

<b><u>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</u></b>			Page of Page(s) 1   22	
1. Amendment/ <u>Modification</u> No. <b>A00003</b>	2. Effective Date See Block 15c	3. Requisition/Purchase Order No.	4. Project No. (if applicable)	
5. ISSUED BY Housing Authority of the City of El Paso, Texas Procurement Department 5300 E. Paisano Dr. El Paso, TX 79905-2931 Mr. Juan Pulido, Procurement Manager		6. ADMINISTERED BY (if other than Item 5) Housing Authority of the City of El Paso, Texas Public Housing Department 5300 E. Paisano Dr. El Paso, TX 79905-2931		
NAME AND ADDRESS OF CONTRACTOR 7. (No., Street Name, County, State & Zip Code)		8a. Amendment of Solicitation No. RFP PM 19-R-0001		
		8b. Dated (see item 10) 7/22/2019		
		9a. Modification of Contract No.		
		9b. Dated (see item 12)		
<b>10. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATION</b>				
The above numbered solicitation is amended as set forth in Item 13. The hour and date specified for receipt of Offers is: <input type="checkbox"/> is extended <input type="checkbox"/> is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 7 & 14, and returning _____ copy (ies) of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such a change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
<b>11. ACCOUNTING AND APPROPRIATION DATE (if required) PHA</b>				
<b>12. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACT IT MODIFIES THE CONTRACT NO. DESCRIBED IN ITEM 13.</b>				
<input type="checkbox"/>	A. This change order is issued pursuant to (Specify Authority) The changes set forth in Item 13 are made in the Contract No. in Item 9a.			
<input type="checkbox"/>	B. The above numbered contract is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc). Set forth in Item 13 pursuant to the authority of FAR 43.103 (b).			
<input type="checkbox"/>	C. This supplemental agreement is entered into pursuant to the authority of: MUTUAL AGREEMENT OF BOTH PARTIES			
<input type="checkbox"/>	D. Other (Specify type of modification and authority)			
E. <b>IMPORTANT:</b> Contractor <input type="checkbox"/> is not <input type="checkbox"/> is required to sign this document and return <u>ALL</u> copies to the issuing office.				
13. Description of <b><u>Amendment:</u></b> <b>Amendment No. A00003.</b> Sample Property Management Agreement between EP Housing Operations and Management Enterprises d/b/a EP Home PFC (“EP Home”) and (“Manager”) <i>Except as provided herein, all terms and conditions of the documents referenced in Item 8a. or 9a., remains unchanged and in full force and effect.</i>				
14a. NAME AND TITLE OF SIGNER (Type or print)		15a. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) <b>Gerald Cichon, Chief Executive Officer</b>		
14b. OFFEROR/CONTRACTOR	14c. Date Signed	15b.	15c. Date Signed	
_____ (Signature of Authorized Person)		_____ (Signature of Contracting Officer)		
APPROVED AS TO FORM: _____ HACEP Legal Counsel		DATE: _____ HACEP Form 001		

## PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (the “*Agreement*”) is entered into this \_\_\_\_ day of September, 2019 by and between EP Housing Operations and Management Enterprises d/b/a EP Home PFC (“*EP Home*”) and \_\_\_\_\_, (“*Manager*”). EP Home and Manager may be referred to herein as a “*Party*” and collectively as the “*Parties*.”

**Whereas**, EP Home is organized as a nonprofit public facility corporation under Texas Local Government Code Chapter 303 that supports the mission of its sole sponsor, the Housing Authority of the City of El Paso (“*HACEP*”);

**Whereas**, HACEP is a Texas municipal housing authority established and operating pursuant to Texas Local Government Code Chapter 392 whose mission is to finance, develop, construct, manage, operate, and oversee affordable residential housing properties located in El Paso County, Texas;

**Whereas**, EP Home is a residential property management company that currently manages approximately 8,600 residential housing units in El Paso, Texas representing most of HACEP’s residential portfolio and consisting of federally-subsidized affordable housing, low-income tax credit housing, and a small number of market rate units, as more particularly described in Exhibit A attached hereto (each of which shall be individually referred to as a “*Property*” and collectively referred to as the “*Properties*”);

**Whereas**, EP Home issued a public request for proposals for property management services for residential units, Solicitation No. PM 19-R-0001 (the “*RFP*”), and Manager responded to the RFP in accordance with its terms;

**Whereas**, EP Home and Manager desire to enter into this Agreement to engage Manager as a subcontractor to EP Home to provide three general areas of subcontracting services to EP Home – property management services, property maintenance services, and services assisting with compliance obligations (collectively, the “*Services*”) – in accordance with the terms and conditions set forth in this Agreement; and

**Now, therefore**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1

#### Designation of Properties/Appointment of Manager

1.1 Effective Date of Designation of Property Manager and Commencement of Services. Manager is designated by EP Home, with the authority of EP Home’s affiliates and partners (the “*Affiliates*,” as defined in Section 10.2a below) as the property manager subcontractor for the Properties as set forth in this Agreement effective as of 12:00 a.m. on January 1, 2020 (the “*Effective Date*”).

1.2 Properties. As of the Effective Date, EP Home hereby appoints Manager, and Manager accepts such appointment, to be EP Home’s subcontracted property manager for the Properties set forth in Exhibit \_\_\_ hereto on the terms and conditions set forth in this Agreement.

1.3 Additional Property. EP Home and Manager may agree that Manager is to act as EP Home’s manager of additional real property from time to time. At such time as EP Home and Manager mutually agree that new real property is to be managed by Manager pursuant to the terms of this Agreement, it will be added pursuant to the terms of this Agreement by modification to the Exhibits to this Agreement. The Exhibits shall reflect the specific provisions relating to such real property and each of the Parties will initial each Exhibit to reflect their mutual agreement to those terms.

1.4 Deletion of Property. EP Home and Manager may agree that Manager shall cease acting as manager of certain Properties from time to time. At such times as EP Home and Manager agree that a Property shall be deleted from Manager’s responsibility, the Parties will document the deletion in writing, signed by the Parties.

**ARTICLE 2**  
**Term**

2.1 Term. The Term of this Agreement shall commence on the Effective Date and unless terminated in accordance with the provisions herein, shall terminate two (2) years thereafter (the “*Initial Term*”). The Term may be renewed for up to three successive one (1) year periods (each a “*Renewal Term*”) at the sole discretion of EP Home for a maximum total of five (5) years duration. EP Home will provide Manager with at least sixty (60) days written notice prior to the end of the Initial Term or any Renewal Term, as the case may be, of its intention not to renew this Agreement. For purposes of this Agreement, the Initial Term as extended by any Renewal Term shall be referred to as the “*Term*.”

**ARTICLE 3**  
**Property Management Services**

3.1 Hours of Operation. Manager agrees to be responsible for providing property management services in accordance with the following schedule:

- a. Regular Hours. Manager will be responsible for providing on-site property management services at the Properties during regular work hours, Monday to Friday, from 8:00 a.m. to 5:00 p.m. with normal closures during breaks, meal periods or on established holidays. At some Properties, the schedule may vary one or two days per week with a later start time so that Manager is available into the early evening to accommodate residents who work.
- b. After-hours/Emergency. Manager will be responsible for providing after-hours and emergency coverage on an on-call basis.

