

RESOLUTION NO. 1882

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD AUTHORIZING THE EXECUTION OF A REVISION OF LOAN AGREEMENT WITH C. EDWARD TROUT AND AMENDING RESOLUTION NO. 1562

BE IT RESOLVED by the City Council of the City of Soledad, as follows:

Section 1. That the City Manager be, and he is hereby, authorized and directed, for and in behalf of the City of Soledad, to execute with C. EDWARD TROUT A Revision of Loan Agreement in the form of the document hereunto attached, marked "Exhibit No. 1", and by reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 11th day of October, 1988, by the following vote:

- AYES, and in favor thereof, Councilmembers: Campos, Ledesma, Mayor Pro Tem Slagle, Mayor Ortiz
- NOES, Councilmembers: None
- ABSENT, Councilmembers: Untalon

Richard C. City
MAYOR OF THE CITY OF SOLEDAD

ATTEST: *[Signature]*
CITY CLERK OF THE CITY OF SOLEDAD

REVISION OF LOAN AGREEMENT

THIS AGREEMENT is made by and between the CITY OF SOLEDAD, a municipal corporation of the State of California, hereinafter called "Lender", and C. EDWARD TROUT, hereinafter called "Borrower", as follows:

RECITALS:

A. This revision agreement refers to a loan from Lender to Borrower evidenced by a promissory note made payable to the order of Lender in the principal amount of Two Hundred Thousand Dollars (\$200,000.00) dated November 28, 1984, a copy of which is attached hereto, marked "Exhibit A," and incorporated herein by reference. Attached to said note and incorporated therein by reference is a Loan Agreement of even date, setting forth in Paragraph 2 thereof the terms of payment of principal and interest on said note. Said note is secured by a deed of trust of even date, recorded December 28, 1984, on Reel 1799, at Page 4, Official Records of Monterey County, California.

B. Borrower has requested Lender to revise the payment schedule of said note contained in Paragraph 2 of the Loan Agreement, in the manner hereinbelow set forth, and Lender has agreed to do so, subject to all of the terms, provisions and conditions of this agreement.

No. 1

AGREEMENT:

It is therefore mutually agreed by and between the said parties, as follows:

1. The schedule of interest payments to be made on said note, as shown in Paragraph 2 of said Loan Agreement, is hereby revised and amended to read as follows:

June 15, 1988	\$ 5,000.00
December 15, 1988	0
June 15, 1989	0
December 15, 1989	7,500.00
June 15, 1990	8,301.00
December 15, 1990	9,102.00
June 15, 1991	9,903.00
December 15, 1991	10,704.00
June 15, 1992	11,505.00
December 15, 1992	12,306.00
June 15, 1993	13,107.00
December 15, 1993	13,908.00
June 15, 1994	14,709.00
December 15, 1994	15,510.00
June 15, 1995	16,311.00
December 15, 1995	17,134.00

2. The principal amount of said note (\$200,000.00) shall be paid in full on December 15, 1995, together with the interest payment then due under the above revised schedule rather than on December 15, 1994, as provided in Paragraph 2 of the Loan Agreement.

3. It is understood and agreed that by executing this Revision of Loan Agreement the Lender is not waiving its right to require that principal and interest payments hereafter becoming due on said note under the revised schedule of payments be made promptly when due, time being of the essence.

4. This agreement is a revision only and not a novation; and except as herein provided all of the terms of said note and of said Loan Agreement shall remain in full force and effect.

5. This agreement, and all of the provisions hereof, shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said parties have executed this agreement this 11th day of October, 1988.

LENDER:

BORROWER:

CITY OF SOLEDAD, a municipal corporation,

By [Signature]
City Manager

[Signature]
C. Edward Trout

Escrow No. 406595 dz

DO NOT DESTROY THIS NOTE: When paid, this note, with Deed of Trust securing same, must be surrendered to Trustee for cancellation before reconveyance will be made.

STRAIGHT NOTE
(Balloon Payment — Due on Sale Clause)

\$ 200,000.00

Monterey, California

November 28, 1984

On or before December 15, 1994 after date, for value received, we, or either of us, promise to pay in lawful money of the United States of America, to

THE CITY OF SOLEDAD, a municipal corporation

or order, at place designated by payee, the principal sum of TWO HUNDRED THOUSAND AND NO/100s -----dollars, with interest in like lawful money ~~from~~ as set forth in the attached loan / agreement, until paid at the rate of seven and one-half (7½) percent per annum, payable as set forth in the attached loan agreement executed by and between Payor and Payee of even date herewith.

