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THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Francis L. Keldermans  
McBride Baker & Coles  
500 West Madison Street  
40<sup>th</sup> Floor  
Chicago, Illinois 60661

0020259851

2303/0054 90 001 Page 1 of 12  
2002-03-07 10:28:43  
Cook County Recorder 43.50



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**SECOND**  
**MODIFICATION OF LOAN DOCUMENTS**

**THIS MODIFICATION OF LOAN DOCUMENTS** (this "Second Modification") is made as of the 15<sup>th</sup> day of February, 2002, by and among **The Townhomes on Wabash at 14th Place, L.L.C.** an Illinois limited liability company, ("Beneficiary") and **GreatBanc Trust Company**, as successor Trustee to **Marine Trust and Investment Company**, not individually, but as Trustee under Trust Agreement dated May 17, 1998 and known as **Trust Number 80-5000** (the "Trustee" or "Trust") (hereinafter the Beneficiary and the Trustee are jointly referred to as the "Borrower"), **Guy G. Gardner** ("Guarantor") and **CIB Bank**, an Illinois banking corporation, its successors and assigns ("Lender").

**RECITALS:**

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of SIX MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,300,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of November 27, 1999 between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement as amended by the First Modification, as hereinafter defined, and this Second Modification), and as evidenced by a Mortgage Note dated as of November 27, 1999, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

**EXONERATION CLAUSE IS ATTACHED  
HERETO AND MADE A PART HEREOF.**

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated November 27, 1999 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on December 3, 1999, as Document No. 09132285 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Security Agreement dated November

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27, 1999 from Borrower and Guarantor to Lender (the "Security Agreement"); and (iii) certain other loan documents (the Note, the Mortgage, the Loan Agreement, the Assignment of Leases, the Security Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty dated as of November 27, 1999 from Guarantor to Lender (the "Guaranty").

D. Borrower and Lender entered into a Modification of Loan Documents as of December 1, 2001 (the "First Modification") pursuant to which First Modification Lender agreed to extend the Maturity Date in the Loan Agreement to February 15, 2002 ("Prior Extension"). In conjunction with the Prior Extension, the Borrower repaid ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000.00) of the outstanding principal balance of the Note through the execution and delivery of Guarantor's promissory note payable to the order of Lender in the principal amount of ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000.00) ("Guarantor's Note") (hereinafter the Note and Guarantor's Note are jointly referred to as the "Note"). The Maturity Date of Guarantor's Note is December 31, 2002.

E. Borrower desires to amend the Loan Documents, the First Modification, and Notes in order to extend or modify (as applicable) the Maturity Dates of the Notes to July 1, 2002 ("Extensions").

F. As a condition precedent to the Extensions, Lender is requiring that Borrower obtain a junior mortgage on the real property commonly known as 1000 S. Michigan Avenue, Chicago, Illinois (the "1000 Property") as additional collateral for the Notes and the other Obligations of Borrower ("Junior Mortgage").

EXONERATION CLAUSE IS ATTACHED  
HERE TO AND MADE A PART HEREOF.

**AGREEMENTS:**

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Second Modification), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**Consideration.** In consideration of the Extensions, Borrower shall obtain and record the Junior Mortgage and pay to Lender a loan extension fee equal to one half percent of the outstanding principal balance of the Note ("Loan Extension Fee").

**Maturity Date.** The Maturity Date of the Notes is extended or modified (as applicable) to July 1, 2002. Any reference in the Notes, the Loan Agreement, the First Modification, or any other Loan Document to the Maturity Date shall mean July 1, 2002.

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3. **Interest.** From the date hereof, the principal balance of SIX MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,300,000.00) ("Principal Balance") shall bear interest payable at the Prime Rate, as hereinafter defined, plus one percent (1.00%) per annum (the "Loan Rate"); provided, however, the Loan Rate shall never be less than 6.25 % per annum. "Prime Rate" shall mean the rate of interest published in the Money Rate section of The Wall Street Journal as the Prime Rate, but may not necessarily be the lowest rate of interest charged by the Lender on its loans. When a range of rates has been published, the higher of the rates will be used. If The Wall Street Journal ceases publication, the prime lending rate or base rate as published in another financial newspaper selected by Lender shall control the rate of the Notes. To the extent permitted by Illinois law, interest shall be calculated by the method known as the "banker's rule" using the actual days the Principal Balance is outstanding hereunder divided by 360 days and multiplied by the Loan Rate. However, that to the extent such calculation is not permitted by Illinois law, interest hereunder shall be calculated on the basis of a 365 or 366 day year as the case may be.

4. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows.

The representations and warranties in the Loan Agreement, the Mortgage, the First Modification, and the other Loan Documents are true and correct as of the date hereof.

There is currently no Event of Default (as defined in the Mortgage) under the Notes, Loan Agreement, the Mortgage, the First Modification and the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Notes, Loan Agreement, the Mortgage, the First Modification, and the other Loan Documents.

The Loan Documents are in full force and effect and, following the execution and delivery of this Second Modification, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

EXONERATION CLAUSE IS ATTACHED  
HERE TO AND MADE A PART HEREOF.

There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Second Modification and to perform the Loan Documents as modified herein. The execution and delivery of this Second Modification and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Second Modification has been duly executed and delivered on behalf of Borrower.

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**Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue its Lender's Title Insurance Policy No. 79-88-211 (the "Title Policy"), as of the date the Junior Mortgage is recorded, reflecting the recording of the Junior Mortgage and insuring the priority of the lien of the Junior Mortgage, subject only to the exceptions expressly agreed to by Lender.

**Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Second Modification. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

**Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Second Modification, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

**Release of Junior Mortgage: Loan Paydown/Substitute Collateral.** Lender agrees that it shall issue its release of the Junior Mortgage with respect to the real property commonly known as 1000 South Michigan Avenue, Chicago, Illinois at such time as each of the following conditions precedent have been fully satisfied: The outstanding balance of the Notes plus the unfunded hard and soft construction costs attributable to the completion of the remaining unsold townhomes in Phase II of The Townhomes on Wabash at 14<sup>th</sup> Place project ("Project") shall be less than 75% of the then fair market value of the unsold townhomes in Phase II of the Project plus 70% of the then fair market value of the vacant land located in Phase I of the Project ("Combined Fair Market Value"). For purposes of determining the Combined Fair Market Value, Lender shall be entitled to rely upon an appraisal which is prepared by a commercial real estate appraiser acceptable to and engaged by Lender (at Guarantor's expense) in conformance with the requirements of The Financial Institution Reform, Recovery & Enforcement Act of 1989 ("FIRREA").

EXONERATION CLAUSE IS ATTACHED  
HERETO AND MADE A PART HEREOF.

In the event the Borrower provides Substitute Collateral (as hereinafter defined), Lender agrees that it shall issue its release of the Junior Mortgage with respect to the real property commonly known as 1000 South Michigan Avenue, Chicago, Illinois ("Junior Mortgage"). "Substitute Collateral" shall mean such collateral in lieu of the Junior Mortgage that in Lender's sole reasonable judgment is (a) acceptable to Lender, (b) is duly perfected, and (c) results in a loan to value ratio (when taking into account the fair market value of the Project plus the fair market value of the new collateral) such that the outstanding balance of the Notes plus the unfunded hard and soft construction costs attributable to the completion of the remaining unsold townhomes in Phase II of the Project shall be less than 75% of the then fair market value of the unsold townhomes in Phase II of the Project plus 70% of the then fair market value of the vacant land located in Phase I of the Project.

9.

**Miscellaneous.**

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(a) This Second Modification shall be governed by and construed in accordance with the laws of the State of Illinois.

This Second Modification shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Second Modification, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Second Modification. Each of the parties to this Second Modification represents that it has been advised by its respective counsel of the legal and practical effect of this Second Modification, and recognizes that it is executing and delivering this Second Modification, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Second Modification, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

Notwithstanding the execution of this Second Modification by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Second Modification, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Second Modification. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

This Second Modification shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

EXONERATION CLAUSE IS ATTACHED  
HERE TO AND MADE A PART HEREOF

Any references to the "Notes", the "First Modification", "Loan Agreement" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Notes, the First Modification, the Loan Agreement, and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

This Second Modification may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

Time is of the essence of each of Borrower's obligations under this Second Modification.