3.2 Scope of Work.

- a. General Property Management. Manager agrees to be responsible for providing on-site property management staff to provide the following scope of services:
- i. Implementing annual rent schedules and annual utility allowances from HAP Contracts;
  - ii. Providing initial and continuing lease-up of all housing units, including determining and ensuring eligibility of all residents per program requirements and policies;
  - iii. Conducting annual income and rent recertification required for each resident family;
  - iv. Arranging and overseeing separate maintenance contract staff in the routine maintenance and minor repairs of properties, including overseeing arrangements for maintenance, janitorial, and landscaping services;
  - v. Ensuring that all properties are well maintained and that there are safe, decent, and sanitary living conditions at all times for all residents;
  - vi. Providing assistance and oversight to ensure that emergency maintenance is performed and completed (by separate maintenance services contractor/personnel) in a timely manner and that such repairs are completed appropriate and complete manner;
  - vii. Identifying and addressing emergency situations that may arise and immediately notifying EP Home/HACEP/designated contact(s) and/or providing follow-up action to remedy emergency situation;
  - viii. Providing excellent customer services to include being available to assisting residents with problems, questions, or concerns related to their residences, leases, eligibility, etc.;
  - ix. Ensuring rents are paid on time and overseeing and documenting the process to evict non-paying residents or residents who otherwise violate terms of the lease agreement;
  - x. Collecting security deposits;
  - xi. Conducting annual inspections to ensure compliance with governmental, program, and owner requirements;
  - xii. Executing marketing plans and tenant selection procedures, and to ensure that such plans comply with non-discrimination and Fair Housing Act obligations;
  - xiii. Developing and maintaining accurate and concise operating budgets including costs for operations, general maintenance, and repair (with the operating budget to include suggested capital improvements, detailed suggestions for the improved operation of the properties covered and a detailed narrative);
  - xiv. Overseeing timely move-ins and move-outs;
  - xv. Submitting monthly subsidy requisitions;
  - xvi. Implement and operate a quality control (“QC”) program designed to assure quality in the Services provided by Manager; and
  - xvii. Communicating on a regular basis with EP Home and/or HACEP to ensure the scope of services and reporting is being completed.
- b. Compliance. Manager agrees to be responsible for the following compliance obligations:
- i. Compiling and maintaining accurate records and files pursuant to governmental and EP Home/HACEP/owner requirements for reporting;
  - ii. Process resident certifications;
  - iii. Transmit resident vouchers;
  - iv. Provide reminder letters and rent change letters;
  - v. Provide notices due at move-in and annual recertification;
  - vi. Monitor compliance;
  - vii. Perform required reconciliations;
  - viii. Ensuring correct annual rent and utility allowance calculations;
  - ix. Input and transmit electronic compliance reports;
  - x. Monitor tenant payments and deposits;
  - xi. Ensuring compliance with Multifamily or other applicable program requirements set by law and monitored/enforced by the United States Department of Housing and Urban Development (“HUD”);

- xii. Ensuring compliance with Texas Department of Housing and Community Affairs (“TDHCA”) requirements for low income housing tax credit (“LIHTC”) program purposes;
  - xiii. In conjunction with EP Home, responding to HUD audits and/or Management and Occupancy Reviews (“MORs”), audits and Compliance Reviews by the Tax Credit Monitoring Agency (TDHCA), and/or audits or requests from the investor/lender in each applicable Property;
  - xiv. Reporting to EP Home and responding to any code violations issued by the City of El Paso or County of El Paso;
  - xv. Completing asset management reporting requirements;
  - xvi. Conducting physical inspection/UCPS inspections;
  - xvii. Conducting CMTS;
  - xviii. Ensuring compliance requirements imposed by investors, lenders, or other parties; and
  - xix. Reporting monthly metrics regarding compliance to EP Home.
- c. ERP System Implementation and Utilization. Manager agrees to be responsible for the following ERP system obligations:
- i. Implementing a computer operating system and/or software to manage the portfolio;
  - ii. Training staff to use the system; and
  - iii. Maintaining and utilizing the system to successfully manage, operate, track, and report on the portfolio’s performance.
- d. Capital Planning. Manager agrees to be responsible for the following:
- i. Preparation of annual operating budgets per property; and
  - ii. Identifying long-term capital needs.

3.3 Reporting Requirements. Manager agrees to provide the following reporting to EP Home, including but not limited to:

- a. Monthly financial statements with budgeted vs. actual and explanation of material variances;
- b. Cash flow report(s);
- c. Rental income, accounts receivable and aging report;
- d. Accounts payable;
- e. Bank reconciliations;
- f. Move-in and move-out reports;
- g. Make-Ready report;
- h. Waiting list report;
- i. Maintenance and preventative maintenance reports;
- j. Compliance due dates report;
- k. Any lawsuits, administrative claims, or other legal actions (collectively, “litigation”) that involves the Services provided herein or relates to the Properties;
- l. Any corrupt or unlawful activity, including fraud, neglect, waste, or abuse, related to the Services or the Properties.

3.4 Staffing Requirements. For all property management services provided by Manager, Manager agrees to:

- a. Provide all of its own personnel and staff and be solely responsible to hire, compensate, provide benefits for, direct, and supervise all of its personnel and staff;
- b. Provide training, certification(s), and license(s) required for its own operations and to ensure its personnel and staff hold certification(s) and license(s) to perform all property maintenance services;
- c. Conduct background checks for all personnel and staff and ensure all personnel and staff pass an appropriate background check for the safety of residents, employees, and the public; and

- d. Maintain workers' compensation insurance for its employees and meet all other insurance requirements set forth in Article 9.

**ARTICLE 4**  
**Property Maintenance Services**

4.1 Hours of Operation. Manager agrees to be responsible for providing property management services in accordance with the following schedule:

- a. Regular Hours. Manager will be responsible for providing on-site property maintenance services during regular work hours, Monday to Friday, from 8:00 a.m. to 5:00 p.m. with normal closures during breaks, meal periods or on established holidays. At some properties, the schedule may vary one or two days per week with a later start time so that the property maintenance staff are available into the early evening to accommodate residents who work.
- b. Emergency Maintenance Operations/Hours. Manager shall ensure that adequate after-hours and emergency maintenance operations are available and responsive on a 24-hour, 7-day-per week basis.

4.2. Scope of Work. Manager will be responsible for providing the scope of services listed below and such additional duties as set forth on Exhibit \_\_\_\_:

- a. Emergency Maintenance. Providing emergency maintenance needs for entire residential property portfolio, with adequate 24-hour, 7-day-per week maintenance staff to respond to emergency maintenance needs;
- b. Roofing. Repairing roofing leaks and damage, utilizing and installing roofing materials, clearing vents and roof drainage;
- c. Windows and Doors. Repairing and/or replacing windows and doors, repairing hinges, handles, locks, and latches;
- d. Plumbing. Repairing plumbing leaks, stoppages, and problems, cleaning drains and traps, servicing and maintaining boilers and water heaters, insulating pipes and water heaters, and performing other minor plumbing repairs;
- e. Painting. Painting exterior and interior walls, touch-up painting and repairing holes, scratches, stains, and cover up graffiti on walls;
- f. Flooring, Countertops, and Built-in-Storage. Repairing and, as necessary, installing, various types of flooring (carpet, tile, etc.), countertops and built-in storage facilities;
- g. Electrical. Replacing light bulbs, repairing light fixtures, inspect wiring periodically to ensure it is in safe condition, to ensure access to meters and switches, replace fuses, ensure wiring, cables and conduits are firmly attached and secured;
- h. Heating and Air Conditioner Systems Repair and Maintenance. Providing service and repairs on both evaporative "swamp" cooler systems, HVAC/Central Air Units, and building HVAC systems, and to perform semi-annual "switch over" of evaporative cooler systems pre-summer (for cooling) and pre-winter (for heating) of each year;
- i. Energy Conservation and Weatherization. Providing assistance and recommendations to implement energy conservation and weatherization systems; caulking window frames, installing and repairing weather stripping for doors and window frames, installing flow-reducing water devices (showers, faucets, commodes);
- j. Make-Ready Services. Performing full make-ready (vacancy turnaround) services so that residential units are ready to be re-leased to a new resident within three days of being vacated by a resident;
- k. General Preventative Maintenance. Providing routine checking on the physical needs and condition of walls, doors, windows, flooring, electrical systems, HVAC systems, and property;
- l. Safety Equipment Inspection and Repairs. Ensuring that fire equipment and safety equipment on site is properly maintained, including checking that smoke detectors working and batteries