The Deed of Trust securing the within note contains the following provisions.

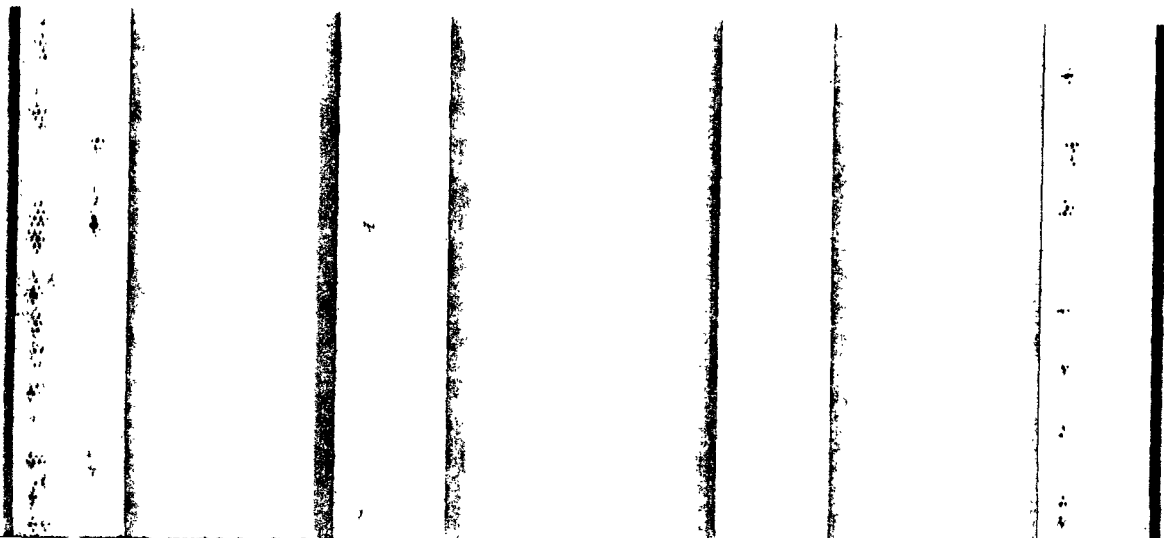
"In the event the herein described property or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, alienated by the Trustor, or by the operation of law or otherwise, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, at the option of the holder hereof and without demand or notice shall immediately become due and payable."

This note is subject to Section 2966 of the Civil Code, which provides that the holder of this note shall give written notice to the Trustor, or his successor in interest, of prescribed information at least 90 and not more than 150 days before any balloon payment is due.

Principal and interest payable in lawful money of the United States of America. Should default be made in payment of interest when due the whole sum of principal and interest shall become immediately due at the option of the holder of this note. If action be instituted on this note I promise to pay such sum as the Court may fix as attorney's fees. This note is secured by a Deed of Trust in which the undersigned is named as "Trustor"



C. Edward Trout



LOAN AGREEMENT

THIS AGREEMENT is made by and between the CITY OF SOLEDAD, a municipal corporation of the State of California, hereinafter called Lender, and C. EDWARD TROUT, hereinafter called Borrower.

RECITALS:

A. Borrower is purchasing a parcel of land situated on Front Street in the City of Soledad, Monterey County, California, and proposes to construct thereon a 60-unit motel, a restaurant, and adjoining shops. Said land is hereinafter sometimes referred to as the "subject property." A particular description of the same is hereunto attached marked "Exhibit A," and by reference made a part hereof.

B. For the purpose of financing said improvements to the subject property, Borrower has arranged for a \$2,000,000.00 interim construction loan, to be replaced with a \$2,000,000.00 permanent loan, from Provident Federal Savings of Boise, Idaho, said loans to be secured by a first deed of trust on the subject property.

C. Borrower is in need of additional financing to complete the purchase of said land and to purchase furniture, furnishings, equipment and trade fixtures for the motel premises.

D. Lender has applied for and expects to obtain \$200,000.00 in Community Development Block Grant (CDBG) funds to assist in financing said project. By this Agreement Lender proposes to loan said sum of \$200,000.00 to Borrower for the purposes set forth in Recital C above.

