



Fort Ord Reuse Authority

920 2nd Avenue, Ste. A, Marina, CA 93933
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

BOARD OF DIRECTORS WORKSHOP Friday, February 10, 2012 from 2:00 to 3:45 p.m. 910 2nd Avenue, Marina, CA 93933 (on the former Fort Ord)

AGENDA

1. **CALL TO ORDER AND ROLL CALL**
2. **INTRODUCTION/OVERVIEW**
3. **HABITAT CONSERVATION PLAN (“HCP”) (5-minute presentation)**
 - a. Background and purpose
 - b. Contents of the document
 - c. Subsequent CEQA/NEPA clearances
 - d. Fort Ord Regional Habitat Cooperative: a Joint Powers Authority
 - e. Funding
 - f. Schedule to approval
4. **BASE REUSE PLAN (“BRP”) REASSESSMENT (5-minute presentation)**
 - a. Background and purpose
 - b. Status report: RFQ process
 - c. Next steps
 - d. Schedule to approval
5. **CAPITAL IMPROVEMENT PROGRAM (“CIP”) (5-minute presentation)**
 - a. Background and purpose
 - b. Remaining Obligations
 - c. Funding Opportunities
 - d. Schedule
6. **FORT ORD REUSE AUTHORITY (“FORA”) EXTENSION (5-minute presentation)**
 - a. Background and purpose
 - b. Remaining obligations
 - c. Schedule/“Critical path” steps for moving extension legislation forward
7. **CALENDAR OF EVENTS / CONSOLIDATED SCHEDULE (5-minute presentation)**
8. **QUESTIONS FROM BOARD MEMBERS**
9. **PUBLIC COMMENT**
10. **BOARD DISCUSSION**
11. **BOARD DIRECTION TO STAFF** ACTION/INFORMATION
12. **ADJOURNMENT (at 3:45 p.m.)**

*Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Deputy Clerk at: 831-883-3672 * 920 2nd Avenue, Ste. A, Marina, CA 93933 by 5:00 p.m. one business day prior to the meeting. Agendas can also be found on the FORA website: www.fora.org.*



Fort Ord Reuse Authority

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BOARD OF DIRECTORS MEETING Friday, February 10, 2012 at 3:45 p.m. – or following workshop 910 2nd Avenue, Marina, CA 93933 (on the former Fort Ord)

AGENDA

1. **CALL TO ORDER AND ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS, AND CORRESPONDENCE**
 - a. Letters of Appreciation to Department of the Interior Secretary Ken Salazar, Deputy Secretary David Hayes, and others
4. **PUBLIC COMMENT PERIOD:** Members of the audience wishing to address the Fort Ord Reuse Authority ("FORA") Board on matters within the jurisdiction of FORA, but not on this agenda, may do so during the Public Comment Period. Public comments are limited to a maximum of three minutes. Public comments on specific agenda items will be heard at the time the matter is under Board consideration.
5. **CONSENT AGENDA**
 - a. January 13, 2012 FORA Board meeting minutes ACTION
6. **OLD BUSINESS**
 - a. Preston Park – Management Agreement Consideration and Disposition report ACTION/INFORMATION
 - b. California Central Coast Veterans Cemetery – update INFORMATION
7. **NEW BUSINESS**
 - a. FORA Mid-Year Budget ACTION
 - b. Base Reuse Plan reassessment – consultant selection ACTION
 - c. Confirmation of Chair's 2012 FORA Committee Appointments ACTION
8. **EXECUTIVE OFFICER'S REPORT**
 - a. Outstanding Receivables INFORMATION
 - b. Administrative Committee INFORMATION
 - c. Finance Committee INFORMATION
 - d. Habitat Conservation Plan INFORMATION
 - e. Executive Officer's Travel INFORMATION
9. **ITEMS FROM MEMBERS**
10. **CLOSED SESSION**
 - a. Preston Park Mediation
11. **REPORT OUT OF CLOSED SESSION**
12. **ADJOURNMENT**

FORT ORD REUSE AUTHORITY BOARD REPORT

ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE

Subject:	Letters of Appreciation to Department of the Interior Secretary Ken Salazar, Deputy Secretary David Hayes, and others	
Meeting Date:	February 10, 2012	
Agenda Number:	3a	INFORMATION

RECOMMENDATION:

Receive copies of Fort Ord Reuse Authority ("FORA") letters to Department of the Interior ("DOI") Secretary Ken Salazar and Deputy Secretary David Hayes expressing appreciation for their January 13, 2012 visit to the former Fort Ord (*Attachment A*). Similar letters were sent to Bureau of Land Management ("BLM") Director Bob Abbey, Congressman Sam Farr, US Army Base Realignment and Closure Chief Tom Lederle, Interim President Henrietta Stern of the FORT Friends group and the Board President of the Conservation Lands Foundation. These letters are not attached since they generally describe the same events and to conserve resources, but copies can be obtained by contacting FORA.

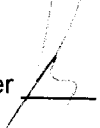
BACKGROUND/DISCUSSION:

September 23, 2011, FORA Assistant Executive Officer Steve Endsley sent a request to DOI Secretary Ken Salazar inviting him and BLM Director Bob Abbey to visit Fort Ord Public Lands (*Attachment B*) and tour this unique resource to discuss protection of these lands for future generations through a National Landscape Conservation System ("NLCS") designation. Many others joined in the invitation to Secretary Salazar.

Through coordination between FORA, local BLM staff and FORT Friends, Secretary Salazar, Deputy Secretary Hayes and BLM Director Abbey toured the Fort Ord Public Lands on January 13th and later that afternoon held a "town hall" gathering, providing the public an opportunity to share their support for the designation and engage federal leadership regarding the importance of the sustainable principles of former Fort Ord reuse efforts.

Secretary Salazar proclaimed that; "This is one of those areas where you are as close as you can come to having heaven on earth," noted articles published in the Monterey Herald and Santa Cruz Sentinel (*Attachment C*). In a thank you letter to FORA Executive Officer Houlemard (*Attachment D*), Secretary Salazar noted that "the commitment to preserve and protect the public lands at Fort Ord...is an excellent example of how locally-driven efforts can create world-class outdoor destinations that strengthen local economies."

FISCAL IMPACT:

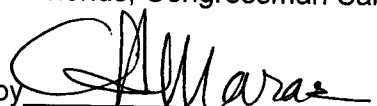
Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

COORDINATION:

BLM, FORT Friends, Congressman Sam Farr, Assembly Member John Laird

Prepared by


Crissy Maras

Approved by


Michael A. Houlemard Jr.



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Attachment A to Item 3a
FORA Board Meeting, 2/10/12

January 18, 2012

Secretary Ken Salazar
Department of the Interior
1849 C St. NW
Washington, DC 20240

RE: Former Fort Ord Visit and the National Conservation Landscape System Designation

Dear Secretary Salazar,

The Fort Ord Reuse Authority ("FORA") Board of Directors was honored to host you, Deputy Secretary Hayes and Bureau of Land Management Director Bob Abbey during your recent visit to the former Fort Ord. The FORA Board has actively pursued a National Conservation Landscape System ("NLCS") designation for several years, including such in each of the past two year's FORA legislative agendas. Your visit was an exciting opportunity for the community to share their support for the designation and highlight these natural habitats and open space areas.

We especially thank you for your kind words of support for our former Fort Ord economic and sustainable reuse efforts, consistent with natural resource conservation principles. We also appreciate your compliments regarding our Community Information Center, and as the Center continues to evolve, we would urge you to maintain connected to our efforts through our website at www.fora.org.

If the former Fort Ord Bureau of Lands Management property is awarded with an NCLS designation, over 60% of the former installation will be sustained as open space and habitat lands will remain available to the public for various types of recreation such as equestrian uses, hiking, and biking. It will additionally provide the opportunity for the local educational institutions to utilize the land in an effort to educate about the importance of sustainability. If such NLCS designation is determined appropriate, we remind you of the Association of Defense Communities Annual Conference that will be held in Monterey this summer as a potential opportunity for announcement – but we are cautious about such optimism.

The FORA Board of Directors and staff extends their appreciation to you and your staff for taking the opportunity to visit the former Fort Ord as part of the NLCS designation interest. We are hopeful that the value and importance of working together in this effort is realized in the near future when the open space on former Fort Ord is recognized for its inherent splendor and protected in perpetuity.

Sincerely,

A handwritten signature in cursive script that reads "Dave Potter".

Dave Potter, Chair
Fort Ord Reuse Authority

C: FORA Board of Directors



Fort Ord Reuse Authority

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January 18, 2012

Deputy Secretary David Hayes
Department of the Interior
1849 C St. NW
Washington DC 20240

RE: Former Fort Ord Visit and the National Conservation Landscape System Designation

Dear Deputy Secretary Hayes,

The Fort Ord Reuse Authority ("FORA") Board of Directors was honored to host you, Secretary Salazar and Bureau of Land Management Director Bob Abbey during your recent visit to the former Fort Ord. The FORA Board has actively pursued a National Conservation Landscape System ("NLCS") designation for several years and your visit was an exciting opportunity for the community to share their support for the designation as well. FORA Board members have endorsed this effort for that last two years and we look forward to a designation in the near future.

If the former Fort Ord Bureau of Lands Management property is awarded with an NCLS designation, over 60% of the former installation will be sustained as open space and habitat lands and remain available to the public for various types of recreation such as equestrian uses, hiking, and biking. It will additionally provide the opportunity for the several local educational institutions to utilize the land in an effort to educate about the importance of economic and environmental sustainability. An additional 10% (or more) of the former Fort Ord will also be conserved as open space and habitat for regional and national enjoyment.

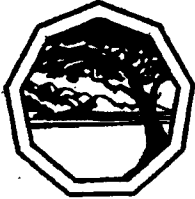
The FORA Board of Directors and staff extends their appreciation to you and your staff for taking the opportunity to visit the former Fort Ord as part of the NLCS designation interest. We are hopeful that the value and importance of working together in this effort is realized in the near future when the open space on former Fort Ord is recognized for its inherent splendor and protected in perpetuity. Please let us know if your schedule brings you back to the former Fort Ord as our staff would like to provide a tour that also focuses on our integration of reuse with open space areas.

Sincerely,

A handwritten signature in cursive script that reads "Dave Potter".

Dave Potter, Chair
Fort Ord Reuse Authority

C: FORA Board of Directors



FORT ORD REUSE AUTHORITY
100 12TH STREET, BUILDING 2880, MARINA, CALIFORNIA 93933
PHONE: (831) 883-3672 - FAX: (831) 883-3675
WEBSITE: www.fora.org

September 23, 2011

The Honorable Ken Salazar, Secretary
U.S. Department of Interior
1849 C Street NW
Washington, DC 20240

Re: Invitation to tour Fort Ord Public Lands

Dear Secretary Salazar:

I am writing to invite you and Bureau of Land Management (BLM) Director Bob Abbey to visit the Fort Ord Public Lands at your earliest convenience. As you know, the Fort Ord Recreation Trails (FORT) Friends, its affiliates and interested groups, also sent you an invitation to tour this unique public resource. I am sending this invitation in further support of and coordination with FORT Friends' request.

The Fort Ord Reuse Authority (FORA) is a regional governmental organization created in 1994 and includes as members the eight cities of the beautiful Monterey Peninsula as well as Monterey County. FORA was granted specific powers by the State of California to complete the planning, financing, and implementation of reuse as described in the adopted 1997 FORA Base Reuse Plan. A key component of the 1997 Base Reuse Plan is preservation of approximately 18,000 acres of habitat and open space. These Fort Ord Public Lands offer some of the last remaining wild lands readily accessible to the public in the Monterey Bay area.

The Fort Ord Public Lands support unique plant and animals communities, including 35 species of rare plants and animals along with their native coastal habitats. FORA is dedicated to preserving former Fort Ord habitats and is the lead agency preparing the Habitat Conservation Plan for former Fort Ord lands including those to be held by BLM, California Department of Parks and Recreation, California State University and the University of California System, among others. FORA believes that the Fort Ord Public Lands are a special resource deserving of national recognition and long-term protection.

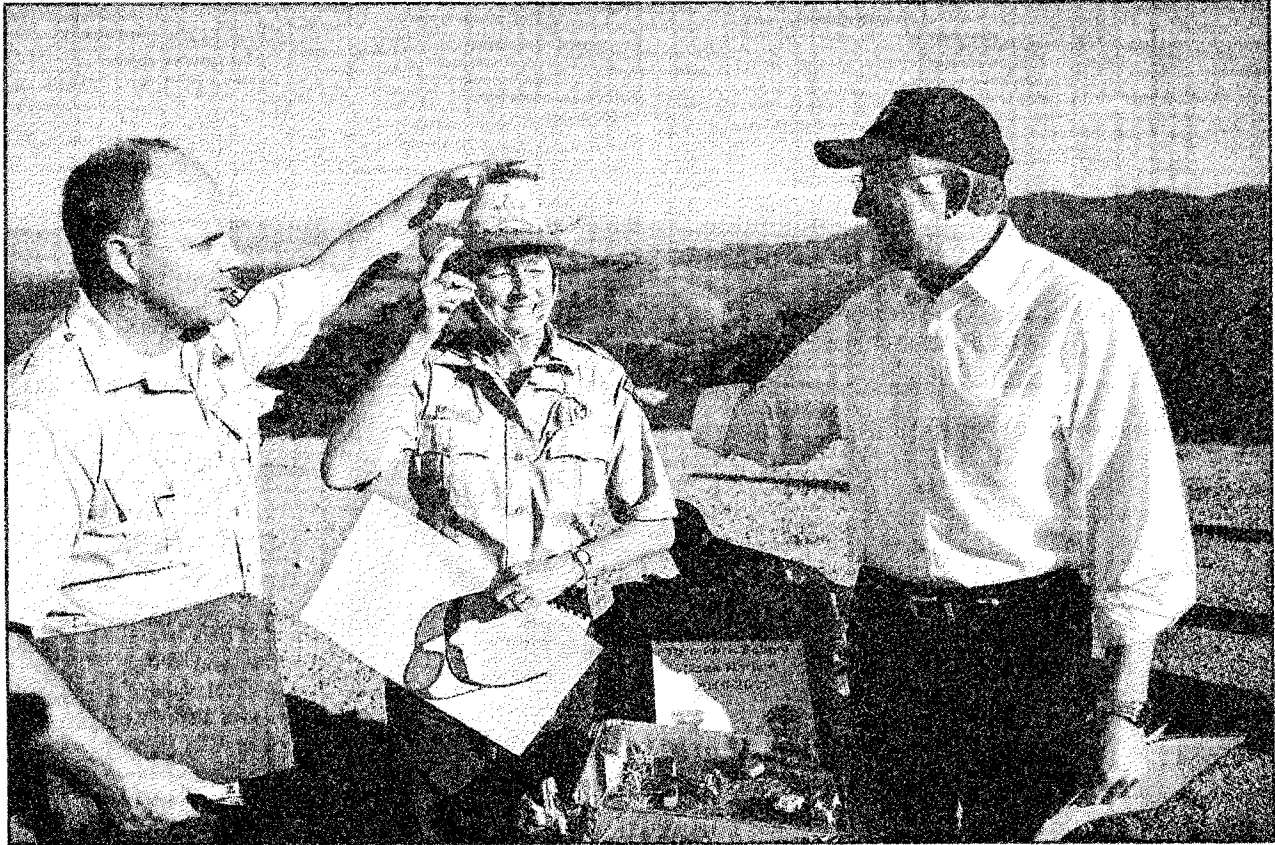
FORA cordially invites you and BLM Director Bob Abbey to visit the Fort Ord Public Lands to meet with FORT Friends, other organizations, and our agency to tour this unique resource and discuss protection of these lands for future generations.

Sincerely,

D. Steven Endsley
Assistant Executive Officer

CC: FORA Board of Directors

Monterey County: Interior chief calls BLM land 'crown jewel'



DAVID ROYAL/The Herald

Bureau of Land Management Fort Ord Manager Eric Morgan, left, places a pink cowboy hat on BLM ranger Tammy Jaki as Interior Secretary Ken Salazar looks on Friday at Wildcat Ridge on Fort Ord. Salazar is known for wearing cowboy hats.

SALAZAR PUSHES FOR ORD MONUMENT

Bureau of Land Management Director Bob Abbey speaks in front of Rep. Sam Farr, D-Carmel, and Interior Secretary Ken Salazar, left, on Friday at the Carpenters Local 605 building in Marina.



By JULIA REYNOLDS
Herald Staff Writer

Interior Secretary Ken Salazar ended a visit to Monterey County on Friday with a call to President Barack Obama to designate Fort Ord as a national monument.

Conducting an informal poll of the audience in a town-hall type meeting in Marina, Salazar described the designation as the best way to conserve the coastal lands in perpetuity.

"Our best places in the United States ... are those where you have the kind of united community support that I see here today," Salazar told his audience after nearly 100 hands were

HERALD QUESTION OF THE DAY

Are you satisfied with the reuse effort at Fort Ord?

