

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Modern Bank, N.A.		07/23/2007	Federally Chartered National Banking Association: UNITED STATES
RECEIVING PARTY DATA			
Name:	Excel National Bank		
Street Address:	9701 Wilshire Boulevard		
City:	Beverly Hills		
State/Country:	CALIFORNIA		
Postal Code:	90212		
Entity Type:	Federally Chartered National Banking Association: UNITED STATES		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	2256278	EXCEL BANK	
Registration Number:	2495729	X EXCELBANK	
CORRESPONDENCE DATA			
Fax Number:	(707)543-4910		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	(707) 543-4900		
Email:	jfriedemann@frigolaw.com		
Correspondent Name:	John F. Friedemann		
Address Line 1:	Friedemann Goldberg LLP		
Address Line 2:	420 Aviation Blvd., Suite 201		
Address Line 4:	Santa Rosa, CALIFORNIA 95403		
ATTORNEY DOCKET NUMBER:	3410.0006		
NAME OF SUBMITTER:	John F. Friedemann		

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Signature:	/John F. Friedemann/
Date:	08/02/2007
Total Attachments: 10 source=EXCEL-MODERN Executed settlement agreement (00048515)#page1.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page2.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page3.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page4.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page5.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page6.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page7.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page8.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page9.tif source=EXCEL-MODERN Executed settlement agreement (00048515)#page10.tif	

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (the "Agreement") is entered into and effective as of the date last executed below (the "Effective Date") by and between Modern Bank, N.A. ("Modern Bank"), having an address at 667 Madison Avenue, New York, NY 10021 and Excel National Bank, having an address at 9701 Wilshire Boulevard, Beverly Hills, California 90212 ("Excel National Bank"). Modern Bank and Excel National Bank are sometimes referred to herein collectively as the "Parties".

WITNESSETH:

WHEREAS, Modern Bank owns the EXCEL BANK trademark and tradename, for use in connection with banking services, as partially evidenced by its ownership of U.S. Trademark Reg. No. 2,256,278 for the mark EXCEL BANK in International Class 36 for "banking services" and U.S. Trademark Reg. No. 2,495,729 for the mark EXCEL BANK (with Design) in International Class 36 for "banking services; banking services conducted through a global communications network; providing banking and financial information via a global communications network" (the "Registrations"); and

WHEREAS, Modern Bank owns the domain name www.excelbank.com and has used the EXCEL BANK marks on webpages at excelbank.com in connection with banking services (the "Domain Name"); and

WHEREAS, Modern Bank's licensee Excel Bank Minnesota uses the EXCEL BANK mark in Minnesota in accordance with a September 25th, 2001 license agreement (the "License Agreement"); and

WHEREAS, Excel National Bank, adopted and commenced use of the name Excel National Bank in 2005 and has since used the name Excel National Bank in connection with banking services; and

WHEREAS, on December 14, 2006 Modern Bank protested Excel National Bank's use of the mark Excel National Bank; and

WHEREAS, Modern Bank subsequently filed a civil action against Excel National Bank captioned *Modern Bank, N.A. v. Excel National Bank* in the United States District Court for the Southern District of New York (the "District Court") alleging, *inter alia*, trademark infringement and unfair competition, Civil Action No. 07 CV 2359 (BSJ) (KNF) (the "Civil Action"); and

WHEREAS, the Parties desire and intend to amicably settle, compromise and resolve all of the claims, disagreements, disputes and demands that exist between themselves related to their respective marks and names, including those contained in, related to or arising out of the Civil Action, on the basis of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Assignment of the EXCEL BANK marks and the Domain Name.** Effective upon the receipt of the payment set forth in Paragraph 2 below, and not otherwise, Modern Bank does hereby sell, transfer, convey and assign to Excel National Bank any and all right, title and interest which Modern Bank possesses or may possess in and to the EXCEL BANK marks and the Registrations, any and all associated logos, symbols, or other designations, including the Domain Name, together with any and all goodwill appurtenant thereto and symbolized thereby, along with the portions of the business associated therewith, and including without limitation any and all common law rights therein and the right to recover for past infringements thereof. Modern Bank shall execute and submit the appropriate paperwork to transfer ownership of the Registrations and the Domain Name to Excel National Bank within twenty (20) days after receipt of the payment set forth in Paragraph 2 below.

