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Cook County Recorder

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SETTLEMENT AGREEMENT, AND
AMENDMENT TO NOTE, MORTGAGE
AND OTHER LOAN DOCUMENTS



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CST 012072

This SETTLEMENT AGREEMENT, AMENDMENT TO NOTE, MORTGAGE, AND OTHER LOAN DOCUMENTS (this "Agreement") is entered into as of this 13 day of November, 2001, by and among SUCCESS NATIONAL BANK, a national banking association ("Lender"), LASALLE BANK, NATIONAL ASSOCIATION, AS SUCCESSOR TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1967 AND KNOWN AS TRUST NUMBER 25671 (the "Trustee") ^{and not personally} ARCHIE R. SIMMONS (the "Beneficiary" and together with the Trustee, the "Borrower"), COLLIN JAMES ("James") and ROBERT BROWN ("Brown").

* as to 30% interest

as to 35% interest

as to 35% interest

WITNESSETH:

WHEREAS, on or about October 9, 1997, Lender agreed to lend Borrower the principal amount of \$415,000.00 (the "Loan") secured by the real and personal property commonly known as 1615-1623 Simpson Street, Evanston, Illinois, as is legally described on Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, to evidence the Loan, Borrower executed and delivered to Lender a certain Promissory Note dated October 9, 1997, in the principal amount of \$415,000.00, which Promissory Note shall be hereinafter referred to as the "Note";

WHEREAS, payment of the Note is secured by, among other things, the following instruments:

- (1) Land Trust Mortgage dated October 9, 1997, recorded October 23, 1997 in the Office of the Recorder of Deeds of Cook County as Document Number 97789359 (the "Mortgage") by the Trustee;



This instrument prepared by (and return after recording to):
Robert W. Glantz, Esq.
SHAW GUSSIS DOMANSKIS FISHMAN & GLANTZ LLC
1144 West Fulton Street, Suite 200
Chicago, Illinois 60607

COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
SKOKIE OFFICE

- (2) Assignment of Rents (the "Assignment of Rents") dated October 9, 1997, recorded October 23, 1997 in the Office of the Recorder of Deeds of Cook County as Document Number 97789360 by the Trustee; and
- (3) Collateral Assignment of Beneficial Interest dated October 9, 1977 from Beneficiary (the "Collateral Assignment").

[The Note, this Agreement, Mortgage, Assignment of Rents, Collateral Assignment and all other documents and instruments evidencing or securing the Loan shall hereinafter be collectively, referred to as the "Loan Documents"]

WHEREAS, Borrower, James and Brown acknowledge and represent to Lender, upon which representations Lender has relied in entering into and performing this Agreement, that:

- (1) material defaults under the Note, Mortgage and other Loan Documents has occurred by reason of the failure of the Trustee and/or Beneficiary to pay the installments of interest and principal due and owing to Lender pursuant to the terms and conditions of the Note, Mortgage and other Loan Documents and their failure to pay certain real estate taxes assessed against the Property (collectively, the "Existing Defaults");
- (2) the present outstanding balance, including principal, late charges, accrued interest, protective advances made for real estate taxes and the fees and expense of enforcing Lender's rights under the Loan Documents as of November 6, 2001 is **SIX HUNDRED FIVE THOUSAND NINE HUNDRED TWENTY-ONE AND 90/100 DOLLARS (\$605,921.90)**, and interest continues to accrue for each day after November 6, 2001, such amounts remain unpaid in the amount of \$217.36 per day (collectively, the "Mortgage Debt");
- (3) the Mortgage Debt is justly due, owing, and delinquent, and there is no offset, defense, or counterclaim that Trustee and Beneficiary have or could sustain in connection therewith;
- (4) Lender made repeated demand that Borrower pay the Mortgage Debt, but Borrower failed and refused to do so;
- (5) in an effort to enforce its rights under the terms of the Loan Documents, on June 6, 2001, Lender commenced a foreclosure action against Trustee, Beneficiary and other parties in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, as Case No. 01 CH 9335 (the "Foreclosure Action") pursuant to which a receiver (the "Receiver") was placed in possession of the Property; and

- (6) Beneficiary has effectively waived his right of redemption and the right of reinstatement has lapsed. Lender has the immediate right to pursue all of its rights and remedies, pursuant to the Note, Mortgage and other Loan Documents.

