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Cook County Recorder 39.00

THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

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KRWR File No. 02441.31500

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Property of Cook County

SEVENTH MODIFICATION OF LOAN DOCUMENTS

THIS SEVENTH MODIFICATION OF LOAN DOCUMENTS (hereinafter referred to as "**this Modification**") is made and entered into as of the 30th day of April, 2002, 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 and No/100 Dollars (\$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, as modified by Modification of Loan Documents dated as of February 16, 2000, and recorded as Document No. 00123616 (hereinafter referred to as the "**First Modification**"), by Second Modification of Loan Documents dated as of October 31, 2000, and recorded as document number 00838165 (hereinafter referred to as the "**Second Modification**"), by Third Modification of Loan Documents dated as of April 30, 2001, and recorded as Document No. 0010404586 (hereinafter referred to as the "**Third Modification**"), by Fourth Modification of Loan Documents dated as of July 31, 2001 and recorded as Document No. 0010918556 (hereinafter referred to as the "**Fourth Modification**"), by Fifth Modification of Loan Documents dated as of October 31, 2001, and recorded as Document No. 0011159015 (hereinafter referred to as the "**Fifth Modification**"), and by Sixth Modification of Loan Documents dated as of January 1, 2002, and recorded as Document No. 0020236105 (hereinafter referred to as the "**Sixth Modification**"). Said Construction Loan Agreement, as modified by the First Modification, the Second Modification, the Third Modification, the Fourth Modification, the Fifth Modification, and the Sixth Modification (hereinafter collectively referred to as the "**Prior Modifications**") is hereinafter referred to as the "**Loan Agreement.**" Initially capitalized terms and other terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

Box 430

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, as modified by the Prior Modifications (said Mortgage Note, as so modified, 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, as modified by the Prior Modifications (said Mortgage, as so modified, 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, all as modified by the Prior Modifications (the Mortgage and all such other documents, as so modified, 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 and the Prior Modifications (said Guaranties as modified by the Prior Modifications are hereinafter referred to collectively as the "Guaranties").

E. Pursuant to the Sixth Modification, Lender extended the Initial Maturity Date of the Loan to April 30, 2002.

F. Phase 1 has been completed, and Units in Phase 1 are being sold. Phase 3 will be commenced before Phase 2 because of stronger pre-sales. The current principal balance of the Loan, after taking into account paydowns from the closings of eight (8) Phase 1 Units, is Two Million Four Hundred Seventy-One Thousand Eight Hundred Seventy-Four and No/100 Dollars (\$2,471,874.00).

G. Borrower has requested certain modifications to the Loan Documents, including, without limitation, that the Maturity Date of the Loan be extended to October 31, 2003.

H. 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 Section 1.

2. **Amendments to Loan Documents.** The Loan Documents are hereby amended, effective as of the date hereof, and notwithstanding anything to the contrary in the Loan Documents, as follows:

A. **Maturity Date.** The Maturity Date for completion of the entire Project is extended from April 30, 2002, to October 31, 2003, and there shall be no further distinction between Initial, First Extended, or Second Extended Maturity Dates.

B. **Revised Budget.** The Revised Project Budget dated April 30, 2002, is hereby approved, increasing Project Costs to Eight Million Seven Hundred Forty-Nine Thousand Five Hundred Thirty-Two and No/100 Dollars (\$8,749,532.00), including an increased Interest Reserve and other increased costs. After deducting therefrom Borrower's Equity (including deferred developer fee) of One Million One Hundred Seventy Five Thousand and No/100 Dollars (\$1,175,000.00) and paydowns of Nine Hundred Sixty Nine Thousand Seven Hundred Forty and No/100 Dollars (\$969,740.00), leaving the sum of Six Million Six Hundred Four Thousand Seven Hundred Ninety-Two and No/100 Dollars (\$6,604,792.00) as the remaining Budget amount for the Project. The maximum principal outstanding at any one time shall still be Three Million Seventy-Five Thousand and No/100 Dollars (\$3,075,000.00), and the maximum allowable Advances is Four Million One Hundred Thirty-Two Thousand Nine Hundred Fifty-Eight and No/100 Dollars (\$4,132,958.00).

C. **Phase 3 Funding.** Funding for Phase 3 Advances can commence immediately, as Lender has agreed that all Phase 3 conditions have been satisfied. An updated appraisal shall not be required upon completion of Phase 3.

D. **Phase 2 Funding.** Funding for Phase 2 Advances can commence only upon satisfaction of the following conditions, in lieu of the conditions in Section 2.5(i)(c) of the Loan Agreement, but in addition to all other conditions precedent in Section 2.4 of the Loan Agreement:

- (i) Construction of Phase 3 is substantially complete, as determined by Lender;
- (ii) Borrower obtains not less than ten (10) pre-sales of Units in Phase 2; and
- (iii) the aggregate net proceeds from the closings of twenty-six (26) of the remaining Phase 1 Units and Phase 3 Units equal or exceed Three Million One Hundred Fifty Thousand and No/100 Dollars (\$3,150,000.00).

E. **Net Sales Proceeds.** Borrower shall continue to pay to Lender 100% of the net sale proceeds from the sale of Units as provided in Section 2.7 of the Loan Agreement, plus a release fee of One Hundred and No/100 Dollars (\$100.00) per Unit.

F. **Borrower's Equity.** Neither the \$50,000.00 Developer fee described in the revised Project Budget nor any equity may be paid or repaid until repayment in full of the Loan.

G. **Fees.** Borrower shall pay the following fees:

- (i) \$10,250.00 (0.33% of \$3,075,000.00) for extension of the Maturity Date; and
- (ii) all fees and costs due to Lender's counsel in connection with the Modification and the transactions described herein.

H. 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.

I. All references in a Loan Document to the Maturity Date or other defined term herein shall be deemed to refer to the Maturity Date and such other terms as set forth herein, respectively.

3. **Consent and Reaffirmation of Guarantors.**

A. 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 fees 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.

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

4. **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.

5. **Reaffirmation of Representations and Warranties.** Borrower and 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.

6. **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.

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

8. **Offsets and Defenses.** The Obligors hereby acknowledge and agree that:

A. 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,

B. 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;

C. 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

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D. Lender is not in default under the Loan Documents.

9. **Entire Agreement.** The Obligors acknowledge that:

A. 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;

B. 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

C. all such agreements, understandings, and documents, except for the Loan Documents, are hereby superseded by this Modification.

10. **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.

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

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

13. **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.

14. **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.

15. **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.


16. **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.

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: 

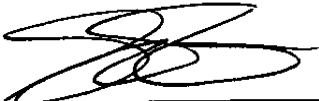
Gary A. Poter, Managing Member

GUARANTORS:

POTER CONSTRUCTION & DEVELOPMENT COMPANY, an Illinois corporation

By: 

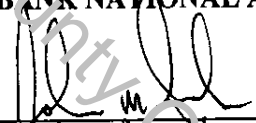
Gary A. Poter, President



GARY A. POTER, Individually

LENDER:

U. S. BANK NATIONAL ASSOCIATION

By: 

Its Vice President

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EXHIBIT A

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.

All as modified by the First Modification, the Second Modification, the Third Modification, the Fourth Modification, and the Fifth Modification.

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EXHIBIT C

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CONDITIONS PRECEDENT

1. Execution and recording of this Seventh Modification of Loan Documents
2. Date Down Endorsement to Lender's title policy (i) extending the date of the Policy, (ii) increasing the effectiveness of all existing endorsements, 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 Loan Extension Fee.
9. Payment to Lender of the Landscape L/C Extension Fee.