AGREEMENT:

It is therefore mutually agreed by and between the parties hereto, as follows:

1. Loan of CDBG funds. Subject to the obtaining of authorization from the State Department of Housing and Community Development to drawdown the CDBG funds referred to in Recital D above, and subject to all of the terms and provisions of this Agreement, Lender agrees to lend to Borrower the sum of \$200,000.00 to help finance the purchase of the subject property and furniture, furnishings, equipment and trade fixtures for the motel ~~and restaurant~~ proposed to be constructed thereon.

Handwritten signature

2. Terms of loan. Said \$200,000.00 loan shall be for the term of ten (10) years from December 15, 1984, at a simple interest rate of 7½% per annum. While the loan will accrue interest over the full ten-year term, interest payments will be deferred until years 4 through 10, during which time Borrower shall pay to Lender interest only in the following installments:

June 15, 1988	\$ 5,000.00
December 15, 1988	5,800.00
June 15, 1989	6,759.00
December 15, 1989	7,638.00
June 15, 1990	8,517.00
December 15, 1990	9,396.00
June 15, 1991	10,275.00
December 15, 1991	11,154.00
June 15, 1992	12,033.00
December 15, 1992	12,912.00
June 15, 1993	13,791.00
December 15, 1993	14,670.00
June 15, 1994	15,549.00
December 15, 1994	16,429.00

At the expiration of said ten-year period (i.e., on December 15, 1994), Borrower shall pay to Lender the principal sum of \$200,000.00, in addition to the interest payment due on the same date. Borrower shall have the right, at his election, to

make prepayments of principal at any time, without penalty, in which event the installments of interest to be paid, as aforesaid, shall be adjusted to reflect such prepayments. Said loan shall be evidenced by a promissory note payable to the order of Lender containing the terms and provisions hereinabove in this paragraph set forth and, in addition thereto, a provision that the entire unpaid principal balance of said note and all interest accrued thereon shall, at the election of the Lender, immediately become due and payable upon the occurrence of any of the following events:

(a) The nonpayment of any installment of interest, or of principal, when due;

(b) The failure of the Borrower to perform or comply with any covenant, condition, or restriction contained in this Agreement;

(c) Any default or delinquency by Borrower in the payment of any other loan or obligation secured by a mortgage or other lien or encumbrance on the subject property, specifically including but not limited to the loan to be made by Provident Federal Savings described in Recital B above;

(d) The sale, assignment, conveyance, transfer or other disposition of the subject property by Borrower, either voluntarily or involuntarily, by operation of law or otherwise (except by will, intestate succession or right of survivorship or by gift or sale to a spouse, child, spouse of a child, or grandchild), or the refinancing of the subject property, without the prior written consent of the Lender, which consent shall not be unreasonably refused;

(e) The filing by or against the Borrower of a petition in bankruptcy or insolvency, or for an arrangement or reorganization, or the making of an assignment for the benefit of creditors; or

(f) The subjection of any right or interest of the Borrower in the subject property to attachment, execution or other levy, or the appointment of a receiver to take control of the subject property, or any other seizure of said property under legal process.

3. Security for loan. Said \$200,000.00 loan shall be secured by:

(a) A second deed of trust on the subject property, prior to all other liens and encumbrances thereon except for (1) the first deed of trust to be held by Provident Federal Savings, as set forth in Recital B above, (2) current taxes and assessments, a lien but not yet due or payable, and (3) easements, right of way, reservations and restrictions now of record and acceptable to Lender.

(b) A security agreement and financing statement, conforming to the requirements of the California Uniform Commercial Code and constituting a first lien on the motel furniture, furnishings, equipment and trade fixtures referred to in Recital C above which are purchased with loan funds provided under this agreement. Said financing statement shall be filed with the Recorder of Monterey County and with the Secretary of State of the State of California, in accordance with the provisions of Sections 9401(1)(c), 9401(7), 9402(5) and 9313(1)(b)

of the California Uniform Commercial Code.

