

RESOLUTION NO. 2451

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
AUTHORIZING THE EXECUTION OF A FOURTH REVISION
OF LOAN AGREEMENT WITH C. EDWARD TROUT

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

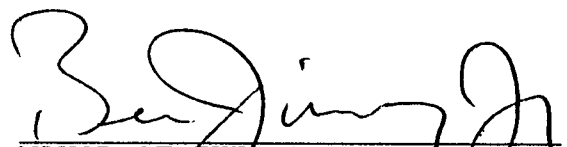
SECTION 1 That the City Manager be, and is hereby authorized and directed for and in behalf of the City Council of the City of Soledad, to execute with C. Edward Trout, a Fourth Revision of Loan Agreement in the form of the document hereunto attached marked, Exhibit "A," and by reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 11th day of September, 1995, by the following vote:

AYES, and in favor thereof, Councilmembers: John Holguin, Fred Ledesma, Richard Ortiz, Mayor Ben Jimenez, Jr.

NAYES, Councilmembers. None

ABSENT, Councilmembers. Mayor Pro Tem Fabian Barrera



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interest payments to be made on said Note, as shown in paragraph 1 of the Third Revision of Loan Agreement, is hereby rescinded.

2. The principal amount of said Note, \$200,000.00, together with unpaid interest payments accrued from the payment schedule set forth in the Third Revision of Loan Agreement, in the sum of \$34,601.00, has been amortized over a 25-year period for monthly payments of \$1,733.32. Said payments shall be made on the last day of each month, commencing on April 30, 1994, the last payment being due on March 31, 2019.

3. It is understood and agreed that by executing this Fourth Revision of Loan Agreement the LENDER is not waiving its right to require that principle and interest payments hereafter becoming due on said note under the Fourth 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 the original loan agreement (Exhibit A) shall remain in full force and effect.

5. Pursuant to the terms of the original 1984 loan agreement, which are incorporated herein and expressly held in full force and effect in all respects excepting those changes set forth in this Fourth Revision, LENDER may, at its election, declare the entire unpaid principal balance and interest immediately due and payable by BORROWER upon the nonpayment of any installment of interest, or of principal, when due. In addition to this remedy, LENDER and BORROWER agree that LENDER shall have the option to impose a late payment penalty of 5%, compounded monthly, on any delinquent installment payment which is overdue by more than ten (10) days. Said penalty payment shall be included with the late payment or added to the installment payment due in the following month.

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

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,

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.

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

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



FOUNDERS TITLE COMPANY
406595

ORDER NO.

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.