

## CITY OF SAN DIEGO

### CONSENT TO ASSIGNMENT OF LEASE AGREEMENT

This Consent to Assignment of Lease Agreement ("Consent") is made as of January 23 2007, by the City of San Diego ("CITY"), as lessor, under that certain lease agreement dated October 17, 1983, by and between Montfield Financial, Ltd., a California limited partnership ("LESSEE" and/or "ASSIGNOR"), and filed as document number RR-259434 in the Office of the City Clerk (the "Lease"), and by R & D Properties LLC, a California limited liability company ("R & D"), and Ralph Burni ("Mr. Burni"), individually and as Trustee of the Ralph Burni Trust U/D/T dated April 10, 1989, as amended ("Burni Trust") (collectively, "ASSIGNEE").

### RECITALS

This Consent is made with regard to the following facts:

- A. CITY and LESSEE have entered into the Lease where CITY leased to LESSEE that certain real property identified as Lots 14 and 15, Montgomery Field, and upon which real property now exists the Four Points by Sheraton San Diego Hotel with the street address of 8110 Aero Drive, San Diego, California 92123 ("Premises"). The Premises are more fully described in the Lease.
- B. ASSIGNOR wishes to assign the Lease to ASSIGNEE and ASSIGNEE agrees to assume all of the rights, title, and interest in the Lease under the provisions of the Agreement of Purchase and Sale and Joint Escrow Instructions between Montfield Financial, Ltd. and R&D Properties, LLC and Ralph Burni, Trustee, dated April 28, 2006 (the "Assignment"), a copy of which is attached to this Consent as Exhibit "A."
- C. ASSIGNOR and ASSIGNEE desire to obtain CITY's consent to the Assignment and CITY is willing to consent to the Assignment on the terms and conditions contained herein.
- D. ASSIGNEE acknowledges that this Consent when signed by CITY does not relieve it from any requirements under the Lease, including but not limited to, the further development of Parcel "B" of the Premises in accordance with the General Development Plan, on file with the CITY, as further discussed in Section IV(B)(8) of the Lease, with said development to be completed on or before March 31, 2010, and to future reviews of percentage rate adjustments in accordance with the Lease.
- E. Further, ASSIGNOR and ASSIGNEE acknowledge CITY's desire to maintain a high quality hotel operation such as Four Points by Sheraton on the Premises.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties all agree as follows:

- 1. Assumption. ASSIGNEE assumes and agrees for the benefit of the CITY to be bound by, and to conform and comply with, every obligation of ASSIGNOR under the Lease, including the amendments made herein after the execution of this Consent by CITY and maintain on the Premises a hotel that provides at least the same level of

quality and service as the hotel currently on the Premises as of the date of this Consent. ASSIGNOR shall remain liable for the payment of all rents and for the performance of all obligations of the Lease. This Consent is not intended to and does not relieve Assignor from any liabilities, obligations, duties, etc. under the Lease.

2. Subsequent Assignments; Recapture. This Consent does not constitute a consent to any subsequent subletting or assignment of the Lease and/or the Premises and does not relieve ASSIGNEE or any persons claiming under or through ASSIGNEE of the obligation to obtain the prior written consent of CITY prior to subletting and/or assigning the Lease and/or the Premises.
3. Default Under the Lease. If ASSIGNEE defaults under the Lease, CITY, without waiving its rights to proceed against ASSIGNEE, may proceed directly against any guarantors, or anyone else liable under the Lease without first exhausting CITY's remedies against any other person or entity liable under the Lease to CITY.
4. Amendment of Master Lease. The Lease shall be amended by adding the following sections to the Lease (with the term "LESSEE" referring to the Lessee under the Master Lease and not in this Consent).
  - 4.1. LESSEE shall comply with Title 24 of the California Code of Regulations (i.e. the "Building Code," as defined in Title 24 of the California Health and Safety Code), the Americans with Disabilities Act of 1990 ("ADA"), and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:
    - a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
    - b. No qualified individual with a disability may be excluded on the basis of a disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE;
    - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
    - d. Where required by law, LESSEE shall, at LESSEE's sole costs and in conformance with all applicable building codes, comply with CITY's disabled access requirements by making accessible any areas of the premises which deny access to disabled persons; and
    - e. LESSEE shall include language in each sublease agreement indicating the sublessee's agreement to abide by the foregoing provisions. LESSEE and each of its sublessees shall be individually responsible for their own ADA compliance program. LESSEE's failure to comply with the above

requirements and/or submitting false information in response to those requirements shall be a default under this Lease.

- 4.2. **Drug Free Workplace.** LESSEE shall comply with the omnibus drug legislation passed by Congress on November 18, 1998 by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances is prohibited on the Premises and specifying the actions that will be taken against employees and/or contractors for violation of the prohibitions;
  - b. Establishing a drug-free awareness program to inform employees about all of the following:
    - 1. the dangers of drug abuse in the workplace;
    - 2. LESSEE's policy maintaining a drug-free workplace;
    - 3. any available drug counseling, rehabilitation and employee assistance programs; and
    - 4. penalties that may be imposed upon employees for drug abuse violations.
  - c. Include in each sublease agreement language indicating the sublessee's agreement to abide by these provisions for a drug-free workplace.

