



1224131056

Doc#: 1224131056 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/28/2012 03:16 PM Pg: 1 of 9

10/2
This instrument prepared by,
and after recording return to:

Field and Goldberg, LLC
10 South LaSalle Street, Suite 2910
Chicago, Illinois 60603
Attention: Jay Melnick

1208150 SATURN

SECOND LOAN MODIFICATION AGREEMENT

THIS SECOND LOAN MODIFICATION AGREEMENT (this "**Agreement**"), between COLFIN BULLS FUNDING A, LLC, a Delaware limited liability company ("**Holder**"), and MIECZYSLAW KOSTELIC, and individual, and JANINA KOSTELIC and individual (together, jointly and severally, "**Borrower**"), is dated as of August 15, 2012.

Borrower owns the real property commonly known as 1016 North Western Avenue, Chicago, Illinois 60622 (the "**1016 Property**") and 1012 North Western Avenue, Chicago, Illinois 60622 (the "**1012 Property**"), and together with the 1016 Property, the "**Properties**"), each as legally described on EXHIBIT A attached hereto and incorporated herein.

On August 5, 2005, MB Financial Bank, N.A., a national banking association ("**Original Lender**") made a \$325,000 mortgage loan to Borrower (the "**1016 Loan**"), which was evidenced by a Promissory Note dated August 5, 2005, in the original principal amount of \$325,000 (the "**1016 Note**"), and secured by, among other things, a first priority Mortgage dated August 5, 2005 and recorded against the 1016 Property on August 24, 2005 as Document 0523617077 (as amended or modified from time to time, the "**1016 Mortgage**") and an Assignment of Rents dated August 5, 2005 and recorded against the 1016 Property on August 24, 2005 as Document 0523617078 (as amended, modified and/or assigned from time to time, the "**1016 Assignment of Rents**").

On August 16, 2008, Original Lender made \$100,000 mortgage loan to Borrower (the "**1012 Loan**"), and together with the 1016 Loan, the "**Loans**"), which was evidenced by a Promissory Note dated August 16, 2008, in the original principal amount of \$100,000 (the "**1012 Note**"), and secured by, among other things, a first-priority Mortgage dated April 16, 2008 and recorded against the 1012 Property on May 8, 2008 as Document 0812910193 (as amended, modified and/or assigned from time to time, the "**1012 Mortgage**") and an Assignment of Rents dated April 16, 2008 and recorded against the 1012 Property on May 8, 2008 as Document No. 0812910194 (as amended, modified and/or assigned from time to time, the "**1012 Assignment of Rents**").

Borrower did not repay either Loan at maturity. On August 16, 2010, Original Lender and Borrower entered into a Forbearance Agreement with respect to the 1016 Loan (the "**1016 Forbearance Agreement**"), and a separate Forbearance Agreement with respect to the 1012 Loan (the "**1012 Forbearance Agreement**").

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Borrower did not repay either Loan within the forbearance period provided under the 1016 Forbearance Agreement and the 1012 Forbearance Agreement. On October 15, 2010, Original Lender and Borrower entered into a Forbearance Agreement with respect to both Loans (the "**Consolidated Forbearance Agreement**"), in connection with which Borrower signed and delivered to Original Lender an Amended and Restated Note dated October 15, 2010, in the original principal amount of \$399,145 (the "**First Amended and Restated Note**"), amending and restating the 1016 Note and the 1012 Note, and evidencing all indebtedness of Borrower to Original Lender under both Loans.

On December 16, 2010, Original Lender and Borrower entered into a Loan Modification Agreement with respect to both Loans (the "**First Modification**"). Under the First Modification, the Loans became cross-collateralized.

Holder subsequently acquired all right, title and interest of Original Lender in, to and under the Loan Documents. Subject to Section 2 below, the term "**Loan Documents**" means, collectively, the 1015 Note, the 1016 Mortgage, the 1016 Assignment of Rents, the 1012 Note, the 1012 Mortgage, the 1012 Assignment of Rents, the 1016 Forbearance Agreement, the 1012 Forbearance Agreement, the Consolidated Forbearance Agreement, the First Amended and Restated Note, the First Modification, the Second Amended and Restated Note (as defined in Section 1(a) below) and all other certificates, documents or instruments evidencing, securing or otherwise relating to either or both Loans, each as amended or modified from time to time.

Holder and Borrower now desire to modify the Loan Documents and to otherwise agree as set forth below.

THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, Holder and Borrower agree as follows:

1. **CONDITIONS.** This Agreement is conditioned on the following:
 - (a) the representation and warranty made by Borrower in Section 4 below being true, accurate, correct and complete;
 - (b) satisfaction of the conditions set forth in Section 2 of the Short Sale Agreement between Holder and Borrower, of even date herewith (the "**Short Sale Agreement**");
 - (c) Borrower's signing and delivering to Holder the Second Amended and Restated Note in the original principal amount of \$116,018.86, of even date herewith (the "**Second Amended and Restated Note**"); and
 - (d) this Agreement being properly recorded in the official records of the county in which the Properties are located.

2. **RELEASE.** Subject to the terms and conditions of this Agreement, and upon satisfaction of the condition set forth in Section 1 above, Holder releases, remises and quits to Borrower all right, title and interest of Holder in, to and under the 1016 Property, to the extent acquired by Holder under the 1016 Mortgage and the 1016 Assignment of Rents. The foregoing release does not affect any other security for the Loans or any other obligations of

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Borrower, and does not constitute a discharge of any indebtedness. Once such release is effective, the term "**Loan Documents**" will mean all Loan Documents other than the 1016 Mortgage and the 1016 Assignment of Rents, each as modified by this Agreement.

3. **ACKNOWLEDGEMENT OF OBLIGATIONS, SECOND AMENDED AND RESTATED NOTE, SECURITY.** Holder and Borrower have agreed to consolidate the Loans. Holder and Borrower acknowledge and agree that as of the date of this Agreement, the total, consolidated outstanding principal balance of the Loans is \$116,018.86. From and after the date of this Agreement, Borrower's obligation to repay such amount, together with interest thereon and enforcement and other costs and expenses in connection therewith, will be evidenced by the Second Amended and Restated Note. Borrower's obligations under the Second Amended and Restated Note and the other Loan Documents will be secured by the 1012 Mortgage and the 1012 Assignment of Rents. Borrower acknowledges that the 1012 Mortgage and the 1012 Assignment of Rents continue to remain valid, perfected, first-priority security-interests in favor of Holder. Borrower further acknowledges that all Loan Documents are cross-collateralized and cross-defaulted, such that all security granted by any of the Loan Documents secures Borrower's obligations under each of the other Loan Documents, and a default or event of default under or a breach of any of the Loan Documents will constitute a default under each of the other Loan Documents. All remedies available to Holder are cumulative and may be exercised in any order and manner as Holder in sole discretion determines.

4. **CONDITION OF TITLE.** Borrower represents and warrants to Holder that there are no title exceptions affecting the 1012 Property other than those which existed as of August 16, 2008, the First Modification and this Agreement. The foregoing representation and warranty is made as of the date of this Agreement and will survive and remain true, accurate, correct and complete until all obligations of Borrower to Holder have been satisfied in full. A breach of the foregoing representation and warranty will constitute a default under this Agreement and the other Loan Documents.

5. **CONTINUED PRIORITY.** In the event that, by virtue of any of the terms, conditions and provisions of this Agreement, a lien or other property interest in the Properties otherwise junior in priority to the liens created by the Loan Documents shall gain superiority over the liens created by the Loan Documents, this Agreement shall, *nunc pro tunc*, be null and void without further action of the parties hereto to the fullest extent as if it had never been executed, to the end that the priority of the Loan Documents shall not be impaired.

6. **NOTICES.** From and after the date of this Agreement, all notices under this Agreement and the Loan Documents will be delivered as set forth in the Short Sale Agreement.

7. **NO CONTEST.** As a material inducement to Holder to enter into this Agreement, Borrower agrees that if Borrower ever breaches or is in default under the Short Sale Agreement or any of the Loan Documents (beyond any applicable notice and cure periods), Borrower will not contest any foreclosure or appointment of a receiver by Holder with respect to the 1012 Property.

8. **SUCCESSORS AND ASSIGNS.** This Agreement will be binding upon and inure to the benefit of the Holder and Borrower and their successors and assigns.

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9. OBLIGATIONS OF BORROWER. All obligations of Borrower under this Agreement and the other Loan Documents are the joint and several obligations of the individuals comprising Borrower.

10. INTERPRETATION. All exhibits, schedules, appendices and attachments to this Agreement are incorporated into its terms and conditions. Section headings and other such captions in this Agreement are for convenience only and not part of its terms and conditions.

11. SEVERABILITY. The provisions of this Agreement are severable. The invalidity or unenforceability of a provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement.

12. WAIVERS. Except as otherwise expressly provided in this Agreement, no waiver of any right or condition under this Agreement will be effective unless in writing. In no event will a waiver of a right or condition under this Agreement be construed as a waiver of any other right or condition.