WHEREAS, Beneficiary, James and Brown have entered into that certain Real Estate Contract dated October __, 2001 (the "Contract") pursuant to which, among other things, Beneficiary would cause Trustee to convey a thirty percent (30%) interest in the Property to each James and Brown in consideration for, among other things, the purchase price of \$202,000.00 (the "Purchase Price"); the proceeds of which would be paid to Lender to reduce the Mortgage Debt (RB)

WHEREAS, the Contract is contingent upon Lender (i) consenting to the transfer of an interest in the Property to James and Brown, (ii) allowing James and Brown to join the Trust and Beneficiary as mortgagors under the Mortgage, (iii) agreeing to re-capitalize the balance due under the Note and Mortgage, (iv) agreeing to forebear from exercising its rights under the Loan Documents arising from an Existing Default, and (v) agreeing to dismiss the Foreclosure Action, including the discharge of the Receiver;

WHEREAS, Lender is willing to (i) consent to the transfer of an interest in the Property to James and Brown, (ii) allow James and Brown to join the Trust and Beneficiary as mortgagors under the Mortgage, (iii) agree to re-capitalize the balance due under the Note and Mortgage upon receipt of the proceeds of the Purchase Price, (iv) agree to forebear from exercising its rights under the Loan Documents arising from an Existing Default, and (v) agree to dismiss the Foreclosure Action, including the discharge of the Receiver; but only upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in considerations of the covenant and agreements hereinafter set forth, and also in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the parties hereto agree as follows:

1. **Partial Payment and Re-Capitalization of the Mortgage Debt.** James and Brown shall pay to Lender the sum of \$202,000.00 (the "Debt Reduction Payment"). The Debt Reduction Payment shall be applied by Lender to the Mortgage Debt and the balance of the Mortgage Debt shall be re-capitalized as principal due under the Note and the other Loan Documents (the "New Principal Balance").

2. **Amendment of Note.** Upon receipt of the Debt Reduction Payment, the Note shall be amended to provided that (i) the rate of interest payable on the New Principal Balance prior to maturity or default shall be amended to be Seven and One-half Percent (7.5%) per annum (the "Amended Rate") and (ii) monthly payments of principal and interest shall be due and payable on the tenth (10th) day of each month hereafter until maturity based upon an amortization of the New Principal Balance over a 20-year period at the Amended Rate. Upon the request of Lender, Brown, James, the Trust and Beneficiary shall execute a separate amendment to the Note to reflect the modifications made thereto pursuant to the terms of this Agreement; and

3. **Joinder under Note, Mortgage and other Loan Documents.** As additional material consideration for Lender entering into this Agreement:

- (a) James and Brown hereby covenant and agree with Lender that each of their respective interests in the Property shall be subject to the covenants, agreements and conditions of the Mortgage and the other Loan Documents, as amended by this Agreement, including, but not limited to their respective interest in the Property continuing to be subject to the lien of the Mortgage; and
- (b) James and Brown hereby, jointly and severally, promise to pay Lender all amounts due under the Note and the other Loan Documents, as amended by this Agreement, and further agree that they shall each be personally, jointly and severally liable with Borrower to Lender under the covenants, agreements and conditions of the Note, Mortgage and other Loan Documents, as amended by this Agreement.