LESSEE and its sublessees shall each be responsible for their own drug-free workplace program.

- 4.3 **Mayor-Council Government.** All references to "City Manager" in this lease and all subsequent amendments to this lease shall be deemed to refer to "Mayor." This section became effective on January 1, 2006, and shall remain in effect for the duration the City operates under the mayor-counsel (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.
5. **Brokerage Commission.** ASSIGNOR and ASSIGNEE agree that CITY shall not be liable for any brokerage commission or finders fee in connection with the consummation of the Assignment or this Consent. ASSIGNOR and ASSIGNEE shall protect, indemnify and hold CITY harmless from any brokerage commission or finders fee in connection with the consummation of the Assignment or this Consent, and from any cost or expense (including attorney's fees) incurred by CITY in defending any claim for any brokerage commission or finders fee. The provisions of this section shall survive the expiration or earlier termination of both the Assignment and this Consent.

6. Master Lease Controls. To the extent that the Assignment by and between ASSIGNOR and ASSIGNEE contradict, supersede, and/or attempt to preempt any term, obligation or right of the CITY under the Lease, the Lease shall control with regard to the rights of the CITY and obligations of ASSIGNOR and ASSIGNEE to the CITY.
7. Controlling Law. The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.
8. Captions. Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.
9. Entire Agreement; Waiver. This Consent constitutes the final, complete, and exclusive statement between the parties to this consent to assignment pertaining to the terms of CITY'S consent. This Consent supersedes all prior and contemporaneous understandings or agreements of the parties, whether oral or written, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and states that agreement modifies this Consent.
10. Waiver of Jury Trial; Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach of this Consent or otherwise for enforcement of any remedy under this Consent, the parties hereto agree that they waive any right to a trial by jury and, in the event of any commencement of litigation, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.
11. Waiver. Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in this Lease. In addition, the acceptance of rents by CITY from ASSIGNEE or anyone else liable under the Lease will not be deemed a waiver by CITY of any provisions of the Lease.
12. Notice. Any notice that may or must be given by any party under this Consent will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to CITY, ASSIGNOR, or ASSIGNEE shall be sent to the respective address set forth on the signature page below, or such other address as the party may designate for service of notice by a notice given in accordance with the provisions of this section. A notice sent pursuant to the terms of this section shall be deemed delivered (a) when delivery is completed, if delivered personally, (b) three (3) business days after deposit into the United States mail, or (c) the day following deposit with a nationally recognized overnight courier if overnight delivery is requested by that courier.

13. Capitalized Terms. All terms spelled with initial capital letter in this Consent that are not expressly defined in this Consent will have the respective meanings given such terms in the Lease.

CITY, ASSIGNOR, and ASSIGNEE have executed this Consent as of the date shown above.

ASSIGNEES:

R & D Properties, LLC,  
a California limited liability company

Date 1-22-07

By: Ralph Burni

Name: Ralph Burni

Title: Managing member

Ralph Burni Individually and as Trustee of the Ralph Burni Trust

Date 1-22-07

By: Ralph Burni

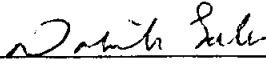
Name: Ralph Burni

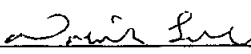
Title: Trustee

ASSIGNOR:

Montfield Financial, LTD  
a California limited partnership

Date 1-22-07

By:   
Aero Street Investors, Inc.  
a California corporation, its sole general partner.

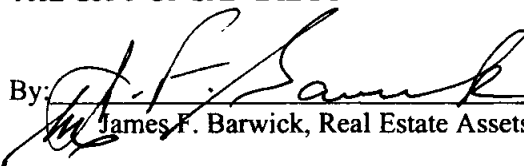
Name: 

Title: Asst. Secretary

LESSOR:

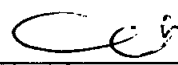
THE CITY OF SAN DIEGO

Date 1/23/07

By:   
James F. Barwick, Real Estate Assets Director

APPROVED AS TO FORM:  
MICHAEL J. AGUIRRE, CITY ATTORNEY

Date 1/23/07

By:   
Deputy City Attorney

**EXHIBIT "A"**

**Agreement of Purchase and Sale and Joint Escrow Instructions between Montfield  
Financial, Ltd. and R&D Properties, LLC and Ralph Burni, Trustee, dated April 28,  
2006**

RECORDING REQUESTED BY )  
 )  
 WHEN RECORDED MAIL TO: )  
 )  
 Pacific Western Bank )  
 Real Estate Lending )  
 401 West "A" Street )  
 San Diego, CA 92101 )  
 Attention: Eric Washington )  
 Loan No. 62046390 )

Above Space for Recorder's Use

### LESSOR ESTOPPEL AND NONDISTURBANCE AGREEMENT

This Lessor Estoppel and Nondisturbance Agreement (the "Agreement") is entered into as of January 8, 2007 by and among PACIFIC WESTERN BANK, a California state-chartered bank, its successors and assigns, including, without limitation any trust assigned a security interest in the Premises (defined below) in connection with a secondary market transaction, its trustee, members, shareholders or certificate holders, as the case may be, and any entity acting as servicer on behalf of the trust and trustee ("Lender"), R & D Properties LLC, a California limited liability company ("R & D"), and Ralph Burni ("Mr. Burni"), individually and as Trustee of the Ralph Burni Trust U/D/T dated April 10, 1989, as amended ("Burni Trust") (collectively, "Borrower"), and the CITY OF SAN DIEGO ("City"), who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts:

