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ALLONGE
(NOTE AND MORTGAGE MODIFICATION AGREEMENT)

Document Prepared By:
Office of Affordable Housing Preservation
451 7th Street SW
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When recorded mail to:

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*Caliente Renaissance Apartments
Caliente, Lincoln County, Nevada
FHA Project No. 125-35064*

**ALLONGE
(NOTE AND MORTGAGE MODIFICATION AGREEMENT)**

THIS ALLONGE (NOTE AND MORTGAGE MODIFICATION AGREEMENT)

("Agreement") is entered into as of the 14th day of May 2009, by and between **CALIENTE ASSOCIATES, a Nevada limited partnership** (the "Maker"), and the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** (the "Secretary" or "HUD").

WITNESSETH:

WHEREAS, Maker is the owner of certain improved real property described in Exhibit A hereto and known as *Caliente Renaissance Apartments* (the "Project"), encumbered by that certain Contingent Repayment **Deed of Trust** (referred to herein as the "Contingent Repayment Mortgage") from the Maker to the Secretary dated *June 27, 2001* and recorded *June 27, 2001* in *Book 156, Page 127* as *Instrument No. 116538*; modified by the *Modification of Mark-to-Market Loan Documents* dated *June 25, 2002* and recorded *April 14, 2003* in *Book 172, Page 126* as *Instrument No. 119979* of the *Official Records in Lincoln County, Nevada* (the "Land Records");

WHEREAS, the Contingent Repayment Mortgage secures performance of a Contingent Repayment **Deed of Trust** Note dated *June 25, 2001*, in the original principal amount of *Eighty Thousand Eight Hundred Twenty Four and No/100 Dollars (\$80,824.00)*, payable to the Secretary, and made and executed by Maker (the "Contingent Repayment Note")

WHEREAS, the Contingent Repayment Note was made as a part of a debt restructuring benefiting the Maker and the Project (the "M2M Debt Restructuring"), under the Mark-to-Market program established under the Multifamily Assisted Housing Reform and Affordability Act of 1997, Title V of the Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105-65, 111 STAT. 1384, as amended "MAHRA");

WHEREAS, the M2M Debt Restructuring included an additional indebtedness from Maker to HUD of a Mortgage Restructuring **Deed of Trust** Note dated *June 25, 2001*, in the original principal amount of *Two Hundred Fifty One Thousand Four Hundred Eighteen and No/100 Dollars (\$251,418.00)*, also payable to the Secretary, and made and executed by Maker, secured by a Mortgage Restructuring **Deed of Trust** encumbering the Project that is superior in lien priority to the Contingent Repayment Mortgage (the "Mortgage Restructuring Note");

WHEREAS, the implementing regulations for MAHRA provide, among other things, that when the Mortgage Restructuring Note is satisfied, the Contingent Repayment Note will be due and payable in full upon demand or as otherwise agreed by the Secretary; and

WHEREAS, the Maker and HUD desire to amend the Contingent Repayment Note and Contingent Repayment Mortgage to provide for the orderly payment of the Contingent Repayment Note in the event that the Mortgage Restructuring Note is paid in full prior to its maturity.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

- 1. **Incorporation of Recitals.** The foregoing recitals are incorporated in and made a part of this Agreement. This Agreement shall be recorded among the Land Records to evidence the amendment to the Contingent Repayment Mortgage, and thereafter (or a duplicate original) shall be attached to the Contingent Repayment Note to evidence the amendment thereof.
- 2. **Modification of Payment Terms.** Section B. of the Contingent Repayment Note titled "Payment Terms" is deleted in the entirety and replaced with the following:

B. 1. Payment-Related Defined Terms.

a. "Payment Period" shall mean each one (1) year period, or portion thereof, during the term hereof, commencing on the Effective Date and, thereafter, each 1st day of Owner's fiscal year, and, terminating on the last day of Owner's fiscal year or the Maturity Date (as hereinafter defined), whichever is earlier.

b. "Payment Date" shall mean, with respect to each Payment Period, the date that is ten (10) days after the date that the annual financial statement of the Owner is due to HUD.