4. **Covenants of Borrower, James and Brown.** Borrower, James and Brown each hereby represent to and covenant with Lender that:

- (a) At the date hereof, the Loan Documents as amended hereby are in full force and effect, and, except for the Existing Defaults, there is no default in the payment of any sums, charges or obligations under the Loan Documents or in the payment or performance of any covenants, agreements or conditions of Lender contained in the Loan Documents;
- (b) At the date hereof, Borrower, James and Brown do not have and hereby waive any right or claim of set-off, discount, deduction, defense or counterclaim which could be asserted in any action brought to enforce the Loan Documents;
- (c) Lender is not in default in the performance or observance of any of its covenants, agreements and obligations under the Loan Documents;
- (d) Except for the Foreclosure Action, there are no actions, suits or proceedings (including, without limitation, proceedings before any court, arbitrator or governmental authority or agency) pending or threatened against Borrower, James or Brown, which if adversely determined, might individually, or in the aggregate, materially adversely:
 - i) impair the ability of any Borrower, James or Brown to pay or perform any obligations under the Loan Documents; or

- ii) affect the Property or other assets pledged as collateral under the Loan Documents;
- (e) There is no presently known fact which affects, or may affect in the future (so far as the undersigned can foresee), materially and adversely the condition (financial or other) of Borrower, James or Brown to pay or perform its obligations under the Loan Documents; and
- (f) Neither the Loan Documents nor any other document or written materials delivered or made, and any other communication made, to Lender or any employee or agent of Lender contains any untrue statement of a material fact or fails to state a material fact necessary in order to make any statement contained therein not misleading in light of the circumstances in which such statement was made.

5. **Forbearance.** Provided that Borrower, James and Brown perform under the terms of this Agreement and continue to comply with the terms, covenants and conditions of the Loan Documents, as amended by this Agreement, Lender agrees to forbear from exercising any of its rights or remedies arising from the Existing Defaults.

6. **Real Estate Tax Escrow.** Concurrently with the execution of this Agreement, Borrower, James and Brown shall pay to Lender the sum of \$13,005.00 and commencing December 10, 2001, and continuing on the tenth (10th) day of each month thereafter until all obligations under the Loan Documents are paid in full, shall pay the sum of \$4,335.00, or such other amount as Lender from time to time estimates will be required to pay taxes, assessments and other governmental liens or charges against the Property prior to the date on which the same become delinquent or past due. Upon demand by Lender, Borrower, James and Brown shall deliver and pay over to Lender, from time to time, such additional sums or such additional security as is necessary to make up any deficiency in the amount necessary to enable Lender to fully pay any of the items hereinabove mentioned as they become payable. Failure to make any of the required payments above in a timely manner shall constitute a monetary default under the Loan Documents. All amounts paid to Lender pursuant to this paragraph shall further secure the Loan and upon any default or event of default under any of the Loan Documents or this Agreement, may be applied by Lender, at its option and discretion, to the payment of any indebtedness or obligation under the Loan Documents. The obligations pursuant to the covenants contained in the Loan Documents relating to such taxes, assessments and other governmental liens or charges shall not be affected by this paragraph or the payments made pursuant hereto. Payments made by Lender pursuant to this paragraph may be made at Lender's discretion, even though subsequent owners of the Property may benefit. Notwithstanding anything contained in this paragraph to the contrary, Lender shall have no obligation to pay such taxes, assessments and other governmental liens or charges against the Property from the amounts collected by Lender pursuant to this paragraph if any default or event of default has occurred under any of the Loan Documents and such default or event of default remains uncured beyond any applicable cure period.

7. **Operating Accounts and Deposits.** Concurrently with the execution of this Agreement, Borrower, James and Brown shall establish and keep with Lender all operating accounts for the Property, including, but not limited to all tenant security deposits received from any tenant of the Property.

8. **Financial Information.** Upon the request of Lender, James, Brown and Beneficiary shall each provide Lender with a copy of his personal financial statements, which statements shall have been prepared consistent with general accepted accounting principles, and a copy of his most recent federal tax return. Failure to provide any and all financial information reasonably requested by Lender within 20 days of such request shall constitute a default under the terms of the Loan Documents.

