AMENDED

MANAGEMENT AGREEMENT

This Amended Management Agreement (this “**Agreement”**) is entered into as of \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, between, The Carlton at Bartram Park, LLC, a Florida limited liability company (“**Owner”**), and Mahaffey Apartment Company**,** a Florida Corporation (“**Manager”**).

 1. **Definitions**. As used in this Agreement, the following terms shall have the following meanings:

**“Gross Collections”** means all amounts actually collected in respect of the Project, include rents, laundry room income, late charges, NSF charges, and utility payments, and shall include deposit forfeitures collected for damages, and security and excluding all other deposits received from tenants at the Project that have not been forfeited.

**“Project”** means a 395-unit apartment complex having a street address of 13990 Bartram Park Boulevard, Jacksonville, Florida 32258, and being commonly known as The Carlton at Bartram Park.

 2. **Appointment of Manager**. Owner hereby appoints Manager as the exclusive managing agent of the Project. Manager hereby accepts the appointment. Manger, in its sole discretion, shall have the right to subcontract its rights and duties under this agreement to a third party property management company. It is the intent of the parties that the relationship between Manager and Owner is, in fact and intent, that of an independent contractor. Nothing contained herein shall be deemed to create an employer/employee, partnership, joint venture or other relationship between Manager and Owner unless expressly provided herein.

 3. **Term**. The term of this Agreement shall commence on the date hereof and shall continue for a period of 10 years (the **“Term”**). Thereafter, this Agreement will continue on a month-to-month basis and may be terminated by either party giving 60 days prior written notice to the other. Additionally, this Agreement may be terminated by either party on the closing date of a sale of the Project to an unaffiliated third party by delivering to the other party at least 30-days’ prior written notice thereof.

 4. **Duties of Manager**. Manager, shall, as agent for and, at the expense of, Owner, perform the services provided herein, subject at all times to Owner’s general supervision and control and as more particularly set forth in this Section 4. In connection therewith, Manager shall perform the following duties:

(a) Not later than 45 days before the beginning of each calendar year, submit to Owner for Owner’s approval a proposed operating budget for the Project, setting forth all estimated receipts and disbursements relating to the Project for the ensuing calendar year or, in the case of the first proposed budget, for the balance of the current calendar year. The operating budget for a calendar year, as approved in writing by Owner, is hereinafter referred to as the **“Approved Budget”** for that year. Except as otherwise provided in this Agreement, Manager shall incur no expenses in connection with the Project that are not provided for in the Approved Budget. If a submitted budget is rejected by Owner, then Manager shall operate the Project under the last Approved Budget on an item-by-item basis with appropriate adjustments for variances in occupancy, for inflation, for adjustments in insurance premiums, taxes, debt service payments, and scheduled contract price increases, and for costs to comply with law. If there is no prior Approved Budget, Owner shall incur such expenses as may be necessary to operate and maintain the Project in a reasonable manner. All expenses described in the previous sentence shall be deemed to be expenses incurred pursuant to an Approved Budget.

(b) Use diligent efforts and utilizing owner’s employees manage the project in accordance with customary business practices to maximize occupancy at the Project (including marketing and advertising the Project subject to the limitations in the applicable Approved Budget) and collect all rents and other income payable with respect to the Project.

(c) When, in Manager’s judgment, it is necessary and prudent, to recommend to Owner of the institution of legal actions or proceedings for the collection of delinquent rents and other income from the Project and for the dispossession of tenants or other persons therefrom.

(d) Cause to be made all necessary repairs to the Project and cause the Project to be maintained in a neat and orderly condition. Unless otherwise provided for in the Approved Budget for the then current year, the expense to be incurred for any single repair or purchase shall not exceed the sum of $2,500 without prior authorization by Owner; however, in the case of an emergency, Manager shall contact Owner and recommend that the Owner spend such sums as the Owner may deem reasonably necessary to maintain the Project and minimize further damage, to prevent default by Owner under contracts which have been delivered to Manager and to avoid suspension of services in or to the Project. Manager shall promptly notify Owner of the nature of any such emergency and the action taken and expenses incurred in connection therewith.

(e) In the name of Owner, at Owner’s expense, contract for electricity, gas, steam, water, telephone, window cleaning, pest control and such other services as shall be customary and advisable for the proper operation of the Project; however, Manager shall not contract for any services whose estimated cost would exceed the cost specified thereof in the Approved Budget without Owner’s prior written consent unless the need for such services constitutes an emergency as indicate above. Manager shall not, excepting only insurance contracts, cause the performance of, without obtaining Owner’s prior consent, enter any contract which (1) will exceed $2,000 more than authorized in the Approved Budget or (2) cannot be canceled on not more than 30 day’s prior notice.

(f) Cause the performance of other services reasonably necessary for the care, protection, maintenance and operation of the Project and the prevention of waste, damage or injury thereto.

