonds.

G. Borrower has executed and delivered to Credit Enhancer a Reimbursement Agreement, dated as of the date hereof, pursuant to which Borrower has agreed to reimburse Credit Enhancer for, among, other things, any payments by Credit Enhancer under the Credit Facility (the **"Reimbursement Agreement"**). The Note, the Security Instrument, the Reimbursement Agreement, this Assignment and all other documents executed by Borrower in connection with the Loan, other than the Financing Agreement and the Regulatory Agreement (each, as defined in the Security Instrument), are collectively referred to as the "Loan Documents."

H. Pursuant to an Assignment and Intercreditor Agreement, dated as of the date hereof, by and among the Issuer, Trustee and Credit Enhancer, the Issuer intends to assign, transfer and deliver the Loan, including the Note and the Security Instrument, but excluding the Issuer's Reserved Rights (as defined in the Indenture), to Credit Enhancer and the Trustee, as their interests may appear.

I. Credit Enhancer requires as a condition to its delivery of the Credit Facility that Borrower enter and cause Manager to enter into this Assignment as additional security for all of Borrower's obligations under the Loan Documents.

J. Capmark Finance Inc. (**"Capmark"**) will initially act as servicer of the Loan on behalf of Credit Enhancer (Capmark, together with any replacements and successors engaged by Credit Enhancer to service the Loan, **"Servicer"**).

K. Manager is willing to consent to the assignment and to attorn to Credit Enhancer upon a default by Borrower under the documents evidencing and securing the Loan, and perform its obligations under the Management Agreement for Credit Enhancer, or its successors in interest, or to permit Credit Enhancer to terminate the Management Agreement without liability.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Borrower, Credit Enhancer and Manager agree as follows:

Borrower hereby transfers, assigns and sets over to Credit Enhancer, its successors and assigns, all right, title and interest of Borrower in and to the Management Agreement. Manager hereby consents to the foregoing assignment. The foregoing assignment is being made by Borrower to Credit Enhancer as collateral security for the full payment and performance by Borrower of all of its obligations under the Loan Documents. However, until the occurrence of an Event of Default (as such term is defined in the Loan Documents) Borrower may exercise all rights as owner of the Mortgaged Property under the Management Agreement, except as otherwise provided in this Assignment. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall automatically terminate upon the release of the Security Instrument as a lien on the Mortgaged Property.

Borrower and Manager represent and warrant to Credit Enhancer that (i) the Management Agreement is unmodified and is in full force and effect, (ii) the Management Agreement is a valid and binding agreement enforceable against the parties in accordance with its terms, and (iii) neither party is in default in performing any of its obligations under the Management Agreement.

Borrower hereby covenants with Credit Enhancer that during the term of this Assignment: (a) Borrower shall not transfer the responsibility for management of the Mortgaged Property from Manager to any other person or entity without the prior written consent of Credit Enhancer; (b) Borrower shall not terminate or amend any of the terms or provisions of the Management Agreement without the prior written consent of Credit Enhancer; and (c) Borrower shall give Credit Enhancer written notice of any notice or information that Borrower receives which indicates that Manager is terminating the Management Agreement or that Manager is otherwise discontinuing its management of the Mortgaged Property.

Upon receipt by Manager of written notice from Credit Enhancer that an Event of Default has occurred and is continuing, Credit Enhancer shall have the right to exercise all rights as owner of the Mortgaged Property under the Management Agreement.

After the occurrence of an Event of Default, Credit Enhancer (or its nominee) shall have the right at any time thereafter to terminate the Management Agreement, without cause and without liability, by giving written notice to Manager of its election to do so. Credit Enhancer's notice shall specify the date of termination, which shall not be less than 30 days after the date of such notice.

On the effective date of termination of the Management Agreement, Manager shall turn over to Credit Enhancer all books and records relating to the Mortgaged Property (copies of which may be retained by Manager, at Manager's expense), together with such authorizations and letters of direction addressed to tenants, suppliers, employees, banks and other parties as Credit Enhancer may reasonably require. Manager shall cooperate with Credit Enhancer in the transfer of management responsibilities to Credit Enhancer or its designee. A final accounting of unpaid fees (if any) due to Manager under the Management Agreement shall be made within 60 days after the effective date of termination, but Credit Enhancer shall not have any liability or obligation to Manager for unpaid fees or other amounts payable under the Management Agreement which accrue before Credit Enhancer (or its nominee) acquires title to the Mortgaged Property, or Credit Enhancer becomes a mortgagee in possession.

