

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**  
**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **May 21, 2007**

**iStar Financial Inc.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation)

**1-15371**  
(Commission File Number)

**95-6881527**  
(IRS Employer  
Identification Number)

**1114 Avenue of the Americas, 27<sup>th</sup> Floor**  
**New York, New York**  
(Address of principal executive offices)

**10036**  
(Zip Code)

Registrant's telephone number, including area code: **(212) 930-9400**

**N/A**  
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

On May 21, 2007, iStar Financial Inc. ("iStar") entered into a definitive asset purchase agreement (the "Asset Purchase Agreement") with Fremont Investment & Loan ("Fremont"), a subsidiary of Fremont General Corporation. The Asset Purchase Agreement contemplates a series of transactions pursuant to which iStar will acquire from Fremont a portfolio of commercial real estate loan assets and other assets relating to Fremont's commercial real estate lending business, and will assume certain liabilities relating to such assets. As consideration for the acquisition, iStar will transfer to Fremont an A-participation interest in the acquired portfolio of loan assets, representing an approximately 70% interest in the portfolio, and will pay Fremont approximately \$1.9 billion in cash. iStar will retain a 30% B-participation interest in the acquired portfolio of loan assets with an approximate \$2.1 billion principal amount. In addition, iStar has agreed to fund up to approximately \$4.4 billion of existing unfunded loan commitments associated with the portfolio. The final purchase price will be subject to adjustments to reflect agreed upon pro-rations. Closing of the transaction is subject to the satisfaction of customary closing conditions and final review of the transaction by the Federal Deposit Insurance Corporation and the Department of Financial Institutions of the State of California.

The Asset Purchase Agreement contains various representations, warranties, covenants and indemnification obligations of the parties.

The Asset Purchase Agreement may be terminated (1) by either party upon a breach by the other party of a representation, warranty, covenant or agreement which would give rise to a failure of a closing condition and is incapable of being cured or is not cured within 30 days, (2) by either party if the transaction is not consummated by September 30, 2007, (3) by either party in the event of certain legal restraints, (4) by mutual written consent of the parties, (5) by either party if Fremont's board of directors determines to accept a Superior Proposal, as defined in the Asset Purchase Agreement, subject to compliance with certain conditions set forth in the Asset Purchase Agreement, including payment of a termination fee, or (6) by either party if the Federal Deposit Insurance Corporation or the Department of Financial Institutions of the State of California advises either party that such regulator objects to the transaction.

iStar has obtained a commitment letter from two commercial banks for a \$2.0 billion loan facility to provide iStar with bridge financing to complete the transaction. iStar expects to replace this interim financing with more permanent financing through the issuance of debt and equity securities following the closing of the transaction.

The foregoing description of the Asset Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of such agreement. A copy of the Asset Purchase Agreement is filed as Exhibit 2.1 to this Current Report and is incorporated by reference into this Item 1.01.

**Item 9.01 Financial Statements and Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
Exhibit 2.1	Asset Purchase Agreement, dated as of May 21, 2007, between iStar Financial Inc. and Fremont Investment & Loan.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Current Report to be signed on its behalf by the undersigned, thereunto duly authorized.

iSTAR FINANCIAL INC.

Date: May 24, 2007

By: /s/ JAY SUGARMAN

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Jay Sugarman  
Chairman and Chief Executive Officer

Date: May 24, 2007

By: /s/ CATHERINE D. RICE

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Catherine D. Rice  
Chief Financial Officer

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
Exhibit 2.1	Asset Purchase Agreement, dated as of May 21, 2007, between iStar Financial Inc. and Fremont Investment & Loan.

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**ASSET PURCHASE AGREEMENT**

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**between**  
**FREMONT INVESTMENT & LOAN**  
**and**  
**iSTAR FINANCIAL INC.**  
**dated as of May 21, 2007**

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1.01(a)	Form of Bill of Sale, Assignment and Assumption Agreement
1.01(b)	Form of Participation Agreement
2.04(d)	Purchase Price Allocation
2.06(j)	Form of Domain Name Agreement
5.09	Form of Transition Services Agreement

**RECITALS:**

WHEREAS, Fremont, directly and through its various Affiliates, is engaged in the commercial real estate mortgage lending business at various locations in the United States (the "*Business*"); and

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Seller wishes to sell to the Purchaser, and the Purchaser wishes to purchase from the Seller, the loans, participation interests, co-lending interests and related assets described in this Agreement, as well as certain other assets owned by the Seller and used in the Business, and in connection therewith the Purchaser is willing to assume certain liabilities of the Seller relating thereto, as particularly set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Seller and the Purchaser hereby agree as follows:

**ARTICLE I.**

**DEFINITIONS**

Section 1.01 *Certain Defined Terms.* For purposes of this Agreement:

"*Accelerated Closing Trigger Date*" means the date when each of the conditions set forth in Sections 6.02(a), (b), (c) and (d) have been satisfied.

"*Acquisition Proposal*" means (a) any proposal or offer from any Person other than the Purchaser or any of its Affiliates relating to any direct or indirect acquisition of (i) all or substantially all of the assets of Fremont and its subsidiaries taken as a whole, (ii) all or substantially all of the Purchased Assets taken as a whole or (iii) more than 50% of the outstanding equity securities of Fremont or its Affiliates, (b) any tender offer, exchange offer or agreement that, if consummated, would result in any Person beneficially owning more than 50% of the outstanding equity securities of Fremont or its Affiliates, (c) any merger, consolidation or other business combination with Fremont or its Affiliates or (d) any recapitalization of Fremont or its Affiliates or similar transaction that, if consummated, would result in any Person beneficially owning more than 50% of the outstanding equity securities of Fremont or its Affiliates (the result of which, as to events described in clauses (a)(iii), (b), (c) or (d), would be to prohibit, impede or otherwise adversely affect the ability of the parties to close the transaction contemplated hereby).

"*Action*" means any Claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

"*Affiliate*" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

"*Agreement*" or "this Agreement" means this Asset Purchase Agreement between the parties hereto (including the Exhibits and Schedules hereto and the Disclosure Schedule) and all amendments hereto made in accordance with the provisions of Section 9.07.

"*Ancillary Agreements*" means the Participation Agreement, the Transition Services Agreement, the Sublease Agreements, the Bill of Sale, the Domain Name Agreement and the assignments and assumption agreements to be executed and delivered in connection with this Agreement.

"*Benefit Plan*" means any "Employee Pension Benefit Plan" (as defined in Section 3(2) of ERISA), "Employee Welfare Benefit Plan" (as defined in Section 3(1) of ERISA), "Multi-Employer Plan" (as defined in Sections 3(37) or 4001(a)(3) of ERISA), pension plan, plan of deferred compensation, medical plan, life insurance plan, long-term disability plan, dental plan, "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA), material personnel policy (including, but not limited to, vacation time, holiday pay, bonus programs, moving expense reimbursement programs and sick leave), excess benefit plan, bonus or incentive plan (including, but not limited to, stock options, restricted stock, stock bonus and deferred bonus plans), severance, change-of-control agreement, employment agreement, consulting agreement or any other material benefit, program or contract, whether or not written or pursuant to a collective bargaining agreement, in any case sponsored, maintained, contributed to or required to be contributed to, or entered into by the Seller or any ERISA Affiliate of the Seller for the benefit of any current or former Business Employee, or with respect to which Seller would reasonably be expected to incur any Liability.

"*Bill of Sale*" means the Bill of Sale, Assignment and Assumption Agreement with respect to the Purchased Assets to be executed by the parties at the Closing, substantially in the form of Exhibit 1.01(a).

"*Business Day*" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York.

"*Business Employee*" means any employee of the Seller whose employment, as of the date hereof, relates primarily to the Purchased Assets.

"*CERCLA*" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended through the Closing.

"*Claims*" means any and all administrative, regulatory or judicial actions, suits, petitions, appeals, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations, proceedings, consent orders or consent agreements.

"*Class 1 Loans*" means those binding and non-binding commitment letters which have been issued by Fremont and which are listed on Schedule 2.10(b) (i) hereto.

"*Class 2 Loans*" means those letters of interest which have been issued by Fremont and "preparing for committee" loans, each as listed on Schedule 2.10(b) (ii) hereto.

"*Closed Special Loans*" means those loan commitments which have been funded and which are listed on Schedule 2.10(a) hereto.

"*COBRA*" means Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code.

"*Code*" means the Internal Revenue Code of 1986, as amended through the date hereof.

"*Collateral Documents*" means (a) with respect to each Loan and each of the Special Loans, each and every collateral document, mortgage, security agreement, assignment of rents, pledge agreement, guaranty, indemnification agreement, assignment of management agreement, assignment of stock or partnership or membership units, UCC financing statements, regulatory agreement, intercreditor agreements, participation agreements, title insurance policies, financing statement search reports, tax and insurance escrows, letters of credit, certificates of deposit or deposits or escrows of any kind, fire and casualty insurance policies, flood hazard insurance policies, and other insurance policies, and each other material document, agreement or instrument under which property is pledged, assigned, granted or otherwise conveyed or provided to or for the benefit of the Seller or any of its Affiliates to secure, support or guaranty a borrower's obligations under such Loan or Special Loan, and (b) with respect to any of the foregoing, together with any amendments or supplements thereto or modifications, renewals, substitutions and/or extensions thereof in effect as of the Closing Date.

"control" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

"Conveyance Taxes" means all sales, use, bulk sale, value added, transfer, stamp, stock transfer, real property transfer or gains and similar Taxes, including, without limitation, Transfer Taxes.

"DFI" means the Department of Financial Institutions of the State of California.

"Disclosure Schedule" means the Disclosure Schedule attached hereto, dated as of the date hereof, delivered by the Seller to the Purchaser in connection with this Agreement.

"Distribution" means, with respect to each Loan, any payment or other distribution (whether received by setoff or otherwise) of cash (including interest, dividends or fees) under or in respect of the related Loan.

"Encumbrance" means any (a) mortgage, pledge, lien, security interest, charge, hypothecation or other encumbrance, security agreement, security arrangement or adverse Claim against title, control or proceeds of any kind; (b) purchase agreement, option agreement, put arrangement or buy-sell arrangement; (c) subordination agreement or arrangement resulting in subordination of any kind; or (d) agreement to create or effect any of the foregoing; *provided, however*, that with respect to the Loans, nothing expressly set forth in the Loan Documents shall be deemed an Encumbrance hereunder.

"Environment" means surface waters, ground waters, soil, subsurface strata and ambient air.

"Environmental Laws" means all Laws, now or hereafter in effect and as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the Environment, health, safety, natural resources or Hazardous Materials, including CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 6901 *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*; the Atomic Energy Act, 42 U.S.C. §§ 2011 *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 *et seq.*; and the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any trade or business, whether or not incorporated, that together with the Seller would be deemed a "single employer" within the meaning of section 4001(b) of ERISA.

"Excluded Taxes" means (a) all Taxes relating to the Excluded Assets or Excluded Liabilities for any period; (b) all Taxes relating to the Purchased Assets for any period prior to the Closing Date; (c) Conveyance Taxes other than Transfer Taxes and (d) 50% of any Transfer Taxes incurred as a result of the sale contemplated by this Agreement. For purposes of this Agreement, in the case of any Straddle Period, (i) Property Taxes relating to the Purchased Assets shall be determined in accordance with Section 5.13 and (ii) Taxes (other than Property Taxes) relating to the Purchased Assets for the period prior to the Closing Date shall be computed as if such taxable period ended as of the close of business on the Closing Date.

"Extension Amendment" means an amendment entered into after March 31, 2007 to a Loan which extends the maturity date thereof other than pursuant to the terms of the original Loan Documents for such Loan.

"FDIC" means the Federal Deposit Insurance Corporation.

"*Federal Funds Rate*" means for any date, the rate for such date published by the Board of Governors of the Federal Reserve System.

"*GAAP*" means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

"*Governmental Authority*" means any federal, national, supranational, state, provincial, local, or similar government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

"*Governmental Order*" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"*Hazardous Materials*" means (a) any petroleum or petroleum products, radioactive materials or wastes, asbestos in any form, urea formaldehyde foam insulation and polychlorinated biphenyls; and (b) any other chemical, material, substance or waste that in relevant form or concentration is prohibited, limited or regulated under any Environmental Law.

"*Impairment*" means any Claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), Encumbrance, right (including expungement, avoidance, reduction, subordination of any kind, including, but not limited to, contractual or equitable subordination or otherwise) or defect, the effect of which is, or would be (in any such case), materially and adversely to affect the Loans in whole or in part.

"*Indebtedness*" means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services; (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments; (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases; (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss; and (i) all Indebtedness of any other Person of the type referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"*Indemnified Party*" means a Purchaser Indemnified Party or a Seller Indemnified Party, as the case may be.

"*Indemnifying Party*" means the Seller pursuant to Section 7.02 or the Purchaser pursuant to Section 7.03, as the case may be.

"*Initial A Participation Value*" means an amount equal to 70% of the Interim Loan Price.

"*Intellectual Property*" means intellectual property, confidential information and proprietary information, in any and all medium, including digital, and in any jurisdiction, including, but not limited to, all (a) patents and patent applications (including all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof) and patent disclosures, inventions and improvements (whether or not patentable and whether or not reduced to practice); (b) trademarks, service marks, trade dress, trade names, Internet domain names, assumed names and corporate names, together with the goodwill of the business associated therewith; (c) copyrightable works of authorship, including all statutory and common law copyrights associated therewith; (d) all registrations, applications, extensions and renewals for any of the items listed in clauses (b) and (c); (e) trade secrets; (f) websites; (g) computer and software programs, including operating systems, applications, routines, interfaces, and algorithms, whether in source code or object code; and (h) manuals, user and technical documentation, data, databases, flowcharts and developers' notes.

"*Intellectual Property Contracts*" means all license and other agreements granting or obtaining any right to use or practice any rights under any Intellectual Property or otherwise relating to the use (both directly or through a third party service), development, maintenance, support, distribution, sale or escrow of Intellectual Property.

"*Interest Adjustment*" means the aggregate amount of all unpaid interest as of the close of business on the Closing Date which is not more than 30 days past due under the terms of the Loan Documents in respect of the Loans (other than Loans with respect to REO Property for which there is no Interest Adjustment).

"*Interim Amount*" means the amount equal to the sum of (i) the Interim Loan Price, (ii) the Non-Loan Purchase Price and (iii) the Interim Interest Adjustment.

"*Interim Date*" means the last Business Day of the month preceding the month in which the Closing occurs.

"*Interim Interest Adjustment*" means the aggregate amount of all unpaid interest as of the close of business on the Interim Date which is not more than 30 days past due under the terms of the Loan Documents in respect of the Loans (other than Loans with respect to REO Property for which there is no Interim Interest Adjustment).

"*Interim Loan Price*" means an amount equal to (i) the aggregate outstanding principal balance of the Loans as of the Reference Date, plus (ii) the aggregate amount of principal advanced subsequent to the Reference Date through and including the Interim Date in respect of the Loans, minus (iii) the aggregate amount of principal paid to Fremont or an Affiliate thereof in respect of the Loans after the Reference Date through and including the Interim Date, minus (iv) \$268,942,000.

"*IP/IT Costs*" means any and all costs and fees paid to third parties (not including any Seller or Purchaser legal fees or expenses) that are attributable (i) pursuant to Section 5.04(c), to any consent, approval, authorization or license necessary or desirable to preserve for the Purchaser any right or benefit under any Transferred IP Agreement to which the Seller or any of its Affiliates is a party or to provide the Purchaser with the rights and benefits of such license, contract or other agreement or arrangement; (ii) to or arising under the Separate IT Agreements, except to the extent excluded from IP/IT Costs pursuant to Section 5.16; and (iii) pursuant to the Transition Services Agreement, (a) to any consents, assignments and sublicenses necessary for the Seller to provide services under the Transition Services Agreement and, if applicable, any work-around, substitution or such other arrangement as the Seller deems appropriate to provide such services, and (b) to the migration or conversion of any data from the Seller's Oracle system to the Purchaser's Oracle system.

"*IRS*" means the Internal Revenue Service of the United States.

"*IT Systems*" means all computer systems, programs, networks, software and hardware used to process, store, maintain and operate data, information and functions used in connection with the Business or the Loans.

"*Law*" means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

"*Leased Real Property*" means the real property leased by Fremont or any of its Affiliates, as tenant, pursuant to the leases listed on Section 2.02(a)(iii) of the Disclosure Schedule.

"*Liabilities*" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, known or unknown, matured or unmatured or determined or determinable, including those arising under any Law (including any Environmental Law), Action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

"*Licensed Intellectual Property*" means Intellectual Property licensed by Fremont or any of its Affiliates from third parties and used in connection with the Business.

"*Lien*" means any mortgage, lien, pledge, change, assignment for security purposes, security interest, or encumbrance of any kind with respect to a Loan.

"*Loan Agreement*" means, with respect to each Loan identified on Section 2.01(i) of the Disclosure Schedule, each loan agreement related to such Loan.

"*Loan Documents*" means, with respect to each Loan or any of the Special Loans, the Loan Agreement, the Collateral Documents related thereto, any promissory notes related thereto and all other documents, instruments, indemnities, guarantees, and agreements executed and delivered in connection therewith and in effect, any written waivers, amendments, modifications and supplements to any of the foregoing and any other documents, memoranda, consents, approvals, reports, plats of survey, opinions of counsel, records, analysis, approvals, valuations, communications and correspondence maintained by and in the possession of (or reasonably obtainable by) the Seller or any of its Affiliates in the course of the Business as part of the files relating to the Loans and Special Loans or the enforcement, origination, acquisition, servicing or administration thereof. The term Loan Documents also includes, but is not limited to, all intervening or other assignments (or analogous documents) pursuant to which the Seller shall have acquired a Loan or a Special Loan.

"*Loans*" means all loans (excluding the Special Loans) made and partially or fully funded by the Business and outstanding as of Reference Date, which are listed on Section 2.01(i) of the Disclosure Schedule, including (a) loans 100% owned by Fremont and/or any of its Affiliates as of such date, (b) Fremont's and any of its Affiliate's respective participation rights with respect to loans that have been funded as of such date (including, but not limited to, loans as to which the Purchaser and any of its Affiliates owns a participation) and (c) Fremont's and any of its Affiliate's rights with respect to loans that have been funded jointly with one or more third parties as of such date. For the avoidance of doubt, (a) on the Closing Date, Loans shall not include any loans that are purchased by other participants pursuant to rights of first or last refusal prior to the Closing and (b) Loans shall include any loans made and partially or fully funded by the Business and outstanding as of the Reference Date that are foreclosed (i) prior to the date of this Agreement or (ii) if after the date of this Agreement, in accordance with the requirements of Section 5.01(a) hereof on or prior to the Closing Date. Section 2.01(i) of the Disclosure Schedule shall contain at least the following information as of the Reference Date concerning any such loans, participation rights or rights: (i) the gross amount of the commitment with respect to the loan, whether funded or not, (ii) the outstanding principal balance of the loan, (iii) the remaining unfunded commitment of the loan, (iv) if applicable, the outstanding principal amount of any participation rights granted to any third party in such loan, and (v) the outstanding principal amount owed to the Seller or any of its Affiliates under such loan.

"*Material Adverse Effect*" means any circumstance, change or effect on the Purchased Assets or the Seller that, in the aggregate with all other circumstances, changes or effects on the Purchased Assets or the Seller, has had or is reasonably likely to have a material adverse effect on the value of the Purchased Assets taken as a whole; *provided, however*, that none of the following shall be deemed to constitute or be taken into account in determining whether there has been a "Material Adverse Effect": (a) any circumstances, changes or effects arising from actions taken with the written consent of the Purchaser, (b) any changes in Law or GAAP, (c) any changes in the credit quality of the Loans or the condition (financial or otherwise) of borrowers under any of the Loans unless the same was the direct result of any action taken by the Seller after the date of this Agreement without the Purchaser's consent, or (d) any changes in the United States or global economy or capital, financial or securities markets generally, including changes in interest or exchange rates.

"*Net Earnings*" for any period prior to the Closing Date shall mean the excess, if any, (and in no event less than zero) of (i) the sum of all interest income, fees (including, without limitation, exit fees and prepayment premiums, but not including non-cash deferred fees on the Seller's books at March 31, 2007 amortized into income) and other income received with respect to the Loans for such period, over (ii) the sum of all interest expense at the Seller's costs of funds allocable to outstanding fundings under the Loans, annual salary and related employee benefit costs in accordance with the Seller's customary and usual practice allocable to such period for Business Employees, rent for Leased Real Property and pursuant to the Excluded Leases reasonably allocable to the Business for such period per month and other miscellaneous expenses at the rate of \$900,000 per month, all as determined in accordance with past practice.

"*Owned Intellectual Property*" means Intellectual Property owned by Fremont or its Affiliates and used in connection with the Business.

"*Parent*" means Fremont General Corporation, a Nevada corporation.

"*Participation Agreement*" means the Participation Agreement to be executed by iStar (or its single purpose entity formed to acquire the Loans) and Fremont, substantially in the form attached hereto as Exhibit 1.01(b).