Yes No

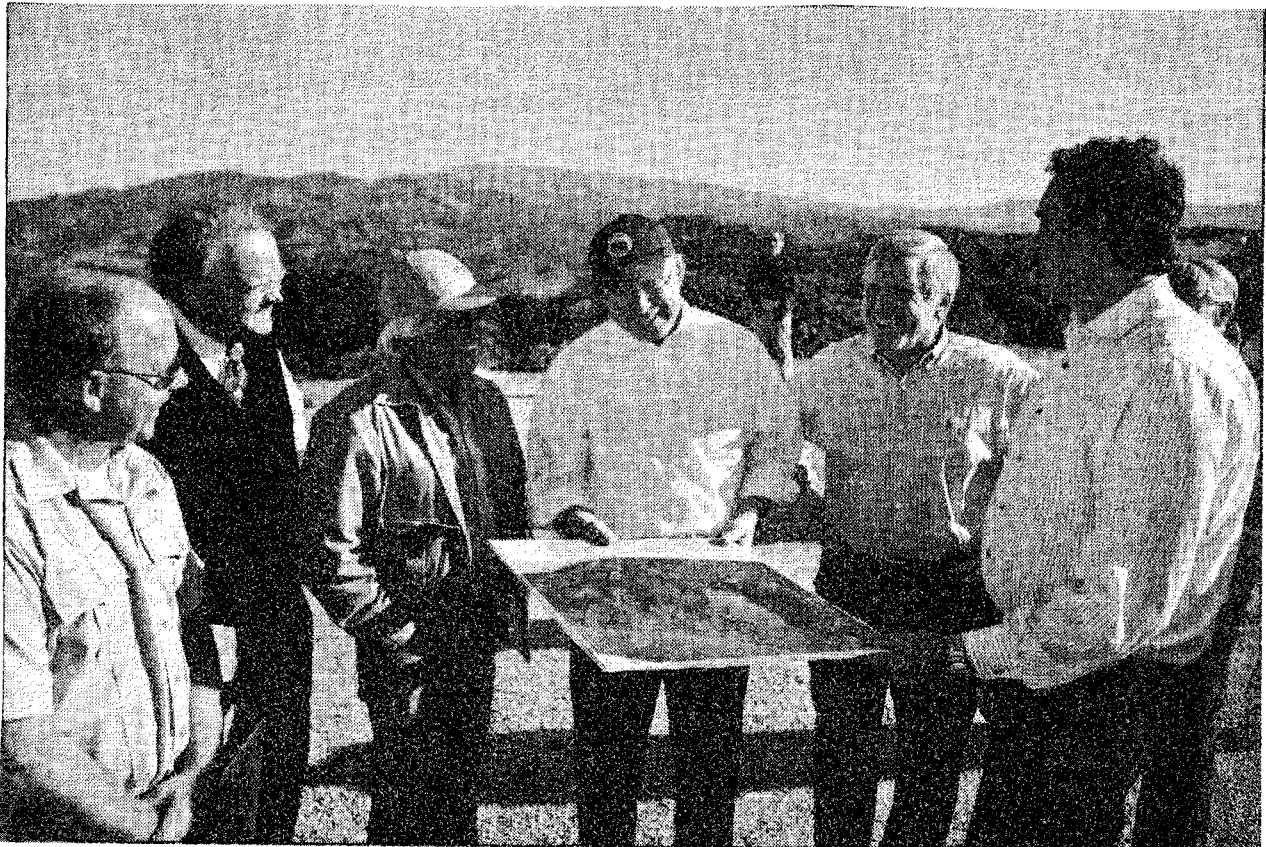
Go to: montereyherald.com to place your vote

Herald surveys are unscientific

raised in favor of the designation.

Salazar spent the morning in Sacramento signing an agreement with Gov. Jerry Brown to expand a state and federal partnership to develop renewable energy projects in California.

By afternoon, he was



DAVID ROYAL/The Herald

Interior Secretary Ken Salazar, center in white, looks over a map of Fort Ord on Wildcat Ridge on Friday. Surrounding Salazar are, from left, Eric Morgan, BLM Fort Ord manager; Rep. Sam Farr, D-Carmel; Marina Mayor and BLM botanist Bruce Delgado; Deputy Interior Secretary David Hayes; and Base Realignment and Closure Commission biologist Bill Collins.

Salazar

touring the vast Bureau of Land Management acreage on the former military base that hugs Monterey Bay.

Atop a rise with spectacular views known as Wildcat Ridge, Rep. Sam Farr, D-Carmel, pointed out to Salazar the surrounding natural attractions, from Pinnacles National Monument to the east, Los Padres National Forest to the south, the Monterey Bay National Marine Sanctuary to the west and the future Fort Ord Dunes State Park below the red-rock hilltop.

Jokingly calling the region the Disneyland of the outdoors, Farr said, "There is more diversity of outdoor activity (here) than anyplace else in the United States."

Farr noted the area's proximity to Salinas — "the largest agricultural city in the

country and home to more farmworkers than anywhere else" — and told Salazar the story of a Salinas boy who took part in a bike race on the land. The boy had disappeared from the group. Fellow bikers found him atop Wildcat Ridge, staring at the sweeping view of the Pacific.

"He stopped right here in tears . . . because he saw the ocean for the first time," Farr said. "That's why we're doing this."

Although Salazar was missing his signature cowboy hat, the Colorado native appeared at home on the ridge in cowboy boots and a western belt buckle. Gesturing to the landscape around him, he said the area is "a crown jewel that will be around when all of us are gone."

The small entourage included Deputy Interior Secretary David J. Hayes, BLM director Bob Abbey and Marina Mayor Bruce Delgado, who is also a Bureau of Land

Management botanist.

The bureau is in charge of about 7,200 acres of maritime chaparral lands transferred from the Department of Defense in 1996. Once military ordnance cleanup is complete, the bureau will take control of an additional 7,000 acres.

The transfer is expected to be complete by 2019, BLM officials said.

After the tour, Salazar's group was joined at the Carpenters Union Local 605 building in Marina by members of the public and California Secretary for Natural Resources John Laird.

The so-called "listening session" was part of Obama's America's Great Outdoors Initiative, which supports local efforts to preserve and protect natural and historical places.

Salazar urged local preservation groups to communicate their support of national monument status to Sens. Barbara Boxer and Dianne Feinstein. The

designation would afford more protection for wildlife, but somewhat less funding and protection than a national park.

BLM spokeswoman Erin Curtin said even existing plans to transfer more acreage to the bureau will raise Fort Ord's profile and draw visitors to the area's 86 miles of roads and trails that can be used for hiking, biking and other recreational activities.

Before he left to catch a plane, Salazar asked how many in the room wanted "this land protected and preserved in perpetuity."

He was met with resounding applause.

"This is one of those places," he said, "where you are as close as you can come to having heaven on earth."

Julia Reynolds can be reached at 648-1187 or jreynolds@montereyherald.com.

Salazar makes push for former Army base

Secretary of the Interior says Fort Ord should become national monument

By **JULIA REYNOLDS**
Monterey County Herald

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Conducting an informal poll of the audience in a town-hall type meeting in Marina, Salazar described the designation as the best way to conserve the coastal lands in perpetuity.

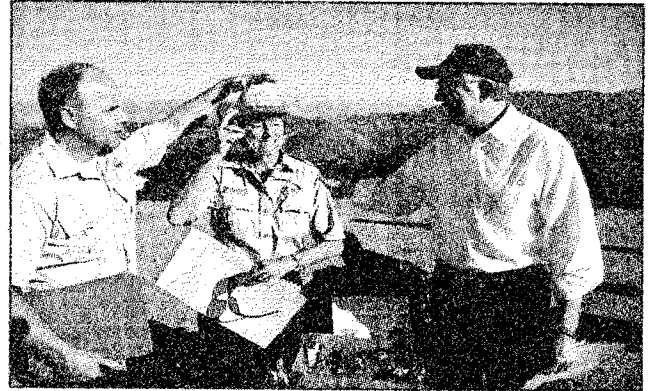
"Our best places in the United States ... are those where you have the kind of united community support that I see here today," Salazar told his audi-

ence after nearly a hundred hands were raised in favor of the designation.

Salazar spent the morning in Sacramento signing an agreement with Gov. Jerry Brown to expand a state and federal partnership to develop renewable energy projects in California.

By afternoon, he was touring the vast Bureau of Land Management acreage on the former military base that hugs Monterey Bay.

Atop a rise with spectacular views known as Wildcat Ridge, Rep. Sam Farr, D-Carmel, pointed out to Salazar the surrounding natural attractions,



DAVID ROYAL/ MONTEREY COUNTY HERALD

Bureau of Land Management Fort Ord Manager Eric Morgan, left, throws a pink cowboy hat on BLM ranger Tammy Jakl in honor of Interior Secretary Ken Salazar, right, on Wildcat Ridge during a visit to the Monterey Peninsula on Friday. Salazar is known for wearing a cowboy hat.

FORT ORD

from Pinnacles National Monument to the east, Los Padres National Forest to the south, the Monterey Bay National Marine Sanctuary to the west and the future Fort Ord Dunes State Park below the red-rock hilltop.

Jokingly calling the region the Disneyland of the outdoors, Farr said, "There is more diversity of outdoor activity (here) than any place else in the United States."

Farr noted the area's proximity to Salinas — "the largest agricultural city in the country and home to more farm workers than anywhere else" — and told Salazar the story of a Salinas boy who took part in a bike race on the land. The boy had disappeared from the group. Fellow bikers found him atop Wildcat Ridge, staring at the sweeping view of the Pacific.

"He stopped right here in tears ... because he saw the ocean for the first time," Farr said. "That's why we're doing this."

Although Salazar was missing his signature cowboy hat, the Colorado native appeared



DAVID ROYAL/ MONTEREY COUNTY HERALD

Interior Secretary Ken Salazar, center in white, laughs while looking over a map of Fort Ord on Wildcat Ridge in Fort Ord Public Lands during a visit to the Monterey Peninsula on Friday. Surrounding Salazar are BLM Fort Ord Manager Eric Morgan, from left, Rep. Sam Farr (D-Carmel), Marina Mayor and BLM botanist Bruce Delgado, Deputy Interior Secretary David Hayes and BRAC biologist Bill Collins. The area was formerly an Army base.

at home on the ridge in cowboy boots and a western belt buckle. Gesturing to the landscape around him, he said the area is "a crown jewel that will be around when all of us are gone."

The small entourage included deputy Interior Secretary David J. Hayes, BLM director Bob Abbey and Marina Mayor Bruce Delgado, who is also a Bureau of Land Management botanist.

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of about 7,200 acres of maritime chaparral lands transferred from the Department of Defense in 1996. Once military ordnance cleanup is complete, the bureau will take control of an additional 7,000 acres.

The transfer is expected to be complete by 2019, BLM officials said.

After the tour, Salazar's group was joined at the Carpenters Union Local 605 building in Marina by members of the public and California Sec-

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THE SECRETARY OF THE INTERIOR
WASHINGTON

January 19, 2012

Michael Houlemard, Executive Officer
Fort Ord Reuse Authority
920 2nd Ave., Suite A
Marina, CA 93933

Dear Michael:

Thank you for participating in the public listening session at Fort Ord. I enjoyed the opportunity to hear from many diverse stakeholder groups and organizations who work to protect natural resources on the base.

Your commitment to preserve and protect the public lands at Fort Ord for the enjoyment of all Americans is an excellent example of how locally-driven efforts can create world-class outdoor destinations that strengthen local economies.

I would also like to personally thank the FORA staff for their participation in the session.

I look forward to continuing the strong partnership we have to ensure that this special area is protected and available for the enjoyment of all for generations to come. I hope you will continue to achieve success in the future.

Sincerely,

A handwritten signature in black ink that reads "Ken Salazar".

Ken Salazar



Fort Ord Reuse Authority

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BOARD OF DIRECTORS MEETING

Friday, January 13, 2012
4:00 p.m. - Carpenters Union Hall
920 2nd Ave, Suite A, Marina (on the former Fort Ord)

MINUTES

A special reception was held at 3:00 pm in the new Fort Ord Reuse Authority (FORA) Community Information Center for Secretary of the Interior Ken Salazar; FORA board members and invited guests attended. Secretary Salazar then addressed members of the community in the Carpenters Union Hall; about 300 people were in attendance. When the question and answer session ran overtime, it was announced that the FORA Board meeting would take place in the FORA Conference Room in the adjoining building. A sign was posted on the door to announce this change.

1. CALL TO ORDER AND ROLL CALL

Chair Potter called the January 13, 2012, Board of Directors meeting to order at 4:12 p.m.

Voting members present:

Chair/Supervisor Potter (County of Monterey)	2 nd Vice Chair/Mayor Pro Tem O'Connell (City of Marina)
1 st Vice Chair/Mayor Edelen (City of Del Rey Oaks)	Councilmember Oglesby (City of Seaside)
Mayor Pendergrass (City of Sand City)	Jim Cook (County of Monterey)
Mayor Pro Tem Kampe (City of Pacific Grove)	Councilmember Brown (City of Marina)
Supervisor Parker (County of Monterey)	Mayor McCloud (City of Carmel-by-the-Sea)
Councilmember Selfridge (City of Monterey)	
Mayor Bachofner (City of Seaside)	

Arriving after the roll: Councilmember Brown (City of Marina)
Absent: none

Ex-Officio members present:

Nicole Charles (27th State Assembly District)
Hans Poschner (15th State Senate District)
Kevin Saunders (California State University Monterey Bay)
Dr. Bruce Margon (University of California Santa Cruz)
Dr. Douglas Garrison (Monterey Peninsula College)
Dan Albert, Jr. (Monterey Peninsula Unified School District)
Debbie Hale (Transportation Agency for Monterey County)
COL Joel Clark (United States Army)
Gail Youngblood (Fort Ord BRAC Office)
Howard Gustafson (Marina Coast Water District)

Absent: Alec Arago (17th Congressional District) and Hunter Harvath (Monterey-Salinas Transit)

- 2. PLEDGE OF ALLEGIANCE – Since no flag was present, Chair Potter omitted the Pledge of Allegiance.
- 3. ANNOUNCEMENTS, ACKNOWLEDGEMENTS, CORRESPONDENCE - none

4. PUBLIC COMMENT PERIOD

Jane Haines said that the deed restrictions and notice to be recorded on the rest of the Preston Park property had not been recorded, citing §8.01.010 of the FORA Master Resolution subsections j and k. Paula Pelot, Preston Park resident, commented that the time of the FORA Board meeting was inconvenient for people who work to attend, and video recordings of the proceedings are not available. She said the board's actions affect the lives of the Preston Park residents, and the only source of information is the minutes. She asked that the Board reconsider the start time and provide more detailed minutes. Patty Kramer, a Marina resident, made the same comment. Denise Turley, a Marina resident, asked that a public meeting be scheduled to address this concern. Chair Potter said these comments will be considered under agenda item 6a.

5. CONSENT AGENDA

Supervisor Parker said she would also appreciate more detail in the minutes and made several refinements to her comments in the December minutes. Mayor McCloud remarked that a change to action minutes had been previously approved, and Executive Officer Houlemard concurred. Chair Potter said the Executive Committee would revisit this matter. There were no public comments. **Motion to approve the December 16, 2011 board minutes, including Supervisor Parker's changes, was made by Supervisor Parker, seconded by Mayor Edelen, and carried.** Mayor McCloud said that Carmel council meetings are available in streaming video and reported that it has been well received.