1.1 The Ground Lease. The City owns the real property located in San Diego, California, described on the attached Exhibit "A" and commonly known as Lots 14 and 15 of Montgomery Field Airport (the "Real Property"). The Lessee described in Section 1.2 below is the current lessee from the City of the Real Property and all improvements located on the Real Property (collectively, along with all easements appurtenant thereto, the "Premises") pursuant to the following ground lease:

(a) Percentage Lease executed by the City, as lessor, on October 25, 1983 and Montgomery Airport Hotel, LTD ("Montgomery"), a Texas limited partnership, as lessee, which was filed October 17, 1983 as Document R-259434 in the Office of the City Clerk, San Diego, California and recorded September 10, 1984 as File No. 84-343306 in the Official Records of San Diego County, together with any addendums, supplements, modifications and changes described in the attached Exhibit "B" (collectively, the "Ground Lease").

Unless otherwise specified, any reference to "Sections" in this Agreement are references to the corresponding sections in the Ground Lease.

1.2 The Loan. The interest of lessee under the Ground Lease (the "Leasehold") has been assigned to R & D and Burni Trust, as tenants in common (the "Lessee"). Lender intends to make a loan to Borrower in the original principal amount of Nine Million Two Hundred Twenty-One Thousand One Hundred Ninety-One Dollars (\$9,221,191) (the "Loan") to

be secured by a Leasehold Deed of Trust (the "Deed of Trust") and an Assignment of Rents ("Assignment") encumbering Lessee's interest in the Ground Lease and the Premises. The Deed of Trust, the Assignment and the other documents evidencing and securing the Loan are collectively referred to herein as the "Loan Documents." Lender will not make the Loan without obtaining the consent, certifications, and covenants of the City in accordance with this Agreement.

2. Acknowledgement of the City. The City acknowledges and consents to the pledge, assignment, and hypothecation by Lessee of its Leasehold interest under the Ground Lease and of its right, title and interest in and to the Premises including the assignment to Lender of Lessee's interest in and to the Ground Lease (including without limitation Lessee's interest in the Right of First Refusal set forth in Section IV.C.30 of the Ground Lease) and all subleases of the Premises or any portion or portions thereof, in connection with the Loan. The City also acknowledges that Lender satisfies the criteria of the second sentence of Section IV.A.3. of the Ground Lease.

3. Estoppel. The City certifies to Lender and Borrower with respect to the Ground Lease as follows:

3.1 Lease Amendments. Attached hereto as Exhibit "B" is a list of all of the documents comprising the Ground Lease, including all amendments and supplements thereto. Except as identified in Exhibit "B", there are no other amendments, supplements, modifications or changes to the Ground Lease and the Ground Lease, together with the amendments, supplements, modifications and changes described in or attached to said Exhibit "B", constitutes the entire agreement between the City and Lessee with respect to the Premises, and they are enforceable against Lessee and the City in accordance with their terms. For the purposes of this Agreement, all references to Lessee or Borrower are deemed to mean Lessee and/or Borrower, as applicable.

3.2 No Transfer of City's Interest. The City is the lessor under the Ground Lease with respect to the Premises and the City has not transferred its interest under the Ground Lease.

3.3 Term of Ground Lease. The Ground Lease is in full force and effect and the term of the Ground Lease expires on October 31, 2033, unless sooner terminated pursuant to the terms of the Lease.

3.4 No Default. To the best of the City's knowledge, no default, or any event or condition which, with the passing of time or the giving of notice, or both, would constitute a default on the part of the City or Lessee or Lessee's predecessor, Montfield Financial, L.P., a California limited partnership ("Montfield"), exists under the Ground Lease in the performance of the terms, covenants and conditions of the Ground Lease required to be performed on the part of the City, Montfield or Lessee.

3.5 Rent. To the best of the City's knowledge, all rents, charges and amounts due to the City pursuant to and in accordance with the respective terms of the Ground Lease have been paid as of the date hereof. Percentage Rent is determined and paid monthly in arrears in accordance with the percentage rent schedule in Section III.A of the Ground Lease. The

percentage rate(s) for the percentage rent were adjusted on July 1, 2003, and are scheduled for adjustment each ten years thereafter in accordance with Section III.B.4. Minimum annual rent is accounted for, and, if due and owing payable, annually on November 30 of each year in accordance with Section III.E.1. The current annual minimum rent under the Ground Lease is \$496,056.83. The next minimum rent adjustments under the Ground Lease are scheduled to occur on November 1, 2007, and prior to the end of every third year thereafter in accordance with Section III.E.2. The current annual rent payable under the Ground Lease is 706,546.14.

3.6 Uses in Compliance. The current uses of the Premises for a hotel facility and related purposes (including, without limitation, the number, size and location of the parking spaces currently located on the Premises as shown on the ALTA Survey provided to the City by Montfield Financial L.P., but excluding the effects of any development on Parcel B described in the Ground Lease) comply with the requirements under Sections I.A. and IV.B.5. of the Ground Lease and all applicable zoning, land use and occupancy laws and regulations affecting the Premises.