"*Permitted Encumbrances*" means the following, individually and collectively:

(i) Encumbrances for Taxes not yet delinquent or being contested in good faith by appropriate proceedings;

(ii) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Encumbrances for construction in progress or otherwise arising in the ordinary course of business securing obligations that are not more than 45 days overdue or that are being contested in good faith by appropriate proceedings, except for Encumbrances attributable to work performed at the direction of the Seller;

(iii) any statutory Encumbrance arising in the ordinary course of business or arising by operation of Law with respect to an obligation or liability that is not yet due or delinquent;

(iv) easements, rights-of-way, restrictions, minor title defects, covenants, encroachments, variations and other similar Encumbrance with respect to any Purchased Asset that does not diminish the value or interfere with the existing use of such Purchased Asset in any material respect;

(v) any interest or title of a lessor under any lease, or any licensor under any license (and any financing statement that may be filed with respect thereto) and covering only the assets so leased or licensed from a non-Affiliate of the Seller entered into in the ordinary course of business that has been disclosed, in writing, to the Purchaser prior to the date of this Agreement;

(vi) Encumbrances disclosed in any existing title insurance policy (or in the event the actual title insurance policy has not been issued, a binder, actual "marked-up" title commitment, pro forma policy, or an agreement to provide any of the foregoing pursuant to binding escrow instructions executed by the title company or its authorized agent) a copy or original of which has been delivered or made available to the Purchaser prior to the date of this Agreement (but excluding, for the avoidance of doubt, any of the foregoing delivered to Purchaser pursuant to Section 6.02(f) and further excluding any Encumbrances (other than a mortgage related to a Purchased Asset) in favor of the Seller or any of its Affiliates); and



(vii) Encumbrances disclosed in any title insurance policy (or binder, actual "marked-up" title commitment, pro forma policy, or an agreement to provide any of the foregoing pursuant to binding escrow instructions executed by the title company or its authorized agent) delivered to the Purchaser pursuant to Section 6.02(f) and excluding any Encumbrances (other than a mortgage related to a Purchased Asset) in favor of the Seller or any of its Affiliates.

"Person" means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

"Property Taxes" means real and personal ad valorem property Taxes and any other Taxes imposed on a periodic basis and measured by the value of any item.

"Purchaser Proration Date" means either (a) the last day of the month preceding the month in which a Purchaser Proration Notice is given prior to the 15<sup>th</sup> day of such month or (b) the last day of the month in which a Purchaser Proration Notice is given if given after the 15<sup>th</sup> day of such month.

"Purchaser Proration Notice" means a notice given by the Purchaser advising the Seller that the Purchaser is ready, willing and able to close the transactions contemplated hereby, subject only to the satisfaction of the conditions set forth in Sections 6.02(a), (b), (c) and (d) hereof and performance by the Seller in all material respects of its obligations hereunder, including, without limitation, delivery of the items set forth in Section 2.06 hereof.

"Reference Date" means March 31, 2007.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land or water or air or otherwise entering into the Environment.

"Remedial Action" means all action to (a) clean up, remove, treat or handle in any other way Hazardous Materials in the Environment; (b) prevent the Release of Hazardous Materials so that they do not migrate, endanger or threaten to endanger public health or the Environment; or (c) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring.

"REO Property" means the real property described on Section 2.02(a)(i) of the Disclosure Schedule hereto and any other real property acquired prior to the Closing Date in accordance with the terms hereof pursuant to a foreclosure or deed-in-lieu of foreclosure of a Loan, including Repossessions to the extent the same constitute real estate.

"Repossessions" means all property, both real and personal, tangible and intangible, acquired pursuant to the exercise of remedies with regard to any Lien securing a Loan (or acquisition in lieu of the exercise of such remedies) in accordance with the terms of the applicable Loan Documents, including all REO Property.

"Special Loans" means the Closed Special Loans, the Class 1 Loans and the Class 2 Loans.

"Straddle Period" means any taxable period beginning on or prior to and ending after the Closing Date.

"Sublease Agreements" means the Sublease Agreements to be executed by Fremont and iStar at the Closing, the terms of which shall be consistent with the terms of this Agreement, but otherwise in form and substance reasonably acceptable to the Purchaser and the Seller, pursuant to which iStar shall sublet from Fremont certain space consisting, with respect to one sublease (the "Santa Monica Sublease") of a portion of the space identified in Section 2.02(b) of the Disclosure Schedule as located in Santa Monica, California, and another sublease (the "Brea Sublease") consisting of space located in a portion of the space identified in Section 2.02(b) of the Disclosure Schedule as located in Brea, California, with the location, size and configuration of each subleased premises to be reasonably determined by the parties prior to the Closing Date in accordance with Section 2.11.

"Superior Proposal" means any Acquisition Proposal on terms that Fremont determines, in its good faith judgment (after having received advice from its outside legal counsel and its financial advisors),

are significantly more favorable to the equity holders of Fremont from a financial point of view than the terms of the transactions set forth in this Agreement; *provided* that the Seller's Board of Directors shall not so determine that any such proposal is a Superior Proposal prior to the time that is two Business Days after the time at which the Seller has complied in all material respects with Section 5.06(b) with respect to such proposal.

"*Tax Returns*" means any return, declaration, report, election, claim for refund or information return or other statement or form filed or required to be filed with any Tax authority relating to Taxes, including any schedule or attachment thereto or any amendment thereof.

"*Taxes*" means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any taxing authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; and customs duties, tariffs, and similar charges.

"*Transfer Tax*" means any customary transfer, stamp or similar Tax imposed pursuant to applicable Law in connection with the recording of any deed, mortgage or similar instrument conveying or assigning, as applicable, the REO Property or mortgages (or similar instruments).

"*Transferred IP Agreements*" means (a) licenses of Owned Intellectual Property from Fremont or any of its Affiliates to third parties where the Owned Intellectual Property which is the subject to such licenses is used solely in connection with the Business, (b) Intellectual Property Contracts to which Fremont or any of its Affiliates are parties or are otherwise subject, and where the Intellectual Property which is the subject to such Intellectual Property Contracts is used solely in connection with the Business; (c) consents, settlements, decrees, orders, injunctions, judgments or rulings governing the use, validity or enforceability of Owned Intellectual Property where such Owned Intellectual Property is used solely in connection with the Business; and (d) the agreement with Oracle Corporation providing for the provision of 130 seat licenses to the Seller.

"*Transferred Rights*" means with respect to each Loan after the Closing Date, to the extent related thereto, the following:

(a) the right to repayment of all amounts funded by, or amounts payable to, Fremont or any of its Affiliates under the related Loan Documents and all obligations owed to Fremont or any of its Affiliates in connection with such Loan;

(b) all Claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Fremont or any of its Affiliates, whether known or unknown against the borrower or any other obligor under the Loan Documents related to such Loan, or any of such borrower's or obligor's Affiliates, agents, representatives, contractors, advisors, or any other Person that in any way is based upon, arises out of or is related to any of the foregoing, including, to the extent permitted under applicable Law, all Claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Fremont or any of its Affiliates against any attorney, accountant, financial advisor or other Person arising under or in connection with the related Loan Documents;

(c) all guarantees and collateral with respect to such Loan and any other security of any kind for or in respect of the foregoing;

(d) all cash, securities (whether certificated or uncertificated securities), security entitlements, accounts, chattel paper, general intangibles, instruments, real property or other property, and all setoffs and recoupments, but only to the extent received or effected by or for the account of Fremont or any of its Affiliates under such Loan and other extensions of credit under the related Loan Documents (whether for principal, interest, fees, reimbursement obligations or otherwise), including all distributions obtained by or through redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of the related borrower, any related obligor or the related Loan Documents,

and all cash, securities, interest, dividends and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and

(e) all proceeds of the foregoing.

"*Transition Services Agreement*" means the Transition Services Agreement to be executed by Fremont and iStar at the Closing, substantially in the form attached hereto as Exhibit 5.09, pursuant to which Fremont and its Affiliates shall provide certain transitional services to iStar following the Closing.

"*Upsize Amendment*" means an amendment entered into after March 31, 2007 to a Loan which increases the principal amount thereof.

"WARN" means the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101 et seq., or any comparable state or local Law.

Section 1.02 *Definitions*. The following terms have the meanings set forth in the Sections set forth below:

Definition	Location
"A Participation Interest"	Participation Agreement
"Assumed Liabilities"	2.03(a)
"Alternative Purchaser"	5.06(c)
"Brea Sublease"	1.01
"B Participant"	Participation Agreement
"Business"	Recitals
"Business Intellectual Property"	3.10(a)
"Business Intellectual Property Contracts"	3.10(d)
"Cash Loan Purchase Price"	2.08(a)
"Closing"	2.05(a)
"Closing Acceleration Notice"	2.08(a)
"Closing Date"	2.05(a)
"Closing Delay Notice"	2.05(c)
"Closing Trigger Date"	2.05(b)
"Confidentiality Agreement"	5.02(e)
"Consent Schedule"	3.03
"Continuation Coverage"	5.14(g)
"Continuation Period"	5.14(g)
"Domain Name Agreement"	2.06(j)
"Employment Contracts"	3.12(e)
"Enforcement Action"	Participation Agreement
"Excluded Assets"	2.02(b)
"Excluded Leases"	2.02(b)
"Excluded Liabilities"	2.03(b)
"Fremont"	Preamble
"Initial Adjustment Schedule"	2.09(b)
"Initial Threshold Amount"	7.04(a)
"iStar"	Preamble
"Landlord's Work"	2.11
"Loan Purchase Price"	2.04(a)
"Loss"	7.02
"Net Earnings Schedule"	2.09(d)
"Non-Loan Purchase Price"	2.04(b)
"Offered Employees"	5.14(a)
"Purchased Assets"	2.02(a)
"Purchased Non-Loan Assets"	2.02(a)
"Purchaser"	Preamble
"Purchaser Indemnified Party"	7.02
"Purchaser Plans"	5.14(b)

"Purchaser's Savings Plan"	5.14(e)
"PWC"	6.02(g)
"Reduced Participation Amount"	2.09(c)
"Releases"	5.04(a)
"Required Consents"	5.04(a)
"Santa Monica Sublease"	1.01
"Seller"	Preamble
"Seller Indemnified Party"	7.03
"Seller's Savings Plan"	5.14(e)
"Separate IT Agreements"	5.16
"Shared Agreements"	5.16
"Termination Date"	8.01(c)
"Termination Fee"	8.02(b)
"Termination Notice"	5.14(g)
"Third Party Claim"	7.05(b)
"Threshold Amount"	7.04(a)
"Transferred Employees"	5.14(a)
"Transferred Lease Agreements"	2.02(a)(iii)

Section 1.03 *Interpretation and Rules of Construction.* In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

- (a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated;
- (b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
- (c) whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";
- (d) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;
- (f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;
- (g) any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor Laws;
- (h) references to a Person are also to its successors and permitted assigns;
- (i) the use of "or" is not intended to be exclusive unless expressly indicated otherwise; and
- (j) the word "knowledge" with respect to any party hereto shall mean the actual knowledge of such party, without any obligation to investigate the matter in question.

## ARTICLE II.

### CONTRIBUTION; PURCHASE AND SALE; PRORATIONS

Section 2.01 *Purchase and Sale of Loans.* On the Closing Date, the Seller shall sell, assign, transfer, convey and deliver, or cause to be assigned, transferred, conveyed and delivered, to the Purchaser (or such subsidiaries of the Purchaser as the Purchaser shall designate), (A) the Loans, (B) the Transferred Rights with respect to the Loans and (C) all Loan Documents related to the Loans.

Section 2.02 *Purchase and Sale of Other Assets.* (a) Upon the terms and subject to the conditions of this Agreement, at the Closing, the Seller shall sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to the Purchaser, and the Purchaser shall purchase from the Seller, the following assets, wherever located, whether tangible or intangible, whether directly or indirectly owned by the Seller and, in any case, belonging to or used in the Business, other than the Excluded Assets (the following assets to be purchased by Purchaser being referred to as the "*Purchased Non-Loan Assets*" and together with the Loans, referred to herein as the "*Purchased Assets*");

- (i) *REO Property.* All rights of the Seller or its Affiliates in respect of any REO Property and all improvements, personality, leases, contracts, and other rights and interests associated therewith that is identified on Section 2.02(a)(i) of the Disclosure Schedule;
- (ii) *Repossessions.* All rights of the Seller or its Affiliates in respect of Repossessions;
- (iii) *Leased Real Property.* All rights of the Seller and its Affiliates in respect of the Leased Real Property identified on Section 2.02(a)(iii) of the Disclosure Schedule and all rights of the Seller and its Affiliates under all contracts identified on Section 2.02(a)(iii) of the Disclosure Schedule as relating to such Leased Real Property (such contracts, the "*Transferred Lease Agreements*");
- (iv) *Personal Property.* All furniture, fixtures, equipment, machinery and other tangible property used or held for use by the Seller or any of its Affiliates with respect to the Transferred Employees, and all hardware (including personal computers, laptops, servers, routers and cabling) used solely in connection with the Business, including all such hardware listed in Section 2.02(a)(iv) of the Disclosure Schedule;
- (v) *Intellectual Property and IT Systems.* All the Seller's and its Affiliates' right, title and interest in, to and under the Owned Intellectual Property which is used solely in connection with the Business, IT Systems which are used solely in connection with the Business, the Transferred IP Agreements, copies and tangible embodiments thereof in whatever form or medium, and all rights to sue and recover damages for past, present and future infringement, dilution, misappropriation, violation, unlawful imitation or breach thereof;
- (vi) *Customer Information.* All customer information, including customer lists, telephone numbers and email addresses, customer-related records and all other customer-related files, programs, plans, data and related information, in whatever form, in each case primarily related to the Business; and
- (vii) *Books and Records.* All books and records relating to the Purchased Assets and related operations of the Business, including all accounting records, financial records and related files and papers.

(b) Notwithstanding anything in Sections 2.01 or 2.02(a) to the contrary, the Purchased Assets shall exclude (i) any loans or other assets acquired by the Seller or its Affiliates after the date hereof in connection with the Business, other than in accordance with the terms and conditions hereof, (ii) any assets related to any Benefit Plan, (iii) artwork, (iv) the leases identified in Section 2.02(b) of the Disclosure Schedule with respect to certain premises located in Brea, California and Santa Monica, California (such leases, the "*Excluded Leases*") and (v) all other assets and properties of the Seller and its Affiliates not used in connection with the Business, that are not specifically referenced in Sections 2.01 and 2.02(a) and the corresponding Schedules thereto (collectively, the "*Excluded Assets*").

Section 2.03 *Assumption and Exclusion of Liabilities.* (a) Upon the terms and subject to the conditions of this Agreement, at the Closing, the Purchaser shall assume and shall agree to pay, perform and discharge the following Liabilities of the Seller, except for the Excluded Liabilities (such Liabilities assumed by iStar, the "Assumed Liabilities"):

- (i) all obligations to make advances and disbursements with respect to the Loans made or required to be made after the Closing Date or which otherwise have been made or are required to be made pursuant to the Loan Documents after the Closing Date and, in all events, do not arise on account of a default by the Seller or any of its Affiliates under the Loan Documents or hereunder;
- (ii) all other Liabilities (exclusive of Liabilities arising by reason of a breach by the Seller or any of its Affiliates on or prior to the Closing Date) under the Loans and the Loan Documents to the extent arising after the Closing Date and that are not otherwise Excluded Liabilities;
- (iii) Liabilities in respect of Repossessions undertaken with the Purchaser's consent (except as otherwise set forth in Section 2.03(a)(v) below);
- (iv) all Liabilities of the Seller arising after the close of business on the Closing Date under the Transferred IP Agreements with respect to the software identified in Section 2.03(a)(iv) of the Disclosure Schedule or the Transferred Lease Agreements (other than Liabilities or obligations attributable to any failure by the Seller or any of its Affiliates to comply with the terms thereof on or prior to the Closing Date); and
- (v) all Liabilities arising after the close of business on the Closing Date relating to the REO Property, including for real estate taxes, obligations under leases or purchase and other contracts, but no liability relating to or arising under Environmental Laws.

(b) Notwithstanding subsection (a) above, the Seller shall retain, and shall be responsible for paying, performing and discharging when due, and the Purchaser shall not assume or have any responsibility for, all Liabilities of the Seller or any of its Affiliates other than the Assumed Liabilities (the "Excluded Liabilities"), including, but not limited to:

- (i) all Liabilities resulting from facts, events or circumstances arising or occurring on or prior to the close of business on the Closing Date except as otherwise expressly provided herein;
- (ii) all Liabilities resulting from the Seller's or any of its Affiliates breaches of its representations, warranties and covenants under this Agreement, the Ancillary Agreements, the Loan Documents, the Transferred IP Agreements or the Transferred Lease Agreements or any other breaches by the Seller or any of its Affiliates with respect to the Loans or the Purchased Assets;
- (iii) any litigation to which the Seller or any of its Affiliates is a defendant or a third party defendant other than any litigation commenced against the Purchaser following the Closing Date based on, relating to or arising out of an action or event occurring after the Closing Date with respect to a Purchased Asset or the Purchaser's use of a Purchased Asset;
- (iv) all Liabilities of the Seller or any of its Affiliates in respect of any Indebtedness of the Seller or any of its Affiliates to any of their respective Affiliates or any other third party, but excluding Liabilities of the Seller or any of its Affiliates in connection with the Purchased Assets expressly assumed by the Purchaser hereunder;

- (v) all Liabilities of the Seller or any of its Affiliates to their respective Affiliates or any other third party in connection with any other contract or arrangement not expressly assumed hereunder, including, without limitation, interest rate hedging transactions, but excluding Liabilities of the Seller or any of its Affiliates in connection with the Purchased Assets acquired or assumed by the Purchaser hereunder;
- (vi) all Liabilities of the Seller or any of its Affiliates arising out of or related to any violation by such party of any applicable Law or Governmental Order;
- (vii) Excluded Taxes;
- (viii) all Liabilities relating to any current or former employee of the Seller or any of its Affiliates (including, but not limited to, severance or retention payments, accrued vacation, pension plan or employee stock ownership plan Liabilities, or any other employee benefits or payments), or any Benefit Plan (including, but not limited to, any liability for the provision of notices or benefits pursuant to COBRA for any individual who is or becomes an M&A Qualified Beneficiary (as such term is defined in Treas. Reg. Section 54.4980B-9) as a result of the consummation of the transactions contemplated by this Agreement), except for liabilities of the Purchaser arising after the Closing Date with respect to the Transferred Employees;
- (ix) all Liabilities arising out of or relating to any repossession of any collateral with respect to the Loans that occurred prior to the Closing Date undertaken without the consent of the Purchaser.
- (x) all Liabilities resulting from, relating to or arising out of the Seller's or any of its Affiliates' failure to obtain the Required Consents; and
- (xi) all Liabilities arising out of or relating to the Excluded Assets.

Section 2.04 *Purchase Price.* (a) The purchase price for the Loans (the "*Loan Purchase Price*") shall be equal to (i) an amount equal to the aggregate outstanding principal balance of the Loans as of the Reference Date, plus (ii) the aggregate amount of principal advanced subsequent to the Reference Date through and including the Closing Date in respect of the Loans, minus (iii) the aggregate amount of principal paid to Fremont or an Affiliate thereof in respect of the Loans after the Reference Date through and including the Closing Date, minus (iv) \$268,942,000.

(b) The purchase price for the Purchased Non-Loan Assets (the "*Non-Loan Purchase Price*") shall be an amount equal to \$50 million.

(c) On the Closing Date, (i) iStar shall transfer and convey to Fremont the A Participation Interest and (ii) iStar shall pay to Fremont by wire transfer in immediately available funds to an account designated in writing by Fremont prior to the Closing an amount equal to the Interim Amount minus the Initial A Participation Value.

(d) The parties shall treat the transactions contemplated by this Agreement for federal and all other Tax purposes as a sale, on the Closing Date, by the Seller to the Purchaser of the Purchased Assets for an aggregate amount equal to the sum of the Loan Purchase Price and the Non-Loan Purchase Price (both subject to any adjustments pursuant to this Agreement), and shall take no position inconsistent therewith for any Tax purpose, including the filing of Tax Returns. The parties have agreed, in accordance with the requirements of Section 1060 of the Code, to an allocation of the amounts paid pursuant to the preceding sentence among the Purchased Assets as set forth on *Exhibit 2.04(d)*.

Section 2.05 *Closing.* (a) Subject to the terms and conditions of this Agreement, the sale and purchase of the Purchased Assets shall take place at a closing (the "*Closing*") to be held at the offices

of Katten Muchin Rosenman LLP, effective as of 11:59 P.M., on the last Business Day of the month during which the Closing Trigger Date occurs, or at such other place or at such other time as the Seller and the Purchaser may mutually agree upon in writing (the "Closing Date").

(b) The "Closing Trigger Date" shall be the date when each of the conditions set forth in Sections 6.01(b) and (e) and Sections 6.02(b), (d), (f) and (g) have been satisfied. Each party shall promptly notify the other upon becoming aware that any of such conditions have been satisfied. Upon the occurrence of the Closing Trigger Date, the parties will schedule the Closing Date for the last Business Day of the month during which the Closing Trigger Date occurs.

(c) If at any time on or after the Closing Trigger Date there occurs a material and pervasive disruption in the debt financing markets in the United States, then the Purchaser shall be permitted to deliver to the Seller a written notice (a "Closing Delay Notice") requesting that the Closing Date be postponed until a date not later than the last Business Day of the following month. The Closing Delay Notice shall contain the Purchaser's waiver of all of the conditions set forth in Section 6.02 (other than Section 6.02(e)) and all of the Purchaser's rights to terminate this Agreement pursuant to Section 8.01, other than such rights arising out of a willful violation of the Seller's covenants hereunder occurring after the date of the Closing Delay Notice. It is understood and agreed that the Purchaser shall not be permitted to deliver a Closing Delay Notice if it has previously delivered a Purchaser Proration Notice.