6. OLD BUSINESS

a. Preston Park

i. Second Vote (ACTION)

1. Authorize staff to secure an updated appraisal for Preston Park
2. Approve an up-to-ninety (90) day extension of the last Preston Park Management Agreement³.
3. Authorize staff to sell Preston Park

ii. First Vote on New Alliance/FORA Preston Park Management Agreement (ACTION)

iii. Disposition update (INFORMATION)

Assistant Executive Officer Endsley summarized the board report. Chair Potter said discussion of 6ai1 and 6ai3 would be first. General discussion on both items followed. Mayor McCloud asked if there was a date certain for the updated appraisal and Assistant Executive Officer Endsley replied yes. There were no public comments. **Motion to authorize staff to secure an updated appraisal for Preston Park (item 6ai1) was made by Mayor McCloud, seconded by Mayor Edelen, and carried unanimously.** Two board members suggested that mediation by the parties to work out their differences be given a chance, and Executive Officer Houlemard reported that a mediation meeting had been scheduled for February 2. Public comment re item 6ai3: Patty Kramer opposed the sale of Preston Park. Her recent letter had recommended that Preston Park be conveyed as a no-cost parcel, in view of Marina's budget constraints, but she acknowledged the need to fund infrastructure. She added that the residents would be unfairly treated if the property were sold. **Motion to authorize staff to sell Preston Park (item 6ai3) was made by Mayor Edelen and seconded by Councilmember Oglesby.** Discussion of the "buy" concept followed, and Authority Counsel Bowden provided clarification, stating that the Implementation Agreement separated out Preston Park as a special case, and, similar to the Abrams Park transaction, FORA is legally entitled to 50% of Preston Park's fair market value. Councilmember O'Connell suggested that the legal documents be carefully reviewed and any move forward should proceed with care. He stated that the Marina city council disagrees with this interpretation. **A vote was called for and the item passed, since this was a second vote and required only a majority [ten (10) yes votes and three (3) nay votes: Councilmembers Selfridge and O'Connell and Supervisor Parker].**

Item 6ai2: Chair Potter explained that a ninety-day extension in item 6ai2 referred to the three-party management agreement that expired on December 31, 2011. He stated that item 6ai2 is up for a second vote. Assistant Executive Officer Endsley clarified that the ninety-day extension in item 6aii would have been an extension at the December Board meeting, but, since this motion didn't pass in December and the three-party management agreement expired on December 31, 2011, the Executive Officer entered into a two-party management agreement, as authorized by the Board at their November meeting and described in the board report. Councilmember O'Connell asked why a Marina representative had not been permitted to attend the Closed Session in November, when this was discussed, and that this appears to be a Brown

Act violation. Authority Counsel Bowden explained that the item involved litigation. Councilmember Oglesby said this fact should have been noted in the minutes. Mayor McCloud asked if ninety days are enough time for this extension. Jim Cook asked what Marina's position was, and Councilmember O'Connell replied the city council supports extending the three-party management agreement for ninety days. Several public comments regarding the absence of public input in the Closed Session discussion were expressed. A discussion followed that revolved around supposed unilateral actions and all parties present agreed to communicate directly with each other to avoid future misunderstandings. **Motion to continue item 6ai2 (a second vote) and item 6aii (first vote) was made by Mayor McCloud, seconded by Supervisor Parker but then withdrawn, since this represented a change in the original 6ai2 first vote text.** Councilmember Brown suggested that item 6aii (the two-party agreement) be continued to the February board meeting. Discussion followed. **Motion to authorize an extension of the existing three-party management agreement for ninety days (item 6ai2) was made by Mayor McCloud, seconded by Mr. Cook, and failed (second vote).** The board expressed the need to more carefully review the redline draft and await the results of the mediation process. **Motion to continue discussion on the two-party management agreement (item 6aii) to the February board meeting was made by Mayor Bachofner and seconded by Mayor Edelen.** Public comment: Patty Kramer asked that the residents of Preston Park be emailed an explanation of these issues. Denise Turley commented that the recent rent increase was turned down because FORA had refused to take care of some maintenance problems. **The last motion passed unanimously.** Assistant Executive Officer Endsley said a meeting with the Preston Park residents would be scheduled.

- b. **California Central Coast Veterans Cemetery:** Senior Planner Jonathan Garcia summarized the board report. There were no board or public comments.

7. NEW BUSINESS

- a. **Denise Duffy and Associates – Contract Amendment #5:** Senior Planner Garcia summarized the board report. There were no board or public comments. **Motion to authorize the Executive Officer to execute Amendment #5 to the Denise Duffy and Associates contract, not to exceed \$158,000, to complete a second Administrative draft EIS/EIR document and screencheck version of the document was made by Mayor McCloud, seconded by Supervisor Parker, and carried.**
- b. **Base Reuse Plan ("BRP") Reassessment – update:** Assistant Executive Officer Endsley summarized the board report and attachments. Executive Officer Houlemard requested that board members set aside three hours for a workshop/board meeting in February for a thorough briefing and discussion on the BRP and its reassessment. He suggested starting the meeting at 2:00. He said it was very important that all understand the Sierra Club settlement agreement, its provisions and implications. He called attention to the newly-opened FORA Community Information Center in the FORA building and said the BRP can be found on the FORA website, www.fora.org.

8. EXECUTIVE OFFICER'S REPORT

All items were informational. Executive Officer Houlemard and Chair Potter made comments about Item 8a (Outstanding Receivables). Mr. Houlemard reported on Secretary of the Interior Ken Salazar's visit today, noting that the local community had urged Mr. Salazar to protect Bureau of Land Management's ("BLM's") 14,600 acres on the former Fort Ord through a National Landscape Conservation System National Monument designation, which could be achieved through an Executive Order by President Obama. Dr. Garrison asked if this designation had any affect on adjacent land. Mr. Houlemard replied no, but there are some restrictions, e.g., in the buffer zones in the Habitat Conservation Plan. Debbie Hale commented that the BLM designation would not affect the HWY 68 project, and she would like to coordinate a trip to Washington, DC, to pursue potential cost savings

9. ELECTION OF OFFICERS – 2012

Mayor McCloud, chair of the Nominating Committee, announced the candidates: Chair – Supervisor Potter, 1st Vice Chair – Mayor Edelen, 2nd Vice Chair – Mayor Pro Tem O'Connell, and Board Representatives – Mayor Pendergrass and Mayor Bachofner. (When the position of Past Chair is vacant, the FORA Master Resolution allows for two board representatives.) There were no other nominations. **Motion to elect the five candidates**

to their respective offices/positions was made by Mayor McCloud, seconded by Councilmember Kampe, and carried.

10. ITEMS FROM MEMBERS

Mayor McCloud said she had met with Brian O'Donnell from the Conservation Lands Foundation, and suggested taking the tax increment issues to the Monterey Bay Mayors' meeting. Supervisor Potter said the Board of Supervisors would also be taking up the matter. Mr. Houlemard mentioned a meeting on January 18th at FORA. He added that FORA's tax increment should remain enforceable obligations that continue to go to FORA through redevelopment agencies' successor agencies. FORA was working to obtain a legal opinion on this issue. The FORA Finance Committee will review this matter at its February 1, 2012 meeting.

11. ADJOURNMENT – Chair Potter adjourned the meeting at 5:23 p.m.

Minutes prepared by Linda Stiehl, Acting Clerk, and reviewed by Executive Officer Houlemard, Assistant Executive Officer Endsley and Senior Planner Garcia.

Approved by _____
Michael A. Houlemard, Jr., Executive Officer/Clerk

DRAFT

FORT ORD REUSE AUTHORITY BOARD REPORT

OLD BUSINESS

Subject:	Preston Park – Management Agreement Consideration and Disposition report	
Meeting Date:	February 10, 2012	ACTION/INFORMATION
Agenda Number:	6a	

RECOMMENDATION(S):

- i. Authorize the Executive Officer to execute a New Alliance/FORA Preston Park Management Agreement (*Attachment A*), or
- ii. Authorize the Executive Officer to execute a New Alliance/FORA/Marina Preston Park Management Agreement (*Attachment B*).
- iii. Receive a report on the status of Preston Park disposition.

BACKGROUND/DISCUSSION:

The previous 3-Party (Marina, FORA, and Alliance) Preston Park Management Agreement expired on December 31, 2011. During closed session at its November 18, 2011 meeting, the Board authorized the Executive Officer to enter into an interim 2-Party (FORA and Alliance) management agreement for up to 90 days should the proposed new 2-Party management agreement not be in place by December 31, 2011. At the January 13, 2012 meeting, FORA 2nd Vice Chair Frank O’Connell questioned whether this action on November 18, 2011 was a violation of the Brown Act because it excluded Marina and didn’t appear on the Board agenda.


Authority Counsel has opined that the action complied with the Brown Act. The action was properly agendized. The closed session, that excluded Marina as a party in interest, was the item where a direct breach of the Agent agreement by Marina occurred, and was clearly stated on the agenda as item “10c Conference with Authority Counsel: Pending Litigation – pursuant to subdivision (b) of California Government Code Section 54956.9: one case.” The reason for this closed session item was that Marina breached the Preston Park Management Agreement by directing the management company not to distribute excess revenue 50/50 to Marina and FORA as FORA previously directed Marina (as FORA’s Agent) and the management company. The Board in closed session: (1) instructed Authority Counsel not to file suit against Marina for breach of contract; (2) Instead, instructed the Executive Officer to enter into a 2-Party management agreement with Alliance for 90 days. The purpose of the temporary agreement was to avoid litigation. The Board did report this action out of Closed Session but no one was present at the time except the FORA Board and staff.

At the January 13, 2012 meeting, the FORA Board took a 2nd vote to approve a 90-day continuation of the 3-Party Preston Park Management Agreement, but the motion failed. Instead of taking a 1st vote on a 2-Party Management Agreement at this meeting, the Board directed staff to return next month for consideration of the 2-Party or 3-Party management agreement. The 2-Party agreement has been modified to reflect some requested changes previously requested by Marina staff and FORA 2nd Vice Chair O’Connell (*Attachment C*).

Given Marina's breach of the 3-Party management agreement and other failures to carry out FORA directions, FORA staff does not recommend that the Board enter into a subsequent 3-Party management agreement. If Marina were to be a party to the management agreement and made a similar breach, FORA would be giving up its role in the Principal (FORA)-Agent (Marina) agreement to Marina if FORA did not challenge the breach. FORA staff and Authority Counsel do not recommend placing FORA in contract with an Agent who has not performed their agent duties on behalf of FORA.

Also during the January 13, 2012 meeting, the FORA Board took 2nd votes to approve the Preston Park appraisal and sale of Preston Park. FORA staff has contracted with CBRE to complete an updated appraisal and is preparing to market Preston Park for 3rd party sale. Concurrent with these processes, FORA negotiators have scheduled a mediation session with Marina negotiators on February 2, 2012. Staff will provide an oral update at this Board meeting.

FISCAL IMPACT:

Reviewed by FORA Controller 

Costs associated with Preston Park disposition including legal, mediation, and appraisal costs are included in the approved FY 11-12 operating budget.

COORDINATION:

Marina, Executive Committee, Authority Counsel, special legal counsel, Judicial Arbitration and Mediation Services, Inc. ("JAMS"), Preston Park ad hoc Negotiating Committee, and Alliance.

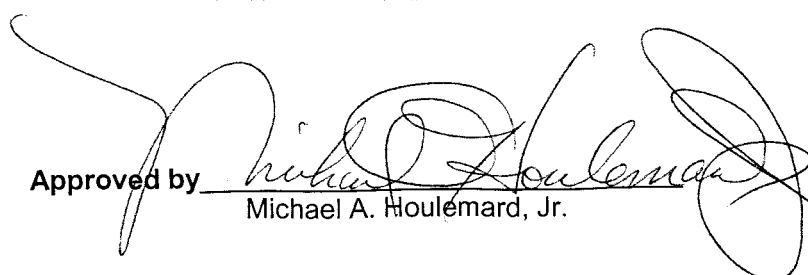
Prepared by


Jonathan Garcia

Reviewed by


Steve Endsley

Approved by


Michael A. Houlemard, Jr.

**PRESTON PARK
MANAGEMENT AGREEMENT
FOR
PRESTON PARK**

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THIS MANAGEMENT AGREEMENT ("Agreement") is dated for reference on _____, 2012. It is made and entered into on December 7, 2007, by and between the Fort Ord Reuse Authority, a California public entity, hereinafter referred to as "Owner," and Alliance Residential, LLC, an Arizona Limited Liability Company, hereinafter referred to as "Communities, Inc., a Delaware corporation, ("Operator" and the City of Marina, a California charter city, hereinafter referred to as "Agent," as follows:").

RECITALS

1. Owner is the owner of holds exclusive title to certain improved real property and the improvements thereon commonly known as Preston Park consisting of 354 of 354 units ("Units") [2 are used for management purposes] located at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. FORA has designated City as its Agent for the purposes of this Agreement;
3. Owner requires the services of a professional management company to perform administrative and financial services. Owner has determined that Operator has the requisite skill, training and experience to properly perform the services specified herein.
4. Operator holds through an authorized officer and legal authority, including a California real estate brokerage license as required by the laws of the State of California, needed to manage the Property.
3. The purpose of this Agreement is to articulate the terms under which Owner and Operator will share responsibilities for the Property.

AGREEMENT

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

ARTICLE I

1. APPOINTMENT OF OPERATOR AND AGENT

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 lease the Property and to perform those actions necessary to fulfill Operator's obligations to those government agencies with authority over the Property Owner except as provided herein. Owner confirms its previous appointment of City as its Agent for the purposes of this Agreement. All subsequent uses of the term

"Owner" in this Agreement shall mean "Agent" except as otherwise indicated.

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ARTICLE II

2. TERM

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2.1 TERM. The term of this Agreement shall commence on January 1, 2008, unless an earlier date is agreed to by the City, current operator and Operator 2012, and shall continue and include to midnight, December 31, 2011 unless terminated 2012 or until the Fort Ord Reuse Authority ("FORA") transfers title to the Property except as provided herein or extended in writing by mutual agreement thereto section 2.2., whichever occurs first.

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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 This Agreement is terminable on the occurrence of any of the following:

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

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(b) If either party defaults in the performance of any of its obligations hereunder a material obligation and such default continues for thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying such default, the party not in default may terminate this Agreement upon ten (10) days written notice to the defaulting party. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30-day period then the party not in default shall not effect affect the termination.

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

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

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

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

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

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(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

3. COMPENSATION

3.1 Management Fee. 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 ~~equal to 2.5%~~ 2.5% of the ~~total gross revenue~~ Gross Revenue, as defined in Section 3.2 below, received. ~~Owner shall pay Management Fees shall be paid in monthly installments at the beginning of each month, or as incurred, and.~~ These fees shall be deductible paid from the Trust Account as part of the operating expenses of the Property on or before.

3.2 Gross Revenue. For purposes of computing the ~~10th of each month from~~ collection of said gross revenue. In Management Fee, 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 ~~term~~ "Gross Revenue. The entire amount of" means all revenue derived from the ~~Property,~~ Property, 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 of this Agreement; excluding tenant security deposits (except as provided below); (b) forfeited cleaning, tenant security and damage deposits forfeited by tenants in such period; (c) laundry and vending machines income receipts; (d) any and all other revenue from the operation of the Property received and relating to during the period in question~~ Term of this Agreement; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) any other sums and charges collected in connection with termination of the tenant leases; tenant's right of occupancy. 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 or proceeds from third-party damage claims).

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

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

Fifty percent (50%) to FORA.

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3.4 ~~Capital Improvement Management Fee. Each year in the annual budget process, the~~ **On or before March 31, 2012** Operator shall submit to Owner an annual Capital Improvements Improvement Program describing ("CIP"). The CIP shall describe recommended capital improvements. The Owner and Agent shall approve in writing the Capital improvement projects to be implemented/undertaken each Fiscal Year-year. Owner will pay to Operator a construction management fee for Capital Improvements managed by Operator. That fee shall be equal to six percent (6%) of the total project cost as set forth in an executed written proposal or agreement, as. Each project must be approved in writing by Owner, as. Operator's fee will be increased or decreased by all change orders relating thereto. An initial payment of ten percent (10%) of construction costs shall be made upon execution of a written proposal or agreement, and services approved by Owner. Operator's CIP management fee shall be computed and paid based on monthly construction invoices describing the work performed by the project manager. Such fees and capital projects will be paid from Capital Reserve funds. Approval of the construction manager by Owner or Owner's designee shall be obtained by Operator prior to commencement Account. 3.5. Definitions For Section 3:

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3.5.1. Capital Improvements and Maintenance. For purposes of any capital improvements as defined in this Section 3.4.

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A, a capital item is distinguished from maintenance in that it has the effect of extending a capital improvement is intended to extend the useful life of a fixed asset, whereas repairs and maintenance have the effect merely of keeping keep the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not considered a capital improvement. The replacement improvements. Replacement of structural elements, even if they cost costing more than Five Thousand Dollars (\$5,000), i.e., slurry seals, due to caused by normal wear and tear, are considered non-routine maintenance and not a capital improvement because they do not extend the useful life the property. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately rather than delaying until the scheduled larger capital project.

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

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Examples: Those items listed in the budget of which are classified as general Repairs and Maintenance.

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

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Examples: Slurry Seal, Carpet and Flooring Replacements, Modest roof repairs, Gutter repairs, dryer vent cleaning.

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

Examples: Replacement of windows, Exterior building repaint, Interior Unit remodeling or remediation, re-plumbing projects, Signage development, Roof replacement.

3.5 — ~~Transactions With Affiliates~~. With the prior approval and direction of Owner, (which approval is implicitly granted to the extent obtained in the Budget), 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.

3.6 — 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

4. DUTIES AND RESPONSIBILITIES

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

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

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~~(a) — Collection of Monies.~~

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

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~~(b) 4.2.2 Books, Records, and Documentation.~~

~~(i) 4.2.2.1.~~ Operator shall maintain at its principal office or on the Property, complete and separate books, records and documents relating to the management and operation of the Property, including without limitation 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, business 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 Documentation"). Operator shall maintain all financial books and records of account shall be maintained in conformance 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 with two day's written advance notice of two business days to Operator.

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~~(ii) 4.2.2.2.~~ Upon request, Operator shall make all Books, Records financial books and Documents records available for examination, audit, inspection and copying by duly authorized representatives of any public housing agency or authority officials with regulatory power and/or jurisdiction authority over the Operator or Property to the extent required by federal or state law. Since the City of Marina obtains 50% of the proceeds, the City of Marina will have the same inspection rights as FORA.

