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00123616

KRWR File No. 02441.31500

209317

MODIFICATION OF LOAN DOCUMENTS

THIS MODIFICATION (hereinafter referred to as "this Modification") is made and entered into as of the 16th day of February, 2000, by **COUNTRY CLUB CONDOMINIUMS LIMITED PARTNERSHIP**, an Illinois limited partnership (hereinafter referred to as "Borrower"), and **GARY A. POTER and POTER CONSTRUCTION & DEVELOPMENT COMPANY**, an Illinois corporation (hereinafter referred to collectively as the "Guarantors"), to and for the benefit of **U.S. BANK NATIONAL ASSOCIATION** (hereinafter referred to as "Lender").

RECITALS:

A. Lender has heretofore made a revolving construction loan (hereinafter referred to as the "Loan") to Borrower in the original principal amount of Three Million Seventy Five Thousand Dollars and No Cents (\$3,075,000.00), the terms and conditions of which are set forth in a certain Construction Loan Agreement dated October 5, 1999, between Borrower, Guarantors and Lender (hereinafter referred to as the "Loan Agreement"). Initially capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Loan is also evidenced by a Mortgage Note in said principal amount dated October 5, 1999, made by Borrower and payable to Lender (said Mortgage Note is hereinafter referred to as the "Note").

C. The Note is secured by, among other things, a Mortgage and Assignment of Leases and Rents and Security Agreement dated October 5, 1999, made by Borrower in favor of Lender, and recorded on October 7, 1999, in the Office of the Cook County Recorder of Deeds as Document No. 99951517 (said Mortgage is hereinafter referred to as the "Mortgage"), encumbering the premises legally described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Property"). The Loan is further evidenced and secured by certain other documents, including but not limited to those described in Exhibit "B" attached hereto and by this reference incorporated herein (the Mortgage and all such other documents are hereinafter referred to collectively as the "Security Documents").

D. In connection with the Loan, the Guarantors executed that certain Guaranty dated October 5, 1999 and that certain Guaranty of Completion dated October 5, 1999 to and for the benefit of Lender (said Guaranties are hereinafter referred to collectively as the "Guaranties").

E. Borrower has applied to the City for a building permit for the Project (hereinafter referred to as the "Project Permit") but has been advised that the Project Permit, if issued, will not be issued in sufficient time to enable Borrower to commence construction of 2½ models (hereinafter referred to as the "Models") for Units 202, 203 and 102(½). However, the City is willing to issue temporary permits (hereinafter referred to as "Model Permits") to enable Borrower to commence construction of the Models without the Project Permit if Borrower furnishes to the City an irrevocable unconditional sight draft letter of credit in the amount of Three Hundred Twelve Thousand Two Hundred Fifty Dollars and No Cents (\$312,250.00), which is the aggregate of the projected sales prices for the Models (hereinafter referred to as "Models L/C").

F. Borrower has asked Lender to issue the Models L/C and Lender has agreed to do so subject to the terms and conditions herein set forth.

G. The parties desire to modify and amend the Loan Agreement, the Note, the Security Documents and the Guaranties (hereinafter referred to collectively as the "Loan Documents") as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The aforesaid Recitals are hereby incorporated into this Modification as if fully set forth in this Paragraph 1.

2. **Models L/C.** Lender agrees to issue the Models L/C in the form required by the City and reasonably satisfactory to Lender, upon the following terms and conditions and subject to the other terms, conditions and requirements set forth elsewhere in this Modification:

(A) The Models L/C shall be issued when all conditions precedent thereto have been satisfied. The Models L/C shall expire and terminate not later than August 31, 2000 concurrently herewith, Borrower shall pay to Lender a fee (hereinafter referred to as "Models L/C Fee") in the amount of \$1,561.25 (½ percent), or upon the issuance of the Project Permit, whichever occurs first.

(B) The amount of the Loan shall be increased by the amount of the Models L/C.

(C) The Models L/C may be drawn upon only by the City as named beneficiary therein.

(D) A drawing under the Models L/C shall be deemed a disbursement under the Note and shall accrue interest at the Default Rate from and including the date of disbursement.