Section 2.06 *Closing Deliveries by the Seller.* Subject to Section 5.04(b), at the Closing, the Seller shall deliver or cause to be delivered to the Purchaser:

(a) a duly executed deed in recordable form and otherwise in the form customarily used in the applicable jurisdiction, together with completed transfer tax declarations or exemptions, assignments of title policies, leases and contracts and bills of sale necessary to convey to the Purchaser's designated Affiliate title to any REO Property;

(b) the Bill of Sale and such other instruments, in form and substance reasonably satisfactory to the Purchaser and the Seller, as may be reasonably requested by the Purchaser to transfer the Purchased Assets to the Purchaser or evidence such transfer on the public records;

(c) executed counterparts of each other Ancillary Agreement to which the Seller is a party;

(d) a certificate of a duly authorized officer of the Seller certifying as to the matters set forth in Section 6.02(a);

(e) a certificate, duly executed by the Secretary of the Seller, certifying on behalf of the Seller (i) as to the effectiveness of the Seller's Articles of Incorporation and Bylaws; and (ii) as to the valid adoption of resolutions of the Board of Directors of the Seller evidencing its authorization of the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby;

(f) executed assignments and other transfer documents in recordable form necessary to transfer all Loan Documents and Transferred Rights to the Purchaser or as directed by the Purchaser together with UCC-3 financing statements;

(g) originals of the Loan Documents for each Loan and Special Loan, including, but not limited to, the following:

(i) with respect to every Loan and Special Loan for which a note was to be issued pursuant to the Loan Documents, the original note bearing all intervening endorsements, endorsed by an allonge attached thereto or endorsed in favor of the Purchaser or the Purchaser's designee or, if the original note is not included therein, then a lost note affidavit and indemnity with a copy of the note attached thereto;



- (ii) the original mortgage or analogous document, with evidence of recording thereon, and, if the mortgage was executed pursuant to a power of attorney, a true copy of the power of attorney, with evidence of recording thereon (if recording is customary in the jurisdiction in which such power of attorney was executed), assignments, or in the case of an original mortgage that has been lost after recordation, a certification by the appropriate county recording office where such mortgage is recorded that such copy is a true and complete copy of the original recorded mortgage;
- (iii) the originals of all agreements modifying a money term or other material modification, consolidation and extension agreements, if any, with, if applicable, evidence of recording thereon, or if such original modification, consolidation and extension agreements have been delivered to the appropriate recording office for recordation and either have not yet been returned with evidence of recordation thereon or have been lost after recordation, true copies of such modifications, consolidations and extensions certified by the Seller;
- (iv) originals of all intervening assignments of mortgage, if any, with evidence of recording thereon or, if such original assignments of mortgage have been delivered to the appropriate recorder's office for recordation or have been lost, certified true copies of such assignments of mortgage certified by the Seller;
- (v) the original or a copy of each guaranty, if any, constituting additional security for the repayment of such loan;
- (vi) the original title insurance policy, or in the event such original title insurance policy has not been issued, a binder, actual "marked-up" title commitment, pro forma policy, or an agreement to provide any of the foregoing pursuant to binding escrow instructions executed by the title company or its authorized agent, with the original title insurance policy to follow;
- (vii) (A) copies of UCC financing statements (together with all assignments thereof) filed in connection with a Loan or Special Loan and (B) UCC-2 or UCC-3 financing statements assigning such UCC financing statements to the Purchaser or its designee executed and delivered in connection with the Loan or Special Loan;
- (viii) to the extent in the Seller's or any of its Affiliate's possession or control or reasonably obtainable by the Seller or its Affiliates, copies of the related ground lease(s), if any, related to any Loan or Special Loan where the borrower is the lessee under such ground lease and there is a lien in favor of the mortgagee in such lease;
- (ix) copies of any Loan Agreements, lock-box agreements (together with such executed assignments, directions and other documents as may be required to transfer any lock-box or collateral account arrangement to the Purchaser or its designee) and intercreditor agreements, if any, related to any Loan or Special Loan;
- (x) the original of each letter of credit, if any, constituting additional collateral for each Loan and Special Loan (other than letters of credit representing tenant security deposits which have been collaterally assigned to the lender), which shall be assigned and delivered to the Purchaser or its designee;
- (xi) the original or a copy of the environmental indemnity agreement, if any, related to any Loan or Special Loan;
- (xii) to the extent in the Seller's or any of its Affiliate's possession or control or reasonably obtainable by the Seller or its Affiliates, copies of third party management agreements, if any, for all hotels and for such other real properties securing Loans;

- (xiii) to the extent in the Seller's or any of its Affiliate's possession or control or reasonably obtainable by the Seller or its Affiliates, the original of any environmental insurance policy or if the original is held by the related borrower, a copy thereof;
- (xiv) a copy of any affidavit and indemnification agreement in favor of the lender;
- (xv) to the extent in Seller's possession or control or reasonably obtainable by the Seller or its Affiliates, with respect to hospitality properties, a copy of any franchise agreement, franchise comfort letter and applicable assignment or transfer documents;
- (xvi) copies of any interest rate cap agreements (or other interest rate protection agreements) and the related confirmations; and
- (xvii) any participation or co-lending agreement.

(h) true and complete copies of the Transferred IP Agreements and the Transferred Lease Agreements, and an executed assignment and assumption agreement with respect to the foregoing;

(i) written evidence of each Required Consent;

(j) Domain Name Agreement and Assignment with respect to CRELearn.com, substantially in the form attached hereto as Exhibit 2.06(j) (the "*Domain Name Agreement*");

(k) to the extent in Seller's or any of its Affiliate's possession or control or reasonably obtainable by the Seller or its Affiliates, true and complete copies of all leases, contracts and agreements relating to any REO Property;

(l) such documents as may be required to transfer to the Purchaser or its designee, as directed by the Purchaser, all accounts maintained by or for the Seller or its Affiliates in connection with the Purchased Assets;

(m) all insurance policy certificates and evidence of insurance pertaining to the Purchased Assets; and

(n) written notices, as requested by the Purchaser, to obligors, tenants and other Persons as reasonably determined by the Purchaser, notifying such Persons of the sale and transfer of the Purchased Assets;

(o) with respect to the Intellectual Property listed in Sections 3.10(b)(i) and 3.10(b)(iii) of the Disclosure Schedule, the Seller shall have delivered to the Purchaser a full and complete copy of such Intellectual Property; and

(p) such other documents as the Purchaser or its counsel may reasonably request to transfer to the Purchaser or its designee good title the Purchased Assets, subject to Permitted Encumbrances.

*Section 2.07 Closing Deliveries by the Purchaser.* At the Closing, the Purchaser shall deliver to the Seller:

(a) the Interim Amount, by delivery to the Seller of (i) the A Participation Interest and (ii) cash in an amount equal to the difference between (A) the Interim Amount and (B) the Initial A Participation Value;

(b) an executed counterpart of the Bill of Sale;

(c) executed counterparts of each other Ancillary Agreement to which the Purchaser is a party;

(d) assumption by the Purchaser, in form and substance satisfactory to the Seller, of the agreements, assets and obligations to be transferred to the Purchaser pursuant to clauses (f), (h) and (k) of Section 2.06; and

(e) a certificate of a duly authorized officer of the Purchaser certifying as to the matters set forth in Section 6.01(a).

Section 2.08 *Net Earnings; Prorations.*

(a) The Purchaser shall be entitled to a reduction in the cash portion of the Loan Purchase Price (the "*Cash Loan Purchase Price*") equal to 50% of the Net Earnings for the period commencing July 1, 2007 through and including the Closing Date; *provided, however*, that if the Closing shall not have occurred on the last day of the month during which the Seller receives a Purchaser Proration Notice solely as a result of the failure of any of the conditions set forth in Sections 6.02(a), 6.02(b), 6.02(c), 6.02(d) or 6.01(e) to be satisfied, the Purchaser shall be entitled to a reduction in the Cash Loan Purchase Price equal to 100% of the Net Earnings for the period commencing on the first day after the Purchaser Proration Date through and including the Closing Date if the Purchaser Proration Date occurs prior to July 1, 2007. It is understood and agreed that a Purchaser Proration Notice shall not be given prior to June 1, 2007. Upon its receipt of a Purchaser Proration Notice, the Seller may elect to hold the Closing on a day that is earlier than the last Business Day of the month in which the Purchaser Proration Notice is received by written notice to the Purchaser (a "*Closing Acceleration Notice*") no later than the second Business Day following the later of (i) the Seller's receipt of a Purchaser Proration Notice and (ii) the Accelerated Closing Trigger Date. In the event that the Seller timely delivers the Closing Acceleration Notice, the Closing Date shall be 5 Business Days following the Purchaser's receipt of such notice. Notwithstanding the above, in the event that the Purchaser delivers a Closing Delay Notice, the Purchaser shall not be entitled to a reduction in the Cash Loan Purchase Price for any portion of the Net Earnings from and after the originally scheduled Closing Date through and including the actual Closing Date.

(b) All customary and usual prorations with respect to the REO Property and other Purchased Non-Loan Assets and all prorations of amounts with respect to the Loans other than as set forth above shall be made as of the Closing Date.

(c) As to the Special Loans and any other loans committed to after the date hereof pursuant to Section 5.01 hereof, subject to compliance by the Purchaser with Section 2.10, all fees and payments of interest and other amounts shall be for the credit of the Purchaser and the Purchaser shall be responsible for all principal or other amounts funded by the Seller thereunder; *provided, however*, that with respect to any Closed Special Loan, any such payments of interest shall be prorated between the Seller and the Purchaser with respect to the periods from and after the time such Closed Special Loan is participated to iStar pursuant to Section 2.10(a).

(d) Notwithstanding anything to the contrary herein, all fees paid by a borrower to the Seller pursuant to an Extension Amendment or an Upsize Amendment, including, without limitation, the Extension Amendments and Upsize Amendments set forth in Section 3.04(b) of the Disclosure Schedule, shall be for the benefit of the Purchaser and such amounts shall be paid to the Purchaser on the Closing Date.

(e) From and after the Closing, the Purchaser and the Seller and their respective accountants shall work together to effectuate such adjustments and payments as are necessary to give effect to this Section 2.08.

(f) In the event that the Closing Date does not occur on the last Business Day of the month for any reason in accordance with the terms hereof, then all amounts calculated on a monthly basis shall be prorated for such month in a manner consistent with the terms of this Agreement.

(a) The Seller shall cause to be prepared a schedule setting forth (i) the Interim Loan Price, (ii) the Non-Loan Purchase Price, and (iii) the Interim Interest Adjustment. The Seller shall provide a copy of such schedule to the Purchaser no later than three Business Days prior to the Closing Date and, with the written consent of the Purchaser, such schedule shall serve as the basis for the calculation of the Interim Amount.

(b) As promptly as practicable but no later than five Business Days after the Closing Date, the Seller shall cause to be prepared a schedule (the "*Initial Adjustment Schedule*") setting forth the Loan Purchase Price and the Interest Adjustment. The Purchaser shall cooperate with the Seller in connection with the preparation of such schedule, and shall give the Seller reasonable access to the books and records of the Business to the extent reasonably necessary to facilitate such preparation, and provide the Seller such other information as it may reasonably request in connection with such preparation. Upon the availability of the Initial Adjustment Schedule, the Seller shall deliver same to the Purchaser, together with a duly completed and executed certificate of a senior officer of the Seller to the effect that, to the best knowledge of such officer, such schedule has been prepared in accordance with the requirements of this Agreement. With the written consent of the Purchaser, such schedule shall serve as the basis for the calculation of the amounts to be paid under Section 2.09(c) below. The Purchaser shall have the right to review the Seller's books and records following the Closing Date for the purpose of confirming the accuracy of the Initial Adjustment Schedule and the Seller shall make such books and records (and knowledgeable personnel) available to the Purchaser in connection with such review during the Seller's regular business hours.

(c) If the Interest Adjustment exceeds the Interim Interest Adjustment, then the Purchaser shall promptly pay to the Seller the amount of such excess. If the Loan Purchase Price exceeds the Interim Loan Price, (i) the Purchaser shall promptly pay to the Seller 30% of the amount of such excess and (ii) (A) the amount that the A Participation Interest shall be entitled to receive (before interest) shall be increased retroactively to the Closing Date by an amount equal to 70% of such excess, and (B) interest shall accrue on such increased portion from and after the Closing Date in accordance with the Participation Agreement. If the Interim Interest Adjustment exceeds the Interest Adjustment, the Seller shall promptly pay to the Purchaser the amount of such excess. If the Interim Loan Price exceeds the Loan Purchase Price, (i) the Seller shall promptly pay to the Purchaser 30% of the amount of such excess, (ii) the amount that the A Participation Interest shall be entitled to receive (before interest) shall be reduced by an amount equal to 70% of such excess (the "*Reduced Participation Amount*"), (iii) any interest accrued on such Reduced Participation Amount shall be eliminated and (iv) if any interest was previously paid to and received by Fremont in respect of the portion of the A Participation Interest attributable to such Reduced Participation Amount, such interest shall promptly be paid to the Purchaser. Any amounts required to be paid under this Section 2.09(c) shall be paid within two Business Days after the Initial Adjustment Schedule shall be determined, by wire transfer of immediately available funds to an account designated in writing by the Seller or the Purchaser, as applicable, together with interest from the Closing Date to the date of payment at the Federal Funds Rate in effect from time to time during such period.

(d) In the event that the Purchaser is entitled to a reduction in the Cash Loan Purchase Price as contemplated by Section 2.08(a), then, as promptly as practicable but no later than 15 Business Days after the Closing Date, the Seller shall cause to be prepared a schedule (the "*Net Earnings Schedule*") setting forth in reasonable detail the Seller's calculation of Net Earnings and the components thereof as reflected in the definition of such term. The Purchaser shall cooperate with the Seller in the preparation of such schedule in the manner provided in Section 2.09(b). Upon the availability of the Net Earnings Schedule, the Seller shall deliver the same to the Purchaser, together with a duly completed and executed certificate of a senior officer of the Seller to the effect that, to the best knowledge of such officer, such schedule has been prepared in accordance with the requirements of

this Agreement. With the written consent of the Purchaser, such schedule shall serve as the basis for the calculation of Net Earnings. Within two Business Days after the delivery of the Net Earnings Schedule to the Purchaser, the Seller shall pay to the Purchaser by wire transfer of immediately available funds to an account designated in writing by the Purchaser the amount by which the Cash Loan Purchase Price shall be reduced as contemplated hereby, together with interest from the Closing Date to the date of payment at the Federal Funds Rate in effect from time to time during such period. The Purchaser shall have the right to review the Seller's books and records following the Closing Date for the purpose of determining whether it is entitled to any Net Earnings pursuant to this Agreement as well as the accuracy of any determination of the Seller of Net Earnings and the Seller shall make such books and records (and knowledgeable personnel) available to the Purchaser in connection with such review during the Seller's regular business hours.

(e) As promptly as practicable but no later than five Business Days after the Closing Date, the Seller shall cause to be prepared a schedule setting forth all fees paid by a borrower to the Seller pursuant to an Extension Amendment or an Upsize Amendment. Upon the availability of such schedule, the Seller shall deliver the same to the Purchaser, together with a duly completed and executed certificate of a senior officer of the Seller to the effect that, to the best knowledge of such officer, such schedule has been prepared in accordance with the requirements of this Agreement. With the written consent of the Purchaser, such schedule shall serve as the basis for the calculation of any amounts owed to the Purchaser pursuant to Section 2.08(d). Within two Business Days after the delivery of such schedule to the Purchaser, the Seller shall pay to the Purchaser by wire transfer of immediately available funds to an account designated in writing by the Purchaser any amounts owed to the Purchaser pursuant to Section 2.08(d) that were not paid on the Closing Date as contemplated by Section 2.08(d), together with interest from the Closing Date to the date of payment at the Federal Funds Rate in effect from time to time during such period. The Purchaser shall have the right to review the Seller's books and records following the Closing Date for the purpose of determining and confirming the amounts owed to it pursuant to Section 2.08(d) and the Seller shall make such books and records (and knowledgeable personnel) available to the Purchaser in connection with such review during the Seller's regular business hours.

Section 2.10 *Special Loans.* (a) As soon as practicable following the execution of this Agreement, as to any Closed Special Loan originated prior to such date, Fremont shall enter into a participation agreement granting the Purchaser 100% of all of the economic rights (including, without limitation, commitment fees) of Fremont in such Closed Special Loan and requiring the Purchaser to assume all of the obligations of Fremont pursuant to such Closed Special Loan, including, without limitation, the obligation to fund any advances required to be made by Fremont pursuant to such Closed Special Loan. Within 5 Business Days of the earlier of (i) the Closing Date and (ii) the date on which all required consents and approvals from the borrower or any other party thereto have been obtained, in exchange for any such participations, Fremont shall convey to the Purchaser any Closed Special Loans, including, without limitation, all rights and obligations thereunder. The definitive terms and conditions with respect to the foregoing transactions shall be set forth in definitive transaction documents to be entered into after the date hereof.

(b) As soon as practicable following the execution of this Agreement, the Purchaser and the Seller shall send a joint written notice to each borrower under the Class 1 Loans and the Class 2 Loans listed on Schedule 2.10(b) informing them that all interests of Fremont with respect thereto have been assigned to *iStar* and containing such other matters as are agreed upon. Such notices shall require that the borrower confirm in writing the receipt and acceptance of the terms thereof and indicate that for all purposes *iStar* is the prospective lender thereunder. From and after the date of this Agreement, the Class 1 Loans and the Class 2 Loans shall be subject to the terms of Section 5.01 hereof and if closed with *iStar's* approval and direction, shall be closed in *iStar's* name.

Section 2.11 *Sublease Agreements*. The Purchaser and the Seller will proceed with reasonable diligence to finalize the Sublease Agreements after the execution and delivery of this Agreement, including the determination of the location, size and configuration of the applicable subleased premises and also the plans and specifications for the physical separation of the applicable subleased premises from the remainder of the premises demised under the applicable Excluded Lease (such separation, "*Landlord's Work*"). The term of the Sublease Agreements will commence on the Closing Date and shall end on the scheduled termination date of the Excluded Lease with respect to the Brea Sublease and on the 18th monthly anniversary of the Closing Date with respect to the Santa Monica Sublease; *provided* that, the Santa Monica sublease term may, at the election of the subtenant, be terminated sooner than such date upon not less than 30 days prior notice. The base rent payable under the applicable Sublease Agreement will be the pro rata share of the base, minimum or fixed rent and "pass-through" rent on account of taxes and operating expenses and any other additional rent payable under the applicable Excluded Lease. The Seller shall use commercially reasonable efforts to complete Landlord's Work not later than the Closing Date, including by preparing (or causing to be prepared) plans and specifications for Landlord's Work reasonably satisfactory to the Seller and the Purchaser. The Purchaser and the Seller acknowledge and agree that the effectiveness of the Sublease Agreements is expressly conditioned upon receiving the prior written consent thereto of the applicable landlord as and to the extent required under the applicable Excluded Lease and that the Seller shall use reasonable best efforts to obtain such prior written consent.

### ARTICLE III.

#### REPRESENTATIONS AND WARRANTIES OF FREMONT

As an inducement to the Purchaser to enter into this Agreement, Fremont hereby represents and warrants to the Purchaser as follows:

Section 3.01 *Organization, Authority and Qualification of the Seller*. The Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction where the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed or qualified and in good standing would not have a Material Adverse Effect. The execution and delivery of this Agreement and the Ancillary Agreements by the Seller, the performance by the Seller of its obligations hereunder and thereunder and the consummation by the Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Seller. This Agreement has been, and upon their execution the Ancillary Agreements shall have been, duly executed and delivered by the Seller.

Section 3.02 *No Conflict*. The execution, delivery and performance of this Agreement and the Ancillary Agreements by the Seller does not and will not (a) violate, conflict with or result in the breach of any provision of the Articles of Incorporation or By-Laws of the Seller, (b) assuming the making or obtaining of all filings, notifications, consents, approvals, authorizations and other actions referred to in Section 3.03 or the Consent Schedule, except as may result from any facts or circumstances relating solely to the Purchaser, materially conflict with or violate any Law or Governmental Order applicable to the Seller, the Business and the Purchased Assets, or (c) assuming the making or obtaining of all filings, notifications, consents, approvals, authorizations and other actions referred to in Section 3.03 or the Consent Schedule (as defined in Section 3.03), except as may result from any facts or circumstances relating solely to the Purchaser, conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment,

acceleration, suspension, revocation or cancellation of, or result in the creation of any Encumbrance on any of the Purchased Assets pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Seller is a party, except for any such conflicts, breaches, defaults, consent requirements, rights or Encumbrances that would not have a Material Adverse Effect.

**Section 3.03 Consents and Approvals.** The execution, delivery and performance of this Agreement and each Ancillary Agreement by the Seller does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority or other third party, except (a) with respect to any Governmental Authority, as described in Section 3.03(i) of the Disclosure Schedule, (b) with respect to any third party other than a Governmental Authority, as described in Section 3.03(ii) of the Disclosure Schedule, which schedule shall be prepared to the knowledge of the Seller and shall be delivered to the Purchaser within 14 calendar days of the date of this Agreement (the "*Consent Schedule*") and (c) for such consents, approvals, authorizations or other orders, actions, filings and notifications which would not be reasonably expected to (i) impair in any material respect the ability of the Seller to perform its obligations hereunder or in the Ancillary Agreements, (ii) prevent any of the transactions contemplated by this Agreement or the Ancillary Agreements, or (iii) impair in any material respect the ability of the Purchaser to perform, following the Closing Date, its obligations under the Loan Documents, enforce, administer and service the Loans, or perform its obligations under this Agreement and the Ancillary Agreements.

**Section 3.04 Conduct in the Ordinary Course; Absence of Certain Changes and Events.** Since March 31, 2007, the Purchased Assets have been serviced, administered and operated in the ordinary course and consistent with past practice. As amplification and not limitation of the foregoing, since March 31, 2007, the Seller has not:

(a) permitted or allowed any of the Purchased Assets to be subjected to any Encumbrance, other than Permitted Encumbrances and Encumbrances that will be released at or prior to the Closing;

(b) except as set forth in Section 3.04(b) of the Disclosure Schedule, materially amended, modified or consented to the termination of any Loan Agreement, Transferred IP Agreement or Transferred Lease Agreement or the Seller's rights thereunder;

(c) (i) abandoned, sold, assigned, or granted any security interest in or to any of the Owned Intellectual Property, Licensed Intellectual Property, IT Systems or Transferred IP Agreements, including failing (A) to perform or cause to be performed in all material respects all applicable filings, recordings and other acts or (B) to pay or cause to be paid all required fees and taxes to maintain and protect its interest in such Intellectual Property or IT Systems, (ii) granted to any third party any license with respect to any Owned Intellectual Property, Licensed Intellectual Property or IT System, (iii) developed, created or invented any Intellectual Property or IT System jointly with any third party other than in the ordinary course and consistent with past practice, or (iv) disclosed, or allowed to be disclosed, any confidential Intellectual Property or any confidential information relating to any of the IT Systems, unless the recipient of such Intellectual Property or such information is subject to a confidentiality or non-disclosure covenant protecting against further disclosure thereof; or

(d) agreed, whether in writing or otherwise, to take any of the actions specified in this Section 3.04 or granted any options to purchase, rights of first refusal, rights of first offer or any other similar rights or commitments with respect to any of the actions specified in this Section 3.04, except as expressly contemplated by this Agreement and the Ancillary Agreements.

