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MTC-17456

ASSUMPTION AGREEMENT AND MODIFICATION AND  
EXTENSION OF NOTE AND LOAN DOCUMENTS

THIS AGREEMENT is made this 27<sup>th</sup> day of February, 1987, by and between THUNDERBIRD-KLAMATH FALLS, INC., an Oregon corporation (hereinafter "Successor Borrower") and PACIFIC FIRST FEDERAL SAVINGS BANK, a federally-chartered stock savings bank organized under the laws of the United States of America (hereinafter "Lender").

RECITALS:

A. On March 10, 1972, EDWARD H. PIETZ, TOD E. McCLASKEY, E. D. VARELDZIS, GLORIA PIETZ, MAXINE McCLASKEY, GEORGIA VARELDZIS, and HARRY BRUSS (hereinafter collectively "Original Borrower") executed a Note and Agreement in the original principal sum of Nine Hundred Fifty Thousand and No/100 Dollars (\$950,000.00) (hereinafter the "Note") in favor of Lender, with an original maturity date of April 1, 1992. The Note was secured by a mortgage dated March 10, 1972, recorded March 17, 1972, in Volume M72, Page 2905, in the Klamath County, State of Oregon Records (hereinafter "Mortgage"). That Mortgage covered the real property located in the City of Klamath Falls, County of Klamath, State of Oregon, commonly known as Red Lion Motor Inn and described in Exhibit A attached hereto and by this reference incorporated herein.

B. In connection with the above-described loan (hereinafter "Loan"), the following additional documents were executed:

- (1) Chattel Mortgage dated March 10, 1972;
- (2) Assignment of Leases and Rents dated March 10, 1972, recorded March 17, 1972, in Volume M72, Page 2908; and
- (3) Financing Statement filed March 17, 1972, as No. 62243.

These documents, together with the Note and Mortgage, are hereinafter collectively referred to as "Loan Documents."

C. Successor Borrower desires to assume the obligations of Original Borrower to Lender under the Loan Documents. Lender is willing to permit such an assumption so long as Successor Borrower assumes all liability.

D. Successor Borrower and Lender further desire to modify certain terms and provisions of the Loan Documents.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Amounts Due on Note and Mortgage: As of February 1, 1987, there remains due and owing on the Note an unpaid principal balance of \$464,012.81 and unpaid interest of -0-.

2. Assumption of Liability: Successor Borrower assumes and agrees to pay and perform all of the liabilities and obligations of Original Borrower as evidenced in the Loan Documents as modified herein and to abide by the warranties and terms thereof as if Successor Borrower were the Original Borrower. Notwithstanding anything contained in the Loan Documents to the contrary, Lender shall now have full recourse to Successor Borrower and its assets to recover all amounts due and owing under the Loan Documents.

3. Release of Liability of Original Borrower and Guarantors: Lender releases from all liabilities and obligations on the Loan Documents Original Borrower and any former guarantors, and each of them, except RL Acquisition Company, A California Limited Partnership, a California limited partnership, pursuant to its guaranty of even date herewith and except Successor Borrower if Successor Borrower was the Original Borrower or was a part of Original Borrower.

4. Modification and Extension Fee: Successor Borrower will pay a modification and extension fee of \$2,405.08 upon execution of this Agreement.

5. Modification of Interest Rate: Effective September 1, 1986, through and including June 30, 1987, the unpaid principal balance of the Note shall bear interest at a rate, until default, equal to three and one-half percent (3½%) per annum higher than and varying on each Quarterly Date with the CD Rate, as such terms are hereafter defined. The interest rate shall be adjusted as of each Quarterly Date, as hereafter defined, to correspond with the CD Rate on the date of the adjustment. If any interest rate is not divisible into a whole number by one-eighth (1/8th), the interest rate shall be rounded up to the nearest one-eighth of one percent (.125%).