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10. **Trustee Exculpation.** It is expressly understood and agreed that nothing in this Loan Agreement shall be construed as creating any personal liability on the Trustee personally to perform any express or implied covenant, condition or obligation under this Second Modification all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Second Modification. Notwithstanding the foregoing, the Lender shall not be precluded from: (a) recovering any condemnation awards or insurance proceeds attributable to property that secures the Note; (b) recovering any tenant security deposits, advance or prepaid rents, if any; or (c) enforcing the personal liability of the Borrower or any guarantor of the Note.

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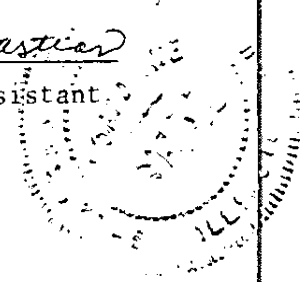
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IN WITNESS WHEREOF, the parties hereto have executed this Second Modification dated as of the day and year first above written.

GREATBANC TRUST COMPANY, as successor Trustee to MARINE TRUST AND INVESTMENT COMPANY AS TRUSTEE UNDER TRUST NO. 80-5000

By: Angela Giannetti  
Name: Angela Giannetti  
Title: Ass't. Vice Pres. & Sr. Land Trust Officer

Attest: Evelyn Sebastian  
Administrative Assistant



THE TOWNHOMES ON WABASH AT 14TH PLACE L.L.C., an Illinois limited liability company  
By: Its Members

Urban Technologies, Inc., an Illinois corporation  
By: Guy G. Gardner  
Guy G. Gardner, President

Bottlewerks Molding, Inc., an Illinois corporation  
By: Guy G. Gardner  
Name: Guy G. Gardner  
Title: President

GUARANTOR:  
Guy G. Gardner  
Guy G. Gardner, individually

CIB BANK  
By: David E. Nick  
David E. Nick, Vice President

EXONERATION CLAUSE IS ATTACHED  
HERE TO AND MADE A PART HEREOF.

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STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

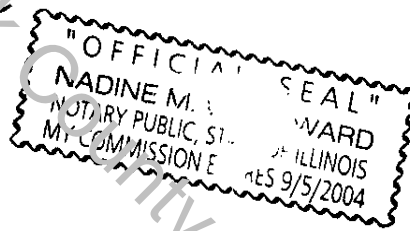
I the undersigned \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Angela Giannetti, the Trust Officer of GreatBanc Trust Company, as successor Trustee, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of February, 2002.

*Nadine M. Howard*  
Notary Public

My Commission Expires: 9/5/2004

STATE OF Illinois )  
 ) .ss  
COUNTY OF Cook )

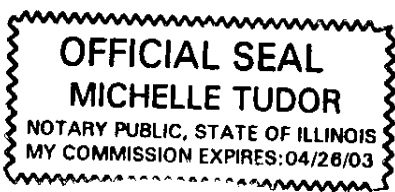


I Michelle Tudor, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Guy Gardner of Urban Technologies, Inc., an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of February, 2002.

*Michelle M Tudor*  
Notary Public

My Commission Expires:



EXONERATION CLAUSE IS ATTACHED  
HERETO AND MADE A PART HEREOF.

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STATE OF Illinois  
COUNTY OF Cook ) .ss

I Michelle Tudor, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Guy Gardner, \_\_\_\_\_ of **Bottlewerks Molding, Inc.**, an Illinois corporation, 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of February, 2002.

Michelle M. Tudor  
Notary Public

My Commission Expires:



EXONERATION CLAUSE IS ATTACHED  
HERETO AND MADE A PART HEREOF.

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STATE OF Illinois )  
 ) .ss  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Guy G. Gardner** 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of February, 2002.



Notary Public

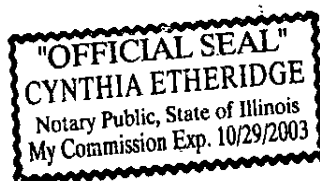
*Michelle N. Tudor*

My Commission Expires:

STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **David E. Nick**, Vice President of CIB bank 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 and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28 day of February, 2002.