Manager's address for notices is:

ALLIANCE RESIDENTIAL, LLC
2525 East Camelback Road, Suite 500
Phoenix, Arizona 85016
Attn: Chief Executive Officer

All notices to be given by Credit Enhancer to Manager shall be given in the same manner as notices to Borrower pursuant to the notice provisions contained in the Security Instrument.

Modifications (if any) to this Assignment are attached on Exhibit A to this Assignment. This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

The parties to this Assignment acknowledge and agree that, except as otherwise provided below, in connection with any provision of this Assignment under which Credit Enhancer is granted the right to (a) request that the Borrower or another party (i) take or refrain from taking certain action, or (ii) deliver certain payments, information, documents or instruments, (b) give any instructions or directions or perform any work or inspections or (c) exercise remedies under this Assignment, Servicer is hereby authorized to act on behalf of, and in the place and stead of, Credit Enhancer, pursuant to the Servicing Agreement (as defined in the Reimbursement Agreement). Any rights of Servicer to act on behalf of Credit Enhancer pursuant to the preceding sentence shall be terminated as and to the extent determined by Credit Enhancer upon delivery by Credit Enhancer to the parties to this Assignment of notice of such termination. Servicer is neither affiliated with, nor acting as an agent for, the Borrower or Credit Enhancer.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower, Credit Enhancer and Manager have executed this Assignment as of the day and year first above written.

CREDIT ENHANCER:

FANNIE MAE

By: ___________________________
Name: _________________________
Title: _________________________

BORROWER:

CITY OF MARINA ABRAMS B NON-PROFIT CORPORATION,
a California nonprofit public benefit corporation

By:____________________________
Name: Layne Long
Title: Executive Officer

MANAGER:

ALLIANCE COMMUNITIES, INC.

By: _____________________________________
Name: ________________________
Title: ________________________

EXHIBIT "C"
Abrams Park Management Agreement

MANAGEMENT STRUCTURE

The Senior Management Team for Preston Park and Abrams Park:

Regional Manager
Director of Facilities
Regional Training Manager
Regional Marketing Manager
Vice President of Operations

Regional Manager, has an office at Schoonover Park. She will be at the communities at least two days a week and will have the capacity to spend additional time as needed. She will be responsible for all compliance training related to the approved below market rate rental program.

Director of Facilities, will perform monthly site inspections in addition to overseeing any capital projects that require completion. He will spend no less than two days per month at the community and possibly more depending on the capital project requirements.

Regional Training Manager and Regional Marketing Manager, will spend no less than one day each month at the site providing leasing and customer service training and marketing resources. They are also available on an as needed basis for one-on-one training.

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

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

EXHIBIT D
Abrams Park Management Agreement

TENANT GRIEVANCE PROCEDURE

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

ABRAMS 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 Operator'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 the Owner to hear grievances and render a decision. The Owner has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at Abrams Park. If the Mediation Center of Monterey County is not available for the Grievance Hearing, the Owner shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at Abrams 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 Abrams Park and who executed the lease with Alliance Communities, Inc. ("Alliance Residential") or its predecessor(s).

E. Management: The property management company for Abrams Park 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 the Owner.

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 Abrams 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 Abrams 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 Owner staff representative ("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 the Owner. Such requests may be made to the 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 the Owner. 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 the Owner 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 Owner policy or regulation.

A decision by the Hearing Officer or the Owner 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: ________________________

November 20, 2018

REVISED

Item No. **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 4, 2018

Honorable Chair and Members
of the Abrams B and Preston Park
Sustainable Community Non-Profit Corporation Boards

Abrams B NPC Meeting
of December 4, 2018

Preston Park Sustainable
Community NPC Meeting
of December 4, 2018

CITY COUNCIL, BOARD OF ABRAMS B NON-PROFIT, AND BOARD OF PRESTON PARK SUSTAINABLE COMMUNITY NON-PROFIT CONSIDER ADOPTING RESOLUTION NO. 2018- AND RESOLUTION NO. 2018- (NPC), APPROVING AN AMENDED MANAGEMENT AGREEMENT BETWEEN CITY OF MARINA, CITY OF MARINA ABRAMS B NON-PROFIT CORPORATION, AND ALLIANCE COMMUNITIES INC., FOR ABRAMS B HOUSING AREA, SUBJECT TO APPROVAL BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND RESOLUTION NO. 2018- AND RESOLUTION NO. 2018- (NPC) APPROVING AN AMENDED MANAGEMENT AGREEMENT BETWEEN CITY OF MARINA, CITY OF MARINA PRESTON PARK SUSTAINABLE COMMUNITY NON-PROFIT, AND ALLIANCE COMMUNITIES IN., FOR PRESTON PARK HOUSING AREA AUTHORIZING CITY MANAGER /EXECUTIVE DIRECTOR TO EXECUTE AN AMENDED MANAGEMENT AGREEMENTS ON BEHALF OF THE CITY AND THE NON-PROFIT CORPORATIONS SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY/NON-PROFIT CORPORATION LEGAL COUNSEL

