

SECOND AMENDED AND RESTATED PROMISSORY NOTE

U.S. \$1,297,483.63

Clearwater, Florida
January 27, 2022

BEING INDEBTED, FOR VALUE RECEIVED, the undersigned, **Palmetto Preservation, Ltd.**, a Florida limited partnership, (the "Borrower"), having an address of c/o HallKeen Management Inc., 1400 Providence Highway, Suite 1000, Norwood, Massachusetts 02062, promises to pay to the order of the **City of Clearwater** (the "Lender"), or order, its successors or assigns, at its offices at P.O. Box 4748, Clearwater, Florida 33758-4748, the sum of One Million Two Hundred Ninety-Seven Thousand Four Hundred Eighty-Three and 63/100 Dollars (\$1,297,483.63), together with interest accrued on the unpaid balance, calculated in the manner hereinafter stated, from the dates of disbursements until maturity, both principal and interest being payable in lawful money of the United States of America. This Second Amended and Restated Promissory Note is a modification and restatement of the original Promissory Note in the amount of Seven Hundred Thousand Dollars (\$700,000) dated on April 1, 2002, (the "Original Note"), as modified pursuant to that certain Modified Promissory Note ("Modified Note") dated May 27, 2005, which increased the original loan amount to One Million Dollars (\$1,000,000), as modified pursuant to that certain Amended and Restated Promissory Note (the "Amended and Restated Note" and collectively with the Original Note, and the Modified Note, the "Note") dated May 14, 2012, which increased the loan amount to \$1,209,062 (the "Loan"), which is secured by that certain Mortgage and Security Agreement, dated April 3, 2002 (the "Original Mortgage"), and recorded on April 4, 2002, in Official Records Book 11928, Page 2494 of the Public Records of Pinellas County, Florida (the "Public Records"), as affected by that certain Subordination Agreement, recorded on April 4, 2002, in Official Records Book 11928, Page 2476, of the Public Records, and as modified by that certain Mortgage Modification Agreement and Receipt of Future Advance dated May 14, 2012 (the "Modified Mortgage" and, together with the Original Mortgage, collectively, the "Mortgage"), (collectively, the "Loan Documents"), and recorded on May 15, 2012, in Official Records Book 17582, Page 2508, of the Public Records.

DEFINITIONS:

"Cash Flow" shall mean the amount, determined for any fiscal year of the Borrower or portion thereof, equal to the excess, if any, of:

- (i) All gross revenue collected directly or indirectly from the operations of the Project (excluding proceeds of the sale or refinancing of the Project or any portion thereof) and the Borrower, over
- (ii) Project expenses and required deposits to the Borrower's reserves, including any additional reserves established from time to time.

Cash Flow shall not be reduced by payments of any items described in the preceding clause (ii) made from the proceeds of any loans, from condemnation or insurance proceeds or directly from any reserve, or by depreciation and amortization taken into account for federal income tax purposes.

“HFA Loan” shall mean that certain loan in the amount of \$285,168.99 from the Housing Finance Authority of Pinellas County, Florida (the “HFA”) to Borrower.

“HOME Loan” shall mean that certain loan in the amount of \$900,000.00 from Pinellas County, Florida (the “County”) to Borrower.

“Intercreditor Agreement” shall mean that certain agreement of even date herewith concerning the lien position, payment terms and other rights of the owners of the HFA Loan, HOME Loan, this Note and the Seller Loan.

“Project” shall mean the land and improvements comprising a project commonly known as Palmetto Park Apartments located at 1003 Martin Luther King Jr. Avenue in Clearwater, Florida, together with such additions or improvements thereto as may hereafter be performed or acquired by the Borrower.

“Project Expenses” shall mean all costs and expenses of any type incurred on an accrual basis incident to the equipping, financing, ownership and operation of the Project, including payments of fees to the members or their affiliates (other than fees the payment of which is contingent on the amount of Cash Flow), taxes, required payments of principal and interest on any loans and any other Borrower loans or obligations (including loans from members), and costs of capital improvements to the Project not funded from the Borrower replacement reserve.

“Seller Loan” shall mean that certain loan in the amount of \$8,726,624.00 from Greenwood Apartments, LLC (or its assign) (the “Seller”) to Borrower.

“Sponsor Loan” shall mean that certain loan in the amount of \$2,000,000 from HK Palmetto Lenders LLC, a Massachusetts limited liability company (the “Sponsor”), to Borrower.

PAYMENT AND TAXES:

1. This Note has a maturity date of the sooner of (a) forty-five (45) years after the date hereof, and (b) the repayment of the HOME Loan.

2. Interest shall be computed at one and nine-tenths of one percent (1.90%) per annum, compounded annually. No payment of interest or principal shall be required under the Note until April 1, 2025.

3. On April 1, 2025, payments will be made from the Cash Flow generated in 2024 according to the priority set forth in Section 11.03(b) of the Borrower’s Amended and Restated Agreement of Limited Partnership dated as of January 1, 2022 (“Manner of Distribution”). Additional payments of principal and interest shall be made from Cash Flow from time to time but not less frequently than annually thereafter. Payments from Cash Flow shall be in accordance

with the Manner of Distribution. The interest rate, as stated above, shall remain unchanged throughout the term of the Note.