9. **Title Policy Endorsements.** Concurrently with the execution of this Agreement, Borrower, James and Brown, at their sole cost and expense, shall obtain and deliver to Lender an endorsement to Loan Policy of Title Insurance No. 1409 007688373 dated October 23, 1997 issued by Chicago Title Insurance Company (the "Policy"), extending the effective date of the Policy through the recording of this Agreement, insuring this Modification Agreement in Schedule A of the Policy, and insuring the priority of the Mortgage as modified by this Agreement. *New lender policy from Laurus title shall be sufficient.*

10. **Title Policy Endorsements.** Concurrently with the execution of this Agreement, Borrower, James and Brown, at their sole cost and expense, shall obtain and deliver to Lender a certificate evidencing that insurance policies for liability and casualty are in place for the subject Property with premiums prepaid in companies, forms, amounts and coverage satisfactory to Lender, containing waiver of subrogation, waiver of warranty and mortgage clauses in favor of Lender and providing for thirty (30) days' written notice to Lender in advance of cancellation of said policies for non-payment of premiums or any other reason or for material modification of said policies and ten (10) days' written notice to Lender in advance of payment of any insurance claims under said policies to any person.

11. **Dismissal of the Foreclosure Action.** As soon as reasonably practicable after the consummation of this Agreement and provided that Borrower, James and Brown have complied with the terms of this Agreement and the Loan Documents, as amended by this Agreement, Lender and Borrower shall cause the Foreclosure Action to be dismissed. Provided however, it is hereby agreed and shall be set forth in an agreed order dismissing the Foreclosure Action, that upon the dismissal of the Receiver, all income and other amounts from the Property held by the Receiver, after deducting his costs and expenses, shall be delivered to Lender and held by Lender in escrow subject to the terms of Paragraph 6 above.

12. **Release and Waiver of Homestead and Right of Redemption.** To the fullest extent allowed by applicable law, Beneficiary, Trustee, James and Brown each hereby releases and waives: (i) any and all rights under and by virtue of the homestead exemption laws of the State of Illinois; (ii) all rights to retain possession of the Property after an Event of Default; and (iii) any and all rights of redemption from sale under any order or judgment of foreclosure of the Mortgage or under any sale or statute or order, decree or judgment of any court relating to the Mortgage, on behalf of itself and each and every person acquiring any interest in or title to any portion of the Property, it being the intent hereof that any and all such rights of redemption of

Beneficiary, Trustee, James and Brown and of all such other persons are and shall be deemed to be hereby waived to the maximum extent and with the maximum effect permitted by the provisions of the Illinois Mortgage Foreclosure Law, including without limitation Sections 15-1601 and 15-1602 and any other applicable sections thereof, and to the maximum extent and with the maximum effect permitted by the provisions of all other applicable laws or by any successor or replacement statutes.

13. **No Waiver.** Notwithstanding anything contained in this Modification Agreement to the contrary, or any prior act of Lender or any procedure established by Lender with regard to the Loan, except for the specific forbearance set forth above, Borrower, James and Brown acknowledge and agree that Lender has not heretofore waived any of its rights or remedies under the Loan Documents nor has Lender waived any of the duties or obligations of Borrower, James and Brown hereunder. No waiver by Lender of any covenant or condition under the Loan Documents shall be deemed a waiver of any subsequent breach of the same or any other covenant or condition. No covenant, term or condition of the Loan Documents shall be deemed waived by Lender unless waived in writing.

14. **Controlling Agreement.** In the event of conflict between the other Loan Documents and this Agreement, this Agreement shall control.

15. **Miscellaneous.**

- (a) Time is of the essence with respect to the payment, performance and observance of each and every covenant, agreement, condition, representation, warranty and obligation under the Loan Documents.
- (b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute and be taken as one and the same instrument.
- (c) None of the covenants, terms or conditions of this Agreement shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument, duly signed and delivered by all the parties hereto.
- (d) This Agreement contains the entire agreement between the parties hereto as to the subject matter hereof and there are no other terms, obligations, covenants, representations, warranties, statements or conditions, oral or otherwise, of any kind.
- (e) The recitals to this Agreement are hereby incorporated into and made a part of this Agreement, and shall constitute covenants and representations of Borrower and shall be binding upon and enforceable against Borrower.