**Section 3.05 Litigation.** Except as disclosed in Section 3.05(i) of the Disclosure Schedule, there are no Actions by or against the Seller or any of its Affiliates and relating to the Business or affecting any of the Purchased Assets pending before any Governmental Authority (or, to the knowledge of the

Seller, threatened to be brought by or before any Governmental Authority) as to which there is a reasonable probability of an adverse determination, and which, if adversely determined, would have a Material Adverse Effect. Except as disclosed in Section 3.05(ii) of the Disclosure Schedule, neither the Seller nor any of the Purchased Assets is subject to any Governmental Order (nor, to the knowledge of Fremont, are there any such Governmental Orders threatened to be imposed by any Governmental Authority) which would reasonably be expected to affect the legality, validity or enforceability of this Agreement, any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby in any material respect.

**Section 3.06 *Compliance with Laws.*** Except as set forth in Section 3.06 of the Disclosure Schedule, Seller has conducted and continues to manage, operate, administer and service the Purchased Assets in all material respects in accordance with all Laws and Governmental Orders applicable to Purchased Assets, and the Seller is not in violation in any material respect of any such Law or Governmental Order.

**Section 3.07 *Purchased Assets.*** (a) Seller owns, leases or has the legal right to use all the Purchased Assets and, with respect to contract rights, to the Seller's knowledge, the Seller is a party to and/or enjoys the right to the benefits of all contracts, agreements and other arrangements relating to the Purchased Assets. The Seller has good title to, or, in the case of leased Purchased Assets, valid and subsisting leasehold interests in, all of the Purchased Assets, free and clear of all Encumbrances, except for Permitted Encumbrances.

(b) Assuming the receipt of all of the consents listed on the Consent Schedule, following the consummation of the transactions contemplated by this Agreement and the execution of the instruments of transfer contemplated by this Agreement, *iStar* or its designated Affiliate will own, with good title, or lease under valid and subsisting leases, or otherwise acquire the interests of the Seller in the Purchased Assets, respectively, free and clear of any Encumbrances, except for Permitted Encumbrances.

(c) As of April 30, 2007, (i) except as provided in the Loan Documents, Fremont has not waived in writing any material defaults or any material terms of the Loan Documents, (ii) to Fremont's knowledge, no material default by any borrower which is reasonably likely to become an Event of Default (as defined in the applicable Loan Document) exists under the Loan Documents (other than with respect to entitlement receipt dates, out of balance issues on construction costs and interest reserves and presale requirements not timely met), (iii) except as contemplated by the terms of the Loan Documents (including, without limitation, with respect to any "holdback" under the Loan Documents), Fremont has not advanced any material sums to cure any defaults of a borrower, and (iv) to the knowledge of Fremont, except as set forth in Section 3.07(c) of the Disclosure Schedule, there are no currently outstanding default notices or notices with respect to loan balancing sent by Fremont with respect to any Loan or the Loan Documents. The Seller agrees to use all reasonable efforts to apprise the Purchaser of any changes with respect to the matters set forth in this Section 3.07(c).

**Section 3.08 *Purchased Loans; Special Loans.***

(a) Section 2.01(i) of the Disclosure Schedule accurately sets forth the following information as of the Reference Date and as of April 30, 2007 concerning the Loans: (i) the gross amount of the commitment with respect to the Loan, whether funded or not, (ii) the outstanding principal balance of the Loan, (iii) the remaining unfunded commitment of the Loan, (iv) if applicable, the outstanding principal amount of any participation rights granted to any third party in such Loan, (v) the outstanding principal amount owed to the Seller or any of its Affiliates under such Loan, (vi) a list of the Loans that are currently in foreclosure or where the borrower thereunder is, to the knowledge of the Seller, the subject of bankruptcy or foreclosure proceedings, (vii) all deposits held by Fremont under any of the Loans, and (viii) all obligations of Fremont to refund deposits or other sums.



(b) The Seller and its Affiliates have materially complied with, and have materially performed, all obligations required to be complied with or performed by them under the Loan Documents and the Seller and its Affiliates have not breached any of their representations or warranties under any of the Loan Documents in any material respect. To the Seller's knowledge, except as set forth in Section 3.08(b) of the Disclosure Schedule, no Loan is subject to any borrower's, guarantor's, indemnitor's or other obligor's or participant's or co-lender's right of set-off, equitable subordination or other defense to payment.

(c) Neither the Seller nor its Affiliates nor, to the Seller's knowledge, the Seller's predecessors in interest, has effected or received the benefit of any setoff against any borrower or any obligor on account of any of the Loans.

(d) The Seller has provided to the Purchaser or its representatives access to true, correct and complete copies of each Loan Document in the Seller's possession or control. The Seller is in possession of the original promissory note for each Loan except where it is a participant only and with respect to participated Loans, the Seller has possession of the original participation certificate. No Encumbrances on the collateral have been released by the Seller or any of its Affiliates, except for such Encumbrances relating to collateral (i) sold in the ordinary course of the related borrower's or obligor's business, (ii) sold in accordance with the terms of the related Collateral Documents that has resulted in a payment of principal on the related Loan, or (iii) otherwise sold or transferred to the extent expressly permitted under the related Loan Documents. Except as otherwise disclosed in the Schedules hereto and except for immaterial changes in the normal course of the administration of a Loan, no Collateral Document relating to a Loan has been terminated or canceled.

(e) To the Seller's knowledge, all material waivers, modifications and consents with respect to the Loans are in writing.

(f) As of April 30, 2007, neither the Seller nor any of its Affiliates has received any written notice (and does not otherwise have any actual notice) that (i) any payment or other transfer made to or for the account of the Seller or such Affiliate from or on account of any borrower or any obligor with respect to any Loan is or may be void or voidable as an actual or constructive fraudulent transfer or as a preferential transfer or (ii) the Loans or any portion of them are void, voidable, unenforceable or subject to any Impairment. The Seller agrees to use all reasonable efforts to apprise the Purchaser of any changes with respect to the matters set forth in this Section 3.08(f).

(g) To the Seller's knowledge, each Loan (i) is denominated and payable only in United States dollars, (ii) is not unsecured and is not secured solely by equity in the related borrower or obligor, if any, or any other Person, (iii) has not been rescinded in writing, (iv) is not subordinated in writing to any other obligation of the related borrower or obligor, and (v) does not provide for interest payable as a percent of profits or, as to condominium loans, as a percent of proceeds from the sale of condominiums.

(h) To the knowledge of the Seller, each Loan is the legal, valid and binding payment obligation of the related borrower and other obligors with respect to such Loan, if any, enforceable against the related borrower and such obligors in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally, and except as such enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity).

(i) To the knowledge of the Seller, except as previously disclosed in third-party environmental site assessments made available to the Purchaser by the Seller, (i) no collateral relating to any Loan and no REO Property is subject to any environmental hazard (including, without limitation, any situation involving Hazardous Materials) which under applicable Laws would have to be eliminated before the sale of, or which could otherwise materially affect the value or marketability of, such collateral,

(ii) there exist no circumstances or conditions respecting any collateral relating to any Loan or to any REO Property that would reasonably be expected to (x) constitute or result in a material violation of an Environmental Law, (y) impose any material constraint on the business or operations of the related borrower or obligor or such collateral or result in any material change in the operation or use of such collateral or (z) require Remedial Action under any applicable Environmental Laws, (iii) as of April 30, 2007 the Seller has not given to or received from any Governmental Authority written notice of any release or presence of Hazardous Materials with respect to any collateral relating to any Loan or to any REO Property, or become aware of any such conditions, and (iv) the Seller has not taken any action in relation to any Loan, the related borrower or obligor or the related collateral that would reasonably be expected to subject it or the Purchaser to material liability under any Environmental Laws. Neither the Seller nor any of its Affiliates has received any written notice or other written communication by or on behalf of any agent on any Loan relating to the subject matter set forth in clauses (i) through (iv) above (or in respect of any Loan for which the Seller or any of its Affiliates is the Agent, that Fremont is aware of). In addition, the Seller has delivered or caused to be delivered or made available to the Purchaser or its representatives copies of any environmental assessment or report on any collateral relating to the Loans and REO Property that the Seller or any of its Affiliates has in its possession or received from the related agent (or in respect of any Loan for which any of the Seller or any of its Affiliates is agent, that Fremont is aware of).

(j) The Seller has delivered to the Purchaser true and complete copies of all non-binding commitment letters relating to the Class 1 Loans and all letters of interest relating to the Class 2 Loans and, to the extent applicable, has made available to the Purchaser all Loan Documents relating thereto (including all amendments to any of the foregoing). The Seller has not issued any commitment letters with respect to the Class 2 Loans or indicated in writing that any will be coming.

Section 3.09 *Bulk Sales Laws.* The Seller is not required to comply with "bulk sales laws" or regulations relating to transfers governed by Article 6 of the UCC of any state or any other applicable laws or regulations relating to bulk transfers in connection with the consummation of any of the transactions contemplated hereby.

Section 3.10 *Intellectual Property and IT Systems.*

(a) The Seller or its Affiliates own or have a valid and legally enforceable right to use all Intellectual Property used in the conduct of the Business as currently conducted and as conducted during the past six months (the "*Business Intellectual Property*"). The Seller and its Affiliates do not license, sell or distribute any Business Intellectual Property to third parties. Sections 3.10(b)(i)-(iv) of the Disclosure Schedule contains information as described below with respect to the following Intellectual Property: registered and material unregistered trademarks; registered or pending applications for patents; registered or pending applications for copyrights; registered domain names and material IT Systems.

(b) Section 3.10(b)(i) of the Disclosure Schedule sets forth a true and correct list of Owned Intellectual Property which is used exclusively in the Business as currently conducted and as conducted during the past six months. Section 3.10(b)(ii) of the Disclosure Schedule sets forth a true and correct list of material Owned Intellectual Property which is used non-exclusively in the Business as currently conducted and as conducted during the past six months. Section 3.10(b)(iii) of the Disclosure Schedule sets forth a true and correct list of all Licensed Intellectual Property which is exclusively used in the Business as currently conducted and as conducted during the past six months. Section 3.10(b)(iv) of the Disclosure Schedule sets forth a true and correct list of all Licensed Intellectual Property which is used non-exclusively in the Business as currently conducted and as conducted during the past six months. Each of said sections of the Disclosure Schedule also sets forth (A) the specific entity (the Seller or one of its Affiliates) which owns or is the stated licensee (or rights holder) of the Business Intellectual Property, and (B) the jurisdictions in which each such item of Owned Intellectual Property has been

issued or registered or in which an application for such issuance and registration has been filed (including the respective registration or application numbers). No Owned Intellectual Property that is or has been the subject of an application or registration has had such application or registration canceled, abandoned, adjudicated invalid, or otherwise terminated; and all renewal and maintenance fees in respect of the applicable Owned Intellectual Property have been duly paid. The Seller and its Affiliates have taken all reasonable measures, as appropriate, to maintain and protect the confidential and proprietary nature of the Owned Intellectual Property.

(c) Fremont is the sole and exclusive owner of the entire right, title and interest in and to the Owned Intellectual Property (free and clear of any Encumbrances (other than Permitted Encumbrances) or obligations to pay any compensation to any third party in respect thereof or in connection with the use thereof). All Owned Intellectual Property has been developed or created by (i) employees of the Seller or its Affiliates who developed or created such Owned Intellectual Property acting within the scope of their employment, and who have, to the extent necessary, assigned all of their rights thereto to the Seller or (ii) independent contractors who have assigned all of their rights thereto to the Seller. No government funding or university or college facilities were used in the development of any Owned Intellectual Property.

(d) Subject to the last sentence of this Section 3.10(d), Section 3.10(d) of the Disclosure Schedule, which shall be delivered to the Purchaser within 7 calendar days of the date of this Agreement, shall set forth Intellectual Property Contracts for Business Intellectual Property to which the Seller or any of its Affiliates is a party ("*Business Intellectual Property Contracts*"), and includes the identity of all parties thereto and a description of the nature and subject matter thereof. The Seller has made available to the Purchaser complete and correct copies of all Transferred IP Agreements. Section 3.10(d) of the Disclosure Schedule does not need to include any licenses for commercially available, "off-the-shelf" IT Systems licensed pursuant to shrink-wrap or click wrap license that are not material to the Purchased Assets. None of the Seller or its Affiliates is in material default in the performance, observance or fulfillment of any obligation, covenant or condition contained in any of the Transferred IP Agreements, and, to the knowledge of the Seller, no other party is in default in the performance, observance or fulfillment of any obligation, covenant or condition contained in any of the Transferred IP Agreements. The Business does not use any Business Intellectual Property not owned by the Seller or its Affiliates, except pursuant to Business Intellectual Property Contracts listed under Sections 3.10(b)(iii) or (iv) of the Disclosure Schedule.

(e) To the knowledge of Fremont, the conduct of the Business does not infringe, misappropriate or violate, and has not infringed, misappropriated or violated, the Intellectual Property of any third party, and no Action alleging any of the foregoing is pending, and no Claim has been threatened or asserted against the Seller or any of its Affiliates alleging any of the foregoing. To the knowledge of Fremont, no Person is engaging in any activity that infringes the Owned Intellectual Property.

(f) No Owned Intellectual Property is subject to any outstanding decree, order, injunction, judgment or ruling restricting the use of such Owned Intellectual Property or that would impair the validity or enforceability of such Owned Intellectual Property.

(g) Each item of Business Intellectual Property (including the IT Systems) will, immediately subsequent to the Closing hereunder, be owned or otherwise available for use by iStar (i) on such terms and in such a manner as are identical in all material respects to those pursuant to which the Seller and its Affiliates immediately prior to the Closing, own or have the right to use such item, or (ii) pursuant to the Transition Services Agreement. The IT Systems constitute all of the IT systems material to the current servicing and maintenance of the Loans.

(h) The Seller and its Affiliates have taken all reasonable steps in accordance with industry standards to secure the material IT Systems from unauthorized access or use by any Person and to enable the continued and uninterrupted operation of the material IT Systems. The Business has not

suffered any failures, errors or breakdowns in the IT Systems used in the servicing and maintenance of the Loans within the past 12 months which have caused any substantial disruption or interruption in the Business.

Section 3.11 *Real Property.* (a) Except as would not reasonably be expected to have a Material Adverse Effect, as of the date of this Agreement, Seller and its Affiliates have complied with and performed all obligations required to be complied with or performed by them under the Transferred Lease Agreements. Neither the Seller nor any of its Affiliates has received notice from any other party to any Transferred Lease Agreement, or otherwise has knowledge of, such party's intention to terminate such Transferred Lease Agreement.

(b) The rent set forth in, or calculated pursuant to, each Transferred Lease Agreement and Excluded Lease is the actual rent being paid under such Transferred Lease Agreement and Excluded Lease, and there are no separate agreements or understandings with respect to the same.

(c) To the Seller's knowledge, no REO Property is subject to any mortgage or any lien or Encumbrance that would materially adversely affect the use thereof, other than mortgages or analogous documents securing a Loan for the benefit of the Seller and which are assigned to the Purchaser.

Section 3.12 *Labor and Employee Benefit Matters.*

(a) Section 3.12(a) of the Disclosure Schedule lists all Benefit Plans. No Benefit Plan is subject to Section 302 or Title IV of ERISA or Section 412 of the Code. No Benefit Plan is a "multi-employer plan" (as such term is defined in Section 3(37) or 4001 of ERISA).

(b) With respect to each Benefit Plan, the Seller has made available to the Purchaser true, complete and correct copies of (to the extent applicable): (i) all documents pursuant to which the Benefit Plan is maintained, funded and administered (including the plan and trust documents, any amendments thereto, the summary plan descriptions, and any insurance contracts or service provider agreements); (ii) the three most recent annual reports (IRS Form 5500 series) filed with the IRS (with applicable attachments); and (iii) the most recent determination letter, if any, received from the IRS.

(c) Section 3.12(c) of the Disclosure Schedule lists each Business Employee by identification number, including his or her work location, job title, current base rate of wages or salary, and whether he or she is eligible for any incentive compensation or bonus.

(d) During the two-year period ending on the Closing Date, with respect to any operation of the Seller that employs any of the Business Employees: (i) there has not been (and to the Seller's knowledge there is not now threatened) any strike, lockout, picketing, primary or secondary boycott, handbilling, concerted work stoppage or slowdown, or similar, material labor dispute; (ii) no employees of the Seller have been represented by any labor organization with respect to their employment by the Seller; (iii) the Seller has not been a party to or negotiated any collective bargaining agreement, labor contract, or other written or oral agreement or understanding with any labor organization covering wages, hours, or terms or conditions of employment; (iv) no labor organization or employee of the Seller has, to the Seller's knowledge, attempted to organize any of the Seller's employees, made a demand for voluntary recognition, presented the Seller with any petitions or authorization cards seeking to have a labor organization represent any group of the Seller's employees, filed any representation petition with the National Labor Relations Board, or given the Seller notice of any election of a collective bargaining representative (nor, to the Seller's knowledge, has any of these actions been threatened); and (v) the Seller has not authorized any employer or multiemployer association or organization to represent the Seller in collective bargaining with any labor organization.

(e) The Seller has made available to the Purchaser all Employment Contracts, which include (i) all written agreements between the Seller and any Business Employee that describe any terms or conditions of employment for any Business Employee, including any and all employment agreements, retention agreements, severance agreements, compensation agreements change of control agreements, consulting agreements; and (ii) all written agreements between the Seller and any Business Employee that (A) impose upon any Business Employee any obligation with respect to the assignment of inventions or the nondisclosure or confidentiality of proprietary or confidential information or (B) restrict the activities of any Business Employee during or after his or her employment by the Seller, including any agreement that restricts any Business Employee's ability to compete with any Person, provide services to any Person, solicit any Person's employees, or solicit any Person's customers or prospective customers (the "*Employment Contracts*").

(f) Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a determination from the IRS that such Benefit plan is so qualified, and nothing has occurred since the date of such determination that would reasonably be expected to cause such determination letter to become unreliable.

(g) Each Benefit Plan that is subject to the health care continuation requirements of COBRA has been administered in material compliance with such requirements. No Benefit Plan provides medical or life or other welfare benefits to any current or future retired or terminated employee (or any dependent thereof) of the Seller other than as required pursuant to COBRA or applicable state law.

(h) The transactions contemplated by this Agreement would not reasonably be expected to constitute transactions to evade or avoid liability (as described in Section 4069(a) or 4212(c) of ERISA).

(i) The transactions contemplated by this Agreement would not reasonably be expected to constitute nonexempt prohibited transactions (within the meaning of Section 406 of ERISA and Section 4975 of the Code).

(j) Except as set forth in Section 3.12(j) of the Disclosure Schedule, no Business Employee has any plans to terminate his or her employment with the Seller on or before the Closing Date (other than in connection with accepting employment with the Purchaser).

(k) Section 3.12(k) of the Disclosure Schedule sets forth a true, complete and correct list, by work location, of all employees of the Seller whose services were performed primarily for the benefit of any of the Purchased Assets and who have suffered an "employment loss" or "mass layoff"—as defined by WARN—during the 90-day period prior to the date of this Agreement. On the Closing Date, the Seller shall provide the Purchaser with an updated version of Section 3.12(k) of the Disclosure Schedule, listing all employees of the Seller whose services were performed primarily for the benefit of the

Purchased Assets and who have suffered an "employment loss" or "mass layoff" (as those terms are defined by WARN) during the 90-day period ending on and including the Closing Date.

Section 3.13 *Taxes*. Except as set forth in Section 3.13 of the Disclosure Schedule, (a) all material Tax Returns required to be filed by or with respect to the Purchased Assets and the Business have been timely filed and all such Tax Returns are true, correct and complete in all material respects; (b) all material Taxes shown on such Tax Returns have been timely paid; (c) no material adjustment relating to such Tax Returns has been proposed in writing by any Governmental Authority; (d) there are no material Tax liens on any of the Purchased Assets (except for liens for Taxes that are not yet due); (e) the Seller has not received any notice in writing from any jurisdiction where the Seller does not currently file Tax Returns to the effect that such filings may be required with respect to the Business or that the Business may otherwise be subject to taxation by such jurisdiction; and (f) the Seller is not aware of any Tax audits by any Tax authority in progress relating to the Purchased Assets or the Business, nor has the Seller received any written notice indicating that a Governmental Authority intends to conduct such an audit.

Section 3.14 *Brokers*. No broker, finder or investment banker (other than Credit Suisse Securities LLC, the fees and expenses of which will be paid by the Seller or its Affiliates) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the Ancillary Agreements based upon arrangements made by or on behalf of the Seller or any of its Affiliates.

Section 3.15 *Solvency*. The Seller is, and after giving effect to the transactions contemplated by this Agreement will be, solvent.

Section 3.16 *Letters of Credit and Reserve Accounts*. Section 3.16(i) of the Disclosure Schedule lists, and the Seller has made available to the Purchaser, each letter of credit delivered to, and held by, the Seller or its Affiliates pertaining to the Loans. Section 3.16(ii) of the Disclosure Schedule lists all impounded or reserve accounts held by the Seller or its Affiliates with respect to the Loans.