REQUEST:

It is requested that the City Council, Board of Directors Abrams B Non-Profit Corporation, and Board of Directors Preston Park Sustainable Community Non-Profit Corporation consider:

(1) Adopting Resolution No. 2018- and Resolution No. 2018- (NPC), approving an Amended Management Agreement Between City of Marina, City of Marina Abrams B Non-Profit Corporation, and Alliance Communities Inc., for Abrams B Housing Area, subject to approval by the Federal National Mortgage Association, and

(2) Authorizing City Manager/Executive Director to execute an Amended Management Agreement on Behalf of the City and the Non-Profit Corporation subject to final review and approval by the City Attorney/Non-Profit Corporation Legal Counsel.

(3) Adopting Resolution No. 2018 – and Resolution No. 2018 – (NPC), approving an Amended Management Agreement Between City of Marina, City of Marina Preston Park Sustainable Community Non-Profit Corporation, and Alliance Communities Inc., for Preston Park Housing Area, and

(4) Authorizing City Manager/Executive Director to execute an Amended Management Agreement on Behalf of the City and the Non-Profit Corporation subject to final review and approval by the City Attorney/Non-Profit Corporation Legal Counsel.

BACKGROUND:

The City is the owner of the Abrams B housing area and the Abrams B Non-Profit Corporation is the lessee of the property. In 2006, in connection with financing arrangement for Abrams B housing, the Non-Profit Corporation was required by the Federal National Mortgage Association ("Fannie Mae"), acting as the credit enhancer for the financing arrangement, to enter into a conditional assignment of the Management Agreement whereby in the event of a default in the financing arrangement the Management Agreement would be assigned to Fannie Mae. Any termination and all subsequent amendments to the Management Agreement are subject to the prior written approval of Fannie Mae. Fannie Mae approved the Management Agreement with Alliance Communities, Inc., and all amendments to date to the Management Agreement.

At a regular meeting of October 16, 2007, the City Council adopted Resolution No. 2007-249 and the Non-Profit Corporation Board adopted Resolution No. 2007-01 (NPC) approving the Management Agreement with Alliance Residential LLC (which became Alliance Communities Inc. in May 2009) for management of the Abrams housing area. The term of the Agreement was for three (3) years, from January 1, 2008 to December 31, 2011.

On December 27, 2007, Amendment No. 1 to the Management Agreement for Abrams Park was executed by the City Manager on behalf of the City and the Executive Officer on behalf of the Abrams B Non-Profit Corporation. The Amendment modified the term of the Agreement to two (2) years, to December 31, 2010, with an option for extension of an additional one-year term from January 1, 2011 to December 31, 2011, and added an early termination clause.

At a regular meeting of July 7, 2010, the City Council adopted Resolution No. 2010-108 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2010-1 (NPC) which approved Amendment No. 2 to the Management Agreement. Requested by the Finance Director, Amendment No. 2 amended the audit requirements to permit a two (2) year audit instead of an annual audit, resulting in cost savings.

At a special meeting on December 14, 2010, the City Council adopted Resolution No. 2010-199 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2010-05 (NPC) which approved Amendment No. 3 to the Management Agreement. Amendment No. 3 exercised the option provided in Amendment No. 1 and extended the term of the Agreement from December 31, 2010 to December 31, 2011.

At a regular meeting of February 15, 2011, the City Council adopted Resolution No. 2011-27 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2011-01 (NPC) which approved Amendment No. 4 to the Management Agreement. Amendment No. 4 deleted the Incentive Fee clause, amended the Capital Improvements Management Fee, revised record keeping and monthly reporting requirements, defined affordable rents, revised the requirements for bank accounts and their signatories, updated the priority preferences for resident selection, and amended the Grievance Procedure.

At a regular meeting of December 4, 2011, the City Council adopted Resolution No. 2011- 206 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2011-10 (NPC) which approved Amendment No. 5 to the Management Agreement. Amendment No. 5 extended the term of the Agreement from December 31, 2011 to December 31, 2012.