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~~(iii) 4.2.2.3.~~ On or before fifteen (15) days following the end of each calendar month, Operator shall provide deliver or cause to be delivered to Owner a standard Financial Reporting Package to Owner by the 15th day of each month during the Term for the preceding month. The Financial Reporting Package shall include: Operations an unaudited financial statements and various

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~~reports as follows: Summary, Variance Analysis, Market Survey, Income Statement, Balance Sheet, Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, Aged Receivables, Capital Expenditures Statement, Request for Reserves Withdrawal, report of all disbursements, General Ledger detail report of all transactions in all accounts, of Management Activities including summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question. All reporting will utilize, Variance Analysis, Market Survey, Income statement showing the results of operation of the Property for the preceding calendar month and the Fiscal Year to date, and comparison of actual income and expenses with the income and expenses projected in the Budget, Balance Sheet, Trial Balance, General Ledger detail report of all transactions in all accounts, summary of Account Receivable and Account Payable, Bank Reconciliation and Bank Statements for all three bank accounts, Capital Expenditures Statement, and Request for Reserves Withdrawal. All reporting will use Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.~~

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~~(iv) — On or before fifteen (15) days following 4.2.3 Annual Audit. At the end of each calendar month, Owner shall deliver or cause to be delivered to Owner (i) an unaudited income and expense statement showing the results of operations 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.~~

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~~(e) — Audit. date of termination, Operator shall arrange and coordinate audits an audit of the books and records of the Property made by a firm of Certified Public Accountants certified public accountants as approved by Owner. The first audit shall cover eighteen (18) months from January 1, 2008 through June 30, 2009. Subsequent audits shall cover two year periods beginning July 1, 2009; except that if the Agreement is terminated before the end of any two-year audit period, said audit shall be conducted through the date of termination. Operator shall also have said accountants prepare, or have a firm of Certified Public 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 audits audit is a cost of the Property that shall be reflected in the annual budget approved by Owner. To the extent feasible, FORA shall coordinate with City of Marina to conduct an audit of Preston Park in conjunction with City of Marina's audit of Abrams B.~~

~~(d) 4.2.4 Repairs and Maintenance. Operator will use commercially reasonable efforts to maintain the condition of the Property in the condition prescribed by Owner, will regularly inspect the readily accessible areas of Property, will take commercially reasonable efforts against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. Operator's maintenance duties shall include making all necessary repairs for the Property and trash removal. Consistent with provisions of FORA and City of Marina FORA 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 contract over \$20,000 per year for an item which is not covered within the approved annual budget shall be presented to Owner for approval in advance of the execution of such a contract by Operator, unless~~

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

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~~(e) 4.2.5 Rental of Housing Units. Operator's renting of the Units shall be done in conformance with the terms and conditions of conform to this Agreement and the Regulatory Agreement between the Redevelopment Agency of the City of Marina and FORA ("Regulatory Agreement"), including the following policies:~~

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~~(i) 4.2.5.1. The Units shall be rented on a six-month lease term or month-to-month basis except as may otherwise be required by the Regulatory Agreement.~~

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~~(ii) Owner has 4.2.5.2 Rents established rental rates for the Units for fiscal year 2007-08 (July 1, 2007 - June 30, 2008) as set forth in Exhibit "B" hereto will be applied until changed by Owner. Any amendment to the rental rate schedule shall be approved in advance in writing by Owner.~~

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

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~~(iv) 4.2.5.4. Operator shall select tenants for available units as follows:~~

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~~(A) Notwithstanding the provisions of the 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 35% of the housing units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner’s tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant’s employer verifying the applicant’s eligibility will be required when submitting the application. Incomplete applications will not be accepted.~~

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

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

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

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

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

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

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~~(f) 4.2.6. Insurance.~~

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~~(i) 4.2.6.1 Fire Coverage. Operator shall obtain and keep in force fire and extended coverage insurance and other customary property insurance for the Property, the~~

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cost of insurance to be paid out of the Trust Account as approved by the Budget.

(ii) ~~4.2.6.2. Comprehensive General Liability Coverage.~~ Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy ~~and to cover Owner and Operator,~~ in amounts no less than \$1,000,000 per occurrence of bodily injury and property damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with ~~3-~~30-day prior written notice of cancellations or material change in coverage. Operator shall be named as an additional insured on such CGL policy.

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

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

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

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

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

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copies of all insurance contracts required by this Agreement within thirty (30) days of their inception and subsequent renewals.

~~(g) Debt Service.~~ 4.2.7 Taxes and Assessments.

~~(i) On Owner's behalf, Operator shall process payments of Owner's debt service on the Property as directed in writing by Owner.~~

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

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

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

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Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

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

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

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~~(k)~~4.2.11 Employment of Personnel.

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

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~~(ii)~~ The salaries, wages, other compensation, benefits (including without limitation social security, taxes, worker's compensation insurance, and the like), travel, training and other 4.2.11.2. Operator may treat Property-related expenses of all on-site, field, or maintenance employees of Operator working on or with respect to the Property shall be compensable business expenses of the Property and. These expenses include worker's compensation insurance, travel and training. Such management expenses must be included in the approved budget for the Property. The property related expenses of Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the

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approved budget. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, ~~wages and other employee compensation of employees workers performing services for Operator at properties other than the Property, shall be reimbursed to Operator pro rata based on the portion of working hours involved in services to the Property and such other properties; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget).~~ Operator shall solicit and receive approval from Owner to utilize the services of a roving maintenance supervisor prior to services being rendered.

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~~(iii) 4.2.11.3. Non-compensable Salaries. 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:~~

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

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~~(B) off-site record-keeping personnel (off-site) are non-reimbursable expenses of Operator.~~

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

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

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

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

ARTICLE V

5 OWNER'S EXPENSES OF OWNER

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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 reasonable 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, including fees for necessary legal advice, 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 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, including future attorneys' fees and costs 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. survive termination of this Agreement. Owner's expenses shall be limited to the amount included in the annual budget as approved by the Owner.~~

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

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- ~~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 relative to the leasing, management, use, operation, repair, maintenance or occupancy of the Property, or relative to the rules, regulations or orders of any national or local Board of Fire Underwriters or other similar body;~~
- ~~d) Actual cost of making all repairs, decorations and alterations of the Property;~~
- ~~e) Employment fees, including costs of advertising, relating to the Property Personnel;~~
- ~~f) Third party costs of collection of delinquent rentals, including a collection agency;~~
- ~~g) Legal fees of attorneys in accordance with this Agreement;~~
- ~~h) Cost of capital expenditures, to the extent approved in the current year Approved Budget or otherwise allowed by this Agreement;~~
- ~~i) Cost of printed checks for each bank account maintained by Operator relating to the Property;~~
- ~~j) Leasing bonuses and other incentive compensation payments;~~
- ~~k) Cost of service contracts and agreements;~~
- ~~l) Cost of utilities;~~
- ~~m) Cost of advertising as to the extent set forth in the Approved Budget;~~
- ~~n) Cost of real estate and personal property taxes, improvement assessments and other like charges;~~
- ~~o) Fee(s) as provided in Section 3.1 through 3.5 hereof;~~
- ~~p) Periodic payments on account of any debts and liability of Owner pursuant to Section 4.2(g) hereof;~~
- ~~q) Costs of Owner's Liability Insurance and workers' compensation insurance;~~
- ~~r) Costs of the property management software package that is utilized for management of the Property and Operator training class and related travel~~

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expenses for the use of such and software; and
s) Employee-related costs as set forth in Section 4.2(k) hereof.
t) Reasonable administrative expenses including of the Agent's staff Owner devoted to oversight of the Management Agreement and Capital Project Manager Agreement(s) and liaison with residents. These expenses are limited to the amount included in the Preston Park approved annual budget as approved by the Owner and Agent.

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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. OPERATOR'S EXPENSES

6.1 Operator agrees to pay all salaries, wages and other compensation and fringe benefits of all personnel described in Section 4.2(k)(ii) 11 of this Agreement as an Operator's 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.

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ARTICLE VII

7. BANK ACCOUNTS

7.1 ESTABLISHMENT OF ACCOUNTS.

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

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Operator shall establish a working capital reserve of \$20,000 to be retained within the Trust

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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~~

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

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

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

7.1.5. Distributions from Trust Account. Provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing. On the 15th of the month, Operator will also wire disbursement of Marina's 50% share to the City of Marina, as a continuation of current practice of simultaneous distribution.

7.1.6. Broker / Insurance. The designated broker for Operator shall be an authorized signer on the Trust Account, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. For purposes of Section 7.1.1, the name of the designated broker shall be communicated by Operator to Owner in writing. Authorized signatories on such accounts shall have

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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 Authorized signatories or persons who in any way handle funds for the Property (onsite, whether on or offsite) off site, shall be insured for dishonesty in the minimum account of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date."

(d) Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business. 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 (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

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

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

ARTICLE VIII

8. ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by DecemberMarch 31 of each year, with the exception of the first fiscal year when the proposed budget will

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

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

8.3 **APPROVAL OF BUDGETS.** ~~Subject to notation in Article 8.5 below, if~~ If Operator submits a timely budget recommendation, and Owner does not disapprove it in writing to Operator's proposed budgets before July 1 of each year, the budgets shall be 1, Operator's proposed budget is deemed approved. If an annual budget has not been approved by said that 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 Approved 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 approved budgets and the operation of lease revenues from the Property is~~ are subject to the terms and conditions of that certain Implementation Agreement dated May 1, 2001, 2001 ("Implementation Agreement") by and between the Fort Ord Reuse Authority ("FORA") and the City of Marina. Operator hereby acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall advise the City and notify FORA Owner of any operational or budget changed financial conditions in order for FORA to assure itself that the provisions of allow Owner to determine compliance with the Implementation Agreement are being met. 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

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9. GENERAL PROVISIONS

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

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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~~ agent of Owner and as such owes Owner the duties a reasonable investor would expect if managing his own property.

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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)~~ 9.4.1 Operator shall indemnify, hold harmless and defend ~~FORA and City, their Owner, its officers, and 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 ~~FORA and or City~~ 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. ~~FORA and City~~ Owner shall approve the liability insurance coverage procured by Operator pursuant to Section 4.2(f)(ii), and, once approved, ~~FORA and City~~ 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).1 shall not apply to Claims that are not covered under the commercial general liability insurance policy procured by Operator pursuant to Section 4.2(f)(ii). 6.2 of this Agreement unless Operator has engaged in gross negligence or willful misconduct.

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~~(b)~~ 9.4.2 ~~FORA and City~~ Owner shall indemnify Operator (and Operator's affiliates,

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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, FORA or City.

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

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

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

TO AGENT: ~~CITY OF MARINA~~
~~Attention: City Manager~~
~~City Hall~~
~~211 Hillcrest Avenue~~
~~Marina, California 93933~~

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

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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.

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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~~

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~~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.~~

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

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

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

9.8.2. *Mediation (60 days)*

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

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

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subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

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

9.8.3. Arbitration (90 days)

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

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

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

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

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

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

9.8.4. Attorney's Fees.

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

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

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

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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.

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

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9.1312 HEADINGS. All headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

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9.1413 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.

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

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

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FORT ORD REUSE AUTHORITY

Michael A. Houlemard Jr.
Executive Officer

Alliance Residential, LLC, an Arizona Limited Liability Company

By

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EXHIBIT A

Preston Park Management Agreement

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SCOPE OF SERVICES

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

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

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

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

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EXHIBIT B

Preston Park Management Agreement
July 1, 2007

AFFORDABLE RENTAL RATES.

Rates may be established each year.

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EXHIBIT "C"

Preston Park Management Agreement

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MANAGEMENT STRUCTURE

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

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The Senior Management Team for Preston Park and Abrams Park:

Regina Leachman**Corinne Carmody**, Regional Manager

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Greg Beeler**Steve Keller**, Regional Maintenance Supervisor

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Kelly Ogan**Amy Corcoran**, Regional Training Manager

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Amy Guerrero**Jennifer Barrett**, Regional Marketing Manager

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Kellie Hughes**Annette Thurman**, Vice President of Operations

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~~Regina Leachman~~~~Corinne Carmody~~, Regional Manager, has an office at ~~Schoonover Park~~ in Walnut Creek, California. She will be at the communities at least two days a week and will have or to the capacity to spend additional time as needed. ~~Regina~~ extent mutually agreed upon by Owner and Operator. ~~Corinne~~ will be responsible for all compliance training related to the approved below market rate rental program.

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

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~~Kelly Ogan~~~~Amy Corcoran~~ and ~~Amy Guerrero~~~~Jennifer Barrett~~, Regional Training Manager and Regional Marketing Manager, will spend no less than one day each month at the site providing shall provide leasing and customer service training and marketing resources. ~~Kelly~~~~Amy~~ and ~~Amy~~~~Jennifer~~ are also available on an as needed basis for one-on-one training.

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

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

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EXHIBIT D

Preston Park Management Agreement

TENANT GRIEVANCE PROCEDURE

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

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**~~PRESTON AND ABRAMS PARKS~~ PARK
GRIEVANCE PROCEDURE**

I. Definitions applicable to the grievance procedure

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A. Grievance: Any dispute pertaining to a lease violation, maintenance charge or other disagreements with respect to Management's action or failure to act in accordance with the individual Tenant's lease or Management's Policies or regulations that adversely affects the individual Tenant's rights, duties, welfare or status.

B. Elements of due process: An eviction action or a termination of tenancy in a State court in which the following procedural safeguards are required:

1. Adequate notice to the Tenant of the grounds for terminating the tenancy and for eviction;
2. Right of the Tenant to be represented by counsel;
3. Opportunity for the Tenant to refute the evidence presented by Management, including the right to confront and cross examine witnesses and to present any affirmative legal or equitable defense which the Tenant may have;
4. A decision on the merits of the case.

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C. Hearing Officer: A neutral party selected by the City of Marina FORA to hear grievances and render a decision. The City of Marina FORA has selected the Conflict Resolution and Mediation Center of Monterey County to be the Hearing Officer for grievances at Preston and Abrams Parks Park. If the Mediation Center of Monterey County is not available for the Grievance Hearing, the City of Marina FORA shall choose another Hearing Officer who is a neutral third party not involved in the management decisions at Preston and Abrams Parks Park and has experience and knowledge of management practices and procedures for comparable properties and has experience in mediation.

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D. Tenant: The adult person (or persons other than a live-in aide) who resides in the unit at Preston or Abrams Parks Park and who executed the lease with Alliance Residential or its predecessor(s).

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E. Management: The property management company for Preston and Abrams Parks is Alliance

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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 City of Marina~~ FORA.
- H. Tenant's designated representative: A person that the Tenant has designated in writing to represent him/her in this grievance procedure or a legal document naming a person that represents the Tenant in such matters. The written designation along with the address and contact information for designated representative shall be placed in the Tenant's file. All correspondence related to this grievance procedure shall be distributed to both the Tenant and the designative representative.

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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 and 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 ~~Preston or Abrams Parks~~ Park at the time the alleged dispute occurred.

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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 ~~City of Marina Housing Coordinator~~ designated FORA staff representative. Class action lawsuits and evictions are heard in a court of law and receive due process in that manner.

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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 City of Marina and/or the Fort Ord Reuse Authority (for Preston Park only)~~ FORA. Such requests may be made to the ~~City of Marina Housing Coordinator~~ designated FORA staff representative.

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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.

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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.

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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.

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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 City of Marina's Development Services Department. FORA, Management shall retain a copy of the decision in the Tenant's folder.

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

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

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

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

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

_____ Date _____ Signature _____

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Print Name Address

~~All other provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.~~

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

~~OWNER: FORT ORD REUSE AUTHORITY~~

~~By: _____ Michael
A. Houlemard, Jr. Executive Officer~~

~~Date: ____, 2011~~

~~AGENT: CITY OF MARINA~~

~~By:~~

~~_____
____ Anthony J. Altfeld, City~~

~~Manager Date: ____, 2011 Attest:~~

~~(Pursuant to Resolution: 2011~~

~~By: City Clerk~~

~~Approved as to Form~~

~~City Attorney Risk Manager~~

~~OPERATOR: ALLIANCE COMMUNITIES INC.~~

~~By: Name: _____~~

~~Title: _____~~

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Date: _____, 2011

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**MANAGEMENT AGREEMENT
FOR
PRESTON PARK**

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into on ~~February~~ December 7, 2012 2012, by and between the Fort Ord Reuse Authority, a California public entity, hereinafter referred to as "Owner," Alliance Residential, LLC, an Arizona Limited Liability Company, , hereinafter referred to as "Operator" and the City of Marina, a California charter city, hereinafter referred to as "Agent," as follows:

RECITALS

1. Owner is the owner of certain improved real property and the improvements thereon commonly known as Preston Park consisting of 354 units ("Units") [2 are used for management purposes] located at 682 Wahl Court, Marina, CA 93933 (the "Property").
2. FORA has designated City as its Agent for the purposes of this Agreement;
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 AND AGENT

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 lease the Property and to perform those actions necessary to fulfill Owner's obligations to those government agencies with authority over the Property except as provided herein. Owner confirms its previous appointment of City as its Agent for the purposes of this Agreement. All subsequent uses of the term "Owner" in this Agreement shall mean "Agent" except as otherwise indicated.