#### **ARTICLE IV.**

##### **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

As an inducement to the Seller to enter into this Agreement, the Purchaser hereby represents and warrants to the Seller as follows:

Section 4.01 *Organization and Authority of the Purchaser*. The Purchaser is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all necessary corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party, the performance by the Purchaser of its obligations hereunder and thereunder and the consummation by the Purchaser of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Purchaser. This Agreement has been, and upon their execution the Ancillary Agreements to which the Purchaser is a party shall have been, duly executed and delivered by the Purchaser.

Section 4.02 *No Conflict*. The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party do not and will not (a) violate, conflict with or result in the breach of any provision of the Charter or Bylaws of the Purchaser, (b) assuming the making or obtaining of all filings, notifications, consents, approvals, authorizations and other actions referred to in Section 4.03, except as may result from any facts or circumstances relating solely to the Seller, materially conflict with or violate any Law or Governmental Order applicable to the Purchaser, or (c) assuming the making or obtaining of all filings, notifications, consents, approvals, authorizations and other actions referred to in Section 4.03, except as may result from any facts or circumstances

relating solely to the Seller, conflict with, or result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Purchaser is a party, except for any such conflicts, breaches, defaults, consent requirements or rights that would not reasonably be expected to materially adversely affect the ability of the Purchaser to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement or the Ancillary Agreements.

Section 4.03 *Governmental Consents and Approvals.* The execution, delivery and performance by the Purchaser of this Agreement and each Ancillary Agreement to which the Purchaser is a party does not and will not require any consent, approval, authorization or other order of, action by, filing with, or notification to any Governmental Authority or third party, except with respect to Subleases and the Required Consents.

Section 4.04 *Litigation.* No material Action by or against the Purchaser is pending or, to the knowledge of the Purchaser, threatened, which would reasonably be expected to materially affect the legality, validity or enforceability of this Agreement, any Ancillary Agreement or the consummation of the transactions contemplated hereby or thereby.

Section 4.05 *Brokers.* No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser.

Section 4.06 *Financing.* The Purchaser has or has access to, and on the Closing Date will have available, all funds necessary to pay all amounts to be paid by it hereunder.

Section 4.07 *Assumed Letters of Interest.* The Purchaser has previously delivered in writing to the Seller a list of those Class 2 Loans as to which the Purchaser will seek to enter into letters of commitment with the Persons who are parties thereto.

## ARTICLE V.

### ADDITIONAL AGREEMENTS

Section 5.01 *Conduct of Business Prior to the Closing.*

(a) The Seller covenants and agrees that, except as otherwise contemplated hereby, between the date hereof and the time of the Closing, the Seller shall service and administer the Loans and the Special Loans and manage and operate the Purchased Non-Loan Assets prudently and in the ordinary course of business; *provided, however,* that notwithstanding the foregoing, prior to the Closing, (i) the Seller shall not take any material actions with respect to any Loan or Special Loan (including, but not limited to, commencing any Enforcement Action, granting or withholding any material consent or approval, releasing any collateral (except to the extent such release is required pursuant to the terms and provisions of the Loan Documents as in effect on the date hereof), subordinating any Liens, Loans or Special Loans, modifying, extending or amending any of the Loan Documents, granting or withholding any material waiver or releasing any borrower, guarantor, indemnitor, obligor or other Person, completing any Enforcement Action or accepting any deed (or other transfer) in lieu of the exercise of such remedies) or any other Purchased Asset (including, without limitation, any REO Property) without obtaining the Purchaser's prior written consent, (ii) the Seller shall not sell, convey or transfer any Loan, Special Loan or other Purchased Asset or any participation or other interest thereon without the Purchaser's prior written consent, and (iii) the Seller shall not issue any new loan commitment or letter of interest or close on any existing commitment letter or letter of interest, including any such letters that constitute Special Loans, or amend any material terms thereof without the Purchaser's prior written consent, all of which may be withheld in the Purchaser's sole discretion;

provided, however, that the Purchaser shall be permitted to withhold consent to closing transactions covered by binding commitment letters with respect to Class 1 Loans only as a result of the failure to satisfy a condition to the commitment. The Purchaser shall have designated representatives of the Purchaser meet with designated representatives of the Seller at least twice a week (which may be telephonic) to review all such matters. The Seller shall provide to the Purchaser copies of all written materials relating to loan proposals (including all third party reports) and commitments. Representatives of the Purchaser shall have the right to attend all meetings between the Seller and its borrowers in the course of negotiating loan proposals and loan modifications and the Seller shall give the Purchaser reasonable advance notice thereof. The Seller shall use reasonable best efforts to send the Purchaser copies of all notices given to, or received from, borrowers or its or their consultants, attorneys or agents, contractors, architects, or other representatives at such time as sent by, or received by, the Seller.

(b) Without limiting the generality of the foregoing, the Seller shall not engage in any practice, take any action, fail to take any action or enter into any transaction which would reasonably be expected to cause any representation or warranty of the Seller to be untrue or result in a breach of any covenant made by the Seller in this Agreement.

(c) From the date hereof through the Closing, except as provided by Section 5.14(a) or with the prior written consent of the Purchaser, the Seller: (i) shall use all commercially reasonable efforts to maintain the employment of all Offered Employees; (ii) shall not, except in the ordinary course of business in accordance with existing personnel policies, discharge or take any other adverse employment action against any Offered Employee; (iii) shall not, except under the terms of existing Employment Contracts, or as required by Law, take or promise to take any action that would increase the wages, salary, bonus, incentive compensation, severance, or any other benefits payable to (or that could become payable to) any of the Offered Employees before, on or after the Closing Date; and (iv) shall not enter into or amend any Employment Contract of any Offered Employee.

Section 5.02 *Access to Information.* (a) From the date hereof until the Closing, upon reasonable notice, the Seller shall cause its officers, directors, employees, agents, representatives, accountants and counsel to: (i) afford the officers, employees, agents, accountants, counsel and representatives of the Purchaser reasonable access, during normal business hours, to the offices, properties, plants, other facilities, IT Systems, books and records of the Seller (relating to the Business and the Purchased Assets), and to those officers, directors, employees, agents, accountants and counsel of the Seller who have any knowledge relating to the Business as the Purchaser may reasonably request, and (ii) furnish to the officers, employees, agents, accountants, counsel and representatives of the Purchaser such additional financial and operating data and other information regarding the assets, properties, and liabilities of the Business (or legible copies thereof) as the Purchaser may from time to time reasonably request.

(b) In order to facilitate the resolution of any Claims made against or incurred by the Seller prior to the Closing, for a period of seven years after the Closing, the Purchaser shall (i) to the extent such information is provided by the Seller to the Purchaser, retain the books and records delivered to the Purchaser relating to the Purchased Assets relating to periods prior to the Closing in a reasonable manner and (ii) upon reasonable notice, afford the officers, employees, agents and representatives of the Seller reasonable access (including the right to make, at the Seller's expense, photocopies), during normal business hours, to such books and records.

(c) In order to facilitate the resolution of any Claims made by or against or incurred by the Purchaser after the Closing or for any other reasonable purpose, for a period of seven years following the Closing, the Seller shall (i) retain the books and records of the Seller which relate to the Business and its operations for periods prior to the Closing and which shall not otherwise have been delivered to the Purchaser and (ii) upon reasonable notice, afford the officers, employees, agents and representatives of the Purchaser reasonable access (including the right to make photocopies, at the Purchaser's expense), during normal business hours, to such books and records.



(d) The parties hereto acknowledge and agree that no investigation pursuant to this Section 5.02 shall affect or be deemed to modify any representation or warranty made by the Seller herein. Notwithstanding the above, neither party shall be required to provide access to or disclose information pursuant to this Section 5.02 where such access or disclosure would violate the rights of its customers, jeopardize any attorney-client privilege or contravene any Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. The parties hereto will make appropriate substitute disclosure arrangements under circumstances in which the restrictions in the preceding sentence apply. Each party shall, and shall cause its representatives to, use all reasonable efforts to prevent such access and inspection from interfering with the business operations of the other.

(e) All information obtained by the Purchaser pursuant to this Section 5.02 shall be kept confidential in accordance with the confidentiality agreement, dated February 26, 2007, between Fremont General Corporation and the Purchaser, as amended on April 19, 2007 (the "*Confidentiality Agreement*").

**Section 5.03 Confidentiality.** The Seller agrees to, and shall use all reasonable efforts to cause its agents, representatives, Affiliates, employees, officers and directors to: (a) treat and hold as confidential (and not disclose or provide access to any Person) all information relating to processes, policies and strategies and details of the Business and the Purchased Assets (including, but not limited to information relating to the terms of the Loan Documents transferred hereunder or information regarding the Intellectual Property or IT Systems transferred hereunder), operations methods, and all other confidential or proprietary information with respect to the Purchased Assets, (b) in the event that the Seller or any such agent, representative, Affiliate, employee, officer or director becomes legally compelled to disclose any such information, provide the Purchaser with prompt written notice of such requirement so that the Purchaser may seek a protective order or other remedy or waive compliance with this Section 5.03, and (c) in the event that such protective order or other remedy is not obtained, or the Purchaser waives compliance with this Section 5.03, furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information, *provided, however*, that this sentence shall not apply to any information that (y) at the time of disclosure, is available publicly and was not disclosed in breach of this Agreement by the Seller, its agents, representatives, Affiliates, employees, officers or directors or (z) also relates to a business of the Seller or its Affiliates other than the Business. In addition, with respect to Intellectual Property and IT Systems, any combination of features shall not be deemed to be within the exception contained in clause (y) above merely because the individual features are in the public domain unless the combination itself and its principle of operation are in the public domain.

**Section 5.04 Regulatory and Other Authorizations; Notices and Consents.**

(a) The parties hereto shall cooperate with each other and use their reasonable best efforts to promptly prepare and file all necessary documentation to effect all applications, notices, petitions and filings, and to obtain as promptly as practicable all permits, consents, approvals and authorizations of all third parties and Governmental Authorities which are necessary or advisable to consummate the transactions contemplated by this Agreement, to comply with applicable Law or to comply with the terms and provisions of applicable agreements, and to comply with the terms and conditions of all such permits, consents, approvals and authorizations of all such Governmental Authorities. The Seller shall use reasonable best efforts to obtain all authorizations, consents, orders and approvals of all borrowers, co-lenders, licensors, participants, landlords, mezzanine lenders and other third parties that are necessary for the performance of its obligations pursuant to Section 2.01 of this Agreement as promptly as possible after the date hereof (collectively, such authorizations, consents, orders and approvals referred to herein as the "*Required Consents*") and the Purchaser shall use all reasonable efforts to cooperate with the Seller and use all reasonable efforts in promptly seeking to obtain all such authorizations, consents, orders and approvals; *provided, however*, that neither the Seller nor the Purchaser shall have any obligation to give any guarantee or other consideration of any nature in

connection with any such notice, consent or estoppel certificate or to consent to any change in the terms of any agreement or arrangement which the Seller or the Purchaser, as applicable, in its respective sole discretion may deem adverse to its interests. The Seller shall use reasonable best efforts to obtain releases from borrowers and other third parties that are necessary to relieve the Seller from any obligation to extend funds to any such borrower or third parties from and after the Closing Date pursuant to any Assumed Liabilities, including without limitation pursuant to any Loan Documents (the "Releases") and the Purchaser shall use reasonable best efforts (at no cost to the Purchaser) to cooperate with the Seller in obtaining the Releases. The Seller will, if requested by any third-party from whom the Seller is seeking a Release, confirm to such third-party that the Seller is not released from any Excluded Liabilities.

(b) Subject to the terms and conditions of this Agreement, in the event that, with respect to any Loan, the related Loan Documents do not permit, or contain an unsatisfied condition or requirement for, the assignment thereof to the Purchaser, the Seller and the Purchaser shall, if after using reasonable best efforts to satisfy the relevant condition or requirement, the Seller is unable to satisfy such condition or requirement and if the Purchaser shall, in its reasonable discretion, consent both to the entering into of such substitute arrangement and to the documents with respect thereto, enter into substitute arrangements, with respect to such Loan as reasonably necessary to effectuate the intent and purposes of this Agreement, including, without limitation, by the Seller granting, and, with respect to Assumed Liabilities only, the Purchaser assuming all obligations with respect to, a participation interest in any such Loan, it being expressly understood that in no event shall the Purchaser be deemed to have agreed to do any of the foregoing except to the extent consistent with Section 6.02(d).

(c) The Seller and the Purchaser agree that, in the event that any consent, approval or authorization necessary or desirable to preserve for the Purchaser any right or benefit under any Transferred IP Agreement or Transferred Lease Agreement to which the Seller is a party is not or cannot be obtained at or prior to the Closing, such Transferred IP Agreement or Transferred Lease will not be assigned at the Closing and the Seller will, subsequent to the Closing, cooperate with the Purchaser in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization is not or cannot be obtained, the Seller shall use all reasonable best efforts to take all steps necessary to provide the Purchaser with the rights and benefits of the affected lease, license, contract, commitment or other agreement or arrangement for the term of such lease, license, contract or other agreement or arrangement (including, (i) enforcing at the request and direction of the Purchaser, and for the account of the Purchaser (or its Affiliates), any rights of the Seller or its Affiliates arising from the applicable lease, license, contract, commitment or other agreement or arrangement and (ii) immediately forwarding to the Purchaser, and informing the Purchaser of, any and all correspondence and communications it receives from the other parties to any applicable contract), and, if the Seller provides such rights and benefits, the Purchaser, as the case may be, shall assume the applicable obligations and burdens thereunder. This Section 5.04 shall not release the Seller from the consequences of any breach of its representations and warranties under this Agreement. The payment to third parties of all fees and costs (not including any Seller or Purchaser legal fees or expenses) for any consent, approval, authorization or license necessary or desirable to preserve for the Purchaser any right or benefit under any Transferred IP Agreement to which the Seller or any of its Affiliates is a party or to provide the Purchaser with the rights and benefits of such license, contract or other agreement or arrangement shall be allocated pursuant to the procedures set forth in Section 5.17.

Section 5.05 *Notice of Developments.* (a) Prior to the Closing, the Seller shall promptly notify the Purchaser in writing of (a) all events, circumstances, facts and occurrences arising subsequent to the date of this Agreement which would reasonably be expected to result in any breach of a representation or warranty or covenant of the Seller in this Agreement or which would reasonably be expected to have the effect of making any representation or warranty of the Seller in this Agreement untrue or incorrect in any respect and (b) all other material developments affecting the Purchased Assets.

Section 5.06 *No Solicitation or Negotiation.* (a) The Seller shall, and shall direct or cause its representatives to, immediately cease and cause to be terminated any discussions or negotiations with any parties that may be ongoing with respect to an Acquisition Proposal. The Seller shall not, directly or indirectly, and shall instruct (and not revoke any such instructions) its representatives not to, directly or indirectly, (i) solicit, initiate, negotiate, knowingly encourage or knowingly facilitate (including by way of furnishing non-public information) the submission of any Acquisition Proposal, (ii) enter into any agreement with respect to any Acquisition Proposal or (iii) participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Acquisition Proposal, or afford access to properties, books or records of the Seller to any Person that has disclosed to the Seller that it is contemplating making an Acquisition Proposal.

(b) Notwithstanding anything to the contrary in this Section 5.06, the Seller may participate in any discussions or negotiations with, or furnish information to, any Person that has made an unsolicited Acquisition Proposal, that did not result from a breach of Section 5.06(a), and where the Seller has (i) determined, in its good faith judgment (after consultation with its outside legal counsel and its financial advisors), that such Acquisition Proposal constitutes, or may reasonably be expected to lead to, a Superior Proposal, (ii) provided written notice to the Purchaser of its intent to participate in discussions or negotiations with, or furnish information to, such Person, and (iii) obtained from such Person an executed confidentiality agreement on terms no more favorable to the other party than those contained in the Confidentiality Agreement. The Seller shall notify the Purchaser of any Acquisition Proposal it receives within one Business Day after receipt of such Acquisition Proposal and shall include the material terms and conditions of such Acquisition Proposal and the identity of the Person making such Acquisition Proposal. The Seller shall notify the Purchaser of any material modification to any Acquisition Proposal within one Business Day after such modification is proposed.

(c) In the event that the Seller enters into a definitive agreement with respect to a Superior Proposal, such agreement shall provide that the purchaser thereunder (the "*Alternative Purchaser*") shall, at the option of the Purchaser, (i) assume the funding commitment with respect to those Special Loans assigned to the Purchaser pursuant to Section 2.10 hereof that have not yet been funded and indemnify the Purchaser with respect to such funding commitment and (ii) purchase each of the Special Loans assigned to the Purchaser pursuant to Section 2.10 hereof that have been funded for an amount equal to the par value of such Special Loans plus the accrued interest thereon and indemnify the Purchaser with respect to the obligations under the Loan Documents with respect to those Special Loans purchased. In order to exercise the option referred to in the preceding sentence, the Purchaser must deliver written notice to the Alternative Purchaser not later than the second Business Day following the termination of this Agreement pursuant to Section 8.01(f).

Section 5.07 *Use of Intellectual Property.* Except as set forth in the Transition Services Agreement, from and after the Closing, neither the Seller nor any of its Affiliates shall use any of the Owned Intellectual Property or any of the Licensed Intellectual Property transferred to iStar pursuant to this Agreement.

Section 5.08 *Non-Solicitation of Customers.* From and after the Closing Date until the 18 month anniversary of the Closing, the Seller shall not, directly or indirectly, and shall instruct (and not revoke any such instructions) its representatives not to, solicit, divert, take away or attempt to solicit, divert or take away any customer of the Business as of the date hereof.

Section 5.09 *Transition Services.* Following the Closing, Fremont shall provide, or cause to be provided, to iStar certain services that are currently provided by Fremont and its Affiliates to the Business pursuant to the Transition Services Agreement.

Section 5.10 *Tax Cooperation and Exchange of Information.* The Seller and the Purchaser shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return or otherwise in respect of Tax matters in connection with this Agreement and the Purchased Assets.

Section 5.11 *Transfer Taxes.* The parties shall each be responsible for the payment of one-half of any Transfer Taxes which become payable in connection with the transactions contemplated by this Agreement. The party that is primarily responsible under law for the filing of any Tax Returns or other documents in connection with such Transfer Taxes shall prepare the appropriate Tax Return or other document and provide a copy to the other party for its review and consent prior to the filing thereof. The party that is primarily responsible under law for the payment of any such Transfer Tax shall pay the same to the appropriate Taxing authority, and shall be promptly reimbursed for one-half of the amount of such Transfer Tax by the other party.

Section 5.12 *Further Action.* (a) Each party agrees (i) to execute and deliver, or cause to be executed and delivered, all such instruments and (ii) to take all such action (including, without limitation, post closing adjustments on account of errors relating to provisions hereunder) as the other parties may reasonably request to effectuate the intent and purposes, and to carry out the terms, of this Agreement, including, subject to the terms of this Agreement, the procurement of any third-party consents and amendments to agreements, the filing of continuation statements in all necessary jurisdictions and the timely transfer of accounts and other collateral relating to the Loans. From and after the date hereof, the Seller shall (at the Purchaser's expense, except if the same is an indemnification obligation of the Seller pursuant to Section 7.02) fully and promptly cooperate with the Purchaser, and the successors and assigns of the Purchaser, in connection with any litigation involving the Purchased Assets (including, but not limited to, the Transferred Rights), to the extent reasonably requested by Purchaser or such successor or assignee.

(b) If at any time after the Closing, Seller or any of its Affiliates receives a Distribution with respect to any Loan to which the Purchaser is entitled pursuant to this Agreement, the Seller shall (i) accept and hold such Distribution in trust for the account and sole benefit of the Purchaser, (ii) have no equitable or beneficial interest in such Distribution, and (iii) deliver such Distribution (free of any withholding, setoff, recoupment or deduction of any kind except as required by applicable Law) promptly, but in any event no later than three Business Days after the date on which the Seller or its Affiliate receives the Distribution, to Purchaser in the same form received and, when necessary or appropriate, with the Seller's or such Affiliate's endorsement (without recourse, representation or warranty), except to the extent prohibited under applicable Law. Pending such transfer, the Seller shall hold the same on behalf and for the sole benefit of B Participant, and Seller shall have no legal, equitable or beneficial interest in any such Distribution.

(c) In furtherance of Sections 5.12(a) and (b) of this Agreement, the Seller, effective upon the Closing, constitutes and appoints iStar and/or the B Participant as the agent and attorney-in-fact of the Seller in connection with the collection of the Loans, with full power of substitution, to execute, sign, endorse or deliver, in such Seller's name, receipts or any other documents necessary to evidence, collect, or otherwise realize upon the Loans, and to institute and prosecute, in the name of the Seller, all proceedings and actions which the Purchaser may deem desirable to collect, assert or enforce any Claim, right or title of any kind in and to the Purchased Assets and to defend and compromise any and all actions, suits or proceedings which the owner of the Purchased Assets is entitled to defend or compromise. The Seller agrees that the foregoing powers are coupled with an interest and are and shall be irrevocable by the Seller in any manner and for any reason (including the dissolution of the Seller).

(d) In furtherance of Sections 5.12(a) and (b) of this Agreement, the Seller, effective upon the Closing, constitutes and appoints iStar and its successors and assigns as the agent and attorney-in-fact of the Seller in connection with the collection of the Purchased Non-Loan Assets, with full power of substitution, to execute, sign, endorse or deliver, in the Seller's name, receipts or any other documents necessary to evidence, collect, or otherwise realize upon the Purchased Non-Loan Assets, and to institute and prosecute, in the name of such Seller, all proceedings and actions which iStar may deem desirable to collect, assert or enforce any Claim, right or title of any kind in and to the Purchased Non-Loan Assets and to defend and compromise any and all actions, suits or proceedings which the owner of the Purchased Non-Loan Assets is entitled to defend or compromise. The Seller agrees that the foregoing powers are coupled with an interest and are and shall be irrevocable by the Seller in any manner and for any reason (including the dissolution of the Seller).