For the purposes of this Agreement, "CD Rate" shall mean the average rate for the first two (2) weeks of the month preceding the adjustment date for three (3) month certificates of deposit (secondary market) as quoted in the Federal Reserve H.15 (519) Statistic Report on the last day of said two-week period. The CD Rate shall be adjusted on the first day of each January, April, July and October thereafter (the "Quarterly Date"), beginning with whichever Quarterly Date first occurs, based upon the same index. If at any time during the term of the Loan the CD

Rate is not readily ascertainable in the manner described in the first sentence of this paragraph, the CD Rate shall be the certificate of deposit rate (or, in Lender's judgment, a rate comparable thereto) offered for a term of ninety (90) days by the then-largest bank in the United States of America (as measured by assets).

Effective July 1, 1987, through and including maturity, the unpaid principal balance of the Note shall bear interest at a rate, until default, equal to two and one-half percent (2½%) per annum higher than and varying on each Quarterly Date with the CD Rate. The interest rate shall be adjusted as of each Quarterly Date to correspond with the CD Rate on the date of the adjustment. If any interest rate is not divisible into a whole number by one-eighth (1/8th), the interest rate shall be rounded up to the nearest one-eighth of one percent (.125%).

If and so long as any default exists under the Note or any of the security granted to secure the Note, the interest rate on the Note, and on any judgment obtained for the collection of the Note, shall be increased from the date of default to a rate (the "Default Rate") equal to five percent (5%) per annum higher than and varying daily with the otherwise applicable interest rate on the Note.

6. Modification of Monthly Payments: Commencing with the payment due on October 1, 1986 and continuing until and including the payment due on September 1, 1989, the Note shall be payable in monthly installments of interest only. Commencing with the payment due on October 1, 1989, the Note shall be payable in monthly installments of principal and interest in an amount sufficient to repay said principal and interest in equal monthly installments over a period of twenty-five (25) years from September 1, 1989 (the "Amortization Period").

After the interest-only period, payments shall be adjusted on each Quarterly Date to reflect the then-current interest rate and the remaining portion of the Amortization Period.

On the first day of the first month after each Quarterly Date, Lender shall calculate the new monthly installment. The installment shall be calculated using the Amortization Period remaining as of each Quarterly Date and the then-current interest rate on the Note. Lender shall advise Successor Borrower in writing of the information used in making the calculations of the monthly installments.

7. Modification of Maturity Date: The maturity date is hereby changed from April 1, 1992, to August 31, 1996.

8. Modification of Prepayment Terms: The provisions of the Loan Documents concerning prepayment are modified to provide as follows:

The Note may be prepaid in whole or in part at any time upon giving Lender written notice at least ten (10) days prior to prepayment and when accompanied by a prepayment premium equal to three percent (3%) of the loan amount to be prepaid if prepayment is made on or after the date of this Agreement and before September 1, 1987, reducing to two percent (2%) of the loan amount to be prepaid if prepayment is made on or after September 1, 1987, and before September 1, 1988, and one percent (1%) of the loan amount to be prepaid if prepayment is made on or after September 1, 1988, and before September 1, 1994, and no prepayment premium shall apply thereafter. Said premium shall be in addition to all other sums payable to Lender.

In the event of prepayment due to default and acceleration or from insurance proceeds (but only if insurance proceeds are applied to the loan balance at Successor Borrower's request), the prepayment premium provided herein shall apply.

9. Priority of Mortgage Not Affected: The Note and Mortgage are hereby amended to provide that the interest rate, payment terms, and maturity date may be adjusted, renewed, and renegotiated as provided therein or herein. The priority of the Mortgage shall not be affected by this Agreement or by renegotiation or adjustment of the interest rate in the Note upward or downward, which may increase or decrease the amount of periodic payments and may extend the term of the Note or Mortgage, or both. The priority of the Mortgage also shall not be affected by the execution of new notes or agreements for modification and extension of Note and Mortgage during the term thereof which reflect changes made pursuant to any of the adjustments described in the Mortgage or in this Agreement. Unless otherwise provided by law, the priority of the Mortgage shall not be affected by any change in terms whether or not it adversely affects subordinate or prior interest holders.

10. Obligation to Pay Debt and Costs: In consideration of this Agreement, Successor Borrower unconditionally agrees to pay the indebtedness evidenced by said Note as hereby amended, to perform each and all of the conditions and covenants required to be performed by Original Borrower and Successor Borrower under the Loan Documents and this Agreement, and to pay all costs of Lender in connection with preparation and recording of this Agreement, including but not limited to title insurance costs and premiums, attorneys' fees, recording fees, escrow fees and taxes.