- replaced when needed, and keeping fire escape routes (stairs, corridors, fire escapes) free of obstruction;
- m. Grounds Maintenance/Landscaping. Providing full-service grounds maintenance for apartment complexes and residential communities, repairing cracks in paths, sidewalks, walls, repairing outdoor rock and cement walls, cleaning rocks, trimming shrubs, bushes and trees and cutting grass, monitoring landscaping needs;
  - n. Elevators. Assisting with minor maintenance regarding elevators, coordinate with separate elevator contractor for specialized elevator repair/maintenance;
  - o. Other/Miscellaneous Property Maintenance Services. To include interior and exterior maintenance-related cleaning, cleaning up debris left on site after maintenance services are performed, repair building code violations, meet and confer with third-party contractors who are assigned to assist with specialized maintenance tasks, providing maintenance needs at property managers' offices, residential community centers, and central office locations; and
  - p. Maintenance Support Services. Manager agrees to perform the following support services:
    - i. Maintenance and Capital Planning. To include planning and supervising maintenance and repair activity for all residential properties, as well as to, in conjunction with HACEP management, developing and maintaining schedules of pending and planned maintenance projects, to be available to advise HACEP management on the selection of materials and equipment to be procured for the maintenance of the units. Furthermore, to identify possible needed capital improvements and participate in the planning process;
    - ii. Maintenance Policy Compliance. To include maintaining files and records required for maintenance of LIHTC, HOME and Section 202 properties and ensuring EP Home/HACEP/owner maintenance and repair policies are met;
    - iii. Resident Relations and Satisfaction. To ensure excellent relations and customer service with residents, and that there is excellent resident satisfaction with the condition of the grounds, common areas, and units;
    - iv. Electronic Maintenance Tracking and Reporting. To implement and use electronic maintenance management data systems and programs to track maintenance requests, needs, repairs, repair-response times, complaints, etc. and to provide information/data necessary for all required maintenance reports required by HUD, TDHCA or other oversight agency(ies);
    - v. Maintenance-Related Budgeting. To develop budgets for regular and emergency maintenance needs listed in scope of services (Section A above), with the goal of meeting the needs of residential communities and their residents, as well as to assist EP Home or HACEP management in the development of the annual operating budget with respect to maintenance program needs;
    - vi. Communications. To remain in constant contact/communications with EP Home and/or HACEP management assigned point-of-contact personnel, and property managers to ensure responsiveness and quality of maintenance services; and
    - vii. Maintenance Procurement Advisory Role. To include advising EP Home and/or HACEP procurement staff as to pending and planned maintenance supply and equipment needs, assessing and reviewing existing warranties/manufacturer instructions, providing advisory role on new equipment purchases.

4.3 Staffing Requirements. For all property maintenance services provided by Manager, Manager agrees to:

- a. Provide all of its own personnel and staff and be solely responsible to hire, compensate, provide benefits for, direct, and supervise all of its personnel and staff;
- b. Provide training, certification(s), and license(s) required for its own operations and to ensure its personnel and staff hold certification(s) and license(s) to perform all property maintenance services;
- c. Conduct background checks for all personnel and staff and ensure all personnel and staff pass an appropriate background check for the safety of residents, employees, and the public; and
- d. Maintain workers' compensation insurance for its employees and meet all other insurance requirements set forth in Article 9.

**ARTICLE 5**  
**Rental Assistance Demonstration (RAD) Program Assistance**

5.1 Scope of Work. Manager will be responsible for providing the following services to assist EP Home with HACEP's RAD conversion and post-RAD conversion process:

- a. As guided by the HACEP RAD Relocation team, accommodate the relocation of EP Home and HACEP residents from units that will be demolished or rehabbed and the move-in of right to return residents and applicants from the waiting list; relocations must be done in-line with RAD closings or leasing schedules in financing models;
- b. Implement rent schedules, including utility allowances from HAP contracts;
- c. Perform initial certifications for tax credit units along with initial certifications for PBRA or other affordable programs and submit for review to auditor and investor/lender(s);
- d. Submit certifications and vouchers by the 10<sup>th</sup> of each month;
- e. Transition general ledgers from development to property accounting;
- f. Promote awareness of RAD program requirements, including resident rights under RAD, and ability to meet such requirements and accommodate residents for RAD purposes; and
- g. Meet all compliance requirements at each Property.

**ARTICLE 6**  
**Manager's Role and Authority/Limitations on Manager's Authority**

6.1 Functions Reserved to EP Home. Notwithstanding anything to the contrary provided in this Agreement, EP Home will continue to be responsible for four main functions with respect to the Properties: (a) asset management (i.e., executive-level oversight), (b) audit/compliance reviews, (c) resident care/resident relations (providing resident services, outreach, social services), and (d) public safety (i.e., security, off-duty police patrols).

6.2 Limitations on Manager's Authority. Manager shall not take any of the following actions without the prior written approval of EP Home:

- a. Adopt any change in policy with respect to the management, operation, repair or maintenance of the Properties that would or has the potential to be considered inconsistent with Manager's obligations under this Agreement or under any applicable Laws;
- b. Undertake any material alteration, reconstruction, reconfiguration or other physical change to the Properties;
- c. Take any action or permit any action to be taken which would violate any local, state or <sup>[1]</sup>federal law applicable to the Properties;
- d. Take any action or permit any action to be taken which would constitute a violation or breach of the Properties' partnership agreement or EP Home's management agreement with the owners of the Properties;
- e. Incur any expenses on behalf of EP Home or make any expenditures for the Properties <sup>[2]</sup>that are not in accordance with the applicable Annual Budget; except as provided for emergencies as set out in Section 6.1(c) or approved in writing by EP Home in advance of such expenditures;
- f. Except for the fees set out in this Agreement payable to Manager, pay any additional <sup>[3]</sup>fees, costs or expenses to itself or enter into any contract or arrangement with one of its' Affiliates. For the purpose of this Agreement, the term "Affiliate" with respect to Manager, means: (i) any stockholder, officer, director or employee of Manager; (ii) any parent, subsidiary or brother-sister corporation of Manager; (iii) any parent, child, grandchild or spouse of any person in clauses (i) or (ii) above; (iv) any corporation, partnership, trust or other entity, other than EP Home, in which Manager or any Affiliate (within the meaning of clauses (i) through (iv) above) has any economic interest; or (v) any other person which, directly or indirectly through intermediaries, controls, is controlled by or is under common control with Manager. As used in this definition, "control" means, with respect to any person or entity, ownership of at least 10% of the voting securities, partnership interests or other ownership or equity interests in such person or entity or the ability to otherwise direct (as an officer or director of such person or entity, or otherwise) the management, operations, business or policies of such person or entity. For the purposes of determining whether a person or entity shall be deemed to control another person or entity, ownership of such person or



entity shall include ownership interests held by any member of the Immediate Family (as defined in EP Home Agreement) of such person or entity living in the same household.

- f. Except as expressly authorized in this Agreement, enter into any contract or arrangement with any other party without the written consent of EP Home.
- g. When, in the judgment of Manager, it is necessary for (1) evictions, (2) defense of tenant lawsuits in justice of the peace court not covered by insurance, (3) advice on tenant problems which have significant potential for claims against EP Home, (4) advice on lease changes, deletions, or additional provisions requested by a prospective tenant or his attorney which, in Manager's prudent judgment, may constitute a risk to EP Home, or (5) for any other purpose relating to the Properties, Manager will select and retain the services of only that legal counsel on behalf of EP Home approved by EP Home in writing.