ARTICLE II

TERM

2.1 TERM. The term of this Agreement shall commence on February
January 1, 2012~~08~~, unless an earlier date is agreed to by the City and FORA-
~~current operator and Operator~~, and shall continue and include December 31, 2012~~4~~
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 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 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 upon ten (10) days written notice to the defaulting party. Notwithstanding
the above, if a cure has commenced and the defaulting party is diligently pursuing
said cure within said 30 day period then the party not in default shall not effect the
termination.

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

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

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

(b) Operator will immediately deliver to Owner all Books, Records,
and Documents (as herein defined) maintained 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 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) cleaning, tenant security and damage deposits forfeited by tenants in such period; (c) laundry and vending machines income; (d) any and all other revenue from the operation of the Property received and relating to the period in question; (e) proceeds from rental interruption insurance, but not any other insurance proceeds or proceeds from third-party damage claims, and (f) 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 or proceeds from third-party damage claims).

3.3 Unused section.

3.4 **Capital Improvement Management Fee**. Each year in the annual budget process, the Operator shall submit a Capital Improvements Program describing recommended capital improvements. The Owner and Agent shall approve in writing the Capital improvement projects to be implemented each Fiscal Year. Owner will pay to Operator a construction management fee equal to six percent (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. An initial payment of ten percent (10%) of construction costs shall be made upon execution of a written proposal or agreement, and services shall be computed and paid based on monthly invoices describing the work performed by the project manager. Such fees will be paid from Capital Reserve funds. 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 3.4.

A capital item is distinguished from maintenance in that it has the effect of extending the useful life of a fixed asset, whereas repairs and maintenance have the effect merely of keeping the asset in its customary state of operating efficiency. Minor improvements to structures or site involving a total expenditure of less than Five Thousand Dollars (\$5,000) are not considered a capital improvement. The replacement of structural elements, even if they cost more than Five Thousand Dollars (\$5,000), i.e., slurry seals, due to normal wear and tear are considered non-routine maintenance and not a capital improvement because they do not extend the useful life the property. "Extraordinary maintenance," referring to those emergency items that need immediate replacement prior to the capital planned schedule for replacement, are provided for in the annual budget so that urgent replacements or repairs may be addressed immediately rather than delaying until the scheduled larger capital project.

Routine maintenance: Simple, small-scale activities (usually requiring only minimal skills or training) associated with regular (daily, weekly, monthly, etc.) and general upkeep of a building, equipment, machine, plant, or system against normal wear and tear.

Examples: Those items listed in the budget of which are classified as general Repairs and Maintenance.

Non-routine maintenance: Activities that require specialized skills or training that are associated with irregular or out of the ordinary upkeep of a building, equipment, machine, plant, or system.

Examples: Slurry Seal, Carpet and Flooring Replacements, Modest roof repairs, Gutter repairs, dryer vent cleaning.

Capital work/construction: Complex or larger scale activity associated with buildings, structures, or other types of real property or improvements including alterations, painting, remodeling, transportation of construction and furnishing goods and material etc.

Examples: Replacement of windows, Exterior building repaint, Interior Unit remodeling or remediation, replumbing projects, Signage development, Roof replacement.

3.5 **Transactions With Affiliates.** With the prior approval and direction of Owner, (which approval is implicitly granted to the extent obtained in the Budget), 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.

3.6 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 lease the Property 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. 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 maintained in conformance 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 with written advance notice of

two business days.

(ii) Upon 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 15th day of each month during the Term for the preceding month. The Financial Reporting Package shall include: Operations Summary, Variance Analysis, Market Survey, Income Statement, Balance Sheet, Projected Cash Flow, Trial Balance, Bank Reconciliation, Trust Account Bank Statement, Aged Receivables, Capital Expenditures Statement, Request for Reserves Withdrawal, report of all disbursements, General Ledger detail report of all transactions in all accounts, summary of tenant comments and complaints, and a summary of any Tenant's Association meeting that occurs during the period in question. All reporting will utilize Operator's standard chart of accounts and the Yardi software unless otherwise stipulated and as agreed to by Owner and Operator in writing.

(iv) On or before fifteen (15) days following the end of each calendar month, Owner 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) Audit. Operator shall arrange and coordinate audits of the books and records of the Property made by a firm of Certified Public Accountants approved by Owner. The first audit shall cover eighteen (18) months from January 1, 2008 through June 30, 2009. Subsequent audits shall cover two-year periods beginning July 1, 2009; except that if the Agreement is terminated before the end of any two-year audit period, said audit shall be conducted through the date of termination. Operator shall also prepare, or have a firm of Certified Public 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 audits is a cost of the Property that shall be reflected in the annual budget approved by Owner.

(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 necessary repairs. Operator's maintenance duties shall include making all necessary 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 approved annual budget shall be presented to Owner for approval in advance of the execution of such a contract by Operator, unless the expenditure is for emergency repairs that are immediately necessary for the preservation or safety of the Property, repairs for the health, safety or welfare of people or property, repairs to avoid suspension of necessary

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

(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 Redevelopment Agency of the City of Marina and FORA ("Regulatory Agreement"), including the following:

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

(ii) Owner has established rental rates for the Units for fiscal year 2007-08 (July 1, 2007 -June 30, 2008) as set forth in Exhibit "B" hereto. 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 and maximum occupancy guidelines published by the State of California at the time of renting and applicable occupancy standards for the Units. Fifty one (51) of the Units are to be rented at below market rate affordable rents ("Affordable Rents") as required by the Regulatory Agreement. The Affordable Rents are set forth in Exhibit B and may be amended annually. Any increase in the Affordable Rents shall be subject to the approval of Owner. 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) Notwithstanding the provisions of the 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 35% of the housing units shall be offered for lease at any one time on the basis of the preferences listed in (B) – (E) below. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator as a result of implementing Owner's tenant selection criteria set forth below and as may be amended by Owner. Owner agrees to promptly notify Operator of any changes to the tenant selection criteria. For all preferences, a letter from the applicant's employer

verifying the applicant's eligibility will be required when submitting the application. Incomplete applications will not be accepted.

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

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

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

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

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

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

(f) Insurance.

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

(ii) Operator shall obtain and keep in force a Comprehensive General Liability (CGL) insurance policy and in amounts no less than \$1,000,000 per occurrence of bodily injury and property damage, and not less than \$2,000,000 policy general aggregate and an excess or umbrella liability policy in an amount not less than \$10,000,000 per occurrence basis, the cost of insurance to be paid out of the Trust Account as approved by the Budget. Such insurance shall name Owner as a named insured and shall provide Owner and Lender with 3~day prior written notice of cancellations or material change in coverage.

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

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

(v) 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.

(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 \$500,000. Such insurance shall provide Owner with 30-day prior written notice of cancellations or material change in coverage. Workers' compensation insurance expenses associated with employees employed for the direct benefit of Owner or the Property shall be included in the approved budget for the Property.

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

(g) Debt Service, Taxes and Assessments.

(i) On Owner's behalf, Operator shall process payments of Owner's debt service on the Property as directed in writing by Owner.

(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. If requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. The parties agree, however, that such advice and assistance goes beyond the ordinary management responsibilities contemplated by this Agreement and, as such, if Operator provides such services, they shall be at an additional cost to Owner.

(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.

(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 comply with the terms of the Regulatory Agreement, a copy of which has been provided previously to Operator. Owner shall indemnify, defend and hold Operator, its officers, agents and employees, harmless from any cost, damage, claim, liability, suit, cause of action or other legal proceedings which may be brought or claimed against Operator based on said compliance provided that Operator is in compliance with the Regulatory Agreement.

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

(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 annual budget approved 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 approved 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 reasonable attorneys' fees and costs and wage penalties relating to the employment of on-site personnel are reimbursable to Operator by Owner, unless Operator has been

negligent in its employment practices. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature.

(ii) The salaries, wages, other compensation, benefits (including without limitation social security, taxes, worker's compensation insurance, and the like), 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. The property related expenses of Executive personnel of Operator who are assigned to on-site Property management for twenty percent (20%) of their time or more may also be included in the approved budget. Operator shall provide to Owner, at Owner's request, payroll and time sheets for all such employees. Notwithstanding the foregoing, 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; provided that Operator shall be reimbursed for any roving maintenance supervisor providing services to the Property at the rate of \$50 per hour for such services (or such amount as may reflected in the approved Budget). Operator shall solicit and receive approval from Owner to 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 has previously provided an oral description of its management structure, roles and assurances as to the frequency of management visits to the Property and said description is attached as Exhibit "C" hereto.

(n) Tenant Grievance Procedure. Operator has previously provided an oral description of its tenant grievance procedure and said 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, including fees for necessary legal advice, 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, including future attorneys' fees and costs 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 relative to the leasing, management, use, operation, repair, maintenance or occupancy of the Property, or relative to the rules, regulations or orders of any national or local Board of Fire Underwriters or other similar body;
- d) Actual cost of making all repairs, decorations and alterations of the Property;
- e) Employment fees, including costs of advertising, relating to the Property Personnel;
- f) Third party costs of collection of delinquent rentals, including a collection agency;
- g) Legal fees of attorneys in accordance with this Agreement;
- h) Cost of capital expenditures, to the extent approved in the current year Approved Budget or otherwise allowed by this Agreement;
- i) Cost of printed checks for each bank account maintained by Operator relating to the Property;
- j) Leasing bonuses and other incentive compensation payments;
- k) Cost of service contracts and agreements;
- l) Cost of utilities;
- m) Cost of advertising as to the extent set forth in the Approved Budget;
- n) Cost of real estate and personal property taxes, improvement assessments and other like charges;
- o) Fee(s) as provided in Section 3.1 through 3.5 hereof;

- p) Periodic payments on account of any debts and liability of Owner pursuant to Section 4.2(g) hereof;
- q) Costs of Owner's Liability Insurance and workers' compensation insurance;
- r) 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
- s) Employee-related costs as set forth in Section 4.2(k) hereof.
- t) Reasonable administrative expenses including the Agent's staff devoted to oversight of the Management Agreement and Capital Project Manager Agreement(s) and liaison with residents. These expenses are limited to the amount included in the Preston Park budget as approved by the Owner and Agent.

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 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, the Security Deposit Trust Account, and the Reserve Account. In addition, the designated broker may authorize any person who qualifies as an authorized signatory on such accounts. For purposes of Section 7.1 I, 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 (onsite or offsite) shall be insured for dishonesty in the minimum amount of Three Million Dollars (\$3,000,000.00) per occurrence or loss with not more than a Twenty Five Thousand Dollars (\$25,000.00) deductible. A certificate confirming such insurance naming Operator and Owner as named insureds and confirming that it will not be modified or cancelled without at least thirty (30) days prior written notice to Owner shall be delivered to Owner prior to the Fee Commencement Date.

(d) Operator may also maintain a petty cash fund from money in the Trust Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business. 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 (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing.

(f) Operator shall establish a separate bank account ('Reserve Account') at a depository selected by Operator as agent for Owner, for the purpose of depositing funds for the Property in amounts Owner shall instruct and in such name as Owner shall designate. Deposits shall conform in all respects to depository and security requirements pertaining to Local Agency cash contained in California Government Code Title 5., Division 2., Part 1., Chapter 4., Article 2., Sections 53630 to 53686. To the extent sufficient funds are available, Operator shall promptly deposit funds in amounts instructed by Owner into the Reserve Account, and shall not deposit funds belonging or attributable to any other party or property into the Reserve Account. Operator shall execute and submit to Owner copies of bank documents demonstrating that funds deposited in the Reserve

Account are held in trust for Owner. Operator shall not withdraw funds from the Reserve Account without express written consent of Owner.

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

ARTICLE VIII

ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. Operator shall prepare and submit to Owner by December 31 of each year, with the exception of the first fiscal year when the proposed budget will be due to Owner from Operator by January 31, for Owner's approval proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties. The proposed budgets will be 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 a salary or wage description for every on-site employee, including any fringe benefits reimbursable hereunder, of Operator whose compensation is reimbursable hereunder;

8.3 APPROVAL OF BUDGETS. Subject to notation in Article 8.5 below, if Owner does not disapprove in writing to Operator's proposed budgets before July 1 of each year, the budgets shall be deemed approved. 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 approved budgets 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.

Operator hereby acknowledges the previous receipt of a copy of the Implementation Agreement. Operator shall advise the City and notify FORA of any operational or budget conditions in order for FORA to assure itself that the provisions of the Implementation Agreement are being met. 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 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 FORA and City, their 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 FORA and or City 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. FORA and City shall approve

the liability insurance coverage procured by Operator pursuant to Section 4.2(f)(ii), and, once approved, FORA and City 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)(ii), unless Operator has engaged in gross negligence or willful misconduct.

(b) FORA and City 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, FORA or City.

(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: FORT ORD REUSE AUTHORITY
Attention: Executive Officer
920 2nd Ave., Suite A
Marina, California 93933

TO AGENT: CITY OF MARINA
Attention: City Manager
City Hall
211 Hillcrest Avenue
Marina, California 93933

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

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No alteration, modification, or interpretation of this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement 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 effect the purpose of the parties and this Agreement.

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

OWNER: FORT ORD REUSE AUTHORITY

By: _____
Michael A. Houlemard, Jr. Executive Officer

Date: ____, 2012

Approved as to Form: _____
Authority Counsel

AGENT: CITY OF MARINA

By: _____
City Manager

Date: ____, 2011

Attest: (Pursuant to Resolution:
2012

By: City Clerk

Approved as to Form: _____
City Attorney Risk Manager

OPERATOR: ALLIANCE COMMUNITIES INC.

By: Name:

Title: _____

Date: _____, 2012

EXHIBIT A
Preston Park Management Agreement

SCOPE OF SERVICES

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

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

- 11 Manage the selection process for outside contractors including landscaping, trash removal, pest control, custodial, etc; prepare recommendations for Board approval. Continually inspect property, recording deficiencies and taking necessary action within budgetary allocations.
- 12 Prepare tenant handbook and circulate written communications to tenants periodically, such as quarterly newsletter, in format and content approved by the City. Participate in meetings and events with tenants as requested.
- 13 Explore opportunities for coordination/joint programs with housing developments at California State University-Monterey Bay.
- 14 Other duties as needed.

EXHIBIT B

Preston Park Management Agreement
July 1,2007

AFFORDABLE RENTAL RATES

Rates may be established each year.

EXHIBIT "C"

Preston Park Management Agreement

MANAGEMENT STRUCTURE

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

The Senior Management Team for Preston Park and Abrams Park:

Regina Leachman, Regional Manager

Greg Beeler, Regional Maintenance Supervisor

Kelly Ogan, Regional Training Manager

Amy Guerrero, Regional Marketing Manager

Kellie Hughes, Vice President of Operations

Regina Leachman, 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. Regina will be responsible for all compliance training related to the approved below market rate rental program.

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

Kelly Ogan and Amy Guerrero, 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. Kelly and Amy are also available on an as needed basis for one-on-one training.

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

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

12-15-10
PRESTON AND ABRAMS PARKS
GRIEVANCE PROCEDURE

I. *Definitions applicable to the grievance procedure*

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

- G. Working days: For the purpose of these procedures, working days means the scheduled working days of the City of Marina.
- 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 and 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 Preston or Abrams Parks 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 City of Marina Housing Coordinator. 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 City of Marina and/or the Fort Ord Reuse Authority (for Preston Park only). Such requests may be made to the City of Marina Housing Coordinator.

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 City of Marina's Development Services Department. 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 City of Marina 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 City of Marina policy or regulation.

A decision by the Hearing Officer or the City of Marina 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

All other provisions of the Agreement not in conflict with this Amendment shall remain in full force and effect.

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

OWNER: FORT ORD REUSE AUTHORITY

By: _____
Michael A. Houlemard, Jr. Executive Officer

Date: __, 2011

AGENT: CITY OF MARINA

By:

_____ Anthony J. Altfeld,

City Manager Date: __, 2011

Attest: (Pursuant to

Resolution: 2011

By: City Clerk

Approved as to Form

City Attorney Risk Manager

OPERATOR: ALLIANCE COMMUNITIES INC.

By: Name:

Title: _____

Date: _____, 2011

January 13, 2012

City of Marina's questions regarding the Preston Park Management Agreement are below. FORA staff's responses are in **bold italics**.

1. Marina is to receive 50% of the NOI, but does not have access to the financial accounts existing under this proposed agreement. Why?

Marina has access but not control.

2. Where in the document does it separate the expenses of Alliance between Preston Park related services and services provided by Alliance to Abrams Park?

This agreement only governs Preston Park. Abrams is not part of this agreement and does not alter separation of revenue/cost centers from current agreements.

3. **Paragraph 3** COMPENSATION seems to increase the management fee from 2% to 2.5% of the total gross revenue. If true, is FOR A paying that extra amount from its share of the NOI that is to be distributed so that Marina's share is not reduced?

Alliance compensation does not change. In the original 3-Party management agreement, Alliance's compensation was 2.5% and the proposed 2-Party management agreement maintains the same compensation.

4. Is FORA indemnifying Marina as to any potential liability resulting from conduct/decisions made by Alliance and/or FOR A under this document?

