

Return to: First American Title Ins. Co.

GF # 765677 mem

## MORTGAGE

SANDOVAL COUNTY

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DATE: March 1, 2006

Albuquerque, New Mexico - \$2,000,000

Butera Properties, LLC, a New Mexico Limited Liability Corporation, for consideration paid, grants to Southwest Lending LLC, a New Mexico Limited Liability Company, whose address is 1692 Pace Rd. NW, Albuquerque, NM 87114 the following described real estate in Bernalillo county, New Mexico:

Tract I - Approximately 1.645 Acres In Sandoval County, New Mexico:

That certain parcel of land being and comprising; the East half (E1/2) of Section 11, all of Section 12 and the North half (N1/2) of Section 12, Township 12 North, Range 1 West; The North half of section 18 and Government Lots 1 and 2 in Section 17, Township 12 North, Range 1 East, New Mexico Principal Meridian, Sandoval County, New Mexico, more particularly described by survey performed by Garry P. Hugg, New Mexico Professional Surveyor Number 5823, using New Mexico State Plane Coordinate System, central Zone (NAD83), grid bearing and ground distances as follows:

BEGINNING at the Closing Corner of Sections 8 and 17, Township 12 North, Range 1 West on the West Boundary of the Town of Alameda Grant (a GLO brass cap monument found in place), whence the National Geodetic Survey Monument "Pearl" (an existing brass cap monument found in place) bears N. 23°, a 59' 29" W., 3012.59 feet distant; Thence,

S. 02°, a 20' 23" W., 2630.85 feet along said Westerly Boundary of the Town of Alameda Grant to the South East corner of said Government Lot 2 (a 5/8" rebar and cap stamped LS 1180 set) and the Southeast corner of the parcel herein described; Thence,

N. 89°, a 43' 15" W., 1404.80 feet along the South line of said Government Lot 2 or the Quarter Corner common to said Sections 17 and 18 (A GLO brass cap monument found in place); Thence,

N. 87°, a 44' 06" W., 4674.43 feet along the East-West center of section line of said Section 18 to the Quarter Corner common to said Section 18, Township 12 North, Range 1 East, and said Section 13, Township 12 North, Range 1 West (a 5/8" rebar and cap stamped LS 1180 set); Thence,

S. 89°, a 36' 41" W., 5248.95 feet along the East-West center of section line of said Section 13 to the Quarter Corner common to Sections 13 and 14 (a 5/8" rebar and cap stamped LS 1180 set) and the Southwest corner of the parcel herein described; Thence,

N. 00,,a 06' 05" E., 2633.11 feet to the corner common to Sections 11, 12, 13, and 14 (a 1-1/2" iron pipe and aluminum cap stamped LS 7248 found in place); Thence,

N. 89,,a 25' 29" W., 2632.81 feet to the Quarter Corner common to Sections 11 and 14 (a 5/8" rebar and cap stamped LS 1180 set) and the Southeast corner of Parcel 3, King Brothers Ranch as the same is shown and designated on the plat entitled "PARCELS 1, 2, AND 3, KING BROTHERS RANCH", FILED IN THE OFFICE OF THE County Clerk of Sandoval County, New Mexico, in Volume 3, folio 2004-A, as Document No. 0018323; Thence,

N. 00,,a 33' 33" E., 5266.80 feet along the North-South center of section line of said Section 11 and the East line of said Parcel 3 to the Quarter Corner common to Section 2 and 11 (a 1-1/2" iron pipe and aluminum cap stamped LS 7248 found in place) the Northwest corner of the parcel herein described and the Northeast corner of said Parcel 3; Thence,

S. 89,,a 24' 00" E., 2638.30 feet to the corner common to Sections 1, 2, 11 and 12 (a 1-1/2" iron pipe and aluminum cap stamped LS 7248 found in place); Thence,

N. 88,,a 59' 09" E., 5255.36 feet to the corner common to Sections 1 and 12, Township 12 North, Range 1 West and Sections 6 and 7, Township 12 North, Range 1 East, (A GLO brass cap monument found in place); Thence,

S. 00,,a 28' 51" W., 5304.25 feet along the New Mexico Principal meridian to the corner common to Sections 12 and 13, Township 12 North, Range 1 West and Sections 7 and 18, township 12 North, Range 1 East (a 1-1/2" iron pipe and aluminum cap stamped LS 7248 found in place); Thence,

S. 87,,a 22' 04" E., 4654.97 feet to the corner common to Sections 7, 8, 17 and 18, township 12 North, Range 1 East (A GLO brass cap monument found in place); Thence,

S. 89,,a 57' 44" E., 1510.15 feet to the Northeast corner of point of beginning of the parcel herein described.

With mortgage covenants.

FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of Mortgagor herein contained.
- B. Payment of the indebtedness evidenced by promissory note of even date herewith in the stated principal sum of Two Million Dollars (\$2,000,000) and any extension or renewal thereof executed by Mortgagor in favor of Mortgagee.

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- C. Payment of additional sums and interest thereon which may hereafter be loaned to Mortgagor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Mortgage.

**TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR AGREES:**

1. To keep the Subject Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting the Subject Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit suffer, or permit any act upon said property in violation of law, and do all other acts which from the character or use of the Subject Property may be reasonably necessary, the specific enumerations herein not excluding the general.
2. To provide, maintain, and deliver to Mortgagee liability insurance satisfactory to and with loss payable to Mortgagee. The amount collected under any insurance policy may be applied by Mortgagee upon any indebtedness secured hereby and in such order as Mortgagee may determine, or at option of Mortgagee the entire amount so collected or any part thereof may be released to Mortgagor. Such application or release shall not cure or waive any default or notice of foreclosure or invalidate any act done pursuant to such notice.
3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgage; and to pay all costs and expenses of Mortgagee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Mortgagee may appear or be named, and in any suit brought by Mortgagee to foreclose this Mortgage.
4. To pay before delinquent; all taxes and assessments affecting the Subject Property; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of the Mortgagee, including, without limiting the generality of the foregoing, the fees of Mortgagee for issuance of any Deed of Partial Release and Partial Reconveyance, or Deed of Release and Full Reconveyance, and all lawful charges, costs and expenses in the event of reinstatement of, following default in, this Mortgage or the obligations secured hereby.
5. To pay immediately and without demand all sums expended by Mortgagee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as is provided for in the note secured by this Mortgage or at the highest legal rate, whichever be the greater rate. Any amounts so paid by Mortgagee shall become a part of the debt secured by this Mortgage and a lien on said premises or immediately due and payable at option of Mortgagee.

Should Mortgagor fail to make any payment or to do any act as herein provided, then Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Subject Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees.

**IT IS MUTUALLY AGREED:**

6. That any award of damages in connection with any condemnation or any taking, or for injury to the Subject Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Mortgagee as further security for all obligations secured hereby (reserving unto the Mortgagor, however, the right to sue therefore and the ownership thereof subject to this Mortgage), and upon receipt of such moneys Mortgagee may hold the same as such further security, or apply or release the same in the same manner and with the same effect as the above provided or disposition of proceeds of insurance.
7. That time is of the essence of this Mortgage, and that by accepting payment of any sum secured hereby after its due date, Mortgagee does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
8. That at any time or from time to time, and without notice, upon written request of Mortgagee and presentation of this Mortgage and the note(s) secured thereby for endorsement, and without liability therefore, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Mortgagee's action be credited on the indebtedness, the Mortgagee may: (a) release all or any part of said property; (b) consent to the making and recording, or either, of any consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof.
9. That upon written request of Mortgagee stating that all sums secured hereby have been paid, and upon surrender of this Mortgage and the note(s) secured thereby to Mortgagee for cancellation and retention, and upon payments of its fees, Mortgagee shall release, without covenant or warranty, express or implied, the property then held hereunder.
10. That as additional security, Mortgagor hereby gives to and confers upon Mortgagee the right, power and authority, during continuance of this Mortgage, to collect the Subject Property income, reserving to Mortgagor the right, prior to any default by Mortgagor in payment of any indebtedness secured hereby or in performance of any agreement

hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default, Mortgagee may at any time, without notice, either in person by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby, and in such order as Mortgagee may determine, enter upon the property, take possession thereof, and collect all income deriving from the property. The entering upon and taking possession of said property, the collection of such property income, and the application thereof as aforesaid, shall not cure or waive any default or notice of Mortgagee's sale hereunder or invalidate any act done pursuant to said notice.