6.3 Service Contracts. Subject to the limitation set out herein, Manager shall have the authority to enter into service contracts on behalf of EP Home and/or the Properties for the supply of all utilities, trash, sewer, security services, elevator services, janitorial services, trash removal and such other services to each Property as is reasonably necessary for the operation of each Property provided the obligations set out under each such contract have been included in the Annual Budget approval for each such Property. All terms of such service contracts shall be fully disclosed to EP Home. No agreement or contract entered into by Manager on behalf of EP Home pursuant to this section shall exceed the sums budgeted for such items in the Annual Budget for such Property, have a term extending beyond the Term of this Agreement, or one (1) year, whichever is shorter and must have an assignment and termination for convenience provision. As to each Property all such service contracts shall have terms in them that allow for termination by Manager without penalty to EP Home upon the sale of that Property or on thirty (30) days prior written notice.

Subject to the limitations set out herein, Manager shall have authority to incur, purchase, and pay for out of the Property Operating Account as set forth in the Annual Budget, as agent of EP Home and on EP Home's behalf, all onsite maintenance supplies, tools and equipment, (Property Management office furniture, supplies, office equipment, any charges for office rent) and other items necessary for the property management, operation and maintenance of the Property, such as onsite office expenses. All such items purchased shall be fully disclosed to EP Home. As to each such Property, the sums expended by Manager for such items shall not exceed the sums budgeted for such items in the Annual Budget for each such Property.

6.4 Discounts, Credits and Rebates. Manager shall use diligent efforts to obtain, and EP Home shall receive the benefit of, all discounts, credits and rebates obtainable by Manager in the management, operation, repair and maintenance of the Properties.

6.5 Hiring and Supervision of Employees.

- a. Manager shall hire, employ, supervise and discharge all employees, independent contractors and/or other on-site personnel ("*Personnel*") which are necessary for the efficient management, operation, repair, leasing, and maintenance of the Properties in accordance with the terms of this Agreement. Any such Personnel shall be employees or subcontractors of Manager and shall not be treated or considered as employees or subcontractors of EP Home or any Affiliate of EP Home, including HACEP. All matters pertaining to the employment, supervision, promotion and discharge of Personnel shall be the responsibility of Manager. Manager shall comply with all Laws applicable to wages, hiring practices, worker's compensation, social security, unemployment insurance, withholding, payroll taxes, hours of labor, working conditions and other employer-employee related matters. Manager shall procure and maintain, in compliance with applicable statutes, worker's compensation insurance covering such Personnel. Manager shall change Personnel used in connection with the Properties if such Personnel are not performing their duties in accordance with the standards of this Agreement.
- b. Manager shall be solely responsible for all expenses incurred relating to the hiring, supervising, directing and discharge of all Personnel except as otherwise approved by EP Home in writing or as set forth in the Annual Budget for each such Property. In the event any such costs are included in the Annual Budget for a Property, the above notwithstanding, the portion of such costs to be included in the Annual Budget shall only be an appropriately allocable portion (based on accurate

time records) of any such salary, payroll taxes, worker's compensation insurance and other direct employment costs which are actually incurred by Manager directly in connection with the operation of that Property.

- c. Any and all supervisory staff provided by Manager who do not work full-time (40 hours per week) at the property, including Regional Property Managers, are not eligible for reimbursement from EP Home's Operating Account for the Property.
- d. Manager shall provide the full range of Personnel Management functions for the onsite employees. These include, but are not limited to: recruitment, screening, hiring, training, health and safety programs, counsel, industrial relations, classification, supervision, performance review, records, payroll administration and termination. All personnel actions shall be taken in consonance with the approved budget, which will reflect all planned changes in pay and allowances for each authorized position. Manager shall establish qualification standards for key on site positions/personnel, setting forth the authority delegated thereto, the responsibilities assigned hereto and the specific duties thereof. Those employees of Manager who handle or are responsible for the handling of monies collected for the Property shall be bonded by a fidelity bond in an amount equal to two (2) months of the properties gross potential rent. EP Home will be informed of any changes to on-site personnel within 30 days of the change.
- e. Manager shall prepare, execute and file all forms, reports and returns required by law in connection with the employment of personnel, unemployment insurance, workers' compensation insurance, disability benefits, Social Security and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.

6.6 Expenditures. Manager will ensure that all of its expenditures on behalf of the Properties are reasonable and customary for that type of expenditure in El Paso County, Texas. Manager shall obtain receipts for all contracts, materials, supplies, utilities and services for those items, which can be obtained from more than one source. Manager shall obtain three bids on all contracts or purchases which exceed \$2,500. The prior written approval of EP Home will be required for any contract which exceeds one year in duration, or expenditure which exceeds \$2,500 in any one instance for labor, materials, or otherwise. Expenditures may be made in instances of emergency repairs involving danger to life or property, or for the safety of the tenants, or required to avoid suspension of any necessary service to the Property, irrespective of the cost limitation imposed by this paragraph however, it is understood and agreed that Manager will, if at all practicable, confer immediately with EP Home regarding every such emergency expenditure. In no event, will Manager notify EP Home of the facts of an emergency repair later than 24 hours from the occurrence of the event.

6.7 Collection of Rents and Other Receipts. Manager shall oversee the collection of all rent and other receipts as they become due and payable from all tenants and all monies due from any source which is obligated to, and for the benefit of the Property. EP Home hereby authorizes Manager to request, demand, collect, receive and receipt for any and all rent and other receipts due the Property which may at any time become due by way of legal process, or otherwise, as may be required for the collection of delinquent rent and other receipts from a tenant or third-party and shall take all such actions including legal proceedings in the name of the Property, as may be required. Manager is responsible for legal proceedings whereby a lawsuit is filed for past-due rent and unauthorized occupants. For all other matters, the matter will be sent to EP Home's in-house legal department for its option to provide representation. Expenses of eviction and court actions relating to delinquencies or other lease violations shall be expenses of the Property and paid from the Operating Account. Manager shall properly assess, bill to and make every reasonable effort to collect from each tenant, or the security deposit, the cost of rent and any repairs due to damages to the rental unit arising during the tenant's occupancy.

6.8 Enforcement of Leases. Manager may, and shall, lawfully terminate any tenancy when, in Manager's judgment, sufficient cause for such termination occurs under the terms of a tenant's lease, including, but not limited to, non-payment of rent. When undertaking actions of this nature, Manager will adhere to any and all applicable statutory landlord and tenant legal regulations and requirements.

## **ARTICLE 7**

### **Accounting, Budgeting, Books and Records**

7.1 Annual Budget. For each fiscal year during the term of this Agreement, Manager shall prepare a recommended annual operating line item budget (“*Annual Budget*”) in the EP Home approved format setting forth projected rental rates, anticipated expenses (including funds required to maintain reasonable operating and replacement reserves) and the performance goals for the Property. The Annual Budget shall include a rent schedule for all units, including recommended rent increases, with respect to lease renewals and new leases. Manager shall use its best efforts to take account of anticipated increases in any and all operating expenses. To the extent feasible, Manager shall provide anticipated increases in real estate rental, utilities, contracted services, and supplies. The Annual Budget and all supporting documentation shall be submitted to EP Home at by no later than December 31 of each calendar year for the following fiscal year and shall include an itemization of the nature and cost of any and all Capital Expenses (as defined below) Manager proposes to have EP Home incur for such Fiscal Year in connection with the Property to which such Annual Budget relates. Following delivery of Manager’s proposed Annual Budget by Manager, EP Home will use reasonable business efforts to approve or modify and approve as modified, the proposed Annual Budget no later than 30 days prior to the end of the Fiscal Year. Until Manager’s proposed Annual Budget is approved by EP Home or EP Home has provided the modifications to that proposed budget which it requires to cause it to be approved by EP Home as the approved Annual Budget for the upcoming year, Manager shall operate, repair, maintain, lease and manage each Property in accordance with the prior year Annual Budget for such Property (excluding any budget items contained therein for Capital Expenses). The above notwithstanding, any changes to a proposed or effective Annual Budget directed or approved by EP Home, from time to time, shall be made by Manager, and such proposed or effective budget, as so amended, shall constitute the Annual Budget for such Properties for the applicable Fiscal Year. Each and every expense of each Property shall be charged to the proper expense category as specified in the Annual Budget for such Property. Manager shall promptly notify EP Home of any material change in any item contained in an Annual Budget, and shall prepare, as requested by EP Home, a proposed revised budget reflecting such change for EP Home’s review.