No. Marina is not a party to the agreement.

5. **Paragraph 4.2.2** Since Marina has a substantial financial interest in Preston Park that is not disputed by anyone and is set forth in the Implementation Agreement between FOR A and Marina, should not Marina have full access to the Books, Records and Documentation referred to in this and other paragraphs of the document?

Does Marina have access to Preston Park financial records? Yes.

6. Does this document relieve Marina staff/consultants of any/all duties that it had under the previous Management Agreement?

Yes. The past agreement expired on December 31, 2011.

7. **Paragraph 9.4** Why does this document not require Alliance to indemnify Marina, as an interested entity, from the claims, liability arising out of the operation or maintenance of the property?

Marina is not a party to the agreement.

8. **Paragraph 9.5.** What is the reason for not requiring all notices provided in the document to be sent to the City of Marina?

Marina is not a party to the agreement. FORA will be willing to work with Marina to provide notice.

9. Is this document in compliance with the legal rights of the City of Marina as they relate to Preston Park? This calls for a legal opinion from Atty. Bowden, not FORA staff.

Authority Counsel Jerry Bowden is not Marina's attorney.

10. Can a copy of the recorded Implementation Agreement be made an attached exhibit to this document? And if so, will it be?

There is no need to do this. The Implementation Agreement is a public document already recorded.

Additional Marina Notes on Proposed Preston Park Management Agreement between Fort Ord Reuse Authority and Alliance Communities Inc.

11.

-3.3 says "Distribution of net profits to City of Marina and FOR A. As provided in Government Code section 67678(b) (2), Operator shall distribute net profit from operation of the Property as follows: Fifty percent (50%) to the City of Marina, and Fifty percent (50%) to FOR A." Section **7.1.5. Distributions from Trust Account** says "Provided sufficient funds are available in the Trust Account, Operator will, on or about the fifteenth (15th) of each month, disburse funds via wire transfer to Owner to an account as stipulated by Owner to Operator in writing." Please add language that on the 15th of the month, Operator will also wire disbursement of Marina's 50% share to the City of Marina , as a continuation of current practice of simultaneous distribution.

FORA has no objection to maintaining the current practice.

12.

-4.2.2.2 says the "Operator shall make financial books and records available for examination, audit, inspection and copying by public officials with regulatory authority over the Operator or Property to the extent required by law." The City has rights to records as a signatory to the Regulatory Agreement but a more explicit reference would

be preferable. Since the City obtains 50% of the proceeds, the City should have the same inspection rights as FORA.

FORA staff does not object to this request.

13.

- **4.2.3, Annual Audit:** says audit will be scheduled at the end of term of Agreement i.e. covering the period starting January 1, 2012 until point of termination prior to December 31, 2012. However prior to now, the audits are performed on a fiscal year cycle of July 1 to June 30. So in 2012 the City of Marina would order 12 month audit for Abrams @ July 1 2011 to June 30, 2012 while FORA orders an audit for Preston @ for the period between January 1 - December 31, 2012. Presumably, the City take responsibility for the Preston audit of July 1-December 31, 2011 in conjunction with the Abrams audit?

FORA will attempt to implement any Preston Park Audit in conjunction with the Abrams Audit.

14.

Commingling of Preston/Abrams In the two mentions of the City of Marina in the Agreement: (3.3 Distribution of net profits and 8.5. Subject to Implementation Agreement dated May 1, 2001 by and between FORA and the City of Marina), there is no acknowledgement of the commingling of staff, space for maintenance and administrative staff, and equipment and supplies for property management of the Preston Park and Abrams B property on a 40/60 basis. This arrangement with Abrams should be described in how costs and compensation are allocated to Alliance in the management of Preston.

FORA staff does not object to continuing this arrangement.

December 16, 2011

City of Marina's questions regarding the Preston Park disposition and Management Agreement are below. FORA staff's responses are in ***bold italics***.

1. What is the source of funds for the appraisal?

The source of funds is from FORA's general funds.

2. What is the authority for the sale of Preston Park by FORA without Marina's consent?

This is an item that is part of ongoing mediation between FORA and Marina. FORA is the owner of Preston Park and as such has the authority to sell.

3. In what document (please be specific as to document and provision) does it state that FORA has a fiduciary duty to disregard the no cost conveyance to Marina of PP and sell it to Marina or a third party?

This is an item that is part of ongoing mediation between FORA and Marina.

4. In the second paragraph of the staff report it states that “FORA’s options are either to obtain fair market value from Marina or from a third party.”
 - a. What document (please be specific as to document and provision) states that those are the two options?

Staff was not referring to a specific document in writing this sentence.

- b. Why does the staff report NOT reference the “no cost conveyance” requirement of FORA to Marina on Preston Park?

This is an item that is part of ongoing mediation between FORA and Marina.

- c. Is not the limitation of stating only two alleged options inaccurate?

These are options that staff described in the staff report. More options may exist.

5. When was the agency agreement between FORA and Marina revoked rescinded?

The 3-Party Preston Park Management Agreement was not revoked or rescinded. It expired on December 31, 2011.

6. Earlier this month, the Marina City Council voted to extend the existing agreement between Marina, FORA, and Alliance
 - a. What effect does this agenda item have on Marina’s vote?

The Marina City Council can approve the 3-Party Preston Park Management Agreement if it wants. However, the FORA Board is not obligated to choose the 3-Party path and is free to move forward on a different path.

7. Since Marina receives ½ of the Net Operating Income (NOI) from Preston Park, will this new arrangement nullify Marina's right to have a say on the monthly rental rates, CIP, maintenance at Preston Park?

Marina's 50 percent of the net PP revenues would be preserved under either scenario, 3-Party or 2-Party agreement. Under a 2-Party agreement, FORA would make monthly rental, CIP, and maintenance decisions. FORA would review recommendations from Marina .

8. Why is this agreement being proposed?

The February 10, 2012 staff report summarizes issues that arose under the 3-Party Preston Park Management Agreement structure.

9. Was Marina given advanced notice of the change in the management agreement with Alliance?

The December 16, 2011 staff report was distributed in advance of the FORA Administrative and Executive Committee meetings, approximately 11 days to two weeks preceding the December Board meeting. Marina representatives attended both meetings.

10. Please state specific document(s) and specific provision(s) that allow the FORA Board to sell Preston Park without prior consent of Marina?

This is a disagreement between Marina and FORA and is a subject of ongoing mediation.

11. What effect does the passing of this item have on Marina's right to a "no cost conveyance" of the Preston Park to the city?

This is a disagreement between Marina and FORA and is a subject of ongoing mediation.

12. Does the passing of this item mean that FORA can sell other real property that is within the jurisdictional boundaries of Del Rey Oaks, Seaside, etc. instead of doing a no cost conveyance?

No. This item is limited to Preston Park which is in its final use. No comparable real property asset ownership structure exists in these jurisdictions.

FORT ORD REUSE AUTHORITY BOARD REPORT**OLD BUSINESS****Subject:** California Central Coast Veterans Cemetery – update**Meeting Date:** February 10, 2012**Agenda Number:** 6b**INFORMATION****RECOMMENDATION:**

Receive an update on the California Central Coast Veterans Cemetery ("CCCVC").

BACKGROUND/DISCUSSION:

In the past, FORA has taken a number of indirect steps to aid and support this worthy project. Most recently, the State Assembly and Senate passed AB 629 in 2011. Governor Brown signed AB 629 into law on September 7, 2011, allowing the California Department of Veterans Affairs ("CDVA") to contract directly with FORA to conduct veterans cemetery design and construction, potentially reducing the Endowment Fund requirement by more than \$500,000 and expediting the project. AB 629 went into effect this month.

FORA, Seaside, and County staff completed a review of FORA's most recent estimate for conducting the cemetery design work in two phases. FORA provided this estimate (*Attachment A*) to CDVA. CDVA will work with the California Department of Finance ("CDF") with the goal of obtaining their sign-off to use FORA's estimate instead of the California Department of General Services' ("CDGS") higher estimate as a basis for the endowment funding requirement needed to allow cemetery design to proceed. There is no specific deadline, but, depending on whether FORA's or CDGS's estimate is used by CDF, either \$508,000 or \$1,006,000 would need to be deposited into the State's Veterans Cemetery Endowment in order for phase I design (called Preliminary Plans) to begin. Another \$882,000 to \$960,000 would be needed to begin phase II design (called Working Drawings).

At the October FORA Board meeting, Supervisor Parker requested that FORA staff address the question: Is there a means for FORA to fund the Veterans Cemetery? FORA staff researched this question and found a March 13, 2006 memorandum from Authority Counsel Jerry Bowden to then Chair Ila Mettee-McCutchon addressing the question of whether or not FORA could provide financing for the Veterans Cemetery. The memo concluded that FORA cannot do so directly unless the FORA act is amended and it is agreed to by the jurisdictions in which the cemetery property is located (Seaside and County of Monterey). In addition, the down economy and recent elimination of redevelopment by the Governor and State Legislature further constricts FORA's options to indirectly support financing the project. The FORA Board directed the Veterans Cemetery funding question to the Finance Committee for further analysis. The Finance Committee will review the item at its February 1, 2012 meeting. FORA is also supporting legislation by Assemblymember Bill Monning that would allow CDVA to reimburse loans made to the State's Veterans Cemetery Endowment Fund.

FISCAL IMPACT:Reviewed by FORA Controller 

Staff time related to this item is included in FORA's annual budget.

COORDINATION:

City of Seaside, County of Monterey, CDVA, CDF, CDGS, Executive Committee, and Administrative Committee.

Prepared by 

Jonathan Garcia

Reviewed by 

Steve Endsley

Approved by: 

Michael A. Houlemard, Jr.

FORA / CONSULTANT PRELIMINARY FEE ESTIMATE
PRELIMINARY PLANS, WORKING DRAWINGS, AND CONSTRUCTION SERVICES
CALIFORNIA CENTRAL COAST VETERANS CEMETERY
 MONTEREY COUNTY, CALIFORNIA

Attachment A to Item 6b
FORA Board Meeting,
02/10/12

Category	Preliminary Plans	Working Drawings	Construction Services	Total	Notes
ARCHITECTURAL AND ENGINEERING SERVICES					
1 A&E Design	\$240,000	\$692,000	\$233,000	\$1,165,000	<i>Includes Contingency</i>
2 Construction Inspection	\$0	\$0	\$180,000	\$180,000	<i>See Assumption 6</i>
3 Construction Inspection Travel	\$0	\$0	\$0	\$0	<i>Included in 2</i>
4 Project Scheduling & Cost Analysis	\$0	\$0	\$0	\$0	
5 Advertising, Printing and Mailing	\$0	\$25,000	\$0	\$25,000	
6 Construction Guarantee Inspection	\$0	\$0	\$20,178	\$20,178	
SUBTOTAL A&E SERVICES	\$240,000	\$717,000	\$433,178	\$1,390,178	
OTHER PROJECT COSTS					
7 Special Consultants	\$0	\$100,000	\$35,800	\$135,800	<i>Soil Management Plan</i>
8 Materials Testing	\$0	\$0	\$85,000	\$85,000	<i>Assumes 3-4 mon. grading</i>
9 Project/Construction Management	\$23,000	\$53,650	\$336,000	\$412,650	
10 Contract Construction Management	\$0	\$0	\$230,000	\$230,000	
11 Site Acquisition Cost & Fees	\$75,000	\$0	\$0	\$75,000	
12 Agency Retained Items	\$0	\$0	\$400,000	\$400,000	
13 ASBE/DVBE Assessment	\$0	\$0	\$0	\$0	<i>Assume inc. in Contract</i>
14 School Checking	\$0	\$0	\$0	\$0	<i>N/A</i>
15 Hospital Checking	\$0	\$0	\$0	\$0	<i>N/A</i>
16 Essential Services	\$0	\$0	\$0	\$0	<i>N/A</i>
17 Handicapped Checking	\$0	\$8,200	\$0	\$8,200	
18 Environmental Document (MND/EA)	\$143,500	\$0	\$0	\$143,500	<i>Consistent with DGS</i>
19 Due Diligence	\$0	\$0	\$0	\$0	<i>Cost Included in 1</i>
20 Other Costs - (SFM)	\$920	\$2,760	\$30,000	\$33,680	
21 Other Costs - (Permit/Reg. Fees)	\$0	\$0	\$0	\$0	
22 Other Costs - (ARF Assessment)	\$0	\$0	\$0	\$0	
23 Construction Staking	\$0	\$0	\$150,000	\$150,000	<i>Assumes 3 months</i>
24 Tree Mitigation and Plan (if required)	\$25,000	\$0	\$75,000	\$100,000	
SUBTOTAL OTHER PROJECT COSTS	\$267,420	\$164,610	\$1,341,800	\$1,773,830	
TOTAL PROJECT COSTS	\$507,420	\$881,610	\$1,774,978	\$3,164,008	

ASSUMPTIONS

- 1 *This fee estimate is based on Phase 1 construction being similar to that shown on the Conceptual Master Plan of 2008, without the loop road to the Amphitheater and the road to Artillery Hill*
- 2 *FORA Working Drawings will include earthwork for approximately half the site to eliminate the need for a UXO tech. in the first five phases*
- 3 *Preliminary Plans and Working Drawings will commence in the first quarter of 2012*
- 4 *Project shall follow LEED standards but not require LEED certification*
- 5 *Preliminary Plan Design numbers include items under the SCGP Grant Process that are titled Master Plan and Schematic Submission*
- 6 *Phase 1 Cemetery Construction is assumed to last 12 months; DGS assumed 18 months*

FORA / CONSULTANT PRELIMINARY FEE ESTIMATE
A&E DESIGN CONSULTANT BREAKDOWN
CALIFORNIA CENTRAL COAST VETERANS CEMETERY
MONTEREY COUNTY, CALIFORNIA

Consultant	Firm	Preliminary Plans Estimated Fee	Working Drawings Estimated Fee	Construction Services Estimated Fee	Total Estimated Fee
Civil Engineer	Whitson Engineers	\$72,000	\$167,500	\$75,000	\$314,500
Landscape Architect	RHAA	\$75,075	\$141,670	\$33,450	\$250,195
Architecture	HKIT Architecture	\$16,000	\$144,000	\$61,000	\$221,000
Mechanical Engineer	List Engineering	\$0	\$26,000	\$3,800	\$29,800
Structural Engineer	Howard Carter Associates	\$12,600	\$25,900	\$8,300	\$46,800
Electrical Engineer	Aurum Consulting	\$6,000	\$30,000	\$5,000	\$41,000
Cost Estimator	Saylor Consulting Group	\$16,800	\$31,800	\$0	\$48,600
Geotech	Kleinfelder	\$0	\$2,000	See Summary	\$2,000
Project Management	Whitson Engineers	\$20,000	\$60,000	\$25,000	\$105,000
Subtotal		\$218,475	\$628,870	\$211,550	\$1,058,895
10% Contingency		\$21,848	\$62,887	\$21,155	\$105,890
Total with Contingency		\$240,000	\$692,000	\$233,000	\$1,165,000

Environmental Document

Environmental Planner Denise Duffy & Associates

Technical Reports/Analysis Likely Required

· Noise Study	\$5,000
· Air Quality	\$7,000
· Greenhouse Gas Analysis	\$9,000
· Traffic	\$10,000
· Tree Impact Analysis	\$10,000
· Visual Analysis	\$3,500
· Cultural Section 106	\$4,000
· Biological/Section 7 Consultation	\$10,000

Technical Reports Subtotal \$58,500

IS/MND and EA/FONSI \$85,000

If EIR/EA instead of IS/MND *(additional)* \$25,000

If EIR/EIS instead of IS/MND *(additional)* \$115,000

Total \$143,500 (MND/EA)

Assumptions:

- 1- The fee estimates are based on Phase 1 construction being similar to that shown on the Conceptual Master Plan of 2008, without the loop road to the Amphitheater and the road to Artillery Hill
- 2- FORA Working Drawings will include earthwork for approximately half the site to eliminate the need for a UXO tech in the first five phases
- 3- Preliminary Plans and Working Drawings will commence in the first quarter of 2012
- 4- Project shall follow LEED standards but not require LEED certification
- 5 - Preliminary Plan Design numbers include items under the SCGP Grant Process that are titled Master Plan and Schematic Submission
- 6- Phase 1 Cemetery Construction is assumed to last 12 months; DGS assumed 18 months

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject:	FORA mid-year budget	
Meeting Date:	February 10, 2012	ACTION
Agenda Number:	7a	

RECOMMENDATIONS:

Accept the FY 11-12 Fort Ord Reuse Authority (FORA) Operating Budget mid-year status report and approve additional expenditures as noted and recommended by the Finance Committee.

BACKGROUND:

The mid-year budget update is typically provided at the February Board meeting. This report covers the status of the FY 11-12 budget approved at the June 10, 2011 meeting. The Finance Committee reviewed the mid-year budget at its February 1 meeting.

