

**NOTE AND MORTGAGE
MODIFICATION AGREEMENT**

SANDOVAL COUNTY
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DATE: October 19, 2006
Albuquerque, New Mexico - \$2,500,000

THIS NOTE AND MORTGAGE MODIFICATION AGREEMENT (this "Agreement") is executed as of the 19th day of October, 2006, by and between Butera Properties, LLC, a New Mexico Limited Liability Corporation ("Borrower") and Southwest Lending LLC, a New Mexico Limited Liability Company ("Lender").

WHEREAS, on March 1, 2006, Borrower executed and delivered that certain Promissory Note (the "Existing Note") in the original stated amount of \$2,000,000, payable to the Order of Lender, evidencing a loan (the "First Loan") made by lender to Borrower and secured by a Mortgage dated of even date therewith (the "Existing Mortgage") encumbering one (1) parcel of property owned by Borrower, and set forth on Exhibit A hereto, recorded at Book 409, page 10362 (Document No. 200610362), real property records of Sandoval County, New Mexico, and

WHEREAS, Borrower has requested that the First Note and First Mortgage executed by it by modified and amended as more particularly set forth in this Agreement; and

WHEREAS, Lender has agreed to such requests, subject to and upon the terms and conditions of this Agreement;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, for and in consideration of Ten and No/100 Dollars (\$10.00), the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. **Modification of Existing Maturity Date.** The Existing Note is hereby modified such that the maturity date thereof is extended from March 1, 2009 to October 19, 2009, with Borrower having the option to extend the maturity date an additional one year (to October 19, 2010), by written notice delivered to Lender on or before October 19, 2009 electing to extend the maturity date, accompanied by payment of (a) interest through October 19, 2009, plus (b) a loan extension fee in the amount of \$25,000, which will not be applied to reduction of principal or interest.

2. **Modification of Fees.** The Existing Note is hereby modified to include an annual loan appraisal fee of one quarter of a percent (0.25%) of the outstanding balance (\$6,250 if no principal reduction is performed) due annually on October 19 of that year (October 19, 2007, 2008, 2009, and 2010 if extended).

3. **Modification of Existing Note Interest Rate, Interest Payment Dates.** The Existing Note is hereby modified and amended such that, from and after October 19, 2006, the principal balance of the Existing Note shall bear interest at the rate of twelve and one quarter

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percent (12.25%) per annum, and payments of interest only shall be made on or before April 19, 2007 and semi-annually thereafter, until the maturity date.

4. **Modification of Current Existing Note Outstanding Balance.** Lender and Borrower confirm that the outstanding principal balance of the Existing Note as of October 19, 2006 was \$2,000,000. Borrower hereby acknowledges receipt of an additional advance in the amount of \$500,000, such that the new principal balance outstanding is \$2,500,000.

5. **Acknowledgement of Existing Mortgages.** The Existing Mortgages are acknowledged and confirmed by Borrower and Lender to be in full force and effect. The debt secured by the First Mortgage consists of (i) that certain \$2,000,000 Note dated March 1, 2006 executed by Borrower in favor of Lender, as amended by (ii) this Note and Mortgage Modification Agreement dated October 19, 2006. The total property securing the obligations consists of 1 parcel of real property as described on Exhibit A attached hereto. A Plat depicting the various parcels which are the subject of the mortgages is attached hereto as Exhibit B.

6. **Clarification of Applicable Law and Venue.** The Existing Note and Existing Mortgage, as well as this Agreement, were negotiated in the State of New Mexico. Payments are to be made in New Mexico. Lender and Borrower reside in New Mexico. Borrower and Lender confirm that the interpretation and performance of the Existing Note and Existing Mortgage (as amended by this Agreement) and this Agreement shall in all respects be controlled and governed by and construed in accordance with the laws of the State of New Mexico, without regard to principles of conflicts of law. In the event of any legal dispute, venue and jurisdiction shall lie in the courts of Sandoval County, New Mexico.

7. **Conforming Amendments.** Any and all of the terms and provisions of the Existing Note and Existing Mortgages and any and all other documents, instruments or agreements evidencing, securing or pertaining to the Existing Note or Existing Mortgage are hereby amended and modified wherever necessary, and even though not specifically addressed herein, so as to conform to the amendments and modifications thereto set forth in the preceding paragraphs hereof.

8. **Full Force and Effect.** Any and all of the terms and provisions of the Existing Note and Existing Mortgages and any and all other documents, instruments or agreements evidencing, securing or pertaining to the Existing Note and Existing Mortgages are and shall remain in full force and effect, except as specifically modified and amended hereby.

9. **Continuity of Obligation.** This Agreement constitutes a modification of the Existing Note and Existing Mortgages, and is not intended to and shall not terminate or extinguish any of the indebtedness or obligations under the Existing Note or Existing Mortgages or the Novation of the original indebtedness or obligations under the Existing Note or Existing Mortgages.

10. **Release and Waiver of Claims.** In consideration of (a) the modification of the Existing Note and (b) the other benefits received by Borrower, Borrower RELEASES, RELINQUISHES, and DISCHARGES Lender, its predecessors, successors, assigns, agents,

officers, directors, employees, and representatives from any claims or causes of action that Borrower may have against Lender, its predecessors, successors, assigns, agents, officers, directors, employees, and representative, with respect to transactions occurring before the date of this Agreement relating to the Existing Note or Existing Mortgages, including any loss, cost, or damage connected with the actions or omissions of Lender, its predecessors, successors, assigns, agents, officers, directors, employees, and representatives, but only to the extent permitted by applicable law.