At a regular meeting of December 4, 2012, the City Council adopted Resolution No. 2012-184 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2012-15 (NPC) which approved Amendment No.6 to the Management Agreement. Amendment No. 6 extended the term of the Agreement from December 31, 2012 to December 31, 2013.

At a regular meeting of December 17, 2013, the City Council adopted Resolution No. 2013-191 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2013-08 (NPC) which approved Amendment No. 7 to the Management Agreement. Amendment No. 7 extended the term of the Agreement from December 31, 2013 to December 31, 2014.

At a regular meeting of December 16, 2014, the City Council adopted Resolution No. 2014-130 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2014-04 (NPC) with approved Amendment No. 8 to the Management Agreement. Amendment No. 8 extended the term of the Agreement from December 31, 2014 to December 31, 2015.

At a regular meeting of December 15, 2015, the City Council adopted Resolution No. 2015-144 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2015-03 (NPC) with approved Amendment No. 9 to the Management Agreement. Amendment No. 9 extended the term of the Agreement from December 31, 2015 to December 31, 2016.

At the regular meeting of December 12, 2016, the City Council adopted Resolution No. 2016-155 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2016-156 (NPC) with approved Amendment No. 10 to the Management Agreement. Amendment No. 10 extended the term of the Agreement from December 31, 2016 to December 31, 2017.

At a regular meeting of December 19, 2017, the City Council adopted Resolution No. 2017-122 and the Abrams B Non-Profit Corporation Board adopted Resolution No. 2017-04 (NPC) which approved Amendment No. 11 to the Management Agreement. Amendment No. 11 made numerous changes that were clean up or clarification in nature and eliminated the bonus and incentive program for Alliance employees.

The current Abrams B Management Agreement terminates on December 31, 2017. As proposed, the Amended Management Agreement would extend the term of the Management Agreement to December 31, 2018
(“**EXHIBIT A**”).

Additionally, the City of Marina purchased Preston Park from the Fort Ord Reuse Authority in September 2015 and approved Amendment No. 1 to the Management Agreement between the City of Marina and Alliance Communities Inc., for the Preston Park Housing Area. Amendment No. 1 extended the term of the Agreement from December 31, 2016 to December 31, 2017.

At a regular meeting of December 19, 2017, the City Council adopted Resolution No. 2017-123 and the Preston Park Sustainable Community Non-Profit Corporation Board adopted Resolution No. 2017-04 (NPC) which approved Amendment No. 2 to the Management Agreement. Amendment No. 2 made numerous changes that were clean up or clarification in nature and eliminated the bonus and incentive program for Alliance employees.

This agreement expires December 31, 2018. As proposed, the Amended Management Agreement would extend the term of the Preston Park Management Agreement to December 31, 2018 (**EXHIBIT B**).

ANALYSIS:

Staff is proposing that an Amended Management Agreements for both Abrams Park and Preston Park be approved which will extend the term from December 31, 2018 to December 31, 2019 for both agreements.

Staff conducted a review of the existing agreements with input from Council members Morton and O'Connell and the Tenants Association. The proposed changes that have been made because of that review are highlighted in the agreements. Most of the changes are cleanup or clarification in nature and do not change the Scope of Services or compensation to the management.

Staff will continue to work with Alliance to monitor the performance of the management of the property. The following is a list of performance indicators that will be considered:

- Revenue vs. expenses vs. budget performance
- Maintenance of the property
- Relationship/communication with residents
- Community appearance
- Capital improvement projects; status of current and recommended for the future
- Resident complaints
- Responses to service requests
- Suggestions from tenants association

Additionally, staff is working to update the Regulatory Agreements particularly in regards to the below market housing restrictions and will be bringing this back to the Council for consideration in the near future.

If the term is not extended beyond December 31, 2018, there will be no legal entity empowered to collect rents and administer the property on and after January 1, 2019.

FISCAL IMPACT:
Should the City Council, Abrams B Non-Profit Corporation Board, and Preston Park Sustainable Community Non-Profit Corporation Board approve the request, the Amended Management Agreements do not change the compensation to Alliance and rental revenue would continue to be collected on and after January 1, 20178 until December 31, 2019.

CONCLUSION:
This request is submitted for City Council and Non-Profit Corporation Boards consideration and possible action.

Respectfully submitted,

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Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

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Layne P. Long
City Manager
City of Marina