(g) Cause the establishment and maintenance of complete and orderly files containing correspondence, rent records, payroll records, leases, receipts, unpaid bills, vouchers and all other documents and papers pertaining to the Project and the management and operation thereof; all of which shall be and remain the property of Owner and shall be available to Owner and its representatives for inspection during the Term at any time during regular business hours, provided that Owner delivers to Manager at least two-business-days’ prior written notice thereof.

(h) Cause the establishment and maintenance of accurate and complete books of account with proper entries of all receipts, income and disbursements pertaining to the Project, which books of account shall be and remain the property of Owner and shall be available to Owner and its representative for inspection during the Term at any time during regular business hours, provided that Owner delivers to Manager at least two-business-days’ advance written notice thereof.

(i) By the 20th day of each month, deliver to the Owner the reports specified on Schedule 1 hereto for the previous month.

(j) Review all bills and statements received for services, work, supplies and other expenditures for the maintenance and operation of the Project and, subject to Owner’s obligation to provide funds to pay expenses, cause Owner to pay in a timely fashion all expenses specified in the Approved Budget and all other expenses approved by Owner.

(k) On the basis of an operating schedule, job standards and wage rates approved by Owner, investigate, recommend for hire, supervise and recommend discharge of the key personnel necessary to be employed to maintain and operate the Project.

(l) Cause key personnel to maintain businesslike relations with the tenants, whose service requests shall be received, considered and recorded in systematic fashion to show the action taken with respect thereto. Complaints of a serious nature shall be reported immediately to Owner, prior to investigation, and subsequent actions will be determined jointly between Owner and Manager.

(m) Promptly after becoming actually aware of the need thereof, advise Owner to take such actions as may be necessary to comply with all laws, orders and other legal requirements affecting the Project imposed by any federal, state, county, or municipal authority having jurisdiction there over.

Owner acknowledges that, it is Owner's sole responsibility to implement any security services or amenities. Owner further acknowledges that it is Owner’s responsibility to provide necessary funding to comply with any and all laws relating to the operation or management of the Project and that Manager recommends that Owner provide necessary funding for (which may include items necessary to comply with applicable laws in certain jurisdictions): (1) installation of deadbolt locks on exterior doors, (2) installation of pinlocks on sliding glass doors, (3) installation of any missing or non-working window latches and smoke alarms (4) change of keyed locks in units immediately prior to move-in of new residents, and (5) change of keyed locks in a unit after any reported unauthorized entry of that unit**.**

Manager will advise Owner to act in accordance with an Operations & Maintenance plan approved by a qualified environmental consultant. Owner represents that Owner acknowledges Manager is not an expert or consultant regarding the Project’s compliance with requirements; accordingly, Manager’s obligations hereunder shall be limited to taking action with respect to matters of which Manager is actually aware do not comply with such requirements. Under no circumstances, however, shall Manager be responsible for compliance with environmental laws or the abatement, remediation, removal or disposal of any petroleum by-products, asbestos-containing materials, or other hazardous materials or substances; accordingly, all work relating to compliance with environmental laws and the abatement, remediation, removal or disposal of petroleum by-products, asbestos-containing materials, and other hazardous materials and substances (except to the extent brought onto the Project by Manager) shall be the sole responsibility of Owner. Owner further represents that: (1) Manager is not responsible for, and makes no opinions, representations or warranties concerning issues relating to security, the structural integrity of improvements, roofing, plumbing, the presence of mold or mold-related conditions or HVAC systems or any other matters not expressly set forth herein including, without limitation, how secure the Project is or should be, recommended security measures, soil tests, asbestos tests, hazardous waste or mold analysis or tests or any other environmental conditions or investigations; (2) Manager’s sole obligations, if requested by Owner, with respect to such matters, is to supervise vendors which have been approved by Owner; and (3) Manager makes no representations or warranties, express or implied, with respect to the quality of any such investigations or inspections. Owner hereby releases and indemnifies Manager from any and all claims, obligations or liabilities, whether based in tort, contract or statute, attributable, in whole or in part, to any such conditions or matters.

 5. **Maintenance and Disbursement of Funds**. Manager shall cause Owner to establish and maintain, in a bank in which deposits are insured by the Federal Deposit Insurance Corporation, a separate bank account (the **“Operating Account”**) for the deposit of the monies of Owner and a separate bank account for security deposits (the **“Security Deposit Account”**), which Owner will maintain in accordance to Florida State law. If anticipated disbursements shall in any given month be in excess of the anticipated revenues, Owner shall advance such funds as are required to meet the Project obligations, including Manager’s compensation, within ten days after Manager’s request. Under no circumstance shall Manager be required to advance funds on behalf of Owner. Manager’s obligations under this Agreement relating to the maintenance, operation, management and servicing of the Project are subject to there being adequate funds, either provided by Project revenues or by Owner, to perform such obligations.