13. CHOICE OF LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL. This Agreement will be governed by Illinois law, without regard to conflict of law principals that would require the law of a different jurisdiction to be applied. Holder and Borrower consent to the jurisdiction of any court sitting in Chicago, Illinois over and waive all right to trial by jury in connection with any matter relating to this Agreement.

14. TIME OF THE ESSENCE. Time is of the essence with respect to the performance of all obligations under this Agreement.

15. MODIFICATIONS IN WRITING. This Agreement may only be modified by a written instrument signed both Holder and Borrower.

16. COUNTERPARTS. This Agreement may be executed in counterparts.

[SIGNATURE PAGE FOLLOWS]

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THIS SECOND LOAN MODIFICATION AGREEMENT is signed and delivered as of the date first set forth above.

HOLDER

COLFIN BULLS FUNDING A, LLC,
a Delaware limited liability company

By: *Thomas F. Harrison*
Printed Name:

Its: **Thomas F. Harrison**
Authorized Signatory

BORROWER

Mieczyslaw Kostelic
MIECZYSLAW KOSTELIC,
an individual

Jamina Kostelic
JANINA KOSTELIC,
an individual

[NOTARY PAGE FOLLOWS]

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ACKNOWLEDGMENT

State of California
County of Los Angeles

On August 11, 2012 before me, Elizabeth A. Palumbo, Notary Public, personally appeared Thomas F. Harrison, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____

A handwritten signature in black ink, appearing to read "Elizabeth A. Palumbo", written over a horizontal line.

(Seal)

County Clerk's Office

2075

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THIS SECOND LOAN MODIFICATION AGREEMENT is signed and delivered as of the date first set forth above.

HOLDER

COLFIN BULLS FUNDING A, LLC,
a Delaware limited liability company

By: _____
Printed Name: _____
Its: _____

BORROWER

Mieczyslaw Kostelic
MIECZYSLAW KOSTELIC,
an individual

Janina Kostelic
JANINA KOSTELIC,
an individual

[NOTARY PAGE FOLLOWS]

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STATE OF ILLINOIS

COUNTY OF _____

On August __, 2012, _____ appeared before me as _____ of COLFIN BULLS FUNDING A, LLC, a Delaware limited liability company, and acknowledged this instrument.

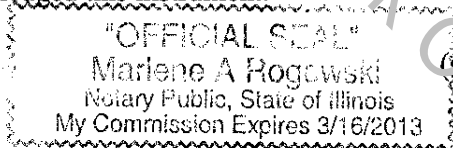
(seal)

Notary Public

STATE OF ILLINOIS

COUNTY OF COOK

On August 15, 2012, MIECZYSLAW KOSTELIC appeared before me and acknowledged this instrument.



(seal)

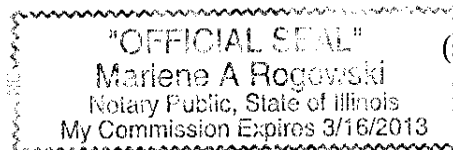
Marlene A. Rogowski

Notary Public

STATE OF ILLINOIS

COUNTY OF COOK

On August 15, 2012, JANINA KOSTELIC appeared before me and acknowledged this instrument.



(seal)

Marlene A. Rogowski

Notary Public

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EXHIBIT A

LEGAL DESCRIPTIONS

1012 PROPERTY:

LOT 2S IN BLOCK 2 IN CHARLES COUNSELMAN'S SUBDIVISION OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY (EXCEPTING HOWEVER, FROM SAID PREMISES THAT PART THEREOF LYING EAST OF A LINE 50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SECTION 1 CONVEYED TO THE CITY OF CHICAGO FOR THE WIDENING OF WESTERN AVENUE BY DEED DATED MARCH 17, 1931 AND RECORDED MAY 1, 1931 AS DOCUMENT NUMBER 10 893 463), IN COOK COUNTY, ILLINOIS

ADDRESS: 1012 N. WESTERN AVENUE
CHICAGO, ILLINOIS 60622

TAX PARCEL(S): 16-01-415-041-0000

1016 PROPERTY

LOT 24 IN BLOCK 2 IN CHARLES COUNSELMAN'S SUBDIVISION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT PART OF SAID LOT LYING EAST OF A LINE 50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SECTION 1 AFORESAID), IN COOK COUNTY, ILLINOIS

ADDRESS: 1016 N. WESTERN AVENUE
CHICAGO, ILLINOIS 60622

TAX PARCEL(S): 16-01-415-040-0000