3.7 Lender Foreclosure. In the event of a default under the Deed of Trust and the foreclosure or transfer in lieu of foreclosure of the Leasehold to the Lender (i.e. the mortgagee or beneficiary) or a third party buyer (whether through the foreclosure sale or by transfer from the Lender in the event Lender is the successful bidder at the foreclosure sale) acceptable to City in accordance with the provisions of Section IV.A.3., then, City Manager agrees that, notwithstanding the contrary provisions of Section IV.A.2., City will not require, as a condition to approval of any such assignment, that the proposed assignee pay additional rent to City to equal the full fair market rent justifiable at the date of such proposed assignment. City further consents and agrees that, in the event the Deed of Trust should at any time be in default and be foreclosed (or if the Lease should be assigned to Lender or a successor leasehold mortgagee or beneficiary approved by City in lieu of foreclosure), then the Lender (or such successor leasehold mortgagee or beneficiary approved by City), or any purchaser at such foreclosure proceeding who has been consented to by City as provided in the following sentence, shall be entitled to succeed to Borrower's leasehold estate under the Lease, and such succession shall not constitute a breach of any provision of the Lease prohibiting subletting or assignment or any other provisions of the Lease. City agrees that upon filing of a written application by a prospective purchaser at any time after commencement of foreclosure proceedings, City shall consent to the assignment of the Lease to such purchaser at the time of the foreclosure sale provided that such purchaser is financially capable, has a favorable business reputation, maintains a hotel franchise arrangement with a franchisor having a reputation, image and experience equal to or better than that of the current franchisor, Sheraton Four Points Hotel, and complies with City of San Diego Charter Section 225. City shall give its consent to the new operator if the proposed new operator is financially capable, qualified to conduct the business for which the Lease was granted, and has a favorable business reputation. Following the Borrower's transfer of the leasehold estate to Lender (or a successor leasehold mortgagee or beneficiary approved by City), whether pursuant to foreclosure proceeding or deed in lieu thereof, upon the filing of a written application by the Lender (or such successor leasehold mortgagee or beneficiary) for consent to the assignment of the Lease to an assignee and/or new operator, City will give its consent thereto, provided that the proposed assignee and/or new operator meets the requirements set forth in the preceding sentence. Following any such default or foreclosure (or assignment in lieu thereof) and during such period as Lender (or such successor leasehold mortgagee or beneficiary) shall be endeavoring in good faith to find such an assignee and/or new

operator, Lender (or such successor leasehold mortgagee or beneficiary) shall have the right to operate (directly or through agents) the hotel and related facilities located on the leased premises. In the event of any such assignment to an assignee and/or new operator, Lender (or such successor leasehold mortgagee or beneficiary) shall have no further obligation under the Lease or otherwise. As used herein, the term "new operator" shall include a new owner of the leasehold estate created by the Lease and any organization which such owner shall have engaged to manage the business for which this Lease was granted. For purposes of this provision, the following shall apply: (i) "a favorable business reputation" shall mean the absence of a reputation for dishonesty, criminal conduct, or association with criminal elements, nor shall the determination involve considerations of taste or personal preference; and (ii) the determination as to whether a person is "financially capable and qualified to conduct the business for which this Lease was granted" shall be according to the standards for such characteristics applied generally by City to new or renewed tenants of City.

3.8 Development Plan. The City confirms that the Premises (exclusive of Parcel B described in the Ground Lease) have been developed in accordance with the General Development Plan described in Section IV B.8., and that all requirements of Section IV B.8 have been satisfied. With respect to Parcel B described in the Ground Lease, City and Montfield entered into a letter agreement dated April 1, 2000, a copy of which is attached hereto (the "Letter Agreement"), whereby City agreed to postpone Lessee's requirement to further develop Parcel B in accordance with the General Development Plan on file with the City (as further discussed in Section IV.B.8 Development of the Lease) for a period of ten (10) years commencing April 1, 2000 and ending on March 31, 2010, on the terms and conditions set forth in the Letter Agreement. The terms and obligations of the Letter Agreement shall be binding on Lessee and any successor in interest to Lessee, whether such successor is Lender pursuant to deed in lieu of foreclosure, an assignee of Lender or a third party purchaser at any foreclosure sale conducted by Lender.

3.9 Improvements and Alterations. The City acknowledges and agrees that if improvements and alterations to the Premises are required during the term of the Loan, the approval of the City with respect to such improvements and alterations shall not be unreasonably withheld or delayed.

3.10 Controlled by Lessee. The City acknowledges and agrees that R & D and Burni Trust meet all the requirements to be the Lessee under the Lease and, collectively, are the successor Lessee by assignment acceptable to and approved by the City. City Manager has not and will not require that R & D or Burni Trust pay any additional rent pursuant to the assignment of the Lease to R & D and Burni Trust.