2. **Payment.** Within three (3) business days after the Effective Date, Excel National Bank shall pay and deliver to Modern Bank, by certified check or wire transfer, the sum of Seventy Two Thousand Five Hundred Dollars (U.S. \$72,500.00).

3. **Permanent Cessation of Use of EXCEL BANK by Modern Bank.** As of the Effective Date, Modern Bank shall cease any and all use of the EXCEL BANK marks and the Domain Name, as well as any and all associated logos, symbols, or other designations incorporating the mark EXCEL BANK. Modern Bank agrees not to use or attempt to register EXCEL BANK or any associated logos, symbols, or other designations.

4. **Assignment of License Agreement.** Modern Bank agrees that as of the date of receipt of the payment set forth in Paragraph 2 above, Excel National Bank shall be the assignee of the License Agreement assuming all of Modern Bank's obligations and benefits thereunder, including without limitation, all rights to license payments after the Effective Date. Excel National Bank agrees to honor the terms of the License Agreement and to accept all of Modern

Bank's rights and obligations conveyed by the License Agreement. Within three (3) business days after the Effective Date, Modern Bank shall provide a full and complete copy of the license agreement to Excel National Bank.

5. **Good Faith; Agreement to Settle Civil Action.** The Parties represent and warrant that they have entered into this Agreement in good faith. All claims being affected by this Agreement are denied and contested by each of the Parties, and nothing contained herein shall be in any way construed as an admission of fault, liability or responsibility on the part of the Parties being hereby released. Each of the Parties denies liability and responsibility and is entering into the Agreement in order to buy its peace and avoid further protracted litigation with each other, and the costs and expenses associated therewith, and in so doing, each of the Parties denies any liability and states that the settlement made herein is entirely a compromise.

6. **Dismissal of Civil Action.** Within five (5) business days after receiving payment in accordance with Paragraph 2 above, Modern Bank shall take appropriate steps to dismiss the Civil Action against Excel National Bank by executing and filing with the Court a "Notice of Dismissal with prejudice" in the form of the document annexed hereto as Exhibit A.

7. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of, and shall be enforceable by, the Parties, as well as their past, present and future respective parents, subsidiaries, related and affiliated companies, officers, directors, partners, principals, members, shareholders, agents, employees, beneficiaries, executors, trustees, administrators, transferees, representatives, successors and assigns, and all entities operated and/or controlled by any of them or in active concert or participation with any of them (collectively, "Affiliates").

8. **Mutual Releases.** Subject to their respective obligations hereunder, and to their continuous, complete and total performance thereof, the Parties hereby release and discharge each other and their respective Affiliates of and from any and all claims, actions, causes of action, suits, debts, liabilities, dues, accounts, reckonings, bills, controversies, disputes, trespasses, damages, judgments, executions and demands whatsoever in law, admiralty or equity, of every kind, nature and description, whether known or unknown, which any Party now has or at any time had against another, based upon, arising out of or related in any way to the use of the Excel National Bank mark or the Civil Action, from the beginning of time to the Effective Date.

9. **Full and Final Accord and Satisfaction.** The Parties intend in executing this Agreement that such Agreement shall be effective as a full and final accord and satisfaction of any and all claims each has against the other based upon allegations contained in, related to, or which may arise out of the Civil Action. Each party acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each party waives the application of the provisions of Section 1542 and any rights created thereunder.

10. **Representations Regarding Assignment.** The Parties each represent and warrant that they do not have knowledge of any adverse claims and that there has been no assignment or transfer of or giving of a security interest in or encumbrance upon any interest in any claim which each of them may have against the other based upon allegations contained in, related to, or which may arise out of the Civil Action and any use of the EXCEL BANK marks and Registrations, any and all associated logos, symbols, or other designations, including the Domain Name, together with any and all goodwill appurtenant thereto and symbolized thereby, along with the portions of the business associated therewith.