4. Equity participation by Lender. In addition to the payments to be made to Lender on the promissory note described in Paragraph 2 above, Borrower will share with Lender those profits that significantly exceed projections during the first three years of operation of the subject property and improvements, if any. The method for calculating Borrower's payment shall be as follows: the number of rooms occupied during the first three years in excess of 70% of full occupancy, multiplied by the average room rate, reduced by operating costs, and multiplied by the ratio of this loan to the total financing provide by both Lender and by Provident Federal Savings. For the purpose of this calculation the following factors have been agreed on: the sum of \$36.00 will be used for the average room rate during the first three years; operating costs will be set at 52% of gross room receipts; and the ratio of this loan (\$200,000.00) to other applicable financing (for purposes of this paragraph \$1,400,000.00) will be 1.7. Said three-years' period will begin on the first day a room is rented. Payment will be made by Borrower within 60 days after completion of the third year of operation. An example of this calculation is as follows:

Total motel rooms are 60; the first room is rented on July 1, 1985; total rooms rented between July 1, 1985, and June 30, 1988, are 47,676. The amount due to Lender would be $[(47,676 - (60 \times 1096 \times 70\%)] \times \$36.00 \times 48\% \times .1428571$, or \$4,058.33. Payment would be due by August 29, 1988.

5. Compliance with CDBG requirements. Borrower shall comply with all applicable terms, conditions, provisions, and assurances set forth and contained in that certain "Grant Agreement" between the State of California Department of Housing and Community Development, as Grantor, and the City

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of Soledad, as Grantee, dated October 1, 1984, a copy of which is hereunto attached, marked "Exhibit B," and by reference made a part hereof.

6. Conditions precedent to drawdown of loan funds.

Prior to the drawdown of the loan funds covered by this Agreement, and as a condition precedent to the obligation of Lender to disburse said funds, Borrower shall:

(a) Provide Lender with a complete set of plans and specifications for the motel improvements to be constructed on the subject property, and obtain Lender's approval of the same.

(b) Submit documentation that financing in the amount of \$400,000.00 for purchase of the subject property, and financing in the amount of \$2,000,000.00 from Provident Federal Savings, has been approved and firmly committed to the project.

(c) Submit documentation that this secondary financing and the terms of this Agreement have been approved and consented to by the primary lender, Provident Federal Savings. Said documentation shall specifically refer to the provisions of subparagraph (b) of Paragraph 3 above, relating to security on furniture, fixtures, equipment and trade fixtures.

(d) Submit a letter of interest from Best Western International, Inc. for staff review.

(e) Submit a third party cost estimate or bids covering the proposed improvements to the subject property for staff review.

(f) Submit a copy of the MAI appraisal of the subject property and improvements for staff review.

7. Fire insurance. Borrower shall, at Borrower's

sole expense, keep or cause to be kept insured for the mutual benefit of the Borrower, the primary lender (i.e., Provident Federal Savings), and Lender, as their respective interests may appear at the time of any loss covered by said insurance, all buildings, structures and improvements located on or appurtenant to the subject property and all personal property contained therein, against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for commercial structures, including vandalism and malicious mischief. The amount of such insurance shall be enough to prevent the Borrower or any lender from becoming a co-insurer under the provisions of the policy or policies, but in no event shall the amount be less than 90% of the then actual replacement cost, excluding the cost of replacing excavations and foundations but without deduction for depreciation (herein called full insurable value.) If any dispute as to whether or not the amount of insurance carried by Borrower complies with the foregoing provisions of this paragraph cannot be resolved by agreement of the parties, Lender may, not more often than once each calendar year, require the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the parties for the purposes of this paragraph. All insurance proceeds shall be held in trust by the recipient and shall be used only for the purpose of repairing, restoring and reconstructing the improvements on the premises and putting the same in as good condition as they were prior to such loss; provided, that any insurance proceeds remaining after completing said restoration of the premises shall belong solely to the Borrower. If Borrower fails to or refuses to

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procure or to maintain insurance as required by this paragraph, Lender shall have the right, at Lender's election and without notice, to procure and maintain such insurance and the premiums paid shall constitute a debt from Borrower to Lender, payable on demand.

8. Financial statements. Copies of annual statements and operating statements of the motel and restaurant business to be operated on the subject property, as required by the Borrower's loan agreement with the primary lender, Provident Federal Savings, shall be furnished to Lender when and as they are issued. Borrower shall also furnish to Lender, upon request, current financial and other supporting data as required by Lender.

9. Review of loan documents by City Attorney. All loan documents to be executed by Lender pursuant to this Agreement shall be subject to examination and approval by the City Attorney of the City of Soledad.