(E) Lender may receive, accept, or pay as complying with the terms of the Models L/C, any drafts or other documents, otherwise in order, which may be signed by, or issued to, the administrator or executor of, or the trustee in bankruptcy or the receiver for any of the property of, the party in whose name it is provided in the Models L/C that any drafts or other documents should be drawn or issued.

(F) Neither Lender nor its agents shall be under any duty to determine the proper identity of any one appearing in the draft or documents as transferee of the Models L/C, nor shall Lender be charged with responsibility of any nature or character for the validity or correctness of any transfer or successive transfers, and payment by Lender to any purported transferee or transferees of the Models L/C as determined by Lender is hereby authorized and approved, and Borrower and Guarantors further agree to hold Lender harmless and indemnified against any liability or claim in connection with or arising out of the foregoing except as to gross negligence or wilful misconduct of Lender.

(G) Borrower agrees that in the event of any extension of the maturity or time for presentation of drafts, acceptances, or documents, or any other modification of the terms of the Models L/C, at the request of Borrower, or in the event of any increase in the amount of the Models L/C, at Borrower's request, these provisions shall be binding upon Borrower with regard to the Models L/C so increased or otherwise modified, to drafts, documents, and property covered thereby, and to any action taken by Lender or any of its correspondents in accordance with such extension, increase, or other modification.

(H) The user of the Models L/C shall not be deemed Lender's agent and neither Lender nor its correspondents shall be responsible for (i) the use which may be made of the Models L/C or for any acts or omissions of the user of the Models L/C; (ii) the validity, sufficiency, or genuineness of documents, even if such documents should in fact prove to be in any or all respects invalid, fraudulent, or forged; (iii) particular conditions stipulated in the documents or superimposed thereof; (iv) failure of any instrument to bear any reference or adequate reference to the Models L/C, or failure of documents to accompany any draft at negotiation, or failure of any person to note the amount of any draft on the reverse of the Models L/C or to surrender or take up the Models L/C or to send forward documents apart from drafts as may be required by the terms of the Models L/C, each of which provisions, if contained in the Models L/C itself, it is agreed may be waived by Lender; and (v) errors, omissions, interruptions, or delays in transmission, or delivery of any messages by mail, cable, telegraph, wireless or otherwise, whether or not they may be in cipher. Lender shall not be responsible for any act, error, neglect, or default, omission, insolvency or failure in the business of any of its correspondents or for any refusal by Lender or any of its correspondents to pay or honor drafts drawn under the Models L/C because of any applicable

law, decree or edit, legal or illegal, of any governmental agency now or hereafter in force or for any matter beyond Lender's control. The happening of any one or more of the contingencies referred to in the preceding clauses of this paragraph shall not affect, impair, or prevent the vesting of any of Lender's rights or powers hereunder or under any collateral or security documents executed in connection herewith, or Borrower's obligations to make reimbursement. In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, Borrower agrees that any action taken by Lender or by any correspondent of Lender under or in connection with the Models L/C or the relative drafts or documents, if taken in good faith, shall be binding on Borrower and shall not put Lender or any of its correspondents under any resulting liability to Borrower and Borrower makes like agreements as to any inaction or omission unless in breach of good faith.

(I) Lender is authorized and instructed to accept and pay drafts without requiring, and without responsibility for, the delivery of documents, either at the time of acceptance or of payment or thereafter.

(J) All rights and liens which Lender now or hereafter possesses with respect to the Loan Documents, as modified hereby, shall continue unimpaired, and Borrower shall remain obligated in accordance with the terms and provisions hereof, notwithstanding the release or substitution of any property which may be held as security hereunder at any time, or of any right or interest therein. No delay, extension of time, renewal, compromise, or other indulgence which may occur, shall impair Lender's rights or powers hereunder. Lender shall not be deemed to have waived any of its rights hereunder unless it or its authorized agent shall have signed such waiver in writing. No such waiver, unless expressly as stated therein, shall be effective as to any transaction which occurs subsequent to the date of such waiver, nor as to any continuance of a breach after such waiver.

(K) Except as otherwise expressly provided in the Loan Documents, as modified hereby, or as Lender and Borrower may otherwise expressly agree with regard to the issuance of the Models L/C by Lender, the most current edition of the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce Brochure, not inconsistent with Article V of the Uniform Commercial Code in effect in the State of Illinois, shall be binding on the Models L/C and shall serve, in the absence of proof expressly to the contrary, as evidence of general banking usage.