DISCUSSION:

Despite the continuing recessionary economic conditions delaying redevelopment activities on the former Fort Ord, FORA Board policies have maintained financial stability. The financial support was aided by two federal grants allowing the Capital Improvement Program (CIP) and environmental cleanup activities to continue uninterrupted. This mid-year budget reports a net increase in both revenues and expenditures.

Revenues: Net increase \$1.7 million

- Significant reductions: 1) a portion of ESCA grant reimbursements to reflect a slightly lower anticipated activities through June 2012 (62K), 2) future tax increment payments (as result of recent State Supreme Court's decision to abolish redevelopment agencies) pending final determination of FORA's share of the ongoing increment (720K).
- Significant additions: 1) development fee from East Garrison project area not included in the approved budget (2.2M), and 2) undistributed Preston Park excess revenue collected in November 2011 (280K).

Expenditures: Net increase \$639 thousand

- Significant reductions:
 - \$135K savings in Salaries and Benefits due to staff reorganization, deferred new hiring, and delayed salary range adjustment (January 2012).
 - \$44K Supplies and Services savings in several categories due to prudent purchasing and/or applying technology (electronic copies rather than hard copies etc).
- Significant additions:
 - \$165K authorized by the Board since the budget approval for HCP consultant (158K) and financial consultant (7K).
 - \$34K requested today for: 1) Public information center (located in FORA building) equipment and exhibits (20K); 2) televised BRP Board meetings (up to 4 meetings at \$600 per meeting, total 2.4K); 3) RDA/Tax increment Brent Hawkins/EPS legal opinion (3.5K); and 4) Legislative consultant for FORA extension and CCCVC services (8.4K).
 - \$548K increase in CIP/Habitat management retention obligation as a result of development fee collection (25% of each dollar collected is directly allocated to HM obligation).

\$71K carryover from previous fiscal year for relocation expenses to IOP office. \$100K moving budget was approved in FY 10-11; relocation conclusion and the budget carried over to this fiscal year.

Attachment 1 illustrates the updated budget as compared to the approved budget; corresponding notes offer brief narrative descriptions of budget variances.

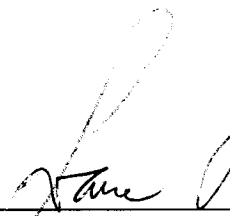
FISCAL IMPACT:

As result of the budget adjustments and larger beginning (carryover) balance, the ending fund balance increases from \$3.1 million to \$5.2 million as compared to the approved budget.

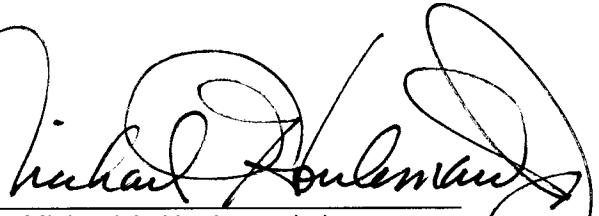
COORDINATION:

Finance Committee, Executive Committee

Prepared by


Ivana Bednarik

Approved by


Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY - FY 11-12 MID-YEAR BUDGET - ALL FUNDS COMBINED

CATEGORIES	FY 11-12 APPROVED	FY 11-12 MID-YEAR	BUDGET ADJUSTMENTS	NOTES
REVENUES			<i>Incr/(Decrease)</i>	
Membership Dues	\$ 261,000	\$ 261,000	-	
Franchise Fees - MCWD	195,000	195,000	-	
Federal Grants - ESCA	963,885	901,698	(62,187)	Decrease reflects anticipated reimbursements in FY 11-12
Federal Grants - EDA	2,109,754	2,105,770	(3,984)	Decrease reflects actual/audited grant balance to be spent in FY 11-12
PLL Loan Payments	727,634	727,634	-	
Development Fees	34,000	2,224,200	2,190,200	Anticipated East Garrison/Manzanita Place CFD payment
Land Sale Proceeds	-	-	-	
Rental/Lease Payments	1,592,858	1,872,858	280,000	Preston Park audited final revenue distribution adjustment
Tax Increment	1,500,000	779,250	(720,750)	Includes collections thru December 2011
CSU Deficit Payment	500,000	500,000	-	
Planning Reimbursements	12,500	12,500	-	
Loan Reimbursements	287,000	287,000	-	
Investment/Interest Income	62,500	104,195	41,695	Higher return due to deferred needs for invested funds
TOTAL REVENUES	8,246,131	9,971,105	1,724,974	Increase in Total revenues
EXPENDITURES				
Salaries & Benefits	1,902,101	1,767,040	(135,061)	Savings due to reorganization and postponed hiring (approved salary ranges included)
Supplies & Services	227,550	276,219	48,669	IOP office relocation budgeted in FY 10-11 actually incurred in FY 11-12
Contractual Services	1,493,250	1,670,650	177,400	HCP, Financial and Legislative consultant budget increase
Capital Projects (CIP)	5,081,208	5,628,759	547,551	Habitat Management set aside increase
Debt Service (P+i)	2,360,423	2,360,423	-	
TOTAL EXPENDITURES	11,064,532	11,703,090	638,559	Increase in Total expenditures
NET REVENUES - Surplus/(Deficit)	(2,818,401)	(1,731,986)	1,086,415	
FUND BALANCES				
Budget Surplus/(Deficit) - Beginning	5,950,417	6,980,431	1,030,014	
Budget Surplus/(Deficit) - Ending	\$ 3,132,016	\$ 5,248,445	\$ 2,116,429	Increase in Ending fund balance/FORA Reserve

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject:	Base Reuse Plan reassessment – consultant selection	
Meeting Date:	February 10, 2012	ACTION
Agenda Number:	7b	

RECOMMENDATION(S):

Authorize Executive Officer to enter into a phase I contract with the selected Base Reuse Plan reassessment consultant, not to exceed \$250,000.

BACKGROUND/DISCUSSION:

The Ventana Chapter of the Sierra Club filed a lawsuit against the Fort Ord Reuse Authority (FORA) after it adopted the BRP in June 1997. The Sierra Club and FORA signed a settlement agreement in 1998 whereby the Sierra Club dropped its lawsuit and FORA agreed to perform a number of actions. One of the actions was the adoption of Chapter 8 to the FORA Master Resolution. Section 8.01.010 (h) of the Master Resolution says that the "Authority Board will perform a full reassessment, review, and consideration of the Reuse Plan and all mandatory elements as specified in the Authority Act... by January 13, 2013... No development will be approved by FORA or any land use agency or local agency after the time specified in this subsection unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted as required by California Environmental Quality Act (CEQA), the Authority Act, the Master Resolution, and all applicable environmental laws."

To meet these obligations, FORA has hired Darren McBain to serve as Associate Planner to support the BRP Reassessment process, as authorized in the FY 11-12 budget, prepared a BRP Reassessment schedule (**Attachment A**), and released a Request for Qualifications (RFQ) (**Attachment B**) to hire a consultant to perform the Reassessment and prepare the associated CEQA compliance document. FORA staff has scheduled selection panel interviews with two competing consultant teams on February 6, 2012, and anticipates making a selection recommendation to the Executive Officer and FORA Board by February 10, 2012 Board meeting.

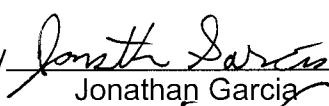
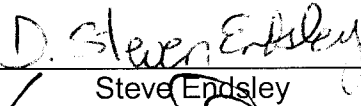
FISCAL IMPACT:

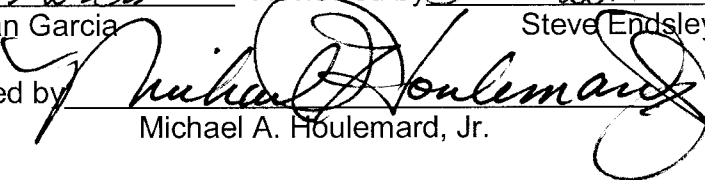
Reviewed by FORA Controller 

Staff time and Base Reuse Plan reassessment consultant costs are included in the approved FY 11-12 budget.

COORDINATION:

Administrative Committee, Executive Committee, and Authority Counsel.

Prepared by  Jonathan Garcia Reviewed by  Steve Endsley

Approved by  Michael A. Houlemard, Jr.

FORT ORD BASE REUSE PLAN REASSESSMENT SCHEDULE

Attachment A to Item 7b
FORA Board Meeting, 02/10/12

1									
2									
3									
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5									
6									
	↑	↑	↑	↑	↑	↑	↑	↑	↑
	Jan. 2012	Feb. 2012	Mar. 2012	July 2012	Dec. 2012	Jan. 2013			

1. RFQ process to select BRP review consultant
2. Initial scoping meeting
3. Board Kickoff presentation
4. Present options to Admin. Committee and FORA Board
5. Present to FORA Board for action
6. Final Action completed



FORT ORD REUSE AUTHORITY

920 2ND AVENUE, SUITE A, MARINA, CALIFORNIA 93933

PHONE: (831) 883-3672 - FAX: (831) 883-3675

WEBSITE: www.fora.org

January 5, 2012

Attachment B to Item 7b
FORA Board Meeting, 02/10/12

Interested Consultant or Consultant team

Re: Invitation to Submit Professional Planning Qualifications to the Fort Ord Reuse Authority. Services to be associated with the reassessment of the 1997 Fort Ord Base Reuse Plan.

Dear Consultant:

The Fort Ord Reuse Authority's ("FORA") state law defined mission is to prepare, adopt, finance, and implement a plan for former Fort Ord reuse, including land use, transportation systems, conservation of land and water, recreation and business operations. In order to meet these mandated objectives, the Fort Ord Base Reuse Plan ("BRP") was adopted in 1997.

The BRP for Fort Ord reuse was adopted by FORA as the official local regional base reuse plan to enhance and deliver promised economic recovery of the underlying and contiguous local jurisdictions, while protecting designated natural resources.

Fifteen years after its adoption, the FORA BRP is scheduled for review and reassessment. FORA hereby solicits submittals of interest from qualified consultant teams willing to provide BRP review and reassessment services. The BRP review and reassessment must be complete by December 2012, but may be extended under certain circumstances. This Request for Qualifications ("RFQ") invites you to submit relevant firm/team qualifications. FORA will review submittals to determine the best suited firms/teams.

Submittals will be evaluated on:

- 1) ***Demonstrated prior contracted experience preparing/assessing regional/local general plans;***
- 2) ***Demonstrated professional background preparing and working with military Base Reuse General Plans;***
- 3) ***Demonstrated knowledge of resource plans for sensitive habitats;***
- 4) ***Demonstrated experience working with the California Environmental Quality Act (CEQA); and***
- 5) ***Defined background working with communities of color and economic recovery programs.***

The submitting firm's/team's Statement of Qualifications (SOQ) must address the skills, experience, and abilities needed to complete this BRP reassessment work (as generally described in the attached Scope of Work). In your SOQ, you must provide: 1) qualifications, 2) examples of relevant experience providing similar services, 3) three past client references, 4) a brief description

outlining tasks 1-5 completion, and 5) a brief description of the project team, their work experience, and level of time commitment to the project.

Submitting firms/teams must provide SOQs to FORA as specifically described in this letter by 12:00 noon on Monday, January 23, 2011. For background information on the Base Reuse Plan, please visit: <http://www.basereuse.org/reuseplan/HomePage/HomePage.htm>. For background information on the Fort Ord Reuse Authority, please visit: www.fora.org.

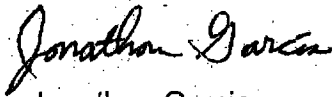
Please limit your SOQ to 50 single-sided pages or 25 double-sided pages on 8.5"x11" paper and unbound. Please address a cover letter to the SOQ to:

Mr. Jonathan Garcia, Senior Planner
FORA
920 2nd Ave., Ste. A,
Marina, California 93933

FORA reserves the right to reject any and all SOQs.

FORA will appoint a selection panel to review the SOQs, select two or more of the submitting firms/teams to participate in the interview process, and make the final selection of the firm/team to recommend to the Executive Officer and the FORA Board.

Sincerely,



Jonathan Garcia
Senior Planner

Scope of Work

The following tasks (1-5) describe the work that the selected consultant will accomplish. The selected consultant will meet all applicable federal, state, and local regulatory standards in the completion of this work. Applicants are free to propose alternative approaches should they see fit.

Task 1 – Scoping – Determine the level of assessment needed.

The Consultant will review Ch. 8 of the FORA Master Resolution, the Authority Act, and the 1997 BRP. After conferring with FORA staff, the consultant will identify required elements of the reassessment and prepare the following deliverables.

Deliverable # 1 – Market Study

The Consultant will review existing market analyses conducted in the Monterey Bay region, collect market data, conduct focused stakeholder interviews, and prepare a comprehensive Market Study that evaluates the development potential of former Fort Ord, taking into account: economic, political, environmental, and regulatory constraints.

Deliverable # 2 – Community Outreach

The Consultant will conduct five public workshops that seek broad community input from counties, municipalities, educational institutions, and culturally, linguistically, and economically diverse communities in the Monterey Bay Region about the elements of the BRP Reassessment. While Community Outreach is ongoing, the consultant shall also attend one FORA Board meeting to provide a reassessment update, present the Market Study, and obtain feedback on the Base Reuse Plan Reassessment.

Task 2 – Scoping Report

Deliverable #3 – BRP Reassessment Scoping Report

The Consultant will prepare a scoping report that summarizes the results of the Market Study and Community Outreach, and presents options for conducting the BRP Reassessment. The Consultant will present the scoping report to the FORA Board and request that the Board select one of the options.

Task 3 – Draft BRP Reassessment

Deliverable #4 – Administrative Draft BRP Reassessment

The Consultant will prepare an administrative draft document consistent with the FORA Board-selected BRP Reassessment option. The Consultant will request feedback from FORA on the administrative draft document.

Deliverable #5 – Public Draft BRP Reassessment

The Consultant will prepare a public draft document that addresses comments received on the administrative draft document.

Task 4 - CEQA Compliance

Deliverable #6 – Administrative Draft BRP Reassessment CEQA document

Concurrent with the preparation of the Draft BRP Reassessment document, the consultant will prepare an Initial Study based on the Draft BRP Reassessment document. FORA will direct the consultant to prepare

the appropriate CEQA document. The Consultant will request feedback from FORA on the administrative draft CEQA document.

Deliverable #7 – Draft BRP Reassessment CEQA document

The Consultant will prepare a public draft document that addresses comments received on the administrative draft CEQA document.

Task 5 – Public Review/Responses to comments/Adoption of CEQA document

Deliverable #8 – Draft BRP Reassessment and CEQA document

The Consultant will be available to review comments during the public comment period.

Deliverable #9 – Responses to comments

The Consultant will review comments after the public comment period ends and provide assistance in preparing responses to comments.

Deliverable #10 – Adoption of BRP Reassessment and BRP Reassessment CEQA documents

The Consultant will attend FORA Board meetings when the Board considers adoption of the BRP Reassessment and BRP Reassessment CEQA documents.

Overarching Goals of the Base Reuse Plan Reassessment

Objective: establish a framework and basis to attract corporations and industries that value quality of life, environmental sustainability, and a business atmosphere that produces stellar employees, while keeping environmental protection as a key aspect of all development plans.

Eight general areas of priority are incorporated into the Base Reuse Plan. These are funding, economic development, environmental quality, human resources, urban design/planning, community services, infrastructure development, and public information and involvement.

FORT ORD REUSE AUTHORITY BOARD REPORT

NEW BUSINESS

Subject: Confirmation of Chair's 2012 FORA Committee Appointments

Meeting Date: February 10, 2012

Agenda Number: 7c

ACTION

RECOMMENDATION:

Confirm Fort Ord Reuse Authority ("FORA") Board of Directors Chair Dave Potter's 2012 appointments to the Finance Advisory Committee (aka the Finance Committee) and the Legislative Advisory Committee (aka the Legislative Committee).

BACKGROUND/DISCUSSION:

Annually at the February Board meeting, the FORA Chair recommends board members to serve on FORA's Finance and Legislative Committees. These appointments are for one year, and each committee will have a chair and a certain number of members, which may be appointed from ex-officio, voting, or alternate named members.

Chair Potter has recommended the following to serve throughout the February 2013 Board meeting:

Finance Committee:

- Mayor Sue McCloud, City of Carmel-by-the-Sea (Chair)
- Councilmember Bill Kampe, City of Pacific Grove (Vice-Chair, to replace Chair in April)
- Councilmember Ian Oglesby, City of Seaside
- Hunter Harvath, Monterey-Salinas Transit
- Graham Bice, UCMBEST
- Jim Ford, City of Marina (Replace Sue McCloud as Finance Committee member in April)

Legislative Committee:

- Supervisor Dave Potter, Monterey County (Chair)
- Mayor Jerry B. Edelen, City of Del Rey Oaks (1st Vice-Chair)
- Councilmember Frank O'Connell, City of Marina (2nd Vice-Chair)
- Mayor David Pendergrass, City of Sand City (Member-at-Large)
- Mayor Felix Bachofner, City of Seaside (Member-at-Large)

FISCAL IMPACT:

Reviewed by FORA Controller _____

Staff time for this item is included in the approved FY 11-12 budget.