c. "Capital Recovery Payment(s)" mean the monthly payments, or, if no cash exists for the payment thereof, the monthly accruals, each in the amount of \$301.67, per month, for 84 months, to reimburse the Owner, with interest, for the capital contributions made by Owner as a part of the transaction that includes the Loan, Mortgage Restructuring Loan, and/or Contingent Repayment Loan. The payment provisions for the Capital Recovery Payments and the conditions therefore are contained in the Regulatory Agreement, which provisions are incorporated herein and made a part hereof by reference.

d. "Incentive Performance Fee" means the annual non-accruing fee which may be payable to the Owner to recognize imputed Owner equity and provide an incentive for operating efficiencies, as provided in and subject to the Regulatory Agreement, the provisions of which are incorporated herein and made a part hereof by reference.

e. "Surplus Cash" shall mean, any cash remaining at the end of each Payment Period after:



(1) The payment of: (i) All sums due or currently required to be paid under the terms of (a) the Loan, if any, the lien for which is prior to the lien of the Contingent Repayment Mortgage securing this Contingent Repayment Note, and, (b) if applicable, subordinate FHA insured or HUD held mortgages with cash flow priority ("Priority Cash Flow Indebtedness") to this Contingent Repayment Note; (ii) all amounts required to be deposited in the reserve fund for replacements; (iii) all other obligations of the Mortgaged Property other than the Loan and Priority Cash Flow Indebtedness, unless funds for payment are set aside or deferment of payment has been approved by the Secretary, and (iv) the Capital Recovery Payments, if any; and

(2) The segregation of: (i) an amount equal to the aggregate of all special funds (including a Section 8 Recapture Agreement Escrow Fund, if applicable) required to be maintained by the project; and (ii) all tenant security deposits held.

f. "Restricted Surplus Cash" shall mean 75 % of Surplus Cash that remains after subtracting the Incentive Performance Fee, if any.

2. **Payment Terms.** The principal and interest due hereunder shall be payable as set forth herein.

a. **Payment Amount.** Commencing on the first Payment Date and on each Payment Date thereafter during the term of this Contingent Repayment Note, payments shall be due and payable to the holder hereof, in arrears for the immediately preceding Payment Period, in an amount equal to 100% of Restricted Surplus Cash.

b. **Application of Payments.** All payments received hereunder shall be applied as follows:

i) First, to interest that has accrued (which interest shall not compound) under this Contingent Repayment Note;

ii) Second, to the outstanding principal sum due under this Contingent Repayment Note.

c. **Maturity.** The balance of principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on *July 1, 2022* (the "Maturity Date").

d. **Annual Review.** In the event that the holder hereof notifies the Owner, based on the holder's review of any financial report submitted to the holder, that the amount of Restricted Surplus Cash due to the holder for any Payment Period exceeds the actual amount paid by the Owner, the Owner shall, within thirty (30) calendar days after receipt of such notice (or such longer period permitted by the holder hereof), cause such shortfall amount to be paid to the holder hereof..

e. **Late Charges.** In the event that any payment or part of any payment due under this Contingent Repayment Note becomes delinquent for more than fifteen (15) days, there shall be due, at the option of the holder hereof, in addition to



other sums due hereunder, a late charge in an amount equal to two percent (2%) of the Payment Amount so delinquent. Whenever, under the law of the jurisdiction where the Mortgaged Property is located, the amount of any such late charge is considered to be additional interest, this provision shall not be effective if the Interest Rate, together with the amount of the late charge, would aggregate an amount in excess of the maximum rate of interest permitted and would constitute usury.

f. Subordination. Notwithstanding anything contained to the contrary in this Contingent Repayment Note, there shall be no periodic payments due hereunder until the Mortgage Restructuring Loan, evidencing the Mortgage Restructuring Note, if made, has been paid in full.

3. Acceleration. Notwithstanding anything contained to the contrary in the Contingent Repayment Note or the Contingent Repayment Mortgage, upon payment in full of the Mortgage Restructuring Note from Restricted Surplus Cash prior to its maturity, the Contingent Repayment Note shall not become immediately due and payable in full; instead, Maker agrees to make annual payments on the Contingent Repayment Note until the Maturity Date in accordance with section 2 above titled "Modification of Payment Terms."