As used in this Agreement or any other Loan Document, "attorney's fees" shall include attorney's fees, if any, which shall be incurred whether or not legal action is commenced

and any such fees incurred at trial, arbitration, interpleader, bankruptcy, hearing, or any judicial proceeding, and on appeal.

11. All Other Terms Unmodified: Except as specifically provided herein, the Loan Documents shall remain in full force and effect in accordance with their respective terms and conditions. This Agreement is subject to all of the conditions and covenants expressed in said Note or in said Mortgage or in any other security documents executed in connection therewith including, among others, conditions and covenants providing for the use of the loan proceeds, acceleration of maturity and for the enforcement of the provisions of the Note and Mortgage in the event of default in the performance of any obligation, which provisions relating to default and/or acceleration shall be applicable to obligations hereby amended as well as to obligations not so amended.

12. Status of Title: In order to induce Lender to execute this Agreement, Successor Borrower represents and warrants that title to the real property described in the Mortgage is now vested in Thunderbird-Klamath Falls, Inc., an Oregon corporation subject only to those matters existing at the time of the recordation of the Mortgage and current taxes, and that no one other than Successor Borrower has any interest in said real property except as hereinabove set forth.

13. Use of Property: This Agreement will not allow use of the Property described in this Agreement in violation of applicable land use laws and regulations. Before signing or accepting this Agreement, the person acquiring fee title to the Property should check with the appropriate city or county planning department to verify approved uses.

14. Effect of Agreement: This Agreement constitutes an amendment to the Loan Documents and is not and shall in no circumstances whatsoever be construed as a novation thereof and shall not adversely affect the priority of the Mortgage and other Loan Documents as first recorded.

15. Indemnification and Hold Harmless: In order to induce Lender to enter into this Agreement, Successor Borrower agrees to indemnify, defend, and hold Lender, its officers, agents, employees, participants, and assigns harmless of and from any and all claims, debts, demands, lawsuits, injuries, damages, penalties, judgments, awards, losses, liabilities, interest, attorney's fees, costs, and expenses of whatever kind or nature arising out of or connected with the execution of this Agreement.

16. Release of All Claims and Waiver of All Defenses: In order to induce Lender to enter into this Agreement, Successor Borrower hereby unconditionally waives and releases Lender, its officers, agents, employees, participants, and assigns from all claims, defenses, demands, damages, costs, and causes of action

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of any kind or nature, known or unknown, existing or contingent to date, excepting therefrom, however, Lender's compliance with all of the terms and conditions of this Agreement and future compliance by Lender with all the terms and conditions of the Loan Documents as modified herein.

17. Non-Recourse: Notwithstanding anything to the contrary contained in this Agreement or in any of the Loan Documents, Lender agrees that in the event the Property is transferred to RL Acquisition Company, a California Limited Partnership a California limited partnership ("RLAC"), none of the general or limited partners of RLAC nor any of their respective officers, directors, employees, or agents (hereinafter collectively called the "Non-Recourse Parties") shall be personally liable for the payment of any sums now or hereafter owing to Lender under the terms of this Agreement or any of the Loan Documents. Lender agrees that in the event of a transfer of the Property to RLAC, its rights hereunder shall be limited to proceeding against the assets of RLAC and that any judgment rendered in favor of Lender in any proceeding brought to enforce this Agreement or any of the Loan Documents shall be satisfied solely from the assets of RLAC, and Lender shall have no right to proceed directly against the Non-Recourse Parties for the enforcement of any monetary claim against RLAC. It is expressly understood and agreed, however, that nothing contained in this paragraph shall in any manner or way prevent Lender from naming any of the Non-Recourse Parties in any proceeding brought to enforce this Agreement or any of the Loan Documents to the extent necessary to maintain such proceeding.