7.2 Books and Records. Manager shall maintain and keep complete, accurate and up-to-date books and records of the Property including accounting and financial records, tenant and maintenance files, memoranda, correspondence, notices and all other such records as may be required either in connection with the business of the Property either with tenants or third persons, including but not limited to relations with suppliers, employees, labor unions, governmental or municipal authorities, and all others with whom business is transacted. Manager shall maintain separate books, files and records for each Property as well as such additional information as may be necessary to enable Manager to produce the reports and provide the information required of it under this Agreement. All books, records, papers, accounts, contracts, leases and files created by Manager for the Properties shall be the property of EP Home. EP Home, its agents or its representatives, shall have the right to inspect such books and records, which Manager shall make available to EP Home, its counsel or its auditors, or HUD, or any institutional holder of a debt instrument or a regulatory compliance organization for inspection during normal business hours or at such other time as requested by EP Home. Manager shall ensure such control over financial transactions as is reasonably required to protect EP Home’s assets from theft, negligence or fraudulent activity on the part of Manager’s employees or other agents.

7.3 Reports. On a monthly basis on or before the twentieth day of each month, Manager shall provide to EP Home, for each Property, the reports as listed on Exhibit \_\_\_\_, except as noted in Exhibit \_\_\_\_. Manager shall send all reports that are required to be sent to any third party to EP Home for their prior approval, which approval shall not be unreasonably withheld or delayed provided, however, that EP Home shall have two weeks to review such reports prior to submission to any third party.

- a. Manager shall prepare, execute and file all forms, reports and returns required by law in connection with the employment of personnel, unemployment insurance, workers’ compensation insurance, disability benefits, Social Security and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed;
- b. Manager shall also provide all other available information regarding the Properties, which is reasonably requested by EP Home, from time to time, including, without limitation, information to permit EP Home to satisfy its reporting and disclosure obligations to governmental authorities; and
- c. Manager shall establish tenant files containing copies of leases, certification forms, notices and other documentation required by EP Home as necessary to conform to the Exhibit \_\_\_\_ requirements.

7.4 EP Home's Right to Audit. EP Home reserves the right for EP Home's employees or other agents appointed by EP Home to conduct an audit or other more limited form of examinations of the files and records of Manager with respect to the Properties, no matter where such files and records are located. EP Home also reserves the right to perform any and all audit tests relating to Manager's activities either at the Properties or at any office of Manager provided such audit tests are related to those activities performed by Manager for EP Home. EP Home shall be required to provide Manager with two (2) business days' prior notice of its intent to carry out such audit or examination. Should EP Home's employees or appointees discover either weaknesses in internal control or errors in record keeping, Manager shall correct such errors and resolve material internal control weaknesses within a reasonable period of time at Manager's sole cost and expense. Manager shall inform EP Home, in writing, of the action taken to correct such audit discrepancies or resolve such weaknesses.

## **ARTICLE 8**

### **Financial Matters**

8.1 Revenues and Expenses. Manager shall establish a bank account in the name of EP Home at a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (a "Bank"), which account shall be a separate interest-bearing bank account for each Property. All funds, revenues, rents and receipts from each Property, shall be deposited into such account (the "Property Account"). EP Home shall have a right to withdraw funds from such Property Accounts as a signatory to such accounts. In no event shall Manager commingle any funds from a Property with any other funds in its possession or under its control. At the commencement of management of the Properties by Manager, EP Home shall provide sufficient funds in the Property Account for each Property as reasonably determined by EP Home. In the event that the balance in the Operating Account is at any time insufficient to pay disbursements due and payable under Article 3, Manager shall promptly inform EP Home of the fact, and EP Home may then remit to Manager sufficient funds to cover the deficiency within fifteen (15) days. In no event shall Manager be required to use its own funds to pay such disbursements or be liable for any losses, costs or damages arising out of EP Home's failure to cover the deficiency.

Manager, as agent for EP Home shall only have the right to withdraw funds from a Property Account for the purpose of causing to be paid all costs in connection with the management, operations, leasing, repair and maintenance of the properties to the extent contained in the Annual Budgets, or as expressly approved under the terms of this Agreement or otherwise approved in writing by EP Home (collectively, "Operating Expenses"). Manager shall maintain a current file of all such invoices and produce the file upon request of EP Home. Notwithstanding anything to the contrary contained in this Agreement, in no event shall EP Home have any obligation to pay any costs incurred as a result of Manager's negligence or willful misconduct, which costs shall be the sole responsibility of Manager. EP Home shall have a right of setoff against any amounts owed under this Agreement to Manager on account of any costs which are the responsibility of Manager pursuant to the terms of the immediately preceding sentence.

Notwithstanding the provisions of Sections 8.1, above, in the case of any emergency that would materially adversely threaten the normal operation of the Properties, place persons in eminent threat of bodily harm or subject EP Home or Manager to civil or criminal liability, Manager shall be entitled to make the expenditures which are necessary and reasonable to address such emergency situation, including, without limitation, for Capital Expenses, provided Manager immediately notifies EP Home of such condition and the expenditures relating thereto.

8.2 Cash Flow Forecasting. In instances where Manager is aware that gross income from the Properties is anticipated to be, or will be, insufficient to pay the costs associated with the Properties, Manager shall prepare a detailed cash flow analysis sufficient to provide EP Home with as much advance notice as possible of any anticipated operating deficits. Such forecasts shall be updated quarterly, or more frequently as dictated by field conditions or as directed by EP Home, but not more frequently than monthly. In the event there are insufficient funds in a Property Account to allow Manager to carry out or perform its duties or obligations under this Agreement Manager shall notify EP Home immediately. If EP Home has not provided such additional funds to the Property Account within five business days after EP Home's receipt of such notice, Manager shall be excused from those duties for which such sums are necessary to perform until the sums are so provided.

## **ARTICLE 9**

## **Insurance**

9.1 General Requirements. Upon commencement as a subcontractor, Manager will procure and maintain at all times and at its own expense, at a minimum, the types of insurance described in this Article 9. The insurance carriers used by subcontractor must be authorized to do business in the State of Texas and the insurance provided will cover all operations under the Management Agreement, whether performed by Manager or its own subcontractors.

9.2 Workers Compensation and Occupational Disease Insurance. Manager shall procure and maintain at all times and at its own expense worker's compensation and occupational disease insurance in accordance with the laws of the State of Texas, and with a minimum employer's liability limit of \$1,000,000 per occurrence.

9.3 Employer's Liability Insurance. Manager shall procure and maintain at all times and at its own expense employer's liability insurance covering claims and suits by or on behalf of employees not otherwise covered by statutory Workers' Compensation insurance with minimum limits of \$1,000,000.

9.4 Commercial General Liability Insurance. Manager shall procure and maintain at all times and at its own expense commercial general liability insurance (primary and umbrella) or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, combined single limit, for bodily injury, personal injury, and property damage liability. Such policy shall include coverage for contractual liability under this Agreement. EP Home should be named as an additional insured on a primary non-contributory basis for any liability arising directly or indirectly from the services contemplated by this Agreement.

9.5 Automobile Liability Insurance. Manager shall procure and maintain at all times and at its own expense automobile liability insurance (primary and umbrella) for motor vehicles (owned, non-owned and hired) used in connection with the Services to be performed, covered with comprehensive automobile liability insurance with limits of not less than \$2,000,000.00 per occurrence combined single limit, for bodily injury and property damage. EP Home should be named as an additional insured on a primary non-contributory basis.

9.6 All Risk Property Insurance. Manager shall procure and maintain at all times and at its own expense all risk property insurance in the minimum amount of \$50,000 insuring the contractor's personal property.