Notary Public

*Cynthia Etheridge*

My Commission Expires:

EXONERATION CLAUSE IS ATTACHED  
HERE TO AND MADE A PART HEREOF.

Schedule A  
The Property

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THE FOLLOWING DESCRIBED PROPERTY TAKEN AS A SINGLE TRACT OF LAND:

LOTS 7, 8, 9, 10 AND 11 IN SPRING'S SUBDIVISION IN THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; ALSO,

LOTS 21 AND 22 IN STEVEN'S RESUBDIVISION OF LOTS 21, 22, 23, 24 AND 25 IN BLOCK 17 IN HERRINGTON ADDITION TO CHICAGO IN THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS;

EXCEPTING FROM THE AFORESAID TRACT, THE FOLLOWING FOUR PARCELS,

(1) THE WEST 29 FEET OF LOTS 21 AND 22 IN STEVEN'S RESUBDIVISION AFORESAID; ALSO

(2) THAT PART OF LOT 7 IN SPRING'S SUBDIVISION, LYING WEST OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 7, SAID POINT BEING 39 FEET EAST OF THE WEST LINE OF SAID LOT 7; RUNNING THENCE SOUTHERLY TO A POINT ON THE SOUTH LINE OF SAID LOT 7, SAID POINT BEING 37.5 FEET EAST OF THE WEST LINE OF SAID LOT 7;

(3) THAT PART OF LOTS 8 AND 9 IN SPRING'S SUBDIVISION AFORESAID, LYING WEST OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 8, SAID POINT BEING 37.5 FEET EAST OF THE WEST LINE OF SAID LOT 8; RUNNING THENCE SOUTHERLY TO A POINT ON THE SOUTH LINE OF THE NORTH 1/2 OF SAID LOT 8, SAID POINT BEING 36.75 FEET EAST OF THE WEST LINE OF SAID LOT 8; THENCE CONTINUING TO A POINT ON THE SOUTH LINE OF SAID LOT 8, SAID POINT BEING 36 FEET EAST OF THE WEST LINE OF SAID LOT 8; THENCE CONTINUING SOUTHERLY ALONG A STRAIGHT LINE TO A POINT ON THE SOUTH LINE OF SAID LOT 9, SAID POINT BEING 36 FEET EAST OF THE WEST LINE OF SAID LOT 9;

(4) THAT PART OF LOTS 10 AND 11 IN SPRING'S SUBDIVISION AFORESAID LYING WEST OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 10, SAID POINT BEING 33 FEET EAST OF THE WEST LINE OF SAID LOT 10; RUNNING THENCE SOUTHERLY TO A POINT ON THE SOUTH LINE OF THE NORTH 10 FEET OF SAID LOT 10, SAID POINT BEING 33 FEET EAST OF THE WEST LINE OF SAID LOT 11; RUNNING THENCE SOUTHWESTERLY TO A POINT ON THE SOUTH LINE OF LOT 11 IN SPRING'S SUBDIVISION AFORESAID, SAID POINT BEING 25.56 FEET EAST OF THE WEST LINE OF SAID LOT 11.

ALSO EXCEPTING FROM THE AFORESAID TRACT THE FOLLOWING THREE PARCELS,

(1) THAT PART OF THE NORTH 17.67 FEET OF THE SOUTH 36.20 FEET, LYING WEST OF THE EAST 96.67 FEET THEREOF;

(2) THAT PART OF THE NORTH 17.66 FEET OF THE SOUTH 89.18 FEET, LYING WEST OF THE EAST 96.67 FEET THEREOF;

(3) THAT PART OF THE NORTH 17.66 FEET OF THE SOUTH 124.49 FEET LYING WEST OF THE EAST 89.77 FEET THEREOF ALL IN COOK COUNTY, ILLINOIS.

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## EXONERATION CLAUSE - MISCELLANEOUS INSTRUMENTS

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against GreatBanc Trust Company as Successor Trustee to Marine Trust and Investment Co. or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any representations, covenant, undertaking or agreement of the said Trustee whether or not in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

GreatBanc Trust Company as Successor  
Trustee to Marine Trust and Investment Co.  
not individually- but solely as Trustee  
under Trust No. 80-5000

By Angela Giannetti  
Assistant Vice President &  
Sr. Land Trust Officer