Section 5.13 *Proration of Taxes and Certain Charges.* (a) Except as provided in Section 5.11, all Property Taxes levied with respect to the REO Property for any taxable period that includes the day before the date of the Closing Date and end after the date of the Closing Date, whether imposed or assessed before or after the Closing Date, shall be prorated between the Seller, on the one hand, and the Purchaser, on the other hand, as of 11:59 P.M. on the Closing Date. If any Taxes subject to proration are paid by the Purchaser, on the one hand, or the Seller, on the other hand, the proportionate amount of such Taxes paid (or in the event a refund of any portion of such Taxes previously paid is received, such refund) shall be paid promptly by (or to) the other after the payment of such Taxes (or promptly following the receipt of any such refund).

(b) Except as otherwise provided in this Agreement, all installments of special assessments or other charges on or with respect to the Purchased Assets payable by the Seller for any period in which the Closing Date shall occur (including base rent, common area maintenance, royalties, all municipal, utility or authority charges for water, sewer, electric or gas charges, garbage or waste removal, and cost of fuel) shall be apportioned as of the Closing Date and each party shall pay its proportionate share promptly upon the receipt of any bill, statement or other charge with respect thereto. If such charges or rates are assessed either based upon time or for a specified period, such charges or rates shall be prorated as of 11:59 P.M. on the Closing Date. If such charges or rates are assessed based upon usage of utility or similar services, such charges shall be prorated based upon meter readings taken on the date of the Closing.

(c) All refunds, reimbursements, installments of base rent, additional rent, license fees or other use related revenue receivable by any party to the extent attributable to the transferred Leased Real Property for any period in which the Closing Date shall occur shall be prorated so that the Seller shall not be entitled to that portion of any such installment applicable to any period from and after the Closing Date, and if the Purchaser, shall receive any such payments after the Closing Date, it shall promptly remit to such other party its share of such payments.

(d) The prorations pursuant to this Section 5.13 may be calculated after the Closing, as each item to be prorated (including any such Tax, obligation, assessment, charge, refund, reimbursement, rent

installment, fee or revenue) accrues or comes due; *provided that*, in any event, any such proration shall be calculated not later than 30 days after the party requesting the proration of any item obtains the information required to calculate such proration.

#### Section 5.14 *Employee-Related Covenants.*

(a) As soon as practicable, the Purchaser shall make offers of employment, to be effective as of the Closing Date, to each of the Business Employees listed on Schedule 5.14(a) (the "*Offered Employees*"), each such offer to include continuation of base salary or wages at an aggregate annual level no less favorable than that in effect as of the date hereof. Those Offered Employees who accept offers of employment with the Purchaser under this Section 5.14(a) and who commence employment with the Purchaser on the Closing Date shall be referred to herein as "*Transferred Employees.*"

(b) Except as provided in Section 5.14(g), as of the Closing Date, the Transferred Employees shall be eligible to participate in employee benefit plans, programs, policies and arrangements of the Purchaser in which similarly situated employees of the Purchaser participate (such plans, programs, policies and arrangements, the "*Purchaser Plans*"). Each Transferred Employee shall be given credit for all purposes for such person's service with the Seller and its affiliates (or any other employer to the extent credited under such Benefit Plan) to the same extent recognized by the Seller under the Benefit Plans prior to the Closing Date for purposes of eligibility, vesting and entitlement to benefits under any analogous Purchaser Plans in which Transferred Employees participate following the Closing Date, except to the extent that giving such service credit would result in an accrual of defined benefit pension benefits. For purposes of clarifying the intent of the preceding sentence, as an example, a Transferred Employee who has been credited under a severance plan of the Seller with five years of service as of the Closing Date and who is terminated by the Purchaser one year following the Closing Date shall be credited with six years of service under the Purchaser's severance plan. To the extent applicable, the Purchaser shall, and shall cause its Affiliates and the Purchaser Plans to, (i) waive all limitations as to preexisting conditions, exclusions and waiting periods and service requirements with respect to participation and coverage requirements applicable to the Transferred Employees under any Purchaser Plan, other than limitations, waiting periods or service requirements that are already in effect with respect to such persons and that have not been satisfied as of the Closing under any Benefit Plan immediately prior to the Closing and (ii) provide each Transferred Employee with credit for any co-payments and deductibles paid prior to the Closing in satisfying any applicable deductible or out-of-pocket requirements under any analogous Purchaser Plan.

(c) On the Closing Date, the Seller shall pay to each Transferred Employee all accrued commissions and bonuses earned under the plans listed in Section 5.14(c) of the Disclosure Schedule from January 1, 2007 through the Closing. All payments required to be made pursuant to this Section 5.14(c) shall be made as if (i) the relevant Transferred Employee remained employed with the Seller through the end of 2007, and (ii) all performance measures contained in each relevant plan were satisfied to the greatest extent possible. All payments required pursuant this Section 5.14(c) shall be prorated for the amount of time that the Transferred Employee was actually employed by the Seller during 2007. On the Closing Date, the Seller shall provide the Purchaser with a schedule of amounts paid to each Transferred Employee pursuant to this Section 5.14(c).

(d) The Seller shall be liable for the provision of notices and continuation coverage for each individual who is or becomes an "M&A Qualified Beneficiary" (as such term is defined in Treas. Reg. Section 54.4980B-9) as a result of the consummation of the transactions contemplated by this Agreement.

(e) Effective as of the Closing Date, the Transferred Employees shall no longer actively participate in the Fremont General Corporation and Affiliated Companies Investment Incentive Plan, as amended (the "*Seller's Savings Plan*"). The Purchaser shall designate a tax-qualified defined contribution plan (such plan, the "*Purchaser's Savings Plan*") that either (i) provides for the receipt

from Transferred Employees of "eligible rollover distributions" (as such term is defined under Section 402 of the Code) or (ii) shall be amended as soon as practicable following the Closing Date to provide for the receipt from the Transferred Employees of eligible rollover distributions. The Seller shall take all actions necessary to provide that the account balances of the Transferred Employees in the Seller's Savings Plan shall be fully vested as of the Closing Date. As soon as practicable following the Closing Date, (x) the Purchaser shall provide the Seller with such documents and other information as the Seller shall reasonably request to assure itself that the Purchaser's Savings Plan is tax qualified and provides for the receipt of eligible rollover distributions, and (y) the Seller shall provide the Purchaser with such documents and other information as the Purchaser shall reasonably request to assure itself that the accounts of the Transferred Employees would be eligible rollover distributions. Each Transferred Employee who is a participant in the Seller's Savings Plan shall be given the opportunity to receive a distribution of his or her account balance and shall be given the opportunity to elect to "roll over" such account balance to the Purchaser's Savings Plan, subject to and in accordance with the provisions of such plan(s) and applicable law. The Sellers shall provide the Purchaser with copies of such personnel and other records pertaining to the Transferred Employees and such records of any agent or representative of the Seller pertaining to the Transferred Employees, in each case pertaining to the Seller's Savings Plan and as the Purchaser may reasonably request in order to administer and manage the accounts and assets rolled over to the Purchaser's Savings Plan.

(f) The Seller agrees that the Purchaser shall be permitted during normal business hours to have reasonable access to the Business Employees to discuss such Business Employee's possible employment with the Purchaser, provided that such discussions do not materially interfere with the Business Employee's performance of his or her duties with the Seller.

(g) From and after the Closing Date until January 1, 2008 (the "*Continuation Period*"), the Seller shall cause each of the Transferred Employees (and, to the extent applicable, the dependents of the Transferred Employees) to be covered pursuant to COBRA under all Benefit Plans which are subject to the requirements of COBRA (the "*Continuation Coverage*"). As between the Purchaser and the Seller, 100% of the cost of the Continuation Coverage (for the sake of clarity, such cost shall include, without limitation, administrative costs for which the Seller shall be permitted to require payment of amounts in excess of 100% of applicable premiums in accordance with Treas. Reg. Section 54.4980B-8) shall be borne by the Purchaser, and will be billed to the Purchaser on a monthly basis. In order to ensure a smooth transition to the Continuation Coverage for each Transferred Employee and their applicable dependents, each such Transferred Employee and each applicable dependent will be deemed to have made the election generally described in Treas. Reg. Section 54.4980B-6, with the understanding that in order to actually be provided Continuation Coverage, each Transferred Employee shall be responsible for electing and enrolling for such coverage with the Seller. The Purchaser agrees that during the Continuation Period it shall not require a Transferred Employee or a dependent thereof to remit to the Purchaser (whether by means of direct payment, payroll deduction or otherwise) in respect of the Continuation Coverage an amount greater than such Transferred Employee or dependent thereof is required to remit with respect to such benefits as an active participant in the relevant Benefit Plan as of the date immediately prior to the Closing Date. During the Continuation Period, the Purchaser shall promptly notify the Seller that a Transferred Employee has been given, or has given, notice of termination of employment with the Purchaser or has otherwise requested to discontinue Continuation Coverage ("*Termination Notice*"), provided, that the Purchaser shall be responsible for the cost of the Continuation Coverage for such Transferred Employee and his or her applicable dependents until the effective date of such termination of employment or election to discontinue Continuation Coverage, as applicable. From and after such date, any continuing obligation for the continuation coverage under COBRA for such Transferred Employee and any applicable dependents (including, but not limited to, premium costs) shall be the responsibility of the Seller and the Transferred Employee, as applicable. The Purchaser shall indemnify and hold harmless the Seller and its affiliates for any liabilities assessed against Seller with respect to (i) any violation of COBRA or analogous state law

which arises from the Purchaser's failure to notify the Seller of a termination of employment or election to discontinue Continuation Coverage in accordance with this Section 5.14(g); and (ii) any violation of the Health Insurance Portability and Accountability of 1996, as amended, or other applicable law concerning the protection of the privacy of the Transferred Employees and their dependents, in any case, which arises through the process of billing the Purchaser with respect to Continuation Coverage pursuant to this Section 5.14(g). Effective January 1, 2008, the Purchaser shall make available to the Transferred Employees who remain employed by the Purchaser and its affiliates as of such date a group health plan or plans which are of the type (for the sake of clarity, as used herein, "type" refers to kind of benefits provided—e.g., medical, dental, flexible spending account, etc.—and not the level or structure of benefits provided) provided by the Seller pursuant to the Continuation Coverage.

(h) Nothing in this Agreement shall be construed as (i) prohibiting the Purchaser from terminating the employment of a Transferred Employee at any time and for any reason following the Closing Date, (ii) requiring the Purchaser to provide any particular employee benefit plan, (iii) prohibiting the Purchaser from amending or terminating any Purchaser Plan or (iv) creating any employee benefit plan.

(i) The Seller shall not engage in any action with respect to the Business Employees that would give rise to any obligation or liability under WARN without complying with all of the obligations of WARN. The Purchaser shall not engage in any action with respect to the Transferred Employees on or after the Closing Date that would give rise to any obligation or liability to the Seller under WARN. If any notice is required under WARN with respect to any "employment loss" or "mass layoff" (as those terms are defined by WARN) of any Business Employees that occurs on or before the Closing Date, the Seller shall be solely responsible and liable for providing such notice. If any notice is required under WARN with respect to any "employment loss" or "mass layoff" (as those terms are defined by WARN) of any Transferred Employees that occurs after the Closing Date, the Purchaser shall be solely responsible and liable for providing such notice.

Section 5.15 *Pre-Closing Information Technology Activities.* Prior to the Closing, each of the Seller and the Purchaser shall cooperate with the other party to effect the actions described on Schedule 5.15 of the Disclosure Schedule. The costs associated with such actions shall be borne by the Seller.

Section 5.16 *Separate IT Agreements.* To the extent that third party services or use of third party IT Systems benefit both the Business, on the one hand, and the Seller or its Affiliates non-Business operations, on the other hand (the "*Shared Agreements*"), the Seller shall provide all reasonably necessary and appropriate information about the Shared Agreements and the software products and services provided thereunder, and otherwise offer prompt assistance to the Purchaser both prior to and after the Closing Date, in order for the Purchaser to obtain new agreements with such third party vendors for the services and IT Systems which are the subject to the Shared Agreements having terms such that the Purchaser will enjoy and have use of the same software, products, services and IT Systems in substantially the same volume, manner and scope as the Business enjoyed or used under the Shared Agreements the "*Separate IT Agreements*"). The payment of all fees and costs under the Separate IT Agreements charged to or incurred by the Purchaser shall be allocated pursuant to the procedures set forth in Section 5.17; *provided, however*, that (i) the Purchaser shall be responsible for any costs or fees attributable to the future ongoing provision of goods, services or other benefits, such as maintenance and support services, under any of the Separate IT Agreements, (ii) in no event shall the Seller pay any costs or fees relating to the integration and/or implementation of any IT Systems which are the subject of the Separate IT Agreements or, with the exception of the migration or conversion of data from the Seller's Oracle system to the Purchaser's Oracle system, any costs or fees relating to the migration or conversion of data from the IT Systems which are the subject of the Shared Agreements to Purchaser's systems, (iii) the Seller shall not pay any costs of the server licenses under the Separate IT Agreement



with Oracle Corporation and (iv) the Seller shall not pay any costs for hardware in connection with the Purchaser's Oracle system or any IT Systems which are the subject of the Separate IT Agreements. For the avoidance of doubt, the costs and fees described in subsections (i), (ii), (iii) and (iv) are excluded from IP/IT Costs (subject to the exception in (ii)).

Section 5.17 *IP/IT Costs*. The Seller and the Purchaser shall each pay 50% of all IP/IT Costs; *provided, however*, that the Seller shall in no event be obligated to pay in excess of \$400,000 in respect of such IP/IT Costs.

Section 5.18 *Notice to and Documentation from Borrowers*.

(a) As soon as reasonably practicable following the execution hereof (subject, however, to the process for obtaining the Required Consents) and in any event not later than the Closing Date, the Purchaser and the Seller shall send a joint written notice to each borrower, guarantor, indemnitor, participant, junior lender, co-lender and senior lender, if any, under the Loans informing them of the sale of the Loans to the B Participant, that Fremont has a participation interest in such Loans and that the Purchaser or an affiliate of the Purchaser will be servicing such Loans and containing such other information as is agreed upon.

(b) The Purchaser and the Seller shall as soon as reasonably practicable after the date hereof and following the Closing Date, cooperate to cause all accounts at Fremont maintained by borrowers under the Loans to be transferred to a bank designated by the Purchaser, including using all reasonable efforts to obtain the execution of account agreements and pledge agreements by such borrowers.

Section 5.19 *Sublease Agreements*. The Purchaser and the Seller shall take all such action as the other party may reasonably request and shall fully and promptly cooperate with each other to enter into Sublease Agreements with respect to the applicable subleased premises on the terms set forth in this Agreement.

## ARTICLE VI.

### CONDITIONS TO CLOSING

Section 6.01 *Conditions to Obligations of the Seller*. The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Closing, of each of the following conditions:

(a) *Representations, Warranties and Covenants*. (i) The representations and warranties of the Purchaser contained in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing, with the same force and effect as if made as of the Closing, except to the extent such representations and warranties are as of another date, in which case, such representations and warranties shall be true and correct as of that date, and (ii) the covenants and agreements contained in this Agreement to be complied with by the Purchaser on or before the Closing shall have been complied with in all material respects.

(b) *Regulatory Approvals*. All regulatory approvals necessary or advisable to consummate the transactions contemplated by this Agreement, if any, shall have been obtained and shall remain in full force and effect, and all statutory waiting periods in respect thereof shall have expired.

(c) *No Injunctions or Restraints; Illegality*. No judgment, order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the transactions contemplated by this Agreement or the Ancillary Agreements shall be in effect and no statute, rule, regulation, order, injunction or decree shall have been enacted, promulgated or enforced by any Governmental Authority that prohibits or makes illegal the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

(d) *Delivery of the Purchaser Closing Deliveries.* The Purchaser shall have delivered to the Seller all of the Closing documents and agreements set forth in Section 2.07.

(e) *Non Objection.* The Seller shall have been notified by each of the FDIC and the DFI of their non-objection to the transactions contemplated by this Agreement and the Ancillary Agreements.

Section 6.02 *Conditions to Obligations of the Purchaser.* The obligations of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Closing, of each of the following conditions:

(a) *Representations, Warranties and Covenants.* (i) The representations and warranties of the Seller contained in Section 3.01, Sections 3.02(a) and (b), the last sentence of Section 3.05, Section 3.08(a), the first sentence of Section 3.08(d), Section 3.08(f) and Section 3.15 shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of the Closing, with the same force and effect as if made as of the Closing, except to the extent such representations and warranties are as of another date, in which case such representations and warranties shall be true and correct in all material respects as of such date, and (ii) the covenants and agreements contained in this Agreement to be complied with by the Seller on or before the Closing shall have been complied with in all material respects.

(b) *Regulatory Approvals.* All regulatory approvals necessary or advisable to consummate the transactions contemplated by this Agreement, if any, shall have been obtained and shall remain in full force and effect, and all statutory waiting periods in respect thereof shall have expired.

(c) *No Injunctions or Restraints; Illegality.* No judgment, order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the transactions contemplated by this Agreement or the Ancillary Agreements shall be in effect and no statute, rule, regulation, order, injunction or decree shall have been enacted, promulgated or enforced by any Governmental Authority that prohibits or makes illegal the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

(d) *Consents and Approvals.* The Seller shall have received, in form and substance reasonably satisfactory to the Purchaser, a substantial portion of the Required Consents, it being understood and agreed that this condition shall be deemed satisfied at such time as the Loans with respect to which consents have not been obtained (i) have an aggregate unpaid principal balance of less than \$400,000,000 as of the Closing Date and (ii) do not exceed an aggregate of ten Loans, it being understood and agreed that any Loan the committed amount of which is less than \$10,000,000 shall be disregarded for purposes of this Section 6.02(d)(ii).

(e) *Delivery of the Seller Closing Deliveries.* The Seller shall have delivered to the Purchaser all of the Closing documents and agreements set forth in Section 2.06.

(f) *Title Insurance.* The Seller shall have provided to the Purchaser an ALTA 2006 Owners Title Insurance Policy for each REO Property insuring the Purchaser as the owner of such REO Property in the amount of the book value of the related REO Property free and clear of all liens and Encumbrances other than Permitted Encumbrances together with such plats of survey of such REO Property as may be in the possession of (or control of) the Seller or its Affiliates. The cost of such policies shall be borne equally by Seller and Purchaser.

(g) *Audited Financial Statements.* The Purchaser shall have received audited financial statements for the Business for the years ended 2004, 2005 and 2006. The Purchaser has retained PricewaterhouseCoopers LLP ("PWC") to perform an audit of the financial statements of the Business for the periods referenced above. The parties agree that if, after July 1, 2007 and prior to the completion of the audit being conducted by PWC, the Seller delivers to the Purchaser the financial statements required by this Section 6.02(g), audited by an independent registered public accounting

firm retained by the Seller and reasonably acceptable to the Purchaser (it being understood and agreed that Squar, Milner, Peterson, Miranda & Williamson, LLP is reasonably acceptable to the Purchaser) then this condition shall be deemed satisfied.

## ARTICLE VII.

### INDEMNIFICATION

#### Section 7.01 *Survival of Representations and Warranties.*

(a) The representations and warranties of the Seller contained in this Agreement and the Ancillary Agreements shall survive the Closing until the first anniversary of the Closing; *provided, however*, that (i) the representations and warranties made pursuant to Sections 3.01 and 3.14 shall survive indefinitely, and (ii) the representations and warranties dealing with Tax matters shall survive until 120 days after the expiration of the relevant statute of limitations for the Tax liabilities in question. Neither the period of survival nor the liability of the Seller with respect to the Seller's representations and warranties shall be reduced by any investigation made at any time by or on behalf of the Purchaser. If written notice of a Claim has been given prior to the expiration of the applicable representations and warranties by the Purchaser to the Seller, then the relevant representations and warranties shall survive as to such Claim, until such Claim has been finally resolved.

(b) The representations and warranties of the Purchaser contained in this Agreement and the Ancillary Agreements shall survive the Closing until the first anniversary of the Closing; *provided, however*, that the representations and warranties made pursuant to Sections 4.01 and 4.05 shall survive indefinitely. Neither the period of survival nor the liability of the Purchaser with respect to the Purchaser's representations and warranties shall be reduced by any investigation made at any time by or on behalf of the Seller. If written notice of a Claim has been given prior to the expiration of the applicable representations and warranties by the Seller to the Purchaser, then the relevant representations and warranties shall survive as to such Claim, until such Claim has been finally resolved.

Section 7.02 *Indemnification by the Seller.* Except as set forth in Section 7.06, the Purchaser and its Affiliates, officers, directors, employees, agents, successors and assigns (each a "*Purchaser Indemnified Party*") shall be indemnified and held harmless by the Seller from and against any and all Liabilities, losses, damages, Claims, costs and expenses, interest, awards, judgments and penalties (including attorneys' and consultants' fees and expenses) actually suffered or incurred by them (including any Action brought or otherwise initiated by any of them) (hereinafter a "*Loss*"), arising out of or resulting from:

- (a) the breach of any representation or warranty made by the Seller contained in this Agreement;
- (b) the breach of any covenant or agreement by the Seller contained in this Agreement;
- (c) any Claim or cause of action of any third party to the extent arising out of the failure to obtain any Required Consent;
- (d) any Claim or cause of action of any third party to the extent arising out of any action, inaction, event, condition, liability or obligation of the Seller occurring or existing prior to the Closing Date, except with respect to any Claim or cause of action relating to any of the Assumed Liabilities; or
- (e) any of the Excluded Liabilities.

To the extent that the Seller's undertakings set forth in this Section 7.02 may be unenforceable, the Seller shall contribute the maximum amount that it is permitted to contribute under applicable Law to the payment and satisfaction of all Losses incurred by the Purchaser Indemnified Parties.