11. That upon default by Mortgagor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Mortgagee may declare all sums secured hereby immediately due and payable by delivery to Mortgagor of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Subject Property under this Mortgage.

Mortgagee shall foreclose this mortgage by judicial foreclosure as provided by law. Any persons, including Mortgagor, or Mortgagee, may purchase at such judicial sale. After deducting all costs, fees, and expenses of Mortgagee, including cost of evidence of title in connection with sale and reasonable attorney's fees, Mortgagee shall apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided by order of the foreclosure Court. An action may be maintained by Mortgagee to recover a deficiency judgment against Mortgagor for any balance due hereunder.

12. That this Mortgage shall be binding upon and inure to the benefit of all parties hereto, their heirs, legatees, legal representatives, devisees, administrators, executors, successors, transferees and assigns. The term Mortgagee shall mean the owner and holder of the note(s) secured hereby, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.
13. That Mortgagor hereby waives, releases and discharges any homestead exemption claimed or declared against the property.


Mortgagee shall be subrogated to the rights of the holder of any pre-existing lien, notwithstanding its release of record of any prior mortgage, Trust Deed or other encumbrance paid or discharged from the proceeds of the note secured hereby or from any advance made by the Mortgagee. This right of subrogation shall not be affected by the creation or declaration of homestead on the Subject Property.

14. That the laws of the State of New Mexico shall govern the validity of this mortgage and any documents executed in connection with this loan, the construction of its terms, and the interpretation of the rights and duties of the parties. The courts of New Mexico shall have exclusive jurisdiction to resolve any dispute arising under this agreement. In

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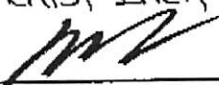
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addition, both parties hereby consent to jurisdiction in the State of New Mexico and agree not to raise any personal jurisdiction defenses.


15. That this agreement constitutes the full and complete agreement of the parties, and no change, modification or amendment to this agreement shall be valid or binding upon the parties unless such change or modification shall be in writing signed by all of the parties. There have been no representations, warranties or promises outside of this agreement. This agreement shall take precedence over any other documents that may be in conflict with it.
16. Mortgagor hereby warrants legal access to the property. Although no legal access has been recorded to date, Mortgagor has represented possession of such access rights through adjoining properties owned by affiliated corporations and partnerships. Mortgagor agrees to appear in and defend any action or proceeding purporting to affect the legal access of the property. Mortgagor and Mortgagor's President further agree that any entity owned, managed or affiliated with Mortgagor or Mortgagor's President, shall give reasonable legal access to the property at such date access is necessary or immediately upon the event of a foreclosure.
17. That any notice, payment, demand, or communication required or permitted to be given shall be in writing and shall be delivered via certified mail return receipt to Southwest Lending L.L.C. at 1692 Pace Rd. Albuquerque NM, 87114 for the Mortgagee and Butera Properties, LLC, at ~~7720~~<sup>1835</sup> East Redfield Road, Suite ~~78~~<sup>4100</sup>, Scottsdale, Arizona 85260 for the Mortgagor. Either party may change this address via written notice to the other party via certified mail return receipt.
18. That every exhibit, schedule and other appendix attached to this mortgage and referred to herein is hereby incorporated in this mortgage by reference.

MORTGAGOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE AND MORTGAGOR AGREES TO ITS TERMS.

Butera Properties, LLC, a New Mexico Limited Liability Corporation  
By: Recorp Investments, Inc., Manager

By:   
David Maniatis, President

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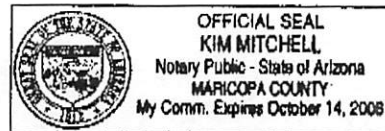
STATE OF ARIZONA )  
 )ss  
COUNTY OF MARICOPA )

Before me the undersigned, a Notary Public, in and for said County and State on this 15<sup>th</sup> day of March, 2006, personally appeared David Maniatis, President of Butera Properties, LLC, a New Mexico Limited Liability Corporation, on behalf of said corporation, to me known to be the identical person who approved the within and foregoing instrument and acknowledged to me that he/she approved the same as his/her free and voluntary act and deed for the uses and purposed therein set-forth.

Given under my hand and seal the day and year last above written.

Kim Mitchell  
Notary Public

My Commission expires: 10-14-2008



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LAGUNA INDIAN RESERVATION BOUNDARY