10. Indemnification. Borrower will indemnify Lender against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including fee of counsel) of whatever kind or nature which may be imposed on, incurred by or asserted at any time against Lender in any way relating to or arising in connection with, the construction of the improvements, the offer or sale of any unit, and/or the use, occupation or operation of any of the properties to be encumbered by the Deed of Trust.

11. Job creation. Borrower agrees that he will create at least 25 new jobs at the motel and restaurant to be constructed on the subject property within the first year following the opening of said motel. At least 20 of said jobs shall be for low and moderate income persons, as defined by

the Lender.

12. Hiring plan. Borrower shall adopt a hiring plan giving special emphasis to recruiting and hiring residents of the Soledad area, minorities and women.

13. Patronage of small business vendors and suppliers. In the operation of said motel and restaurant, Borrower shall emphasize the use of vendors and suppliers who operate small businesses, particularly in the Soledad area, and businesses that are women and minority owned and operated.

14. Equal opportunity policy. In the operation of said motel and restaurant, Borrower shall be an equal opportunity employer and shall comply with all state and federal law, rules and regulations relating to civil rights.

15. Waiver. No waiver by Lender of any default of Borrower under the terms of this Agreement shall be construed or held to be a waiver of any succeeding or preceding default hereunder.

16. Survival of Covenants. All covenants and agreements herein contained shall survive the closing of the loan transaction contemplated by this Agreement and shall remain in full force and effect.

17. Time of the essence. Time and specific performance are of the essence of this agreement, and of every provision hereof.

18. Successors and assigns. Subject to the restriction on assignment hereinabove set forth, this Agreement and all of the provisions hereof shall inure to the benefit of, and shall be binding upon, the heirs, legal representatives, successors and assigns of the respective parties hereto.

19. Attorneys' fees. In case either party shall

bring suit against the other to compel the performance of, or to recover for the breach of, any covenant, agreement or condition therein written, the prevailing party shall be entitled to a reasonable attorneys' fee, to be fixed by the court and made a part of any judgment entered therein.

20. Notices. Any notice to be given hereunder will be sufficiently served if given personally to the party to be served, or if deposited in the United States mail, registered or certified, addressed to the party to be served at the address shown below that party's signature hereto, or at such other address as said party hereafter may designate for the service of notices hereunder.

IN WITNESS WHEREOF, the said parties have executed this Agreement this 28th day of November, 1984.

LENDER:

BORROWER:

CITY OF SOLEDAD, a municipal corporation

By *[Signature]*
City Manager
Pursuant to Resolution 1562

[Signature]
C. Edward Trout

Martha X. Magdaleno

*Loan Agreement
2/28 84*

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28th Nov 84

Martha X. Magdaleno

EXHIBIT "A"

All that real property situate in and being a portion of the Rancho San Vicente, County of Monterey State of California, described as follows:

BEING a part of that certain 166.02 acre tract conveyed by Stephen Joseph Field to James Vanoli, by deed dated September 27, 1944, recorded October 5, 1944 in Volume 843 of Deeds at Page 234, records of Monterey County, California, and being particularly described as follows, to-wit:

COMMENCING at a 4 x 4 survey post, marked P standing at the southwest corner of that certain 2 acre tract conveyed by Stephen Joseph Field to John B. Pura, by deed recorded in Volume 513 of Official Records at Page 157 therein, Monterey County Records, California, and on the east side of the California State Highway, known as U.S. Highway 101, (100 feet wide), as conveyed by Stephen Joseph Field to State of California by deed recorded in Volume 507 of Deeds at Page 143, and running thence along the east side of said State Highway, _____

- (1) S. 14° 57' E., 329.15 feet to an iron pipe, leave east side of State Highway, and running
- (2) N. 74° 57' E., at 465.61 feet an iron pipe standing on the southwest side of the old California State Highway, (60 feet wide), 497.4 feet to station, in the center line of the same, thence along the center line of said old State Highway,
- (3) N. 34° 28' W., 349.35 feet to station, on the northerly line of the said Vanoli 166.02 acre tract, thence along the northerly line of said 166.02 acre tract,
- (4) S. 74° 55' W., at 31.79 feet a 4 x 4 survey post marked P, standing at the southeast corner of the said Pura 2 acre tract, on the southwest side of said Old Highway, (60 feet wide), 379.59 feet to the place of beginning.