3. **Other Amendments to Loan Documents.** The Loan Documents are hereby further amended as follows, effective as of the date hereof:

(A) References in the Loan Documents to the amount of the Loan shall be deemed to include the face amount of the Models L/C.

(B) References in the Loan Documents to the applicable interest rate shall be deemed to refer to the Default Rate in connection with any draws on the Models L/C.

(C) The Mortgage and other Security Documents shall secure the Models L/C.

(D) All references in a Loan Document to any other Loan Document shall be deemed to refer to such Loan Document as modified by this Modification.

4. **Consent of Guarantors.** The Guarantors have received and reviewed this Modification and all documents and instruments in connection herewith and hereby consent to the execution and delivery hereof, agree to pay any fee described herein, and agree that their duties, liabilities and obligations under the Guaranties, as modified hereby, shall not in any manner be impaired, discharged or released by the execution and delivery of this Modification and all documents or instruments in connection therewith.

5. **Conditions Precedent to Effectiveness.** As conditions precedent to Lender's acceptance of this Modification, the items described in Exhibit "C" attached hereto and by this reference incorporated herein (all of which shall be in form and substance satisfactory to Lender) shall be required to be executed, where applicable, and delivered to Lender, or otherwise satisfied, as applicable.

6. **Reaffirmation of Liability.** Notwithstanding the execution of this Modification, the Guarantors hereby reaffirm and acknowledge their liability and obligations to Lender under the Guaranties, as modified hereby.

7. **Reaffirmation of Representations and Warranties.** Borrower and the Guarantors (hereinafter referred to collectively as the "Obligors") hereby reaffirm as true and correct in all respects, as of the date hereof, any representations and warranties made by such party as contained in the Loan Documents.

8. **Reaffirmation of Covenants.** The Obligors do hereby reaffirm and agree to perform each and every covenant, condition, obligation and provision of such party set forth in the Loan Documents, as herein modified.

9. **No Vitiating of Liability.** Nothing contained herein shall vitiate or discharge any party's liability under the Loan Documents, as herein modified.

10. **Offsets and Defenses.** The Obligors hereby acknowledge and agree that: (i) as of the date of this Modification, there are no and the Obligors hereby waive all offsets, defenses or counterclaims against Lender arising out of or in any way relating to the Loan Documents, including without limitation any covenant of good faith and fair dealing, (ii) they release and forever discharge Lender, its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations and organizations acting or who have acted in its behalf of and from all damage, loss, claims, demands, liabilities, obligations, actions and causes of action whatsoever which they or any of them may now have or claim to have against Lender or any of the other persons or entities described in this clause (ii) as of the date of this

Modification, and whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way touching, concerning, arising out of or founded upon the Loan Documents, and (iii) Lender is not in default under the Loan Documents.

11. **Entire Agreement.** The Obligors acknowledge that: (i) there are no other agreements or representations, either oral or written, express or implied, relating to the amendments to the Loan Documents set forth herein and other provisions hereof that are not embodied in this Modification; (ii) this Modification represents a complete integration of all prior and contemporaneous agreements and understandings of Lender and the Obligors relating to the matters set forth herein, and (iii) all such agreements, understandings, and documents, except for the Loan Documents, are hereby superseded by this Modification.

12. **Full Force and Effect; Inconsistency.** Except as herein modified, the terms, conditions and covenants of the Loan Documents shall remain unchanged and otherwise in full force and effect. In the event of an inconsistency between this Modification and the Loan Documents, the terms herein shall control.

13. **Laws of Illinois.** This Modification shall be governed and construed under the laws of the State of Illinois.

14. **Counterparts.** This Modification may be executed in counterparts, all of which, when taken together, shall constitute a single instrument.

15. **Liens.** The Obligors acknowledge and agree that Lender's mortgage lien and other liens on the Property and any other collateral for the Loan continue to be valid, binding and enforceable liens which secure the obligations under the Loan Documents.