4. Substitute Lessee. With respect to Lender's review and approval of a substitute Lessee, as described in Section IV C.25.b.(3), Lender shall have the right to impose certain conditions (determined by Lender in its sole and absolute discretion) in connection with its consideration of and/or granting of consent (which consent may be withheld in Lender's sole and absolute discretion) to the transfer of the Leasehold interest and the assumption of the Loan by the purchaser of the Leasehold interest. By way of example, Lender's current underwriting standards for borrowers of loans on projects similar to the Premises include, without limitation, the following requirements: (a) Lender shall have approved the creditworthiness of the proposed purchaser in light of Lender's then current underwriting criteria for similar properties and loans,

the particular requirements of the Premises, and the managerial, financial and operational ability of the proposed purchaser; (b) Lender shall have received (i) a non-refundable assumption fee of one percent (1%) of the sum of the then outstanding principal balance of the Loan plus the amount of all undisbursed advances, if any, under the Note, and (ii) a non-refundable processing fee of [Five Thousand Dollars (\$5,000)]; (c) Lender shall have received, at the expense of Borrower or the proposed purchaser, and approved, such environmental, building inspection and seismic reports as may be required by Lender, (d) Lender shall have received reimbursement of all reasonable costs incurred by Lender, in connection with the request for such assumption, (e) Lender shall have received formation documents, good standing certificates, tax identification numbers and other information that Lender may require to establish the identity and authority of the proposed purchaser to enter the transactions; and (f) Lender shall have determined that such proposed purchaser is not named on the list entitled Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons issued by the United States Department of the Treasury, or any other similar or substitute list. Any such assumption shall not, however, release Borrower or any other party from any liability under the Loan Documents without Lender's prior written consent, which may be withheld in Lender's sole discretion.

5. Need for Lender's Consent. The City acknowledges that, with the exception of termination of the Ground Lease by the City for a default on the part of Borrower, during the term of the Loan, after the expiration of Lessee's and any mortgagee's cure periods, pursuant to the Loan Documents, the Borrower may not surrender, cancel, modify or amend the Ground Lease or the Leasehold estate created by the Ground Lease without the prior written consent of Lender.

6. Condemnation or Destruction. In the event of condemnation or destruction of all or any portion of the Premises, the rights of the Lender shall be subject to the terms and conditions of the Ground Lease between the City and Borrower. In the event of any conflict between the provisions of the Loan Documents and the Ground Lease, the provisions of the Ground Lease shall control over all provisions of the Loan Documents and this Agreement. Neither Lessee nor City shall exercise any contractual right to terminate the Lease under Section 19 entitled "Eminent Domain" without the prior written consent of Lender. This provision of the Estoppel shall not limit or restrict in any manner the City's right to exercise its power of eminent domain. All amounts payable to Lessee pursuant to Section 19 shall be paid to Lender to be applied by and in accordance with the arrangements between Lessee and Lender, and Lender shall have the right to participate in any condemnation proceeding affecting the leased premises.

7. No Merger. Without the written consent of Lender, there shall be no merger of the Leasehold estate created under the Ground Lease with the fee estate in the Premises by reason of the fact that such leasehold estate may be held directly or indirectly by or for the benefit of any person who owns the fee estate in all or part of the Premises.

8. Default by Borrower under the Ground Lease.

8.1 For so long as Lender encumbers the leasehold estate of the Borrower under the Ground Lease, if the City or Borrower asserts a claim that the other or the holder of the other's interest under the Ground Lease has failed to perform an obligation under the terms of the Ground Lease or is otherwise in default under the Ground Lease in any respect, the party asserting said claim shall immediately deliver written notice thereof to Lender, by certified mail.

If City is the party that made such assertion, may not exercise any rights that it might otherwise have on account of such failure or default until and unless such notice has been given, and the Lender shall have thirty (30) days from such receipt of said notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. Provided the Lender is diligently pursuing curing the default, the thirty (30) day period maybe extended for the Lender, at the City's reasonable discretion, in order to provide the Lender additional time necessary to gain the legal right to enter the Premises and to cure any such outstanding default. Upon the receipt of any such notice of default, Lender may do any act or thing required of Borrower under the Ground Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture of Borrower's rights under the Ground Lease as if done by the Borrower itself.

8.2 So long as Lender is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, Lender shall not be deemed for that reason to have failed to take or diligently prosecute the proceedings necessary to gain the legal right to enter the Premises or to cure the non-monetary default, provided that Lender uses reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

8.3 Lender shall not be required to perform any act that is not susceptible to performance by Lender. If Lender cures all defaults by Lessee and does not acquire the Lease, or if Lender commences an action to foreclose or enforce any other remedies under the Loan Documents, and thereafter Lessee cures such defaults (which cure City shall be obligated to accept) and Lender then terminates all enforcement proceedings above, then the Ground Lease shall remain in full force and effect between City and Lessee.

9. Premature Termination. If the Ground Lease is terminated prior to its stated expiration as a result of any actual or deemed rejection of such Ground Lease under any provision of Title 11 of the U.S. Code or by extreme circumstances (such as war, riot, etc.) not presently anticipated, then the City will give written notice to Lender of such termination, together with a statement of any and all sums which would at that time be due under the Ground Lease ("Termination Notice") and Lender shall have the option upon payment to City of all amounts owing reflected on said statement to obtain a new lease from the City upon the following terms and conditions:

(a) Upon written request received ninety (90) days after service of the Termination Notice, the City shall enter into a new lease (the "New Lease") of the Premises with Lender or its designee (the "New Lessee") in accordance with subparagraph (b) below; provided, however, that Lender's designee shall meet the requirements for City's consent to assignment of the Lease applicable to a "prospective purchaser" under Section 3.7 above.