CONTINUED ON NEXT PAGE

BENEFICIARY, TRUSTEE, JAMES AND BROWN EACH HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

SUCCESS NATIONAL BANK, a national
banking association

ARCHIE R. SIMMONS

By: W. J. Collins
Name: WALTER J. COLLINS
Its: VICE PRESIDENT

COLLINS JAMES

LASALLE BANK, NATIONAL
ASSOCIATION, AS SUCCESSOR TO
AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO, AS
TRUSTEE UNDER TRUST
AGREEMENT DATED JUNE 1, 1967
AND KNOWN AS TRUST NUMBER
25671

ROBERT BROWN

By: _____
Name: _____
Title: _____

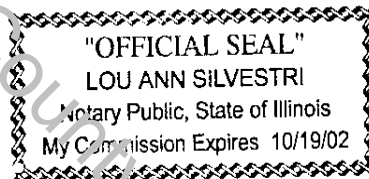
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that WALTER ADREANI, the VICE PRESIDENT of Success National Bank, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instruments as his free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of November, 2001

Lou-Ann Silvestri
NOTARY PUBLIC

My commission expires:



BENEFICIARY, TRUSTEE, JAMES AND BROWN EACH HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, the undersigned executed or caused this Modification Agreement to be executed as of the day and year first above written.

SUCCESS NATIONAL BANK, a national
banking association

By: _____
Name: _____
Its: _____

ARCHIE R. SIMMONS

Archie R. Simmons
By his Attorney in Fact
James M. Simmons

COLLINS JAMES

Collins James

LASALLE BANK, NATIONAL
ASSOCIATION, AS SUCCESSOR TO
AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO, AS
TRUSTEE UNDER TRUST
AGREEMENT DATED JUNE 1, 1967
AND KNOWN AS TRUST NUMBER
25671 and not personally,

ROBERT BROWN

Robert Brown

By: *Joseph F. Sochacki*
Name: JOSEPH F. SOCHACKI
Title: ASST. VICE PRESIDENT

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

STATE OF ILLINOIS

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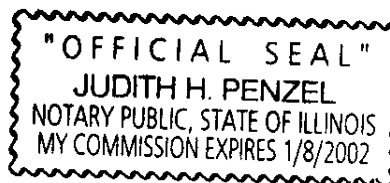
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COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, do hereby certify **JOSEPH F. SOCHACKI**, an officer of LaSalle Bank National Association personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that said officer said of association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal this **November 13, 2001**.

Judith H Penzel
NOTARY PUBLIC



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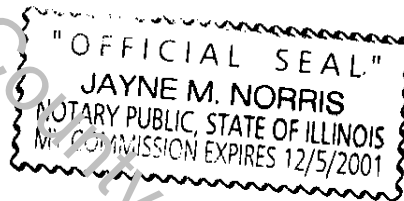
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Judith Simmons, as atty in fact for Archie Simmons who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instruments as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of November, 2001


NOTARY PUBLIC

My commission expires:



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

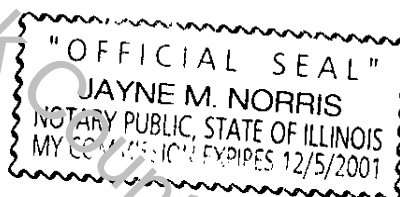
I, the undersigned, a Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Colin James who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instruments as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of November, 2001



NOTARY PUBLIC

My commission expires:



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for and residing in said County, in the State aforesaid, DO HEREBY CERTIFY that Robert Brown who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instruments as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of November, 2001

Jayne M. Norris
NOTARY PUBLIC

My commission expires:

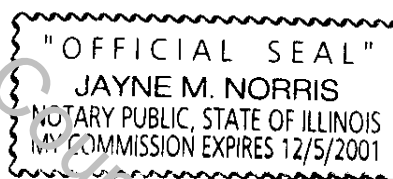


EXHIBIT A

LEGAL DESCRIPTION

LOT 1 OF SIMMONS CONSOLIDATION OF LOTS 9 & 10 (EXCEPT THE WEST 68 FEET THEREOF AND EXCEPT THE NORTH 1 FEET OF SAID LOT 10) IN BLOCK 7 IN PAYNE'S ADDITION TO EVANSTON, A SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

* FRACTIONAL

PIN # 10-12-421-023

P/A 1615-1623 Simpson, Evanston, IL 60201

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