 6. **Compensation**. Owner shall pay to Manager a fee equal to **3%** of the Gross Collections (the **“Base Fee”**). The Base Fee shall be payable on the first day of each month with an annual reconciliation at years end and on the last day of the Term.

In addition to the reimbursable expenses specified in **Schedule 2**, Owner shall pay Manager for all operating expenses and direct costs associated with onsite operation of the Project, including project-level accounting and data processing expense, software licensing, training for project staff, travel, long distance charges, postage, delivery charges, and copy charges related to operation of the Project.

If Manager or its affiliates are asked to supervise construction renovation or deferred maintenance work at the Project, the compensation for such services will be governed by a separate agreement to be executed at that time.

Additionally, after the date of termination of the assignment, Manager will be paid a close-out management fee equivalent to fifty (50%) percent of the last month’s full management fee for the assignment. Said close-out management fee shall be paid to Manager for providing any of the following services: entering invoices and cutting checks, recording post-closing entries and preparing financial statements, reconciling bank statements, consulting with tax preparers or auditors.

 7. **Information to be Supplied to Manager**. To facilitate the efficient operation of the Project, Owner shall inform Manager in writing about the standards to be maintained in the management and operation of the Project, furnish to Manager information concerning previous liability incidents at the Project, furnish to Manager all reports, studies, and information in Owner’s possession or control concerning the physical condition of the Project (including any environmental reports), and, if possible, furnish Manager with a complete set of the plans and specifications of the Project.

 8. **Managerial Personnel**. Manager shall hire, in its name all personnel necessary to fulfill its obligations hereunder. Owner will review and approve key personnel required to reasonably operate the Project from time to time as requested by Owner (**“Project Staff”**). Owner shall employ and compensate Project Staff and fund and pay any Employee Burden.

 9. **Insurance; Indemnity; Waiver of Subrogation**.

(a) **Insurance**.

(1) Owner shall maintain property casualty insurance for the Project, and commercial liability insurance, naming Manager as an additional insured party, in an amount not less than $3,000,000. In addition, Owner shall provide protection against such additional risks as Manager may reasonably request and as may be required by Owner’s mortgage lender. Owner shall furnish Manager with certificates of insurance evidencing the existence of such insurance prior to the commencement of this Agreement. Owner acknowledges that unless there is a claim of Manager engaging in gross negligence or willful misconduct, Owner’s liability coverages shall be primary.

(2) Owner acknowledges that if evidence of insurance coverage is not timely furnished in accordance with Section 9.(a)(1), Manager may, at its option, immediately terminate this Agreement or obtain such coverage on Owner’s behalf.

(3) Manager has arranged, through its insurance agent, a master insurance program in which owners of property managed by Manager may participate. If Owner elects to participate in the master insurance program, then Owner may acquire insurance coverages under the master insurance program through Manager’s agent, in which case, Owner shall pay the amount thereof set forth on the Approved Budget or as otherwise provided on the insurance invoice delivered to Owner thereof. Owner acknowledges that the amounts payable by Owner under the master insurance program include administrative charges in excess of the actual insurance premiums charged by the underlying insurance carriers. Owner acknowledges that Manager is not an expert or consultant regarding insurance coverages and requirements; accordingly, Owner assumes all risks with respect to the adequacy of insurance coverages, whether such insurance is provided under the master insurance program or otherwise, and Manager shall have no liability therefore in any respect. All insurance coverage provided under the master insurance program shall be terminated when this Agreement ends without the need for any prior notice of termination of the insurance coverage.

(b) **Indemnity**. Subject to Section 10, Owner shall defend, indemnify, and hold harmless Manager from and against all claims, demands, or legal proceedings (including expenses and reasonable attorney’s fees incurred in connection with the defense of any such matter) that are brought against Manager arising out of the operation, management or condition of the Project, except with respect to claims arising out of Manager’s gross negligence or willful misconduct. Owner shall have the sole and exclusive right to conduct the defense of any such claim, demand or legal proceeding, provided it does so with counsel reasonably acceptable to Manager. Subject to Section 10, Manager shall defend, indemnify, and hold harmless Owner from all claims, demands, or legal proceedings (including expenses and reasonable attorney’s fees incurred in connection with the defense of any such matter) arising out of the adjudicated gross negligence or willful misconduct of Manager. The indemnification obligations under this Section 9(b) shall survive the termination of this Agreement.

 10. **Waiver of Claims**. Notwithstanding anything in this Agreement to the contrary, and with exception to insurance deductible expenses, Owner and Manager hereby waive and release each other from any and all right of recovery, claim, liability, loss or damage that may occur to the Project or any personal property within the Project by reason of fire, elements, casualty, or other matters which are insurable under an all-risk property insurance policy, regardless of whether the negligence or fault of the other party or other party’s agents, officers, or employees causes or is alleged to have caused such claim, liability, loss or damage.