# NOTICE TO BORROWER

DO NOT SIGN THIS INSTRUMENT BEFORE YOU READ IT. THIS INSTRUMENT PROVIDES FOR THE PAYMENT OF A PENALTY IF YOU WISH TO REPAY THE LOAN PRIOR TO THE DATE PROVIDED FOR REPAYMENT IN THE NOTE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

LENDER:

PACIFIC FIRST FEDERAL SAVINGS BANK

By: 

Its \_\_\_\_\_

[SIGNATURES CONTINUED NEXT PAGE]

SUCCESSOR BORROWER:

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THUNDERBIRD-KLAMATH FALLS, INC., an  
Oregon corporation

By: H. Raymond Bingham  
H. Raymond Bingham, Vice President

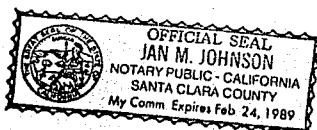
STATE OF Oregon  
County of Multnomah ) ss.

On this 27 day of February, 1987, before me  
appeared Steven A. Davis, to me personally known, who  
being duly sworn did say that he is the Vice-President of  
PACIFIC FIRST FEDERAL SAVINGS BANK and that the foregoing  
instrument was signed in behalf of said Corporation by authority  
of its Board of Directors, and acknowledged that said instrument  
is the free act and deed of said Corporation.

Valerie D Fisher  
Notary Public for Oregon  
My Commission expires: 4-15-87

STATE OF CALIFORNIA  
County of SANTA CLARA ) ss.

On this 26<sup>th</sup> day of FEBRUARY, 1987, before me  
appeared H. Raymond Bingham, to me personally known, who being  
duly sworn did say that he is the Vice President of THUNDERBIRD-  
KLAMATH FALLS, INC., an Oregon corporation, and that the fore-  
going instrument was signed in behalf of said Corporation by  
authority of its Board of Directors, and acknowledged that said  
instrument is the free act and deed of said Corporation.



Jan M. Johnson  
Notary Public for CALIFORNIA  
My Commission expires: 2-24-89



## EXHIBIT A

## DESCRIPTION OF PROPERTY

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The following described real property situate in Klamath County, Oregon:

Beginning at a  $\frac{1}{4}$  inch iron pin on the South line of the relocated right of way of the Klamath Falls-Lakeview Highway (South Sixth Street) which bears South  $80^{\circ}45'$  West a distance of 290.3 feet and South  $0^{\circ}06'30''$  West a distance of 11.82 feet from the Northeast corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3 Township 39 South, Range 9 E.W.M.; said iron pin also being the Northwest corner of parcel of land conveyed to the United States National Bank of Portland by deed recorded in Vol. 293, page 435, Deed records of Klamath County, Oregon; thence North  $89^{\circ}58'30''$  West along said relocated right of way line, a distance of 100.0 feet to an iron pin and the true point of beginning of this description; thence South  $0^{\circ}06'30''$  West parallel with the West line of said United States National Bank parcel a distance of 150.0 feet to an iron pin; thence South  $89^{\circ}58'30''$  East parallel to the South line of said re-located highway right of way a distance of 190.0 feet to an iron pin on the West line of said United States National Bank parcel; thence South  $0^{\circ}06'30''$  West along said West line a distance of 30.0 feet to a  $\frac{5}{8}$  inch iron pin marking the Southwest corner of said parcel; thence South  $0^{\circ}55'30''$  East a distance of 329.18 feet, more or less, to a  $\frac{5}{8}$  inch iron pin on the Northeasterly right of way line of the O.C.&E. Railroad; thence North  $67^{\circ}15'$  West along said right of way line a distance of 472.81 feet, more or less, to an iron pin on the Easterly right of way line of the U.S.R.S. Drain 1-C; thence North  $29^{\circ}11'00''$  West along said right of way line a distance of 65.47 feet to an iron pin; thence North  $01^{\circ}22'00''$  West along the West line of parcel of land conveyed to Johann L. Uhrek et ux., by deed recorded September 20, 1950, Deed Vol. 242, page 201, records of Klamath County, Oregon, a distance of 266.9 feet, more or less, to the South line of the said Klamath Falls-Lakeview Highway (South Sixth Street); thence South  $89^{\circ}58'30''$  East along said relocated right of way line a distance of 367.8 feet, more or less, to the point of beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of March A.D., 19 87 at 3:56 o'clock P M., and duly recorded in Vol. M87  
of Mortgages on Page 3642

FEE \$33.00

By Evelyn Biehn, County Clerk