(b) The New Lease shall be effective as of the date of termination of the Ground Lease and shall be for the remainder of the term of the Ground Lease at the same rent and other charges therein provided and otherwise upon the same agreements, terms, covenants and conditions contained therein, for the same relative priority in time and right as the Ground Lease and having the benefit of and vesting in the New Lessee all of the same rights, title,

interest, powers and privileges of Borrower thereunder. Concurrently with the execution of the new Lease, the City shall convey to the new Lessee thereunder, title to all buildings, structures and improvements during the term of the Lease and subsequent extensions, together with an assignment of its interest in and to any then-existing subleases under which the sublessee has attained to and been recognized by the City.

If the City is prohibited by the Applicable Laws from entering into a new lease with the same terms and provisions as the Lease, then City shall enter into a new lease with Lender that shall contain all of the terms and provisions of the Ground Lease that are not prohibited by the Applicable Laws.

10. No Automatic Rejection of the Lease. Subject to the terms of this Agreement, unless Lender otherwise consents in writing, City hereby waives, and agrees not to assert or otherwise take the benefit of, Section 365(d) for or any other applicable provisions of the United States Bankruptcy Code (11 U.S.C. §101 et seq.), which may cause the termination of the Ground Lease, or otherwise render it unenforceable in accordance with its terms, whether automatically by operation of law, or otherwise (so long as Lessee or Lender is (a) keeping rent current (b) otherwise complying with the terms of Ground Lease to the extent reasonably possible prior to possession of the Premises by Lender, and (c) exercising its rights to cure any default as provided for in the Ground Lease or this Agreement.

11. Subordination. The parties acknowledge that the Ground Lease (including paragraph 8 of the Special Conditions of the Ground Lease) does not give the City or the Borrower the right to subordinate the Ground Lease, or any modifications or amendments to the Ground Lease entered into pursuant to this Agreement, to any mortgage or deed of trust that may be placed by the City on its fee interest in the Premises, and the City and Borrower further agree not to enter into any such subordination during the term of the Loan. This Section 11 does not prohibit or in any manner limit the City's ability and right to encumber its interest in the Real Property and/or Ground Lease. All potential future fee mortgagees or other lienholders shall execute, acknowledge and deliver a commercially reasonable nondisturbance agreement for the benefit of Lessee and Lender.

12. Lender's Liability Under the Lease. Lender or its nominee, or any purchaser, assignee or transferee, as the case may be, shall be liable to perform the obligations imposed on the Borrower under the Ground Lease only for and during the period it is in ownership of the Leasehold estate created by the Ground Lease.

13. Subleases. Upon any termination of the Ground Lease pursuant to Section 9 above, or any situation in which the Borrower is in default, so long as Lender is acting to preserve the Leasehold estate pursuant to its rights under this Agreement and the Ground Lease, City shall not disturb the possession of any sublessee of the Premises so long as such sublessee is not in default under its sublease, which is subordinate to the Ground Lease.

14. Miscellaneous.

14.1 Further Assurances. Each party to this Agreement shall execute and deliver all instruments and documents and take all actions as may be reasonably required or appropriate to carry out the purposes of this Agreement.

14.2 Counterparts and Exhibits. This Agreement may be executed in counterparts, each of which is deemed an original and all of which together constitute one document. All exhibits attached to and referenced in this Agreement are incorporated into this Agreement.

14.3 Time of Essence. Time and strict and punctual performance are of the essence with respect to each provision of this Agreement.

14.4 Attorney's Fees. The prevailing party(ies) in any litigation, arbitration, mediation, bankruptcy, insolvency or other proceeding ("Proceeding") relating to the enforcement or interpretation of this Agreement may recover from the unsuccessful party(ies) all costs, expenses, and actual attorney's fees (including expert witness and other consultants' fees and costs) relating to or arising out of (a) the Proceeding (whether or not the Proceeding proceeds to judgment) and (b) any post-judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the Proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorney's fees.

14.5 Modification. This Agreement may be modified only by a contract in writing executed by all parties to this Agreement.

14.6 Prior Understandings. This Agreement and all documents specifically referred to and executed in connection with this Agreement (including the Ground Lease): (a) contain the entire and final agreement of the parties to this Agreement with respect to the subject matter of this Agreement, and (b) supersede all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to such subject matter, which precede or accompany the execution of this Agreement. This Agreement confirms the terms and conditions of the Ground Lease and sets forth certain covenants of the parties with respect thereto. In the event there is a conflict between the terms and conditions of the Ground Lease, on the one hand, and the terms and conditions of the Deed of Trust, the loan documents or other agreements or instruments between Lender and Lessee regarding the Ground Lease, on the other hand, the terms and conditions of the Ground Lease shall prevail.