 11. **Default**. Except as otherwise provided herein, if either party defaults in performance of any of its obligations hereunder, which default continues for a period of ten days, in the case of monetary defaults, and 30 days, in the case of non-monetary defaults, after written notice thereof, then the non-defaulting party, in addition to pursuing all other rights, remedies and recourses available at law, may terminate this Agreement by written notice to the other party.

 12. **Effect of Termination**. When this Agreement ends, the following shall occur:

(a) Manager shall promptly deliver to Owner all books and records in Manager’s possession relating to the Project (provided that Owner shall permit Manager access thereto for a period of five years after the termination date or as otherwise necessary in any judicial or arbitration proceeding), all keys to the Project, and all other items of personal property owned by Owner and in Manager’s possession.

(b) Manager shall vacate any space in the Project except as occupied under separate lease with Owner.

(c) The relationship created under this Agreement will cease, and Manager will have no further right and authority to act for Owner.

(d) Owner shall remain liable for and assume all obligations relating to the Project, including obligations under contracts executed by Manager in accordance with this Agreement.

(e) Manager shall have no obligation to maintain any books or records relating to the Project for more than the 30 days after the Term ends, unless Manager is required by law to maintain the books and records for a long period, in which case, Manager shall maintain such books and records for the duration required by law.

 13. **Miscellaneous**.

(a) This Agreement shall inure to the benefit of, and constitute a binding obligation upon, the parties hereto and their respective successors and permitted assigns.

(b) This Agreement constitutes the entire agreement between the parties hereto and no variance or modification thereof shall be valid or enforceable, except by a supplemental agreement in writing, executed in the same manner as this Agreement.

(c) The rights and obligations of Manager or Owner hereunder may not be assigned without the prior written consent of the other. Provided, however, Manager may assign its rights and obligations to another party if such party (1) acquires all or substantially all of Manager’s assets or all or substantially all of the assets of Manager’s regional office through which the Project is being managed (the **“Applicable Regional Office”**), (2) is controlled by, is under common control with, or controls Manager or (3) is a party with Manager or the Applicable Regional Office in a merger, consolidation or other business combination and, in each case, assumes Manager’s obligations arising hereunder from and after the date of the transaction. Manager shall be released from all liabilities hereunder after any such permitted assignment.

(d) This Agreement shall be construed according to, and governed by, the laws of the State of Florida. This Agreement shall be performable and venue shall be proper in Marion County, Florida.

(e) This Agreement is terminable without cause by Owner or Berkadia Commercial Mortgage LLC, or its successors or assigns (“Lender”), at any time: (i) after an Event of Default (as such term is defined in that certain Multifamily Loan and Security Agreement (CME) between Lender and Owner dated even with the date hereof), without the necessity of establishing cause and without payment of a penalty or termination fee by Owner (or its successors) or Lender, by giving written notice to Manager of its election to do so. Such written notice shall specify the date of termination, which shall not be less than 30 days after the date of such notice.

*[Signatures appear on the following page.]*

IN WITNESS WHEREOF, the parties hereto have executed this Amended Management Agreement on the day and in the year first above written in multiple originals.

**“MANAGER”**

MAHAFFEY APARTMENT COMPANY,

a Florida Corporation

By:

Name: James W. Mahaffey

Its:

Date: , 2017

# “OWNER”

THE CARLTON AT BARTRAM PARK, LLC,

a Florida limited liability company

By: Bartram Park North Corporate General, Inc.,

 a Florida Corporation

By:

William H. Mahaffey

Its President

Date: , 2017

**Schedule 1**

1. Income and Expense Statement – Current Month
2. Income and Expense Statement – Year to Date
3. Budget Variance Report – Current Month and Year to Date
4. Cash Flow Statement
5. Balance Sheet
6. General Ledger
7. Bank Statement with a Reconciliation Statement
8. Check Register
9. Accounts Payable Open Items Report
10. Aged Delinquency / Prepaid Report

For these items the Manager charges $1.50 per unit, or such other price as may be negotiated between Owner and Manager, over and above the compensation set forth in paragraph 6 abo

**Schedule 2**

1. The ancillary fees are as follows for the initial term:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Training** | **Accounting Software** | **Other Software** **(if applicable)** | **Data Storage** | **IT Services** | **Other Costs** |
|  | One-Time Setup | Monthly | One-Time Setup | Monthly | Monthly | Monthly | Office Supplies, Copies, Faxes, Postage |
| Included in base fee | Included in base fee | $1,050 per month  | Included in base fee | Included in base key | Included in base fee |  $385.10 per month or as budgeted and approved by Owner | Included in base fee |