Section 7.03 *Indemnification by the Purchaser.* The Seller and its Affiliates, officers, directors, employees, agents, successors and assigns (each a "Seller Indemnified Party") shall be indemnified and held harmless by the Purchaser from and against any and all Losses, arising out of or resulting from:

- (a) the breach of any representation or warranty made by the Purchaser contained in this Agreement;
- (b) the breach of any covenant or agreement by the Purchaser contained in this Agreement;
- (c) any Claim or cause of action of any third party to the extent arising out of any action, inaction, event, condition, liability or obligation of the Purchaser occurring or existing on or following the Closing Date relating to the Purchased Assets or the Business (including any Claim or cause of action with respect to actions taken or inaction by the Purchaser or any of its Affiliates as agent and attorney-in-fact of the Seller pursuant to Sections 5.12(c) and (d) hereto), except with respect to any Claim or cause of action relating to any of the Excluded Liabilities; or
- (d) any of the Assumed Liabilities, including, without limitation, any Claim or cause of action of any third party to the extent arising out of any action, inaction, event, condition, liability or obligation of the Purchaser occurring or existing on or following the Closing Date to the extent relating to an Assumed Liability in which the Seller has not obtained a Release.

To the extent that the Purchaser's undertakings set forth in this Section 7.03 may be unenforceable, the Purchaser shall contribute the maximum amount that it is permitted to contribute under applicable Law to the payment and satisfaction of all Losses incurred by the Seller Indemnified Parties.

#### Section 7.04 *Limits on Indemnification.*

(a) No indemnification pursuant to Section 7.02(a) of this Agreement shall be required with respect to any individual item of Loss unless (i) such item exceeds \$200,000 (the "*Initial Threshold Amount*") and (ii) the aggregate of all Losses of the Purchaser Indemnified Parties described in Section 7.02(a) of this Agreement shall exceed \$10,000,000 (the "*Threshold Amount*"), in which case the Seller shall be liable only for the Losses in excess of such amount. The cumulative aggregate indemnity obligation of the Seller under Section 7.02(a) shall in no event exceed \$50,000,000.

(b) No indemnification pursuant to Section 7.03(a) of this Agreement shall be required with respect to any individual item of Loss unless (i) such item exceeds the Initial Threshold Amount and (ii) the aggregate of all Losses of the Seller Indemnified Parties described in Section 7.03(a) of this Agreement shall exceed the Threshold Amount, in which case the Purchaser shall be liable only for the Losses in excess of such amount. The cumulative aggregate indemnity obligation of the Purchaser under Section 7.03(a) shall in no event exceed \$50,000,000.

Section 7.05 *Notice of Loss; Third Party Claims.* (a) An Indemnified Party shall give the Indemnifying Party notice of any matter that an Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement, within five Business Days of such determination, stating the amount of the Loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises.

(b) If an Indemnified Party shall receive notice of any Action, audit, demand or assessment (each, a "*Third Party Claim*") against it or which may give rise to a Claim for indemnification under this Article VII, within five Business Days of the receipt of such notice, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim; *provided, however*, that the failure to timely provide such notice shall not release the Indemnifying Party from any of its obligations under this Article VII except to the extent that the Indemnifying Party is materially prejudiced by such delay. If the Indemnifying Party elects to compromise or defend such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and

through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within five Business Days of the receipt of notice from the Indemnified Party of such Third Party Claim; *provided, however*, that if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate in the reasonable judgment of the Indemnified Party, upon advice from its counsel, for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party. In the event that the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party. The Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any Third Party Claim which (i) does not contain an unconditional release of the Indemnified Party, (ii) imposes any liabilities on the Indemnified Party, (iii) ascribes any fault on the part of the Indemnified Party or (iv) does not provide solely for monetary relief.

Section 7.06 *Credit Risk*. It is understood and agreed by the parties hereto that the Purchaser is assuming the risk of deterioration subsequent to March 31, 2007 in the credit quality of the Loans and the condition (financial or otherwise) of borrowers thereunder. Accordingly, the Purchaser and the Seller agree that, in the event of any claim for indemnification pursuant to Section 7.02(a), the Seller shall be responsible (subject to the terms of this Article VII, including Section 7.04(a)) only for the portion of any such Loss attributable solely to a breach by the Seller of any representation or warranty without regard to any such deterioration in credit quality or the condition (financial or otherwise) of any borrower thereunder.

Section 7.07 *Exclusive Sole Remedy*. Following the Closing, the sole and exclusive remedy of any party for claims for monetary damages arising out of a breach of any representation, warranty, covenant or agreement under this Agreement or in connection with the Purchased Assets shall be a claim for indemnification pursuant to this Article VII; *provided, however*, that nothing herein shall prevent an Indemnified Party from pursuing remedies as may be available to such party under applicable Law in the event of the Indemnifying Party's failure to comply with its indemnification obligations hereunder.

## ARTICLE VIII.

### TERMINATION

Section 8.01 *Termination*. This Agreement may be terminated at any time prior to the Closing:

(a) by the Purchaser, if the Seller shall have breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of the condition set forth in Section 6.02(a) and (ii) is incapable of being cured, or is not cured, by the Seller within 30 calendar days following the Seller's receipt of written notice from the Purchaser of such breach or failure to perform;

(b) by the Seller, if the Purchaser shall have breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of the condition set forth in Section 6.01(a) and (ii) is incapable of being cured, or is not cured, by the Purchaser within 30 calendar days following the Purchaser's receipt of written notice from the Seller of such breach or failure to perform;

(c) by either the Seller or the Purchaser if the Closing shall not have occurred by September 30, 2007 (the "*Termination Date*"); *provided, however*, that the right to terminate this Agreement under this Section 8.01(c) shall not be available to any party whose failure to fulfill any obligation under this Agreement or satisfy any condition shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(d) by either the Seller or the Purchaser in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;

(e) by the mutual written consent of the Seller and the Purchaser;

(f) by the Seller, subject to compliance with Section 5.06(b), or by the Purchaser, if the Seller's Board of Directors determines to accept a Superior Proposal (with such termination becoming effective upon the Seller entering into a binding written agreement with respect to such Superior Proposal); or

(g) by either the Seller or the Purchaser if the Seller or Parent shall have received written notice from the FDIC or the DFI advising the Seller or Parent, respectively, that such regulator objects to the transactions contemplated by this Agreement or the Ancillary Agreements.

**Section 8.02 *Effect of Termination.*** (a) In the event of termination of this Agreement as provided in Section 8.01, this Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except as set forth in Sections 5.02(e), 9.01 and this Section 8.02, and that nothing herein shall relieve either party from liability for any willful breach of this Agreement.

(b) The parties agree that if this Agreement shall be terminated by the Purchaser pursuant to Section 8.01(a) by virtue of a willful breach by the Seller, then the Seller shall be obligated to pay to the Purchaser an amount equal to \$40,000,000 (the "*Termination Fee*") within two Business Days of such termination.

(c) The parties agree that if this Agreement shall be terminated by either the Seller or the Purchaser pursuant to Section 8.01(f), then the Seller shall be obligated to pay to the Purchaser an amount equal to the Termination Fee within two Business Days of such breach.

(d) The parties agree that if this Agreement shall be terminated by the Seller pursuant to Section 8.01(b) by virtue of a willful breach by the Purchaser, then the Purchaser shall be obligated to pay to the Seller an amount equal to the Termination Fee within two Business Days of such termination.

(e) Each of the Purchaser and the Seller acknowledges that the agreements contained in this Section 8.02 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, neither the Purchaser nor the Seller would have entered into this Agreement. Accordingly, in the event that either the Purchaser or the Seller shall fail to pay the Termination Fee when due, and in order to obtain such payment, the Purchaser or the Seller, as the case may be, commences a suit which results in a judgment against such other party for such fee, then the Purchaser or the Seller, as the case may be, shall pay to the other party such other party's reasonable costs and expenses (including reasonable attorney's fees and expenses of enforcement) in connection with such suit, together with interest on the amounts owed at the prime lending rate prevailing at such time, as published in The Wall Street Journal, plus 2% per annum from the date such amounts were required

to be paid until the date actually received by such party. Each party acknowledges that in the event it is entitled to receive the Termination Fee, the right of such party to receive such amount (plus any additional amounts pursuant to the second sentence of this Section 8.02(e)) shall constitute such party's sole and exclusive remedy for, and such amount shall constitute liquidated damages in respect of, the breach or termination of this Agreement regardless of the circumstances giving rise to such breach or termination and such party shall have no further rights, directly or indirectly, against any other party hereto or any of their respective Affiliates, stockholders, partners, members, directors, officers and agents whether at law or equity, in contract, in tort or otherwise.

## **ARTICLE IX.**

### **GENERAL PROVISIONS**

Section 9.01 *Expenses.* Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 9.02 *Notices.* All notices, requests, Claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to the

respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

If to the Seller:

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Fremont Investment & Loan  
2425 Olympic Boulevard  
3<sup>rd</sup> Floor—East  
Santa Monica, California 90404  
Attn: Alan Faigin, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
Attn: William S. Rubenstein, Esq.

If to the Purchaser:

iStar Financial Inc.  
1114 Avenue of the Americas  
27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Chief Operating Officer

with a copy to:

iStar Financial Inc  
1114 Avenue of the Americas  
27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Nina B. Matis, Esq.  
General Counsel

with a copy to:

iStar Asset Services Inc.  
180 Glastonbury Boulevard  
Suite 201  
Glastonbury, Connecticut 06033  
Attn: President

with a copy to:

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661  
Attn: Marcia W. Sullivan, Esq.  
Katten Reference: 208972-664

**Section 9.03 *Public Announcements.*** The parties and/or their Affiliates shall announce the execution and delivery of this Agreement and the transactions contemplated herein pursuant to a joint press release. Thereafter, neither party hereto shall make, or cause to be made, any press release or public announcement, including, without limitation in a report, schedule, form, statement or other document filed or furnished by a party hereto to the Securities and Exchange Commission, in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party unless otherwise required by Law or applicable stock exchange regulation, and except as otherwise required by Law, the parties hereto shall consult with each other and cooperate as to the timing and contents of any such press release, public announcement, communication or filing.

**Section 9.04 *Severability.*** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal



substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 9.05 *Entire Agreement.* This Agreement, the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, among the Seller and the Purchaser with respect to the subject matter hereof and thereof.

Section 9.06 *Assignment.* This Agreement may not be assigned by operation of law or otherwise without the express written consent of the Seller and the Purchaser (which consent may be granted or withheld in the sole discretion of the Seller or the Purchaser) and any such assignment or attempted assignment without such consent shall be void; *provided, however,* that the Purchaser may assign this Agreement or any of its rights and obligations hereunder to one or more Affiliates of the Purchaser without the consent of the Seller, it being understood and agreed that any such assignment shall not relieve the Purchaser of its obligations with respect to the Assumed Liabilities.

Section 9.07 *Amendment.* This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, the Seller and the Purchaser or (b) by a waiver in accordance with Section 9.08.

Section 9.08 *Waiver.* Any party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto, or (c) waive compliance with any of the agreements of the other party or conditions to such party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of either party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 9.09 *No Third Party Beneficiaries.* Except for the provisions of Article VII relating to indemnified parties, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of the Seller, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

Section 9.10 *Specific Performance.* Each party acknowledges and agrees that the other would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by either party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which the parties may be entitled, at law or in equity, they shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

Section 9.11 *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State. All Actions arising out of or relating to this Agreement shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of The City of New York, *provided, however,* that if such federal court does not have jurisdiction over such Action, such Action shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of The City of New York. Consistent with the preceding sentence, the parties hereto hereby (a) submit to the exclusive jurisdiction of any federal or state court sitting in the Borough of Manhattan of The City of New York for the purpose of any Action arising out of or relating to this Agreement brought by any party hereto and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any Claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the transactions contemplated by this Agreement may not be enforced in or by any of the above-named courts.

Section 9.12 *Waiver of Jury Trial.* Each of the parties hereto hereby waives to the fullest extent permitted by applicable Law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each of the parties hereto hereby (a) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it has been induced to enter into this Agreement and the transactions contemplated by this Agreement, as applicable, by, among other things, the mutual waivers and certifications in this Section 9.12.

Section 9.13 *Counterparts.* This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

FREMONT INVESTMENT & LOAN,  
a California Industrial Bank

By: /s/ ALAN W. FAIGIN

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Name: Alan W. Faigin  
Title: Secretary & Chief Legal Officer

iSTAR FINANCIAL INC.,  
a Maryland corporation

By: /s/ JAY SUGARMAN

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Name: Jay Sugarman  
Title: Chairman & CEO

*[Signature Page to Asset Purchase Agreement]*

FORM OF LOAN PARTICIPATION AGREEMENT

THIS LOAN PARTICIPATION AGREEMENT (this "**Agreement**"), is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between **FREMONT INVESTMENT & LOAN**, a California Industrial Bank ("**A Participant**"), and **[iSTAR SPE]**, a ("**B Participant**"), with reference to the following:

A. Fremont Investment & Loan, a California industrial bank ("**Fremont**") has made a number of Loans (hereinafter defined) as described on the Mortgage Loan Schedule attached hereto as *Exhibit A* (the "**Mortgage Loan Schedule**"). Fremont and iStar Financial Inc. ("**iStar**") have entered into an Asset Purchase Agreement (the "**Purchase Agreement**") with respect to the Loans and certain other assets of Fremont. Pursuant to the Purchase Agreement, Fremont has transferred or will transfer legal and equitable title to the Loans to B Participant.

B. As partial payment of the purchase price provided for in the Purchase Agreement, iStar has agreed to transfer to A Participant, on the terms and conditions hereinafter set forth, a seventy percent (70%) participation interest in the Loans and the Loan Documents (as hereinafter defined).

C. A Participant and B Participant desire to memorialize their respective agreements relating to such participation interest and the servicing and repayment of the Loans by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, A Participant and B Participant hereby agree as follows:

## 1. **DEFINITIONS.**

**A. Incorporation of Definitions.** Any term not expressly defined herein but which is defined in one or more Loan Agreements (as hereafter defined) shall have the definition ascribed to such term in the applicable Loan Agreement or in the Loan Agreements generally or the comparable term for such concept if not so defined in a particular Loan Agreement.

**B. Defined Terms.** In addition to those terms defined in the foregoing recitals and in the other provisions of this Agreement, for purposes of this Agreement, unless the context clearly requires otherwise, the following terms shall have the meanings and definitions hereinafter respectively set forth:

(i) *A Participation.* The term "**A Participation**" or "**A Participation Interest**" shall mean the legal and beneficial ownership interest at any time of A Participant in the Loans and in the Loan Documents and the Collateral relating thereto as specified in this Agreement. As of the date hereof, the outstanding principal balance associated with the A Participation is \$ \_\_\_\_\_. The A Participation will decrease (but not below zero) on account of all payments of principal to A Participant made under *Sections 7 and 8*.

(ii) *A Participant Interest Rate.* The term "**A Participation Interest Rate**" shall mean an interest rate per annum equal to one and one-half percent (1.5%) plus LIBOR.

(iii) *Affiliate.* The term "**Affiliate**" shall mean, with respect to any specific entity, any other entity that directly, or indirectly through one or more of its intermediaries, controls, is controlled by, or is under the common control with, such specified entity.

(iv) *Acquiring Lender.* The term "**Acquiring Lender**" shall have the meaning set forth in *Section 12B* hereof.

(v) *Asset Management Fee.* The term "**Asset Management Fee**" shall have the meaning set forth in *Section 7I* hereof.

(vi) *B Participation.* The term "**B Participation**" or "**B Participation Interest**" shall mean the legal and beneficial ownership interest at any time of the Loans, the Loan Documents, the

Collateral relating thereto and all proceeds thereof other than the portion of such assets allocated to the A Participation as specified in this Agreement. The B Participation includes all Borrower Reimbursable Costs made by B Participant not reimbursed by or on behalf of the applicable Borrower plus accrued and unpaid interest thereon calculated at the Interest Rate applicable to the Loan in question and all Post-Acquisition Costs made by B Participant plus interest thereon calculated at the Interest Rate applicable to the Loan in question.

(vii) *Borrower*. The term "**Borrower**" shall mean the borrower with respect to a Loan.

(viii) *Borrower Reimbursable Costs*. The term "**Borrower Reimbursable Costs**" shall mean, collectively, any and all out-of-pocket fees, costs, expenses and indemnified amounts incurred by B Participant at any time which a Borrower is obligated to pay or to reimburse to B Participant pursuant to the applicable Loan Agreement or any other Loan Documents, including, without limitation, the costs and expenses described in the Loan Agreements (generally in Section 9.3), Protective Advances and the actual, out-of-pocket costs and expenses incurred by B Participant in connection with its obligations under this Agreement.

(ix) *Business Day*. The term "**Business Day**" shall mean a weekday on which both A Participant and B Participant are open for the transaction of normal business.

(x) *Costs*. The term "**Costs**" shall mean either Borrower Reimbursable Costs or Post-Acquisition Costs, or both, as the context may require.

(xi) *Date-Down Endorsement*. The term "**Date-Down Endorsement**" shall mean an endorsement to the Title Policy which is in form and content acceptable to B Participant and which in any case (a) dates down the effective date of the Title Policy to the date on which the applicable Disbursement it covers is made, (b) increases the liability limit of the Title Policy by an amount equal to the principal amount of such Disbursement, and (c) contains no new exceptions to title except those approved by B Participant.

(xii) *Declaration*. The term "**Declaration**" shall mean a Condominium Declaration.

(xiii) *Default Rate*. The term "**Default Rate**" shall mean the default interest rate prescribed in a Note.

(xiv) *Disbursement*. The term "**Disbursement**" shall mean any advance or disbursement of proceeds of a Loan, whether for principal or interest (without duplication), made by B Participant pursuant to the applicable Loan Agreement or Note after the date hereof.

(xv) *Effective Date*. The term "**Effective Date**" shall mean the date set forth on the signature page hereof.

(xvi) *Enforcement Action*. The term "**Enforcement Action**" shall mean the commencement of the exercise of any of the following remedies against any Borrower, any Guarantor or any other Person: (a) acceleration of the maturity of any liability or obligation of any Borrower or any Guarantor; (b) commencement of any litigation or proceeding, including the commencement of any foreclosure proceeding, the exercise of any power of sale, the sale by advertisement, obtaining of a receiver or taking of any other remedial action with respect to, or the enforcement of any remedy against, any Project or any of the property or assets of any Borrower or any Guarantor; (c) filing or joining in the filing of any petition against any Borrower or any Guarantor of any Insolvency Proceeding or any other commencement of an Insolvency Proceeding; (d) entering upon, taking possession of, exercising control over or taking title (legal or equitable) to any Project or taking of a deed or assignment in lieu of foreclosure; or (e) any legal action or proceeding, pursuant to any Mezzanine Intercreditor Agreement; provided, however, that "Enforcement Action" shall not include any draw under any letter of credit or certificate of deposit held under

the Loan Documents, provided that such draw is permitted under the terms of the Loan Documents.

(xvii) *Entitlement*. The term "**Entitlement**" shall mean any final zoning, platting, site plan or other applicable development approval or permit from any Governmental Agency having jurisdiction relating to the development, ownership or operation of any Project or the construction of any Renovations, including, without limitation, a conditional use permit or a building permit.

(xviii) *Form W-8BEN Certification*. The term "**Form W-8BEN Certification**" shall have the meaning set forth in *Section 28* hereof.

(xix) *Form W-8ECI Certification*. The term "**Form W-8ECI Certification**" shall have the meaning set forth in *Section 28* hereof.

(xx) *Fremont Insolvency Proceeding*. The term "**Fremont Insolvency Proceeding**" shall mean any proceeding under Title 11 of the United States Code (11 U.S.C. §§101 *et seq.*) or any other insolvency, liquidation, reorganization or other similar proceeding concerning Fremont, any regulatory receivership proceeding, any action for the dissolution of Fremont, any proceeding (judicial or otherwise) concerning the application of the assets of Fremont, for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of Fremont or any other action concerning the adjustment of the debts of Fremont or the cessation of business by Fremont.

(xxi) *Guarantors*. The term "**Guarantors**" shall mean, collectively, the guarantors of all or any portion of any Loan or all or any of any Borrower's obligations set forth and described in the Loan Documents.

(xxii) *Holdbacks*. The term "**Holdbacks**" shall have the meaning set forth in the Notes.

(xxiii) *In Balance*. The term "**In Balance**" shall mean at the time of determination that each Holdback is "in balance" in accordance with the terms of a Note.

(xxiv) *Insolvency Proceeding*. The term "**Insolvency Proceeding**" shall mean any proceeding under Title 11 of the United States Code (11 U.S.C. §§101 *et seq.*) or any other insolvency, liquidation, reorganization or other similar proceeding concerning any Borrower or any Guarantor, any action for the dissolution of any Borrower or any Guarantor, any proceeding (judicial or otherwise) concerning the application of the assets of any Borrower or any Guarantor, for the benefit of their respective creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of any Borrower or any Guarantor or any other action concerning the adjustment of the debts of any Borrower or any Guarantor or the cessation of business by any Borrower, except following a sale, transfer or other disposition of all or substantially all of the assets of any Borrower in a transaction, if any, permitted under the Loan Documents.

(xxv) *Interest Holdback*. The term "**Interest Holdback**" shall mean the Holdback for Interest as defined in a Note.

(xxvi) *Interest Rate*. The term "**Interest Rate**" shall mean the rate at which the outstanding principal balance of a Loan bears interest, as more particularly set forth in a Note, including, without limitation, the Default Rate if applicable.

(xxvii) *Lenders*. The term "**Lender**" shall mean any one of A Participant, B Participant and any other Person who has acquired or subsequently acquires from A Participant or B Participant an interest in the Loans, whether as a participant or a co-lender, and the term "Lenders" shall mean A Participant, B Participant and such other Person(s), collectively. Any subparticipant of A Participant or B Participant in accordance with the terms of this Agreement is expressly excluded

from being a "Lender." As of the Effective Date, A Participant and B Participant are the only Lenders.