4. Borrower acknowledges that the total mortgage loan by Lender to Borrower consisting of the indebtedness evidenced by this Note is secured by the Mortgage as a second lien upon the Property, as described below, to the same extent and effect as though it were advanced the date of first recording of the Mortgage.

5. Payments due under this Note shall be contingent upon Cash Flow of the Borrower and shall be subject and subordinate in priority to certain fees and expenses of Borrower described in the Manner of Distribution.

If Borrower is unable to make the annual mortgage payments to the Lender, Borrower shall provide Lender with an audited financial statement, from an independent third party substantiating that there is insufficient Cash Flow to make the annual payment due under the Note. In those years where there is sufficient Cash Flow to pay the annual loan payment, the payment shall be made according to the Manner of Distribution.

PARITY/PARI-PASSU NOTES:

This Note is issued along with companion promissory notes in the face amounts of (i) \$900,000, payable to the County, (ii) \$8,726,624, payable to the Seller, and (iii) \$285,168.99, payable to the HFA, and (iv) \$2,000,000, payable to the Sponsor. This Lender agrees that the rights, powers, privileges and remedies granted hereunder are on parity and pari-passu with (i) the County under its \$900,000 promissory note and relative mortgage, both of which are being amended simultaneously herewith, (ii) Seller under its \$8,726,624 promissory note and relative mortgage, (iii) the HFA under its \$285,168.99 promissory note and relative mortgage, and (iv) the Sponsor under its \$2,000,000 promissory note and relative mortgage. The Lender shall not take any action that would cause its interests in the Premises to be superior to that of the County, Seller, HFA or Sponsor. These relative rights are further detailed in the Intercreditor Agreement.

EXCESS INTEREST:

In no event shall the amount of interest due or payments made in the nature of interest payable hereunder exceed the maximum rate of interest allowed by applicable law, as amended from time to time, and in the event any such payment is paid by the Borrower or received by the Lender, then such excess sums shall be credited as a payment of principal, unless the Borrower shall notify the Lender, in writing, that the Borrower elects to have such excess sum returned to it forthwith.

PREPAYMENT:

This Note may be prepaid in whole or in part at any time without payment of premium or penalty. Any prepayments shall be applied to the last installments due hereunder.

SECURED NOTE:

This Note is secured by the Mortgage and such other security or supporting documents as are executed in conjunction with it (the "Loan Documents") between the Borrower and Lender on real and/or personal property, improvements, furnishings, fixtures, appurtenances, and hereditaments (the "Premises"). This Note and the Lender are entitled to all of the benefits provided for in the Loan Documents or referred to within them, to which Loan Documents reference is hereby specifically made and they are hereby incorporated herein by reference for a statement of the terms and conditions under which the due date of this Note may be accelerated.

TIME OF THE ESSENCE, LATE CHARGES:

Time is of the essence of this obligation. If any installment or payment is not received on or before the 15th day following the installment due date, the Borrower agrees to pay a delinquency and collection charge of five cents (\$.05) per dollar of the installment then due, in addition to the amount of said installment.

In the event this Note is accelerated pursuant to a failure to timely pay or perform, then the entire unpaid principal shall bear interest at the maximum rate permitted by applicable law as changed from time to time from the time that payment or performance should have occurred. In the event a judgment is obtained, the judgment amount shall bear interest at the default rate recited herein or the rate of interest established by Section 55.03 Florida Statutes, whichever is the greater, until the full amount of the judgment is collected.

COSTS, FEES AND NOTICE:

In the event of either a failure to pay any monetary sum when due, or an occurrence of any default as defined under the Loan Documents, the principal sum above mentioned or any balance remaining unpaid shall be immediately due and payable from the Borrower to the Lender without further notice, together with all interest, all just and reasonable expenses, costs and disbursements, including a reasonable attorney's fee, whether incurred for suit enforcement, protection of the collateral or collection, whether or not suit be brought, such attorney's fees to include those incurred in appellate and Bankruptcy proceedings, if any. Notice, when required, shall be deemed to have been made upon deposit in the United States mails by the Lender to the Borrower, at the following address:

Palmetto Preservation, Ltd.
c/o HallKeen Asset Management LLC
1400 Providence Highway, Suite 1000
Norwood, Massachusetts 02062
Attention: Mark Hess

With copies to:

RSEP Holding, LLC
c/o Red Stone Equity Partners, LLC
1100 Superior Avenue, Suite 1640

Cleveland, Ohio 44114
Attention: Executive Director/General Counsel

And:

Nixon Peabody LLP
Exchange Place
53 State Street
Boston, MA 02109
Attention: Roger Holmes

REMEDIES AND WAIVER:

The remedies of the Lender, as provided herein or in the Mortgage or any other Loan Documents, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall arise. No act of omission or commission of the Lender, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by the Lender and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as to a subsequent event.