9.7 Bonding. Manager and all personnel of Manager who handle or who are responsible for handling EP Home's monies shall be bonded in favor of the EP Home, or the owner of the Property, as the case may be, providing coverage of \$2,000,000 per occurrence with a \$10,000 deductible.

## **ARTICLE 10 Indemnification**

10.1 Manager's Indemnification. MANAGER AGREES TO INDEMNIFY, DEFEND AND SAVE HARMLESS EP HOME AND ITS AFFILIATES, THEIR BOARD MEMBERS, OFFICERS, MANAGERS, MEMBERS, SHAREHOLDERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS AND LOSSES, DAMAGES, LAWSUITS, COSTS, ATTORNEYS' FEES AND OTHER EXPENSES ACCRUING OR RESULTING TO ANY PERSON, ENTITY, FIRM, OR CORPORATION WHO MAY BE INJURED OR DAMAGED BY MANAGER TO THE EXTENT ARISING FROM THE WRONGFUL OR NEGLIGENT ACTS OR OMISSIONS OF MANAGER, OR ANYONE WHOM MANAGER EMPLOYS OR FOR WHOM MANAGER IS LEGALLY RESPONSIBLE, IN THE PERFORMANCE OF THE OBLIGATIONS OR RESPONSIBILITIES UNDER THIS AGREEMENT.

### 10.2 Indemnification Procedure

- a. For purposes of this Agreement, the "Affiliates" of EP Home include HACEP, Paisano Housing Redevelopment Corporation, Affordable Housing Ventures, Inc., Affordable Housing Acquisitions, Inc., Affordable Housing Enterprises, Inc., HACEP Acquisition Corp., EP RAD-1



PFC, EP-RAD-2 PFC, EP RAD-3 PFC, Alamito Public Facilities Corporation, and all of the foregoing entities' respective subsidiaries, partnerships, the subsidiaries' partnerships, and any party to whom EP Home owes a duty of indemnification related to the Properties.

- b. Promptly after receipt by EP HOME and/or its Affiliates of notice of any suit, proceeding, claim, demand, action, or litigation that falls under the scope of this Article 10 and that the indemnified party intends to seek indemnification therefore (collectively, the "Claim") such indemnified party will deliver to Manager a written notice of the Claim and Manager shall assume the defense thereof with counsel mutually satisfactory to the parties.
- c. The indemnified party shall reasonably cooperate with Manager in connection with the defense of the Claim including, without limitation, by making available to Manager all relevant information material to the defense of the Claim. The indemnified party shall be entitled to participate in the settlement or defense of the Claim and to approve any proposed settlement that would impose any obligation or duty on the indemnified party, which approval may, in the sole discretion of the indemnified party, be withheld. The indemnified party shall have the right to pay or settle any Claim at any time, provided that in such event it waives the right to indemnification therefore by Manager.
- d. If Manager fails to contest the Claim or undertake or approve settlement in good faith and with reasonable diligence, the indemnified party shall thereafter have the right to contest, settle or compromise the Claim in its sole discretion, at the risk and expense of Manager, and Manager will thereby waive any claim, defense or argument that Manager's settlement or defense of such Claim is any respect inadequate or unreasonable.
- e. If the indemnification provided for in this Article 10 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any Claim, then Manager, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense, including reasonable attorneys' fees.

10.3 Survival of Indemnity Obligations. The indemnity obligations contained in this Article 10 shall survive the termination of this Agreement.

## **ARTICLE 11 Fees and Reimbursements**

11.1 Properties Management Fee. In consideration of the management Services provided by Manager under this Agreement, EP Home shall pay to Manager a property management fee for each Property at the rate on the terms set on Exhibit. For the purpose of this Agreement Should Manager be paid on a gross rental percentage basis, the definition of "gross rental income" shall include only the following:

"*Gross Rental Income*" for each Property, for any period, shall mean all base, additional rent and percentage rent, received pursuant to leases of the Property, determined on a cash basis, excluding, however, the following items: (a) security deposits unless applied to offset unpaid rent under the applicable lease; (b) occupancy charges collected from tenants and paid to any governmental authority; (c) reimbursements from tenants; (d) proceeds from insurance policies and Awards (as defined below); (e) all rent other than base, additional and percentage rent under leases of the Property, including, without limitation, all rent paid in advance until properly applied; (f) proceeds of sales on dispositions of property; (g) payments (whether in lump sums or periodic payments) in reimbursement for work done; and (h) "key money" for the privilege of leasing space in the Property.

"*Award*" means any award, payment or proceeds with respect to: (a) any sale or taking of all or a portion of a Property, whether permanent or temporary in nature as a result of, or by agreement in anticipation of the exercise of, the right of condemnation or eminent domain; (b) any sale or taking of any easements or appurtenances to a Property or of vaults, areas or projections outside the boundaries of a Property, or rights in, under or above the alleys, streets or avenues, or for the taking of space or rights therein, below the level of or above a Property; and (c) any damage to a Property or any part thereof due to action or failure to act by any public authority, including resulting from a sale



or taking of any portion of a Property, such as, without limitation, the changing of the grade of any street adjacent to a Property or otherwise.

11.2 Leasing Commissions. In consideration of Manager acting as the leasing agent for the Properties under this Agreement, EP Home may pay to Manager a leasing commission at the rate on the terms set on Exhibit \_\_\_\_\_. If any outside brokers are engaged in obtaining any tenant of the Property in conjunction with Manager, and a commission is due hereunder to Manager, Manager shall be responsible for any such fee payable to the outside broker and Manager agrees to pay the outside broker at least the then market rate for the nature of the services provided.

11.3 Reimbursable and Non-Reimbursable Administrative Expenses.

- a. Manager may request actual out-of-pocket expenses incurred by Manager solely in connection with the Services to the extent that Manager is entitled to incur such expenses under the applicable Annual Budget and this Agreement, provided however, in no event shall Manager be reimbursed for expenses which are not to be borne by Manager under this Agreement or are characterized as “overhead expenses.” Expenses which shall be treated as non-reimbursable “overhead expenses” of Manager include, without limitation: (i) office rent and supplies, other than tele copier, copying and similar charges directly attributable to the Properties; (ii) salaries, payroll taxes and employment benefits of Managers personnel, unless otherwise approved in the Annual Budget for such year; (iii) telephone charges other than those expressly attributable to the Properties, (iv) costs applicable to bookkeeping and data processing; (v) costs attributable to losses arising from default by Manager or any of its employees, agents or subcontractors under this Agreement and costs attributable to losses from the negligence, misconduct or fraud of any of such parties; (vi) costs of insurance or fidelity bonds purchased by Manager; (vii) training expenses; and (viii) allocations of overhead from home office operations.
- b. Manager’s actual out-of-pocket expenses to be reimbursed pursuant to the terms of Section 11.3(a) shall be separately billed to EP Home.

## **ARTICLE 12 Termination and Default**

12.1 Termination.

a. EP Home’s Right to Terminate in Event of Default by Manager. This Agreement may be terminated by EP Home, by delivery of written notice thereof to Manager, upon the occurrence of any of the following (each, an “Event of Default”):

- i. If Manager fails to perform the Services or otherwise defaults under this Agreement and if such failure to perform or such default (and its consequences) are not cured within five (5) business days after written notice from EP Home to Manager;
- ii. As to each Property, upon the sale, transfer or other disposition of all or substantially all of that Property (in which case the Agreement will terminate as to that Property only and will continue in effect as to the remaining Properties);
- iii. As to each Property, if all of the residences ceased to be occupied for more than ten (10) days for any reason, including fire, flood, damage, or other natural act;
- iv. Upon the dissolution or other termination of existence of Manager;
- v. Upon the application or consent by Manager for the appointment of any receiver, trustee or similar officer for all or a substantial part of its property, or the appointment of any such receiver, trustee or similar officer without the application or consent of Manager which is not discharged or bonded within 30 days;
- vi. Any change in the majority ownership control of Manager without the prior approval of EP Home, which shall not be unreasonably withheld; or

vii. Upon the commencement by Manager of any bankruptcy, insolvency,<sup>[1]</sup> reorganization, readjustment of debt, dissolution, liquidation or similar proceedings, or involuntary commencement against Manager of any such proceeding which is not discharged or bonded within 30 days.