14.7 Interpretation. Whenever the context so requires in this Agreement, all words used in the singular may include the plural (and vice versa) and the word "person" includes a natural person, a corporation, a firm, a partnership, a joint venture, a trust, an estate or any other entity. The terms "includes" and "including" do not imply any limitation. No remedy or election under this Agreement is exclusive, but rather, to the extent permitted by applicable law, each such remedy and election is cumulative with all other remedies at law or in equity. The paragraph headings in this Agreement: (a) are included only for convenience, (b) do not in any manner modify or limit any of the provisions of this Agreement, and (c) may not be used in the interpretation of this Agreement.

14.8 Partial Invalidity. Each provision of this Agreement is valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement (or the application of such provision to any person or circumstance) is or becomes invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons

or circumstances other than those as to which it is held invalid or unenforceable, are not affected by such invalidity or unenforceability.

14.9 Notices. Each notice and other communication required or permitted to be given under this Agreement ("Notice") must be in writing. Notice is duly given to another party upon: (a) hand delivery to the other party, (b) receipt by the other party when sent by facsimile to the address and number for such party set forth below (provided, however, that the Notice is not effective unless a duplicate copy of the facsimile Notice is promptly given by one of the other methods permitted under this paragraph), (c) three business days after Notice has been deposited with the United States postal service as first class certified mail, return receipt requested, postage prepaid, and addressed to the party as set forth below or (d) the next business day after the Notice has been deposited with a reputable overnight delivery service, postage prepaid, addressed to the party as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery-service provider.

If to City:           The City of San Diego  
Real Estate Assets Department, Airports Division  
3750 John J. Montgomery Drive  
San Diego, CA 92123

and to:               The City of San Diego  
Real Estate Assets Department  
Attn: Department Director  
202 C Street, 9th Floor  
San Diego, CA 92101

If to Borrower:   R & D Properties LLC and Ralph Burni, Trustee  
8110 Aero Drive  
San Diego, CA 92123  
Attn: Ralph Burni

If to Lender:       Pacific Western Bank  
Real Estate Lending  
401 West "A" Street  
San Diego, CA 92101  
Attn: Eric Washington

with a copy to:   Pillsbury Winthrop Shaw Pittman LLP  
501 W. Broadway, Suite 1100  
San Diego, CA 92101  
Attn: Angela M. Yates, Esq.

Each party shall make a reasonable, good faith effort to ensure that it will accept or receive Notices to it that are given in accordance with this paragraph. A party may change its address for purposes of this paragraph by giving the other party(ies) written notice of a new address in the manner set forth above.

14.10 Waiver. Any waiver of a default or provision under this Agreement must be in writing. No such waiver constitutes a waiver of any other default or provision concerning

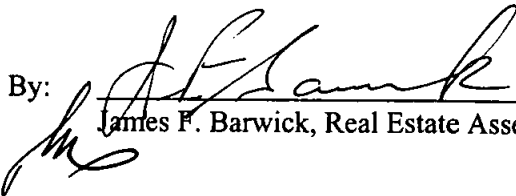
the same or any other provision of this Agreement. A consent to or approval of an act does not waive or render unnecessary the consent to or approval of any other or subsequent act.

14.11 Drafting Ambiguities. Each party to this Agreement and its legal counsel have reviewed and revised this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party or in favor of the party receiving a particular benefit under an agreement may not be employed in the interpretation of this Agreement or any amendment to this Agreement.

14.12 Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies on any person or entity other than the parties to this Agreement and their respective successors-in-interest and permitted assignees, unless such rights are expressly granted in this Agreement to another person specifically identified as a "Third Party Beneficiary."

[Remainder of Page Intentionally Left Blank]

THE CITY OF SAN DIEGO:

By:   
James F. Barwick, Real Estate Assets Director

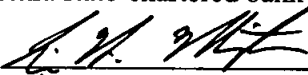
Approved as to form and legality this  
23 day of January, 2007

MICHAEL J. AGUIRRE, CITY ATTORNEY

By:   
Todd Bradley, Deputy City Attorney

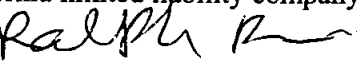
LENDER:

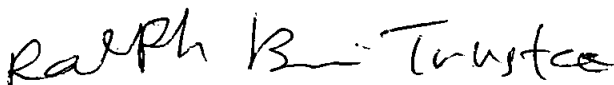
PACIFIC WESTERN BANK,  
a California state-chartered bank

By:   
Its: VICE PRESIDENT

BORROWER:

R & D Properties LLC,  
a California limited liability company

By:   
Ralph Burni  
Its: Manager



Ralph Burni, Trustee of the Ralph Burni Trust  
U/D/T dated April 10, 1989, as amended

STATE OF California )  
COUNTY OF San Diego ) ss.

On January 23, 2007, before me, Stephen L. Geitz, a Notary Public, personally appeared James F. Barwick, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Stephen L. Geitz

Notary Public in and for said State

(Notarial Seal)



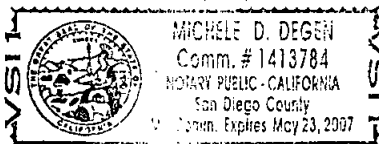
STATE OF )  
COUNTY OF ) ss.

On January 23, 2007, before me, Michele D. Degen, a Notary Public, personally appeared Eric W. Washington, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Michele D. Degen  
Notary Public in and for said State

(Notarial Seal)



STATE OF California  
COUNTY OF San Diego.