LIMITATION OF LIABILITY:

Except as set forth in the next paragraph of this Section, but otherwise notwithstanding anything to the contrary in the Mortgage or this Note, the Lender expressly agrees that the liability of Borrower shall be strictly and absolutely limited to the property encumbered by the Mortgage, namely, the Project (including, but not limited to, the leases, rents profits and issues thereof) and any other collateral now or hereafter securing the Loan. If an event of default shall occur, the Lender shall not and may not seek any judgment for a deficiency or for the payment of principal or interest of the indebtedness secured hereby, against Borrower or any members of Borrower (in their capacity as members) in any action to foreclose, to exercise a power of sale, to confirm any foreclosure or sale under power of sale, or to exercise any other rights of power under or by reason of the Loan Documents evidencing or securing the obligations of the Borrower with respect to the Loan except to the extent required in order to proceed with judicial proceedings to foreclose the Mortgage or any other Loan Document or except for a judgment or decree of specific performance of agreements and covenants under the Loan Documents, other than Lender Loan payment covenants. In the event any suit is brought on the Loan Documents, or concerning the Loan or any amount secured by the Mortgage or other Loan Documents as part of judicial proceedings to foreclose the Mortgage and/or any other security interest granted to the Lender, or to confirm any foreclosure or sale pursuant to power of sale thereunder, any judgment obtained in such suit shall constitute a lien on and will be and can be enforced only against, the property encumbered by the Mortgage and the other Loan Documents, and the leases, rents, profits and issues thereof and not against any other asset of the Borrower or any members of the Borrower, and the terms of such judgment shall expressly so provide.

Notwithstanding anything herein to the contrary in this Note, the Borrower shall be personally liable for, and the Lender shall have the right to seek a judgment for, money damages (including a deficiency judgment) to enforce or collect any or all of the following:

(1) the fees of the Lender, including but not limited to reasonable legal fees and out-of-pocket costs and expenses of the Lender's counsel incurred in connection with the interpretation or enforcement of the Mortgage, this Note or the Loan Documents;

(2) indemnification provisions in favor of the Lender set forth in the Loan Documents (but excluding any indemnity provisions which would result in the payment of principal and interest under the Loan);

(3) liability under any guaranty entered into with the Lender;

(4) the leases, rents, profits and issues of the Project following any payment default (without regard to the expiration of any cure period, if any) to the extent misapplied;

(5) liability for intentional waste, destruction or damage to the Project or any part thereof;

(6) tenant security deposits, to the extent not properly accounted for, or prepaid rent, to the extent misapplied;

(7) the cost to restore the Project as a result of a casualty if the net available insurance proceeds are allowed to be applied to restoration, to the extent that the costs of such restoration is not reimbursed by insurance; and

(8) any liability, damage, cost or expense incurred by Lender as a result of any fraud, material misrepresentation or bad faith by Borrower.

No provision of any Loan Document shall be deemed to waive, amend or modify the recourse obligations set forth herein unless such provision expressly references this Section.

MISCELLANEOUS:

Where applicable, the term Lender shall include any subsequent or successor holder of this Note and the Loan Documents.

The Borrower's limited partner or special limited partner shall have the right, but not the obligation, to cure a default on behalf of the Borrower, and the parties agree to accept such cure as if it were tendered by the Borrower itself.

Notwithstanding the foregoing, so long as RSEP Holding, LLC (or an affiliate thereof) is a limited partner of the Borrower, Lender will not commence foreclosure proceedings with

respect to the Project under the Mortgage or this Note or exercise any other rights or remedies it may have under the Mortgage or this Note, including, but not limited to, accelerating the Loan, collecting rents, appoint (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder. Lender waives no rights or remedies it may have under the Mortgage or this Note, but merely agrees not to enforce those rights or remedies until the end of the Compliance Period (as such term is defined in the Borrower's Amended and Restated Agreement of Limited Partnership dated as of January 1, 2022).

For and in consideration of the funding of this Note by the Lender or any renewal or extension thereof, should any occur, the undersigned Borrower hereby agrees to cooperate or to re-execute any and all Loan Documents deemed necessary or desirable in the Lender's discretion, in order to correct or to adjust for any clerical errors or omissions contained in any document executed in connection with the loan.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREES THAT:

(A) NEITHER THE BORROWER NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF THE SAME SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION OR PROCEDURE ARISING FROM OR BASED UPON THIS PROMISSORY NOTE, ANY OTHER LOAN AGREEMENT OR ANY LOAN DOCUMENT EVIDENCING, SECURING OR RELATING TO THE OBLIGATIONS OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(B) NEITHER THE BORROWER NOR THE LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER THE BORROWER NOR THE LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS TRANSACTION.

THE UNDERSIGNED ACKNOWLEDGE THAT THE LOAN EVIDENCED HEREBY IS FOR COMMERCIAL PURPOSES ONLY AND NOT FOR PERSONAL FAMILY OR HOUSEHOLD PURPOSE.

(Signatures appear on the following page)

PALMETTO PRESERVATION, LTD.,
a Florida limited partnership

By: HK Palmetto Holdings LLC, a
Massachusetts limited liability
company, its general partner

By: 
Andrew P. Burnes, Manager

[City Note]