b. **Manager's Right to Terminate in Event of Default by EP Home.** Manager may terminate this Agreement by giving sixty (60) days written notice to EP Home if EP Home is in material default in its obligations under this Agreement and has not, following written notice to EP Home of such default, failed to cure such default within thirty (30) days of the written notice. If Manager elects to terminate the Agreement in the event of an uncured default by EP Home, all Services to be performed hereunder shall cease sixty (60) days after the EP Home's cure period has expired, or any date thereafter mutually agreed upon between the parties. In no event shall Manager be permitted to abandon the Property.

c. ***Either Party's Right to Terminate Without Cause.*** This Agreement may be terminated in whole or in part by EP Home without cause by giving at least ninety (90) days' prior written notice to Manager. The Agreement may be terminated in whole or in part by Manager without cause by giving at least 120 days' prior written notice to EP Home.

d. ***EP Home's Right to Terminate for Convenience.*** EP Home may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by written notice from EP Home to Manager when the Agreement may be deemed to be no longer in the best interest of EP Home. If the Owner elects to terminate the Agreement in full, all Services to be provided hereunder shall cease sixty (60) days after the date written notice of termination for convenience was provided. The Manager shall continue to render the Services until the effective date of termination. No cost incurred by the Manager after the effective date of termination in such an instance shall be allowed.

12.2 **Parties' Rights Upon Termination.** Upon termination of this Agreement pursuant to Section 12.1 (as to any Property), EP Home shall be obligated to pay Manager only those expenses relating to that Property which are reimbursable under this Agreement and which were incurred prior to and as of the date of such termination and remain unreimbursed. Nothing contained herein, however, shall in any way release Manager or EP Home from liability for failure to perform any of its obligations under this Agreement during any period prior to such termination.

At the termination of this Agreement as to any Property, Manager shall promptly as specified below (but in all events not later than the number of days specified below after such expiration or termination), deliver the following to EP Home or EP Home's appointed agent:

- a. All written data and materials pertaining to such Property with respect to which<sup>[1]</sup> this Agreement was terminated, including, without limitation, all records, contracts, leases, receipts for deposits, unpaid bills, a summary of all leases in existence at the time of termination, and all other papers, plans, books, drawings, documents, writings and accounting data for the past (3) years which pertain to such Property or related business or affairs of EP Home that Manager has in its possession, all of which shall be delivered to EP Home within five (5) business days of such termination. Such data and information and all such documents shall at all times be the property of EP Home; and
- b. Any balances or monies held by Manager with respect to such Property<sup>[1]</sup> with respect to which this Agreement was terminated or expired or the related business or affairs of EP Home, all of which shall be delivered to EP Home within one (1) business day of such termination.

12.3 **Continuing Obligations.** Except as otherwise specifically provided in this Agreement, upon any termination of this Agreement, except as set out in this Agreement, the parties shall cease to have any further rights and obligations under this Agreement except that Section 9.1 and Manager's obligations under such Section shall survive termination of the Agreement.

12.4 Default. Upon the occurrence of an Event of Default, the non-defaulting party shall be entitled to pursue any of its remedies that it may have in law or in equity.

### **ARTICLE 13 Manager Representations**

13.1 Manager Representations. Manager makes the following representations and warranties to EP Home:

- a. Manager's written proposal in response to the RFP is true, correct, and accurate;
- b. Manager shall provide the Services (i) in accordance with the terms and conditions set forth in this Agreement on behalf of EP Home, (ii) in compliance with all municipal, state and federal laws, rules, regulations and governmental orders or requirements (collectively, "Laws") applicable to the Properties, (iii) in compliance with all partnership agreements, mortgages and other encumbrances affecting the Properties, and (iv) to the standards promised in Manager's response to the RFP.
- c. Manager shall at all times apply prudent, sound and efficient business practice in performing its Services under this Agreement in a professional manner consistent with, as to each Property, the practice applied to the highest quality properties of the same type and character as the Property, and manage and maintain each Property in a manner and condition that is the same as that applicable to the highest quality properties of the same type and character of the Property.

13.2 Licenses. Manager is duly organized, validly existing, and in good standing under the laws of the State of \_\_\_\_\_, and is qualified to conduct business and provide the Services in the State of Texas. At all times during the term hereof, Manager shall make all reasonable efforts to comply with all applicable laws in order to conduct business in Texas. Manager has and will continue to have the power and authority required to execute, deliver and perform this Agreement. Manager has and will continue to have sufficient staff and other resources to carry out Manager's duties hereunder in a prompt, efficient and diligent manner. Manager has or will obtain all licenses and permits necessary to legally and validly execute, deliver and perform this Agreement.

13.3 Conflict of Interest. To the best of Manager's knowledge, Manager has no actual, apparent, or perceived conflict of interest pertaining to this Agreement. Manager and EP Home stipulate that management of a competing property shall not be deemed a conflict of interest for purpose of this Agreement or otherwise. Manager shall advise EP Home of any conflicts of interest whether existing as of the effective date of this Agreement or arising in the future, promptly upon discovering the same. Manager's management of other buildings or serving as leasing agent for other EP Homes shall not be considered a conflict of interest. In the event of any conflicts of interest, EP Home and Manager shall each have the right to terminate this Agreement immediately by giving written notice to the other.

### **ARTICLE 14 Miscellaneous**

14.1 Notices. Any and all notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given/received: (a) on the date delivered if delivered personally; (b) the next business day after deposit with a recognized overnight courier service when marked for delivery on the next business day; (c) three (3) days after mailing if sent by registered or certified United States mail, properly addressed and postage pre-paid; (d) upon completion of transmission (which is confirmed by telephone or a statement generated by the transmitting machine) if sent by facsimile to compatible equipment in the possession of the recipient; or (e) by e-mail and addressed to the party for whom it is intended at the address hereinafter set forth:

If to EP Home:  
Gerald Cichon, Chief Executive Officer  
Satish Bhaskar, Executive Vice President

EP Home  
5300 E. Paisano Dr.  
El Paso, Texas 79905  
Fax: 915.849.3711  
Email: [gcichon@hacep.org](mailto:gcichon@hacep.org), [sbhaskar@hacep.org](mailto:sbhaskar@hacep.org); [executive@hacep.org](mailto:executive@hacep.org)

With a copy to:

Art Provenghi  
Legal Counsel  
EP Home  
5300 E. Paisano Dr.  
El Paso, Texas 79905  
Fax: 915.849.3711

If to Manager:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Any party may designate a change of address by written notice to the other in accordance with the provisions set forth above, which notice shall be given at least ten (10) days before such change of address is to become effective.

14.2 Headings. The headings in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

14.3 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, party or parties may require.

14.4 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term hereof, then such clause shall be deemed to be deleted therefrom, and the remainder of this Agreement shall not be affected thereby, and shall remain in full force and effect.

14.5 Assignment. Manager shall not have any right to assign, pledge or otherwise transfer, encumber or convey all or any portion of its interest in this Agreement or to subcontract the performance of its obligations hereunder and all obligations of Manager hereunder shall be directly performed by Manager. EP Home and its Affiliates shall have the right to sell or transfer all or any part of the Properties at any time in their sole discretion and, in its discretion, to either terminate this Agreement with respect to such Properties without further obligation to Manager (other than obligations incurred by EP Home prior to such sale) or assign this Agreement to the new EP Home, subject to Manager's right to terminate pursuant to Article 12. If EP Home elects to assign this Agreement, so long as the new owner agrees to comply with all provisions hereof arising from and after the date of the assignment, this Agreement shall remain in full force and effect and fully binding on Manager, and EP Home shall be relieved from further liability hereunder.