4. Definitions. All references in the Contingent Repayment Mortgage to the Contingent Repayment Note mean the Contingent Repayment Note, as amended and restated in this Agreement. All references in the Contingent Repayment Note, as amended in this Agreement, to the Contingent Repayment Mortgage mean the Contingent Repayment Mortgage, as amended by this Agreement. Capitalized terms not defined herein shall have the meaning ascribed thereto in the Contingent Repayment Note or Contingent Repayment Mortgage.

5. No Impairment/Reaffirmation. Nothing herein contained shall in any way impair the Contingent Repayment Note, the Contingent Repayment Mortgage, or any other security now held for the indebtedness evidenced by the Contingent Repayment Note and secured by the Contingent Repayment Mortgage or alter, waive, vary or affect any provision, condition, or covenant therein, or affect or impair any rights, powers or remedies under the Contingent Repayment Note or the Contingent Repayment Mortgage, except as herein specifically provided, the parties intending that the terms and provisions of the Contingent Repayment Note and the Contingent Repayment Mortgage shall continue in full force and effect except as modified hereby. The parties understand and agree that this Agreement is not a refinancing or novation, nor the creation of a new debt or a new agreement by and between the parties thereto, it being the intent of the parties that the terms and provisions of the Contingent Repayment Note and Contingent Repayment Mortgage are expressly approved, ratified and confirmed, and shall continue in full force and effect, except as expressly modified hereby.

6. Successors Bound. All of the terms, covenants, conditions and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.



7. **Counterparts.** This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, THE PARTIES HAVE HEREUNTO SET THEIR HANDS AND SEALS TO THIS ALLONGE (NOTE AND MORTGAGE MODIFICATION AGREEMENT) AS OF THE DAY AND YEAR HEREINABOVE FIRST WRITTEN.

*CALIENTE ASSOCIATES,
A Nevada limited partnership*

By: 
*Robert F. Nielsen
General Partner*

ATTEST: 

STATE OF Nevada

COUNTY OF Washoe

This instrument was acknowledged before me on May 14, 2009 by Robert Nielson as General Partner of Caliente Associates, a Nevada limited partnership.




NOTARY PUBLIC
My Commission Expires: 03/07/13

Witnessed By:

[Signature]

SECRETARY OF HOUSING AND URBAN DEVELOPMENT ACTING BY AND THROUGH THE DIRECTOR OF PORTFOLIO MANAGEMENT OF THE OFFICE OF AFFORDABLE HOUSING PRESERVATION [SEAL]

Joshua Jarvis

By: [Signature]
LINDA W. FIELD,
DIRECTOR OF PORTFOLIO MANAGEMENT

STATE OF Maryland : SS
COUNTY OF Hann : SS

Before me personally appeared Linda W. Field, who is personally known to me and known to me to be the duly appointed Director of Portfolio Management, Office of Affordable Housing Preservation, and the person who executed the foregoing instrument and I having first made known to her the content thereof, she did acknowledge the signing thereof to be her free and voluntary act and deed as Director of Portfolio Management, Office of Affordable Housing Preservation, for and on behalf of the Secretary of Housing and Urban Development, for the uses, purposes and consideration therein set forth.

Witness my hand and official seal this 27 day of May, 2009.

Notary: [Signature]

Commission Expires: 01.01.11

(SEAL)

This document prepared by:
Office of Affordable Housing Preservation
451 7th Street SW, Room 6222
Washington, DC 20410

When recorded return to:
Jon M. Arntson
Arntson & Stewart, P.C.
51 Broadway, Suite 603
Fargo, ND 58102



**EXHIBIT A
to Contingent Repayment Deed of Trust**

LEGAL DESCRIPTION

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF LINCOLN, STATE OF NEVADA BOUNDED AND DESCRIBED AS FOLLOWS:

LOTS TWO (2) AND THREE (3) IN BLOCK FORTY-SIX (46) OF NORTHSIDE ADDITION IN THE CITY OF CALIENTE, LINCOLN COUNTY, NEVADA.