COORDINATION:

Executive Committee

Prepared by


Crissy Maras

Approved by


Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject:	Outstanding Receivables		
Meeting Date:	February 10, 2012	INFORMATION	
Agenda Number:	8a		

RECOMMENDATIONS:

Receive a Fort Ord Reuse Authority (FORA) outstanding receivables update as of January 31, 2012.

BACKGROUND/DISCUSSION:

FORA has several significant outstanding receivables. The Late Fee policy adopted by the FORA Board requires receivables older than 90 days be reported to the Board.

	Item Description	Amount Owed	Amount Paid	Amount Outstanding
1 City of Del Rey Oaks	PLL Loan Payment 09-10	182,874	-	182,874
	PLL Loan Payment 10-11	256,023	-	256,023
	PLL Loan Payment 11-12	256,023	-	256,023
	<i>DRO Total</i>			
2 City of Marina	Tax Increment 08-09	108,862	108,862	-
	Tax Increment 07-08	111,246	55,623	55,623
	Preston Park Excess Revenue	230,000	230,000	-
	<i>Marina Total</i>			
3 City of Seaside	Tax Increment 03-10	358,830	270,000	88,830
4 Monterey County	Lease revenue 10-11 (Ord Market)	-	*	-
	<i>*County determined \$0 owed</i>			
	Total Outstanding Receivables			\$ 839,373

1. City of Del Rey Oaks (DRO)

- PLL insurance annual payments: In 2009, DRO cancelled agreement with its project developer who previously made the PLL loan payments. The FORA Board approved a payment plan for DRO and the interim use of FORA funds to pay the premium until DRO finds a new developer (who will be required by the City to bring the PLL Insurance coverage current). DRO agreed to make interest payments on the balance owed until this obligation is repaid, and they are current.

Payment status: First Vice Chair Mayor Edelen informed both the Board and Executive Committee that DRO will borrow or secure funds from a new developer to pay off this obligation in this FY.

2. City of Marina (Marina)

- Tax increment (TI): In the fall of 2010, as directed by the FORA Board during the Capital Improvement Program review, FORA conducted an audit of TI revenue that FORA collects from Seaside, Marina and County of Monterey. The results indicated that FORA was owed property TI payments from Seaside and Marina. Both cities acknowledged the debt.

Marina retained a portion of FORA's tax increment in FY 07-08 and FY 08-09. At the July 2011 meeting, FORA Board approved an MOA with Marina for a phased (2 payments) repayment of the FY 08-09 tax increment obligation and this underpayment has been paid off in November 2011.

Regarding the FY 07-08 underpayment, after lengthy communications between FORA and Marina, the City attorney advised FORA that Marina agrees to pay the FY 07-08 TI underpayment and proposes payment plan pursuant to an MOA similar to the one for the FY 08-09 underpayment. At its November 18, 2011 meeting, the FORA Board authorized the Executive Officer Houlemard to negotiate a FY 07-08 tax increment payment agreement with Marina. Per the Executive Committee ("EC") direction, the first payment was to be due on January 1, 2012 given that this amount has been due for over two years. The draft MOA for a phased (2 payments) was forwarded to Marina on November 21; they requested the first payment be due on February 1, 2012 to allow sufficient time for payment processing following the Christmas/Holiday break. The City Council approved the MOA on December 6 and the EC authorized the Executive Officer to execute this agreement with this minor change requested by Marina.

Payment status: Marina paid the first installment on time; the second (last) installment is due June 30, 2012.

- Preston Park Excess Revenue: At the August 12, 2011 meeting, the FORA Board assigned staff to direct Alliance (the Preston Park management company) to distribute accumulated FY 08-11 excess revenue. FORA staff formally transmitted this direction to Alliance, but were informed by Alliance that Marina instructed them to withhold the distribution. At the November 18, 2011 meeting, the FORA Board, at the closed section, directed the FORA Counsel to execute an indemnity agreement with Alliance and request an immediate disbursement of the undistributed revenue (50% to FORA and 50% to Marina).

Payment status: FORA received full payment on November 22, 2011.

3. City of Seaside (Seaside)

- Tax increment: Please see paragraph 2 above regarding Seaside tax increment underpayment. At the February 2011 meeting, the FORA Board approved an MOA with Seaside for a phased (4 payments) repayment of this obligation.

Payment status: Seaside paid the first three installments on time. The last installment payment is due June 30, 2012.

4. County of Monterey (County)

- Lease revenue: In fall 2011, County staff notified FORA that the Ord Market Lessee may owe County/FORA in 2010 lease revenue. Under the Lease terms, the Lessee pays the larger of basic rent or 3% of gross monthly sales. Upon review of the Lessee's 2010 tax forms, the County has determined that the Lessee does not owe any rent for 2010.

Payment status: County has determined that no rent is owed.

FISCAL IMPACT:

FORA must expend resources or borrow funds until these receivables are collected. The majority of FORA revenues come from member/jurisdiction/agencies and developers. FORA's ability to conduct business and finance its capital obligations depends on a timely collection of these revenues.

COORDINATION:

Finance Committee, Executive Committee

Prepared by

Ivana Bednarik

Approved by

Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Administrative Committee

Meeting Date: February 10, 2012

Agenda Number: 8b

INFORMATION

RECOMMENDATION:

Receive a report from the Administrative Committee.

BACKGROUND/DISCUSSION:

The Administrative Committee met on January 4th 2012. The approved minutes are attached.

FISCAL IMPACT:

Reviewed by FORA Controller 

Staff time for this item is included in the approved FY 11-12 budget.

COORDINATION:

Administrative Committee

Prepared by


Crissy Maras

Approved by


Michael A. Houlemard, Jr.



Fort Ord Reuse Authority

920 2nd Ave, Suite A, Marina, CA 93933
Phone: (831) 883-3672 • Fax: (831) 883-3675 • www.fora.org

ADMINISTRATIVE COMMITTEE MEETING

Wednesday, January 4th, 2012

8:15 a.m. – Carpenters Union Hall

910 2nd Ave., Marina CA 93933 (on the former Fort Ord)

Minutes

APPROVED

1. **CALL TO ORDER** - Noting a quorum was present, Fort Ord Reuse Authority ("FORA") Executive Officer Michael Houlemard called the meeting to order at 8:17 AM. The following people, as indicated by signatures on the roll sheet, were present:

Diana Ingersoll, City of Seaside Nick Nichols, County of Monterey Bob Rench, CSUMB Jonathan Garcia, FORA Anya Spear, CSUMB Tim O'Halloran, City of Seaside Carl Niizawa, MCWD Graham Bice, UC-MBEST Steve Endsley, FORA Rob Robinson, BRAC Elizabeth Caraker, City of Monterey	Pat Ward, Bestor Engineers Todd Muck, TAMC Jim Arnold, FORA Bob Schaffer, MCP Vicki Nakamura, MPC Crissy Maras, FORA Beth Palmer, Monterey Downs Doug Yount, City of Marina Daniel Dawson, City of Del Rey Oaks Kathleen Lee, County of Monterey
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2. **PLEDGE OF ALLEGIANCE** –Chair Houlemard asked Scott Hilk to lead the Pledge of Allegiance.
3. **ACKNOWLEDGEMENTS, ANNOUNCEMENTS AND CORRESPONDENCE**
 - a. Chair Houlemard introduced Bob Rench, new CSUMB representative.
 - b. Chair Houlemard announced the recent California Supreme Court ruling to dissolve redevelopment agencies statewide. Mr. Houlemard noted that FORA would call a meeting to discuss the widespread effects this ruling would have on FORA and the jurisdictions, and to strategize on best ways to move forward. This decision will have a financial effect on all the jurisdictions, including FORA, who counted on incoming Tax Increment revenue when the Community Facilities District fee was recently reduced.
4. **PUBLIC COMMENT PERIOD** – none
5. **APPROVAL OF MEETING MINUTES** – On a motion made by Graham Bice, and seconded by Diana Ingersoll, the November 30, 2011 meeting minutes were approved.
6. **OLD BUSINESS**
 - a. **Capital Improvement Program – upcoming schedule/FORA historical funding**

FORA Senior Planner Jonathan Garcia asked members to report any updated development forecasts per the memo distributed at the November 30th meeting. Members indicated overall difficulty with forecasting due to the recent Supreme Court decision phasing redevelopment agencies out. Chair Houlemard again noted the importance of meeting to determine how to move forward, the effects of the law, and how it addresses the unique situation of reusing military bases. Each redevelopment agency must pass a resolution by January 13th designating a successor agency.

Regarding historical funding, a draft spreadsheet was distributed which illustrated a summary of FORA's historical funding and expenditures from 1995 through current. Members reviewed the information and asked that all fee collection be shown together. Chair Houlemard asked that any additional comments be submitted prior to the January 19th Finance Committee, where this spreadsheet will be presented.

b. Habitat Conservation Plan – update

Mr. Garcia distributed the Denise Duffy & Associates scope of work, which is on the January Board agenda for approval. This new contract will take HCP work through the end of the regulatory agency review period. An additional amendment will be required to continue work on the public draft.

c. Base Reuse Plan Reassessment – update

A Request for Qualifications will be issued this week with submittals due by January 23rd. Chair Houlemard noted that FORA staff had been meeting with the Sierra Club, Land Watch, and others, as part of the reassessment program and as required by the Sierra Club settlement agreement. The meetings have been productive, providing FORA the opportunity to offer accurate information when misconceptions were realized. The Sierra Club is concerned about the number of entitled projects, and would like to see that open space is left until already developed areas (“concrete”) have been reused. FORA has hired a new associate planner and principal analyst who will begin working this month on the reassessment and a public education campaign along with jurisdictional staff. FORA Assistant Executive Officer Steve Endsley noted that the reassessment has a CEQA component to it and public participation will be part of a comprehensive digital outreach program.

7. NEW BUSINESS – none

8. FORA BOARD MEETING AGENDA REVIEW JANUARY 13, 2012

There are several components to old business item 6a, Preston Park: a second vote is required to authorize staff to secure an updated appraisal, to approve an up-to 90 day extension of the last Preston Park management agreement, and to authorize staff to offer Preston Park for sale. The Board will also be voting on a new management agreement between Alliance and FORA. FORA is scheduling a meeting with Preston Park tenants to ensure they are aware that any change in management will not affect the rent or services they are accustomed to. Regarding item 6b, staff has been working to finalize cemetery design costs for submittal to the State; two Board members have requested that FORA look into funding cemetery construction. No changes were requested or made to the January 13, 2012 FORA Board agenda.

9. ITEMS FROM MEMBERS

Chair Houlemard noted that Assembly Member Monning, along with Assembly Member Alejo and Senator Blakeslee, have been working to coordinate the legislation to extend FORA to 2024. Monning is starting with a date farther out in the event that it might be pared back and with the hopes that another extension won't be necessary. Mr. Houlemard also announced a possible media event prior to the January Board meeting and a corresponding change to the meeting start time. Details will be released as available.

10. ADJOURNMENT – Acting Chair Houlemard adjourned the meeting at 9:20 a.m.

Meeting minutes prepared by Crissy Maras, Grants and Contracts Coordinator

FORT ORD REUSE AUTHORITY BOARD REPORT

EXECUTIVE OFFICER'S REPORT

Subject: Finance Committee - report

Meeting Date: February 10, 2012

Agenda Number: 8c

INFORMATION

RECOMMENDATION(S):

Receive a report from the Finance Committee (FC) meeting.

BACKGROUND/DISCUSSION:

The FC met on February 1, 2012 to discuss the FY 11-12 Mid-Year budget, dismissal of Redevelopment Agencies, Veterans Cemetery and FORA historical funding. The draft FC minutes will be presented to the Board in March 2012.

FISCAL IMPACT:

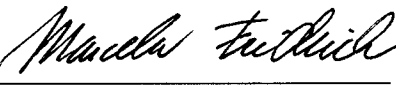
Reviewed by FORA Controller _____

Staff time for this item is included in the approved FY 11-12 budget.

COORDINATION:

Finance Committee

Prepared by



Marcela Fridrich

Approved by



Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT**EXECUTIVE OFFICER'S REPORT****Subject:** Habitat Conservation Plan**Meeting Date:** February 10, 2012**Agenda Number:** 8d**INFORMATION****RECOMMENDATION:**

Receive a status report regarding the Habitat Conservation Plan ("HCP") and State of California 2081 Incidental Take Permit ("2081 permit") preparation process.

BACKGROUND/DISCUSSION:

The Fort Ord Reuse Authority ("FORA"), with the support of its member jurisdictions and consultant team, is on a path to receive approval of a completed basewide HCP and 2081 permit in 2013, concluding with US Fish and Wildlife Service ("USFWS") and California Department of Fish and Game ("CDFG") issuing federal and state permits.

ICF International (formerly Jones & Stokes), FORA's HCP consultant, completed an administrative draft HCP on December 4, 2009. FORA member jurisdictions completed a comment and review period, which ended February 26, 2010. In April 2011, USFWS finished their comments on all draft HCP sections, while CDFG provided limited feedback. These comments by the regulatory agencies required a substantial reorganization of the document. To address this, ICF International completed a 3rd Administrative Draft HCP for review (dated September 1, 2011). The 12 Permittees (County, Cities of Marina, Seaside, Del Rey Oaks, and Monterey, Monterey Peninsula Regional Park District, Marina Coast Water District, State Parks, Monterey Peninsula College, California State University Monterey Bay, University of California Monterey Bay Education, Science, and Technology Center, and FORA) and Cooperating Entity (Bureau of Land Management) reviewed this draft document and submitted their comments in October 2011. This review includes the draft HCP Implementing Agreement and Ordinance/Policy, which are appendices to the draft HCP and are being prepared separately by FORA. ICF International is currently addressing all received comments and compiling a draft that can be submitted to USFWS/CDFG by February 2012. It is estimated that it will take the wildlife agencies 90 days to complete their internal review followed by 60 days for ICF International to prepare a Screen Check draft that will undergo a 30-day review for legal compliance by the wildlife agencies' solicitors/legal departments. ICF International would then respond to any comments/issues raised in 30 days. FORA staff estimate a Public Draft document to be available for public review by September 2012.

At the September 7, 2011 FORA Administrative Committee meeting, Jamie Gomes, Principal, from EPS presented information related to Economic and Planning Systems' ("EPS") review of HCP costs and endowment investment strategy. EPS provided an HCP endowment investment strategy that will be incorporated into the draft HCP. Final approval of the endowment strategy rests with CDFG/USFWS.

FISCAL IMPACT:Reviewed by FORA Controller 

ICF International and Denise Duffy and Associates' (FORA's NEPA/CEQA consultant) contracts have been funded through FORA's annual budgets to accomplish HCP preparation.

COORDINATION:

Executive Committee, Administrative Committee, Legislative Committee, HCP working group, FORA Jurisdictions, USFWS and CDFG personnel, ICF International, Denise Duffy and Associates, and Bureau of Land Management.

Prepared by



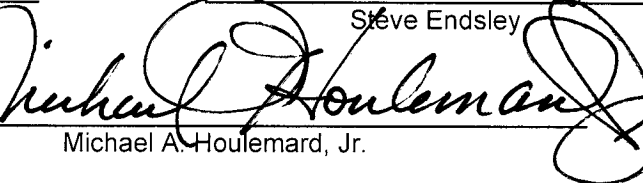
Jonathan Garcia

Reviewed by



Steve Endsley

Approved by



Michael A. Houlemard, Jr.

FORT ORD REUSE AUTHORITY BOARD REPORT**EXECUTIVE OFFICER'S REPORT****Subject:** Executive Officer's Travel**Meeting Date:** February 10, 2012**Agenda Number:** 8e**INFORMATION****RECOMMENDATION:**

Receive an informational travel report from Fort Ord Reuse Authority ("FORA") Executive Officer.

BACKGROUND/DISCUSSION:

The Executive Officer regularly submits reports to the Executive Committee providing details of travel requests, including those by the FORA Board members and Executive Officer. Travel expenses may be paid or reimbursed by FORA, outside agencies/ jurisdictions/organizations, or a combination of these sources. The Executive Committee reviews and approves these requests, accordingly, and the travel information is reported to the Board as an informational item.

The FORA Chair, Executive Officer and Principal Analyst (of FORA staff) attended Legislative Mission Meetings in Sacramento on **January 30 – 31, 2012** and met with representatives on ESCA, Veterans Cemetery and FORA extension issues.

The FORA Chair and possibly Mayor Bachofner will accompany the Executive Officer attending the **February 27-29, 2012** – Association of Defense Communities 2012 Winter Forum, Miami, Florida. In order to save costs, the Executive Officer has decided to forgo attending the **February 2 – 4, 2012** - Local Government Commission conference "New Partners for Smart Growth" in San Diego.


It is anticipated that the FORA Legislative Mission in Washington, DC will take place on April 15-18, 2012. More information will follow.

FISCAL IMPACT:Reviewed by FORA Controller 

Travel costs are covered according to FORA travel policy and are included in the FY 11-12 budget.

COORDINATION:

Executive Committee

Prepared by: 
Ivana Bednarik

Approved by: 
Michael A. Houlemard, Jr.