16. **Construction.** The words "hereof", "herein", and "hereunder", and other words of a similar import refer to this Modification as a whole and not to the individual Sections in which such terms are used. References to Sections and other subdivisions of this Modification are to the designated Sections and other subdivisions of this Modification as originally executed. The headings of this Modification are for convenience only and shall not define or limit the provisions hereof. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

17. **No Third Party Beneficiaries.** This Modification shall inure to the sole benefit of the Obligors and Lender. Nothing contained herein shall create, or be construed to create, any right in any person not a party to this Modification.

18. **Legal Review.** The Obligors acknowledge that they have been advised by legal counsel of their choice in connection with the interpretation, negotiation, drafting and effect of this Modification and the Obligors are satisfied with such legal counsel and the advice which they have received from such legal counsel.

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IN WITNESS WHEREOF, the parties have caused this Modification to be executed pursuant to authority duly granted as of the date and year first written above.

BORROWER:

COUNTRY CLUB CONDOMINIUMS LIMITED PARTNERSHIP, an Illinois limited partnership

By: **East 70th Development, L.L.C.**, Its General Partner

By: 

Gary A. Poter

Its: Managing Member

GUARANTORS:

POTER CONSTRUCTION & DEVELOPMENT COMPANY, an Illinois corporation

By: 

Gary A. Poter

Its: President


GARY A. POTER, Individually

LENDER:

U.S. BANK NATIONAL ASSOCIATION

By: 

Its: ASSISTANT VICE PRESIDENT

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

I, JEFFREY L. BRAND, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gary A. Poter, as Managing Member of East 70th Development, L.L.C., the General Partner of Country Club Condominiums Limited Partnership, as President of Poter Construction & Development Company, and individually, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Member of said Limited Partnership, as such President of said Corporation, and individually, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Limited Liability Company, as such General Partner, and of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 4th day of February, 2000.

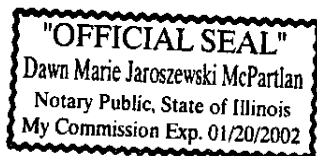


Jeffrey L. Brand
 Notary Public

STATE OF ILLINOIS)
)
 COUNTY OF COOK)

I, Dawn Marie Jaroszewski McPartlan, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Robert J. Burda, Assistant Vice President of U.S. Bank National Association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AVP of said Bank, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as his own 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 16th day of February, 2000



Dawn M. Jaroszewski McPartlan
 Notary Public

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EXHIBIT "A"

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Legal Description

LOTS 1 TO 15 INCLUSIVE IN BLOCK 5 IN RESUBDIVISION OF BLOCKS 10 AND 11 AND PART OF BLOCK 12 IN SOUTH SHORE DIVISION NUMBER 5, BEING A SUBDIVISION OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 24, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 10, 1910 AS DOCUMENT NUMBER 4608737, IN COOK COUNTY, ILLINOIS. ✓

P.I.N.: 20-24-429-001 ✓

COMMON ADDRESS: 2301-2347 EAST 70TH PLACE, CHICAGO, ILLINOIS 60649

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EXHIBIT "B"

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Other Security Documents

1. Assignment of Rents and Lessor's Interest in Leases dated October 5, 1999, executed by Borrower, recorded on October 7, 1999, as Document No. 99951518.
2. UCC-1 and UCC-2 Financing Statements executed by Borrower.
3. Collateral Assignments of Construction Contracts, Architect's Contract and Plans, and Sales Contracts, each dated October 5, 1999, executed by Borrower.
4. Environmental Indemnity Agreement dated October 5, 1999, executed by Borrower and the Guarantors
5. Borrower's Certificate dated October 5, 1999, executed by Borrower.
6. Waiver of Defenses and Estoppel Certificate dated October 5, 1999, executed by Borrower.

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EXHIBIT "C"

Conditions Precedent

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1. Execution and recording of this Modification of Loan Documents
2. Date Down Endorsement to Lender's title policy (i) increasing the coverage by the amount of the Models L/C, (ii) adding a letter of credit endorsement, and (iii) adding no new matters not approved by Lender.
3. ALTA Statement
4. Updated Certified Partnership Documents
5. Updated Certified Corporation Documents
6. Opinion of Counsel
7. Payment of Lender's Legal Fees and costs
8. Payment to Lender of the Models L/C Fee
9. Documentation from the City evidencing Borrower's obligations relating to the Models and setting forth the conditions made under which the City would be permitted to draw on the Models L/C.