11. **Entire Agreement.** This Agreement constitutes the entire agreement, arrangement and understanding between the Parties with respect to its subject matter, and all prior and contemporaneous negotiations, agreements, arrangements and understandings between the Parties, whether written or oral, are merged into and superseded by this Agreement.

12. **Advice of Counsel.** The Parties have freely and voluntarily entered into this Agreement, which has been entered into after negotiation and review of its terms and conditions by Parties with equal bargaining power. The Parties hereto have discussed and considered all relevant information and advice furnished by their respective attorneys, and each of the Parties hereby warrants that it has read and understood each and every provision of this Agreement, and is under no compulsion to execute and deliver a disadvantageous agreement. This Agreement incorporates provisions, comments and suggestions proposed by the Parties and their attorneys. No ambiguity or omission in this Agreement shall be construed or resolved against any party on the ground that this Agreement or any of its provisions was drafted or proposed by that party.

13. **Authorization.** Each person executing this Agreement on behalf of any of the Parties specifically represents and warrants that the person is duly authorized to execute this Agreement on behalf of such Party; that the person's signature is binding upon the entity for which the person is signing; and that the person is of legal age and is legally competent to execute this Agreement.

14. **Attorney's Fees.** In the event any dispute or controversy arises with respect to this Agreement, its interpretation, modification, enforcement or extinction, the prevailing party shall be entitled to costs and attorneys' fees from the other party or parties, whether such dispute or controversy is resolved by judicial or administrative order, arbitration award, settlement or appeal.

15. **Modifications and Amendments.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the party sought to be bound.

16. **Further Assurances.** Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligation hereunder to carry out the express intent of the Parties hereto.

17. **Parties to Bear Own Costs.** Except as otherwise expressly provided herein, each party to this Agreement shall bear its own attorneys' fees and costs of suit in connection with the Civil Action and the negotiations and completion of this Agreement.

18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy of this Agreement may be used as though it were a duplicate original. The Agreement shall not be effective until all required counterparts are fully executed and delivered to the Parties to this Agreement.

19. **Geographic Scope.** The geographic scope of this Agreement and the Parties' rights and obligations under this Agreement is the United States.

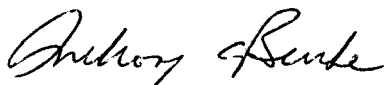
20. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York, without regard to conflicts or choice of laws principles. The Parties hereby stipulate to the personal jurisdiction of the District Court for any matter or proceeding concerning arising out of or relating to this Agreement. Any issues or disputes concerning, arising out of or relating to this Agreement, including, without limitation, the performance of the Parties hereunder, shall be brought before the District Court, and New York law shall apply to any relevant state law issues. In the event the District Court *sua sponte* declines to execute jurisdiction over this Agreement, then and only then may a party seek to enforce this Agreement in another Court of competent jurisdiction.

21. **Severability.** If any provisions of this Agreement are held to be invalid or unenforceable, other provisions shall nonetheless continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date by their respective agents thereunto duly authorized.

Modern Bank, N.A.

Excel National Bank


 Name: ANTHONY E. Burke
 Title: PRESIDENT AND Chief Executive Officer
 Date: July 23, 2007



 Name: BRIAN CARLSON
 Title: President and Chief Executive Officer
 Date: July 20, 2007

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MODERN BANK, N.A.,	:
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Plaintiff,	:
	:
- against -	:
	:
EXCEL NATIONAL BANK,	:
	:
	:
Defendant.	:
-----X	

Docket No. 07CV2359 ((BSJ)(KNF)

**NOTICE OF DISMISSAL
WITH PREJUDICE**

Plaintiff Modern Bank, N.A. and Defendant Excel National Bank have agreed to settle all claims arising out of the pleadings in this action on terms including entry of the following Notice of Dismissal with prejudice, in accordance with Fed. R. Civ. P. 41(a)(1)(i).

Dated: _____, 2007

KENYON & KENYON LLP

By: _____

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