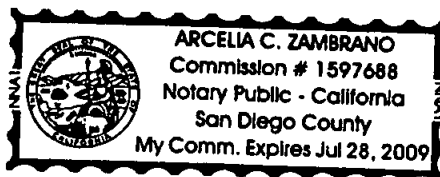
)  
) ss.  
)

On January 23rd, 2007 before me, Arceia C. Zambrano, a Notary Public, personally appeared Ralph Burni, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
Notary Public in and for said State

(Notarial Seal)



## EXHIBIT A

That certain real property situated in the City of San Diego, County of San Diego, State of California, described as Lots 14 and 15, Montgomery Field and shown delineated on Exhibit "A" attached to that certain Percentage Lease recorded in the official records of the County Recorder for the County of San Diego, State of California as Document Number 84-343306 on September 10, 1984, more particularly described below:

THOSE PORTIONS OF LOTS 9, 10, 11, 16, 17 AND 18 OF NEW RIVERSIDE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 679 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 11, 1891; TOGETHER WITH THAT PORTION OF LIME AVENUE ADJACENT TO SAID LOTS AS VACATED AND CLOSED TO PUBLIC USE ON FEBRUARY 9, 1948 BY ORDER OF THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, RECORDED FEBRUARY 13, 1948 AS DOCUMENT NO. 15130 OF OFFICIAL RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF KEARNY VILLA ROAD AND AERO DRIVE AS SHOWN ON RECORD OF SURVEY MAP NO. 9642 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, APRIL 12, 1984 AS FILE NO. 84-133762; THENCE SOUTH  $63^{\circ} 00' 00''$  EAST, ALONG THE CENTER LINE OF SAID AERO DRIVE, 134.11 FEET; THENCE NORTH  $27^{\circ} 00' 00''$  EAST, 60.00 FEET TO A POINT ON THE NORTHERLY RIGHT - OF - WAY LINE OF SAID AERO DRIVE, AND THE TRUE POINT OF BEGINNING; THENCE NORTH  $63^{\circ} 00' 00''$  WEST, 27.61 FEET TO THE BEGINNING OF A NON-TANGENT 102.00 FOOT RADIUS CURVE, CONCAVE NORTH EASTERLY, A RADIAL LINE BEARS NORTH  $51^{\circ} 07' 08''$  EAST; THENCE WESTERLY, NORTH WESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF  $64^{\circ} 02' 52''$  A DISTANCE OF 114.02 FEET; THENCE LEAVING SAID CURVE, NORTH  $25^{\circ} 10' 00''$  EAST, 119.63 FEET TO THE BEGINNING OF A TANGENT 951.00 FOOT RADIUS CURVE, CONCAVE WESTERLY, A RADIAL LINE BEARS NORTH  $64^{\circ} 50' 00''$  WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $21^{\circ} 21' 48''$  A DISTANCE OF 354.49 FEET; THENCE NORTH  $65^{\circ} 28' 32''$  EAST, 750.41 FEET; THENCE SOUTH  $24^{\circ} 31' 06''$  EAST, 1096.30 FEET TO A POINT ON THE NORTHERLY RIGHT - OF - WAY LINE OF SAID AERO DRIVE; THENCE SOUTH  $89^{\circ} 22' 20''$  WEST, ALONG SAID NORTHERLY RIGHT - OF - WAY LINE, 709.12 FEET TO THE BEGINNING OF A NON-TANGENT 1140.00 FOOT RADIUS CURVE, CONCAVE NORTHERLY, A RADIAL LINE BEARS NORTH  $00^{\circ} 37' 55''$  WEST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $27^{\circ} 37' 35''$  A DISTANCE OF 549.79 FEET TO THE TRUE POINT OF BEGINNING.

## **EXHIBIT B**

The "Ground Lease" consists of all of the following:

1. That certain Percentage Lease, as amended, dated October 17, 1983, executed by the City of San Diego ("City") on October 28, 1983, and by Montgomery Airport Hotel, Ltd., a Texas limited partnership, as Lessee, on October 7, 1983, filed in the office of the City Clerk, San Diego, California, as Document R-259434, which was recorded in the Official Records of the County Recorder for the County of San Diego, State of California as Document Number 84-343306 on September 10, 1984.
2. Letter from the City dated January 31, 1998 to Mr. Nabih Geha, Manager, Sheraton Four Points Hotel Re: Percentage Rents for Golf Amenity Activities.
3. Letter from the City dated April 1, 2000 to Mr. Bill Pierpoint, Montfield Financial Ltd., dba Four Points Sheraton Hotel, Reference: Interim Develop Plan for Lease Agreement (RR-259434).
4. City of San Diego General Services/Airports Division Finding of Master Plan Land Use Conformance for Montfield Financial LTD dba Sheraton Four Points Hotel at Montgomery Field executed April 3, 2000 and April 15, 2000 by the Deputy Director, Airports Division and Deputy Director, DEP, respectively.
5. Letter from the City dated December 19, 2003, to Mr. Nabih Geha, General Manager, Montfield Financial, Ltd., regarding minimum rent adjustment.
6. First Amendment to Lease Agreement, Percentage Rate Adjustment filed July 29, 2003 with the City Clerk as Document No. RR-259424-9.