14.6 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

14.7 Governing Law. All of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed in accordance with and governed by the laws of the State of Texas without giving effect to conflicts of laws principles. Manager shall comply with all statutes, rules, regulations, executive orders affecting procurements by Housing Authorities including but not limited to:

Executive Order 11246  
Executive Order 11063  
Copeland "Anti-Kickback" Act (18 USC 874)  
Davis Bacon and Related Acts (40 USC 276a-276a-7)  
Clean Air & Water Acts (42 USC 1857(h); 33 USC 1368)  
Contract Work Hours & Safety Standards Act (40 USC 327-330)  
Energy Policy & Conservation Act (PL 94-163, 89 STAT 871)  
Civil Rights Act of 1964, Title VI (PL 88-352)  
Civil Rights Act of 1968, Title VIII (PL 90-284 Fair Housing Act)  
Age Discrimination Act of 1975  
Anti-Drug Abuse Act of 1988 (42 USC 11901 et. Seq.)  
HUD Information Bulletin 909  
Immigration Reform & Control Act of 1986  
Fair Labor Standards Act (29 USC 201, et. Seq.)

Each provision of law and each clause, which is required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and this Agreement shall be read and enforced as though such provision or clause had been physically inserted herein.

14.8 Waiver. No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance of this Agreement shall be construed as a consent or waiver to or of any subsequent breach or default in the performance by such other party of the same or any other obligation hereunder.

14.9 Trade Names. All trade names used in connection with the Properties shall be and remain the sole property of EP Home, and Manager shall have no right to use such trade names other than in the performance of its duties under the terms of this Agreement.

14.10 No Partnership or Joint Venture. Manager, on the one hand, and EP Home and its Affiliates, on the other, recognize that Manager is an independent contractor and not an employee, agent, partner, joint venturer, covenantor, or representative of EP Home and the Affiliates and that EP Home and the Affiliates will not incur any liability as the result of Manager's actions. Manager and its employees, representatives, and agents shall at all times represent and disclose that they are independent contractors of EP Home and the Affiliates and shall not represent to any third party that they are an employee, agent, covenantor, or representative of EP Home and the Affiliates. EP Home shall not be obligated to withhold any funds from Manager for tax or other governmental purposes, with respect to Manager's own employees, agents, representative or subcontractors. Manager and its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to employees of EP Home and the Affiliates' including workers' compensation insurance coverage.

14.11 Amendments. This Agreement may not be modified, altered or amended except pursuant to a written instrument executed by EP Home and Manager.

14.12 Agreement Not an Interest in Real Properties. This Agreement shall not be deemed at any time to be an interest in real estate or a lien of any nature against the Properties. This Agreement shall at all times be subject and subordinate to all mortgages on the Properties which may now or hereafter be outstanding. This Section shall be self-operative and no further instrument of subordination shall be required by any mortgagee. However, EP Home and/or Manager shall execute promptly any certificate or other document that any mortgagee may request as to the subordination of this Agreement.

14.13 Counterparts. The Agreement may be executed in counterparts and all counterparts shall be considered part of one Agreement binding on all parties hereto.

14.14 Days. Unless otherwise specified, reference in this Agreement to "days" shall refer to calendar days. If a date referenced in this Agreement falls on a Saturday, Sunday or federal holiday, it shall be deemed to fall on the next business day.



14.15 Non-Discrimination. In the performance of its obligations under this Agreement, Manager shall comply with the provisions of any federal, state or local law prohibiting discrimination in housing on the grounds of race, color, sex, creed or national origin, including, without limitation: (a) Title VI of the Civil Rights Act of 1964 (Public Law 88-362, 78 Stat. 241), and all requirements imposed by or pursuant to HUD regulations (24 C.F.R., Subtitle A, Part 1) issued pursuant thereto; (b) regulations issued pursuant to Executive Order 11063; and (c) Title VIII of the 1968 Civil Rights Act.

14.16 Drug Free Workplace. Manager shall at all times comply with, and shall use its best efforts to cause its employees to at all times comply with, the Federal Drug Free Workplace Act of 1988 or any regulations promulgated thereunder, including, without limitation, the regulations at 24 C.F.R. Part 24 (April 1, 1992).

14.17 Use of Data and Confidentiality. EP Home shall own and have the right to use, without further compensation to Manager, all written data and information generated by or for Manager in connection with the Properties or supplied to Manager by EP Home or EP Home's contractors or agents and all drawings, plans, books, records, contracts, agreements and all other documents in writing in its possession relating to its Services or the Properties. Such data and information and all such documents shall at all times be the property of EP Home. Manager shall not, and shall cause each of its respective directors, officers, employees, representatives and agents (collectively, "Representatives") not to, disclose, and Manager and its Representatives shall keep confidential, any and all information (including, without limitation, any proprietary information of EP Home) acquired in connection with the performance of the Services under this Agreement, and Manager or any of its Representatives shall not in any way use such information other than in connection with the performance of the Services under this Agreement. Manager may, however, disclose any of such information to its Representatives who require such information for the purpose of performing or assisting in the performance of their respective obligations hereunder, provided that such parties shall be informed of the confidential nature of such information and shall be bound by a confidentiality obligation of the type contained in this Section. Each party hereto may also disclose any information: (a) which is or becomes generally available to the public without breach of this confidentiality obligation; (b) which is or becomes available to the party from a third party, provided that the third party did not receive the same, directly or indirectly, from any party hereto or any of such party and such third party was not, to the best knowledge of the party hereto under an obligation of confidentiality to the source of such information at the time it was disclosed; (c) to the extent disclosure is required by any applicable law or regulation or by any authorized administrative or governmental agency; or (d) as required in order to enforce Manager's or EP Home's rights or remedies under this Agreement. This Section shall survive expiration or termination of this Agreement. Manager hereby acknowledges that any information acquired in connection with the performance of the Services hereunder may contain material information which has not been effectively disclosed to the public, with respect to Federal Realty Investment Trust or any other entity.

14.18 Venue for Disputes. The Parties agree that any dispute between them regarding this Agreement, the Services, or the Properties shall be brought in El Paso County, Texas.

14.19 Cooperation in Litigation. If any claims, demands, suits, other legal proceedings, or litigation arise out of any of the matters relating to this Agreement be made or instituted by any third party against either EP Home or an Affiliate, on the one hand, and Manager, on the other; then EP Home (or the Affiliate) and Manager shall cooperate with each other in all reasonable respects and shall give to each other all pertinent information and reasonable assistance in the disposition thereof, each Party at its sole expense.

14.20 Responses to Open Records Requests. In the event Manager receives a request for information or to inspect or duplicate copies of records related to the Properties, the Services, or this Agreement, Manager shall provide such request to EP Home within three (3) business days so that EP Home may coordinate and lead the response to such a request, as appropriate or required, pursuant to the Texas Public Information Act ("PIA"). Manager shall not respond to any PIA requests without first providing the request to EP Home and receiving EP Home's written approval for the response.

14.21 Confidentiality by Law. Manager agrees to comply with any confidentiality requirements or obligations related to the residents of the property, including any such requirements set by federal or state law, regulation, or HUD guidance/publication.



14.22 HUD Section 3 Requirements. Manager shall utilize HUD Section 3 residents, individuals, and businesses as defined in Exhibit in performance of their duties to the greatest extent feasible and shall document such efforts monthly. Manager will be evaluated on their performance at achieving this goal and such evaluation shall be a factor in any future work.

14.23 Entire Agreement. This Agreement contains the final and entire Agreement between the parties hereto with respect to Manager's engagement as management agent, and they shall not be bound by any terms, conditions, statements, warranties or representation, oral or written, with respect to such engagement not herein contained.

*[Remainder of page intentionally left blank; signatures on following page]*

SAMPLE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assigns.

**MANAGER**

\_\_\_\_\_

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EP HOUSING OPERATIONS AND MANAGEMENT ENTERPRISES  
D/B/A EP HOME PFC**

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

SAMPLE