11. **Obligations of Borrowers.** The undersigned Borrower, renews, modifies and extends the Existing Note and promises to pay to the order of Lender the outstanding principal balance thereof, with interest as specified therein (as modified per this Agreement), and to perform all of Borrower's obligations under the Existing Note and Existing Mortgages and any other documents evidencing, securing or pertaining thereto, as modified by this Agreement.

12. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal and personal representatives, successors, and assigns.

13. **Multiple Counterparts.** Because of the number of required signatories hereto, this Agreement may be circulated for signature using multiple counterparts, each of which will contain the signature of Lender and Borrower, Such multiple counterparts, when executed by all parties, will collectively constitute this Agreement.

EXECUTED as of the date first above written.

LENDER:

Southwest Lending LLC, a New Mexico Limited Liability Corporation

By: 

Gary Plante

BORROWER:

Butera Properties, LLC, a New Mexico Limited Liability Corporation

By: 

David P. Maniatis, President

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STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

Before me the undersigned, a Notary Public, in and for said County and State on this 18 day of October, 2006, personally appeared Gary Plante, of Southwest Lending LLC (Lender), 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.

Linda Milks

Notary Public

My Commission expires: 8-30-2008



OFFICIAL SEAL
LINDA MILKS
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 8-30-2008

STATE OF Arizona)
)ss
COUNTY OF Maricopa)

Before me the undersigned, a Notary Public, in and for said County and State on this 26th day of October, 2006, personally appeared David Maniatis, President of Butera Properties LLC (Borrower), 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



OFFICIAL SEAL
KIM MITCHELL
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires October 14, 2008

Exhibit A
Legal Description

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., 30122.59 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.

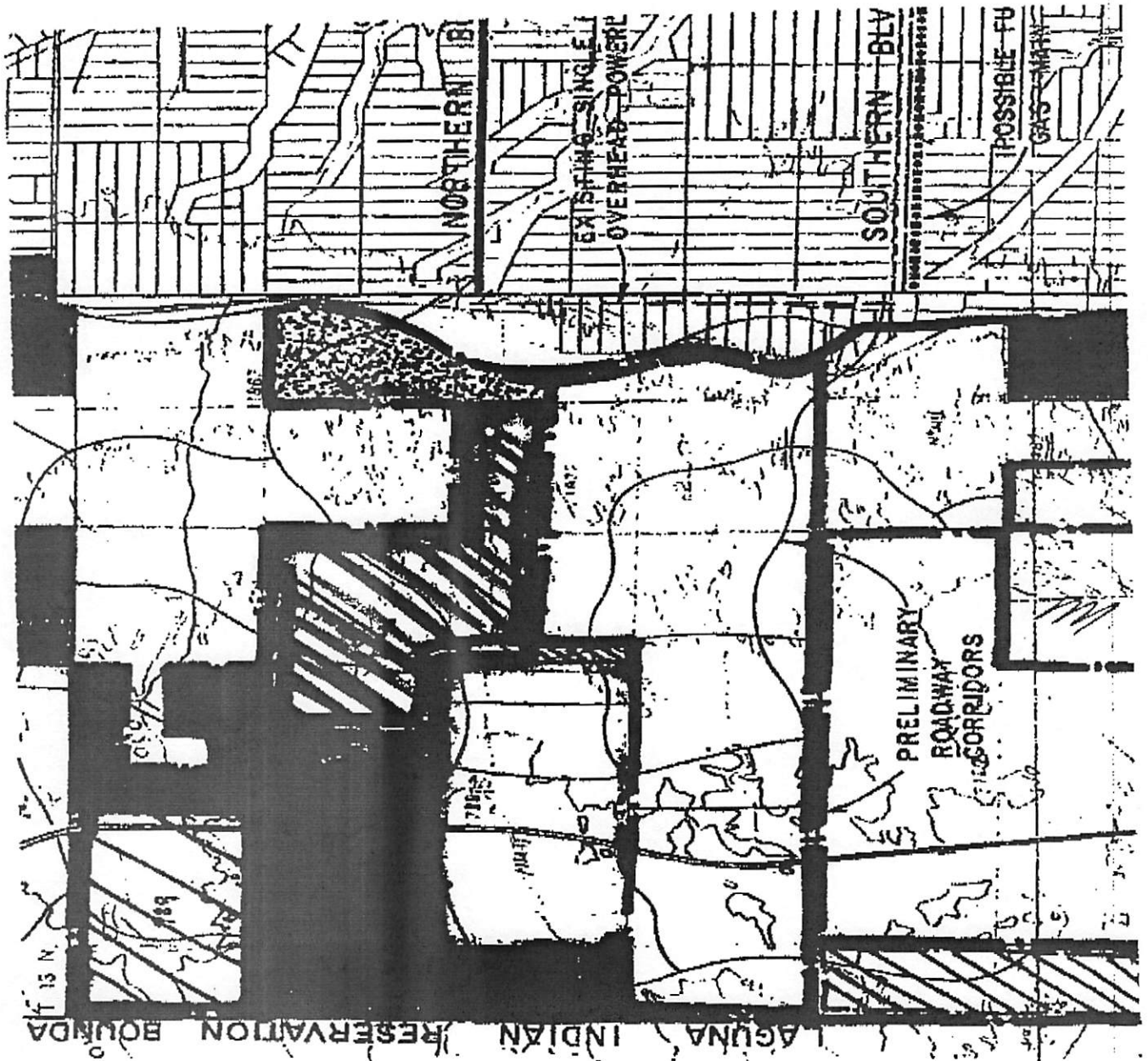
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LAGUNA INDIAN RESERVATION BOUNDARY

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Exhibit B
Plat