(xxviii) *LIBOR*. The term "**LIBOR**" shall mean a floating interest rate per annum (rounded upwards, if necessary, to the next  $\frac{1}{16}$  of 1%) equal to the London Interbank Offered Rate (LIBOR) with a one month maturity as reported in the Money Rates column or section of *The Wall Street Journal* published on the second full Business Day preceding the first day of a calendar month.

(xxix) *Loan and Loans*. The term "**Loan**" shall mean an individual Loan. The term "**Loans**" shall mean the Loans listed on the Mortgage Loan Schedule, including participation interests and co-lending interests in Loans, as applicable.

(xxx) *Loan Agreement*. The term "**Loan Agreement**" shall mean a Loan and Security Agreement, made by and between a Borrower and Fremont, as assigned to B Participant, together with all Modifications thereto.

(xxxi) *Loan Documents*. The term "**Loan Documents**" shall mean all documents, agreements, certificates, instruments and other writings now or hereafter executed by or delivered or caused to be delivered by any Borrower, any Guarantors or any Mezzanine Lender to or for the benefit of Lenders, evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of a Loan or evidencing any transaction contemplated thereby, and all Modifications thereto.

(xxxii) *Mezzanine Borrower*. The term "**Mezzanine Borrower**" shall mean the Borrower under a Mezzanine Loan related to a Loan.

(xxxiii) *Mezzanine Intercreditor Agreement*. The term "**Mezzanine Intercreditor Agreement**" shall mean any intercreditor agreement, recognition agreement or similar agreement between Fremont and a Mezzanine Lender, as assigned to B Participant.

(xxxiv) *Mezzanine Lender*. The term "**Mezzanine Lender**" shall mean the lender under a Mezzanine Loan.

(xxxv) *Mezzanine Lender Loan Purchase*. The term "**Mezzanine Lender Loan Purchase**" shall have the meaning set forth in *Section 12H* hereof.

(xxxvi) *Mezzanine Loan*. The term "**Mezzanine Loan**" shall mean a mezzanine loan related to a Loan.

(xxxvii) *Mezzanine Loan Documents*. The term "**Mezzanine Loan Documents**" shall mean all documents, agreements, certificates, instruments and other writings now or hereafter executed by or delivered or caused to be delivered by a Borrower, a Mezzanine Borrower or any Guarantors to or for the benefit of Mezzanine Lender, evidencing, creating, guaranteeing or securing all or any part of the Mezzanine Loan or evidencing any transaction contemplated thereby, and all Modifications thereto.

(xxxviii) *Minimum Sales Price*. The term "**Minimum Sales Price**" shall mean, for each Condo Unit, a sales price of not less than the minimum sales price for such Condo Unit set forth in the applicable Loan Agreement, generally on *Exhibit D* thereto, plus all charges for upgrades, in accordance with such Loan Agreement.

(xxxix) *Modification*. The term "**Modification**" shall mean any extension, renewal, substitution, replacement, supplement, amendment or modification of any agreement, certificate, document, instrument or other writing, whether or not contemplated in the original agreement, document or instrument, which either (x) was executed and delivered to B Participant prior to the Effective Date or (y) is made on or after the Effective Date in accordance with this Agreement.



(xl) *Mortgage File*. The term "**Mortgage File**" shall have the meaning set forth in *Section 10A* hereof.

(xli) *Net Collections*. The term "**Net Collections**" shall mean net proceeds from the sale of the Collateral, after payment of any necessary and ordinary expenses incurred by B Participant or the Ownership Entity in connection therewith, including, without limitation, attorneys' fees, costs of sale and all unpaid Asset Management Fees, Borrower Reimbursable Costs and Post-Acquisition Costs.

(xlii) *Note*. The term "**Note**" shall mean the promissory note evidencing a Loan executed by a Borrower as maker in favor of Fremont as payee and endorsed to B Participant and any other promissory note or notes hereafter evidencing a Loan, and all Modifications to the foregoing.

(xliii) *Ownership Entity*. The term "**Ownership Entity**" shall have the meaning set forth in *Section 6C* hereof.

(xliv) *Participation Certificate*. The term "**Participation Certificate**" shall have the meaning set forth in *Section 2A* hereof.

(xlv) *Permitted Transferee*. The term "**Permitted Transferee**" shall mean any of the following: (a) any Lender or any Affiliate of a Lender; provided that the payment and performance of the obligations of such Affiliate under this Agreement are guaranteed by such Lender to the other Lender(s) in a manner satisfactory to such other Lender(s); (b) an Affiliate of B Participant which has a net worth in excess of Two Hundred Million Dollars (\$200,000,000) at the time of the Transfer in question; (c) an investment partnership or opportunity fund which has a net worth in excess of Two Hundred Million Dollars (\$200,000,000) at the time of the Transfer in question and is controlled or managed by or under common control or management with any Lender; (d) any of the following entities which has a net worth in excess of Two Hundred Million Dollars (\$200,000,000) at the time of the Transfer in question, (A) a federal or state chartered commercial bank or trust company or federal or state chartered savings and loan association or insurance company organized and existing under the laws of the United States, or any state thereof, (B) a foreign bank or a branch office of a foreign bank, (C) a foreign or domestic pension fund, (D) a foundation, college or university, (E) a nationally recognized commercial credit corporation, (F) a domestic real estate investment trust having an investment grade senior debt rating from a nationally recognized rating agency, (G) an investment bank having an investment grade senior debt rating from a nationally recognized rating agency, or (H) an opportunity fund, investment partnership, hedge fund or similar fund which is organized under the laws of one of the United States and is controlled by an entity that constitutes a Permitted Transferee; or (e) an entity wholly owned by any one of the entities described in *clauses (a) through (d)* above and the obligations of which under this Agreement are guaranteed by any such owning entity described in any of such *clauses (a) through (d)* or by the A Participant or the B Participant, as the case may be.

(xlvi) *Post-Acquisition Costs*. The term "**Post-Acquisition Costs**" shall mean, collectively, any and all reasonable out-of-pocket fees, costs, expenses and indemnified amounts incurred by B Participant, on behalf of the Ownership Entity, from and after the acquisition of title to any or all of the Collateral for a Loan by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code in accordance with the Loan Documents, in connection with performing its obligations and duties under this Agreement, including, without limitation, any and all expenses related to the preservation, operation and management of the Collateral, but expressly excluding any and all Borrower Reimbursable Costs.

(xlvii) *Protective Advance*. The term "**Protective Advance**" shall mean an advance made by B Participant in order to cover any and all reasonable expenses necessary to protect or preserve the value of the Collateral securing a Loan and the priority of the liens and security interests created

by the Loan Documents relating thereto, including without limitation taxes, insurance premiums, payment of ground rent, the costs of prevention of waste, repairs, and maintenance, and foreclosure expenses and legal fees and expenses relating thereto.

(xlviii) *REO Budget*. The term "**REO Budget**" shall have the meaning set forth in *Section 7A* hereof.

(xlix) *Sales Guidelines*. The term "**Sales Guidelines**" shall have the meaning set forth in *Section 7A* hereof.

(l) *Security Instrument*. The term "**Security Instrument**" shall mean the Mortgage and Fixture Filing, Deed of Trust and Fixture Filing, Deed to Secure Debt and Fixture Filing or Indemnity Deed of Trust and Fixture Filing, executed by a Borrower (or guarantor, if an indemnity deed of trust is used) in favor of Fremont, and assigned to B Participant, to secure a Borrower's liabilities and obligations under a Note and other Loan Documents and all Modifications thereto.

(li) *Servicing Standards*. The term "**Servicing Standards**" shall have the meaning set forth in *Section 5* hereof.

(lii) *Single Purpose Entity*. The term "**Single Purpose Entity**" shall mean an entity meeting the requirements of *Exhibit C*.

(liii) *Sources and Uses Schedule*. The term "**Sources and Uses Schedule**" shall mean, collectively, the Sources and Uses Schedule attached as an Exhibit to a Note and further described therein, as amended or replaced from time to time in accordance with the terms of the related Loan Agreement and Note.

(liv) *Tax Code*. The term "**Tax Code**" shall mean the United States Internal Revenue Code of 1986, as amended.

(lv) *Third Party Intercreditor Agreement*. The term "**Third Party Intercreditor Agreement**" shall mean each participation agreement and co-lending agreement entered into by Fremont, and assigned to B Participant, in connection with a Loan.

(lvi) *Third Party Rights*. The term "**Third Party Rights**" shall have the meaning set forth in *Section 12I* hereof.

(lvii) *Transfer Supplement*. The term "**Transfer Supplement**" shall have the meaning set forth in *Section 12B* hereof.

(lviii) *Transferring Lender*. The term "**Transferring Lender**" shall have the meaning set forth in *Section 12B* hereof.

(lix) *Uniform Commercial Code*. The term "**Uniform Commercial Code**" shall mean, with respect to each discrete element or category of the personal property Collateral, the applicable Uniform Commercial Code.

## 2. **PARTICIPATION INTERESTS.**

**A. Acquisition.** Pursuant to the Purchase Agreement, B Participant hereby conveys, transfers and assigns to A Participant and A Participant hereby acquires and takes from B Participant the A Participation Interest. The A Participation Interest hereby acquired by A Participant is evidenced by that certain Participation Certificate executed and delivered to A Participant by B Participant on the Effective Date in the form of *Exhibit B* attached hereto (a "**Participation Certificate**").

**B. Nature of Participation.** B Participant shall participate with A Participant in the ownership, disbursement, debt service and payment of the Loans, in the Loan Documents, in the Collateral and in the proceeds thereof, including, without limitation, in the acquired Collateral listed on Exhibit A-1, with

each Lender having its respective interest therein. The interests of the Lenders shall, subject to Sections 3, 4, 7 and 8 hereof, be of equal priority. A Participant shall have an undivided ownership interest in the Loans, in the Loan Documents, in the Collateral for the Loans and in the proceeds thereof, including, without limitation, in the acquired Collateral listed on Exhibit A-1, which shall at any time be equal to the A Participation. A Participant hereby acknowledges that A Participant is participating in the ownership of the Loans and that A Participant and B Participant are not investing in a common business enterprise with each other. Except for the original Notes (and with respect to a Loan for which a participation certificate rather than a Note has been issued, any original participation certificates) which will be held by a custodian as set forth in Section 2C, all of the Loan Documents and Mortgage Files shall be delivered to B Participant (or any subservicer), and B Participant shall hold all of the Loan Documents as custodian for the Lenders.

**C. B Participant as Lender of Record; Third Parties.** Notwithstanding the Participation Interest in favor of A Participant created by this Agreement, B Participant shall be and remain the lender of record under the Loans, retaining the Loans and the Loan Documents in B Participant's own name. B Participant shall be, and hereby is, authorized to deal with all third parties, including, without limitation, Borrowers, Mezzanine Lenders and other parties to Third Party Intercreditor Agreements. A Participant hereby authorizes any third party, without inquiry as to whether any action by B Participant is authorized hereunder, to deal with B Participant concerning the Loan in the same manner as if A Participant's Participation Interest therein were not outstanding. As between A Participant and B Participant, nothing in the foregoing shall modify any obligation of A Participant to B Participant or of B Participant to A Participant set forth in this Agreement. B Participant may perform any of its obligations under this Agreement by or through its Affiliates, agents, employees or attorneys, *provided* that the costs and fees of such Affiliates, agents, employees or attorneys shall be borne exclusively by B Participant unless such costs and fees constitute, for purposes of this Agreement, either (i) Borrower Reimbursable Costs, in which case B Participant shall only look to Borrower for reimbursement therefor pursuant to the Loan Documents and which shall otherwise be paid in accordance with the terms of this Agreement, or (ii) Post-Acquisition Costs, in which case such Post-Acquisition Costs shall be paid in accordance with the applicable provisions of this Agreement. All communications with Borrowers shall be made by and through B Participant, and A Participant shall not communicate directly with any Borrower, Guarantors or any of their respective principals, or any property manager or leasing agent or any broker for the Collateral or any part thereof, regarding this Agreement or A Participant's Participation Interest, or cause any Borrower to be involved in or affected by any dispute between A Participant and B Participant. Notwithstanding the foregoing, Lenders shall notify Borrowers in writing, promptly following the Effective Date, of the existence of the Participation Interest.

**D. Backup Security Interest.** It is the intention of the parties hereto that the conveyance of the A Participation contemplated by this Agreement shall constitute a conveyance, transfer and assignment of an undivided beneficial interest in the Loans (and all Loan Documents related thereto) and the proceeds thereof from B Participant to A Participant and that such beneficial interest in the Loans of B Participant shall not be part of A Participant's estate in the event of the filing of a bankruptcy petition by or against A Participant under any bankruptcy law. In the event that, notwithstanding the intent of the parties hereto, the conveyance, transfer and assignment contemplated hereby is not recognized as such, this Agreement shall constitute a security agreement under applicable law, and, in furtherance thereof B Participant shall be deemed to have granted, and does hereby grant, to A Participant a security interest in the Loans for the benefit of A Participant and its assignees as security for B Participant's obligations hereunder, which pledge will be perfected by the possession of the promissory notes and participation certificates with respect to the Loans on behalf of A Participant by a financial institution agreed to by the Lenders.

**3. FUNDING OF DISBURSEMENTS.** All Disbursements under any Loan that are to be advanced to or for the account of Borrowers pursuant to the Loan Documents after the date hereof shall be funded by B Participant and not by A Participant, in the manner set forth below:

**A. Disbursements for Interest.** Notwithstanding the fact that any or all of the other conditions to a Disbursement set forth in the Loan Documents may not have been satisfied with respect to a Loan for a particular calendar month, so long as there is then no Event of Default with respect to such Loan, and a Date-Down Endorsement (dated as of the date of the funding) is obtained in connection therewith, B Participant shall fund, from the applicable Interest Holdback and in accordance with the Loan Agreement and Loan Documents, without further direction from the applicable Borrower, on the first (1<sup>st</sup>) day of each calendar month during the term of this Agreement, all accrued interest on the Loans. Notwithstanding the foregoing, B Participant shall have no obligation to fund interest from the Interest Holdback if B Participant has determined to take an Enforcement Action, if the Interest Holdback is exhausted or if B Participant has made a non-recoverability decision under *Section 5K*. Interest that would be payable to B Participant under *Section 4* may be disbursed to B Participant by book entry, and all interest disbursed from the Interest Holdback, whether in cash or by book entry, shall be added to the principal balance of the applicable Note.

**B. Disbursements for Construction and Other Holdbacks.** B Participant agrees to disburse Loan proceeds from the Holdbacks (other than the Interest Holdback) in accordance with and subject to the terms and conditions of the applicable Loan Agreement and Loan Documents and the terms and conditions of this Agreement.

**C. Disbursements for Borrower Reimbursable Costs.** If a Borrower Reimbursable Cost is to be paid from the proceeds of the Loan and if the applicable Loan Documents authorize debiting the Loan or Borrower Reimbursable Cost without specific authorization from the applicable Borrower, then, B Participant shall fund to itself such Borrower Reimbursable Cost without any specific consent or authorization from the applicable Borrower or A Participant to the extent permitted by the Loan Documents on the same basis as any other Disbursement made hereunder.

**D. Payment Procedure.** All payments by a Lender to the other Lender shall be made in accordance with the procedure set forth in *Section 8* hereof.

**E. Compliance by Borrower with Loan Documents.** The advancement of a Disbursement by B Participant to or for the account of a Borrower shall not be deemed or construed to constitute a representation or a waiver by B Participant with respect to a Borrower or a Borrower's compliance with the Loan Documents.

**F. Duty To Fund.** Nothing in this *Section 3* shall relieve B Participant of its obligation to fund each Disbursement when and as required by the Loan Documents and this Agreement; provided, however, that in no event shall B Participant's total exposure for a particular Loan principal be required to exceed the maximum current commitment for such Loan set forth on *Exhibit E*, as same may be changed through a Modification.

**4. INTEREST.** A Participant shall be entitled to interest on the A Participation at the A Participant Interest Rate, and, subject to the provisions of *Section 8B* hereof, A Participant shall be entitled to be paid such interest to the extent of interest available in any calendar month under *Section 3A*, and from interest paid in cash by Borrowers or Guarantors, and B Participant shall receive all other interest, fees and charges (other than repayment of principal) paid with respect to the Notes and Loans in any calendar month, including Default Interest, all prepayment fees, premiums and charges, exit fees, per unit exit fees, extension fees, late fees, and other loan fees and assumption fees. If with respect to any calendar month there are insufficient funds available from the sources described in the first sentence of this section to pay interest to A Participant for such month, such unpaid interest shall accrue at the A Participant Interest Rate until paid.

**5. SERVICING OBLIGATIONS OF B PARTICIPANT.** B Participant shall administer and service the Loans in accordance with the Loan Documents and the terms of this Agreement. B Participant shall supervise and coordinate the making of all Disbursements pursuant to the Loan Documents and, except as otherwise set forth in this Agreement, B Participant shall have the power and duty to make decisions under, and to enforce and to perform in accordance with, the Loan Documents in connection with loan administration, inspections, review of financial data and other matters involved in the administration and servicing of the Loans. Without limiting the generality of the foregoing, B Participant shall administer and service the Loan in accordance with the provisions of *Section 5A* (collectively, the "**Servicing Standards**"):

**A. Servicing of Loan by B Participant.** B Participant shall service the Loans, on behalf of the A Participant and B Participant, with the same care, skill and diligence that B Participant exercises in servicing similar loans for its account alone (assuming an arms' length relationship with the borrowers under such other loans and without regard to any other lending or banking relationship with such borrowers or any of their respective Affiliates or any entities controlled by some or all of the principals of such borrowers) and in accordance with all applicable regulatory servicing requirements, subject to the specific rights and obligations set forth herein. In no event shall B Participant be obligated to violate applicable laws or the terms of any Loan Documents. Without limiting the generality of the foregoing, B Participant's servicing obligations hereunder shall include the following:

(i) B Participant shall discharge in a timely manner each and every obligation which the Loan Documents provide is to be performed by the lender thereunder, either on its own behalf or on behalf of A Participant;

(ii) B Participant shall incur costs (including Protective Advances) in accordance with the provisions of this Agreement and the Loan Documents; and

(iii) Subject to the provisions of this Agreement, B Participant shall in all other respects be responsible for the administration of the Loans.

**B. Books and Records.** B Participant shall at all times keep proper books of account and records regarding the Loans and the Lenders' interests in the Loans. Such books and records shall be available for inspection by A Participant or its representatives and agents at the office of B Participant described in *Section 19* hereof at all reasonable times during B Participant's normal business hours on any Business Days, in each instance upon ten (10) Business Days' prior notice to B Participant. In addition, upon request by A Participant, B Participant, at the sole cost and expense of A Participant, shall promptly send copies (the number of copies of which shall be reasonable) of such books and records to A Participant.

**C. Collection of Payments; Interest Holdback; Direct Payment of Fees.** Subject to the provisions of this Agreement, B Participant shall have the exclusive right and obligation to collect any and all sums (including, without limitation, interest payable by Borrowers directly and interest advanced from any Interest Holdback, as described in *Section 3B* hereof) due or collectible in connection with the Loans, including, without limitation, by making a draw under any letter of credit or certificate of deposit held by B Participant, provided that such draw is permitted by the terms of the Loan Documents.

**D. Allocation of Expenses.** B Participant shall use commercially reasonable efforts to recover from Borrowers and, to the extent of any guaranty for same, Guarantors, all Borrower Reimbursable Costs incurred by B Participant. To the extent not reimbursed by a Borrower or Guarantor pursuant to the foregoing, B Participant shall advance any Borrower Reimbursable Costs. Such advanced Borrower Reimbursable Costs shall bear interest at the applicable Interest Rate and shall be paid to B Participant, along with such accrued interest, first from any repayment thereof by the applicable Borrower thereof and then from principal payments on the affected Loan before any distribution of principal to Lenders with respect to such Loan. Each Lender shall be solely responsible for any taxes,

breakage costs, swaps or other hedge agreements, any regulatory requirements (including capital adequacy requirements and LIBOR requirements) that are specific or personal to such Lender as an entity.

**E. *B Participant's Duty To Advise A Participant; Delivery of Default Notices.*** B Participant shall deliver to A Participant such information relating to the Loans as A Participant may reasonably request from time to time; *provided, however*, that to the extent A Participant requests information which is dependent on B Participant obtaining such information from a Borrower, Guarantor or other third party, it shall not be a breach by B Participant hereunder if B Participant fails to provide such information to A Participant because a Borrower, Guarantor or other third party has failed to provide such information to B Participant. B Participant shall also use its commercially reasonable efforts to promptly advise A Participant of any matter of which B Participant becomes aware relating to the Loans, any of the Collateral, or any Borrower that, in B Participant's commercially reasonable judgment, materially and adversely affects the interests of the Lenders hereunder. B Participant shall deliver to A Participant a copy of any written notices of default sent to a Borrower or Guarantor.

**F. *Limitation on B Participant's Liability.*** Neither B Participant nor any of its officers, directors, employees, attorneys or agents shall be liable for any action taken or omitted to be taken by them or any one of them under or in connection with the Loans, the Collateral or any portion thereof or this Agreement, except for B Participant's gross negligence, willful misconduct or material breach of this Agreement. B Participant shall incur no liability to A Participant by acting in good faith upon any notice, consent, certificate or other instrument or writing (including telegram, cable, telex, e-mail or telecopy) reasonably believed by B Participant to be genuine and to have been signed or sent by the proper party.

**G. *Releases of Collateral.*** B Participant is hereby authorized, as agent for and in the name of A Participant and B Participant and without any further consents or authorizations of A Participant, to (i) consent to the subordination of the lien of the Security Instrument to any Declaration to the extent required by the Loan Documents or by law, (ii) grant partial releases of any individual Condo Units to the extent allowed by the Loan Documents, and (iii) grant partial releases of the condominium common areas so long as such partial releases are effected in substantial compliance with all of the pertinent requirements and conditions of the Loan Documents. B Participant is further authorized to release or assign any lien granted to or held by B Participant upon any Collateral upon payment of any Loan in full and satisfaction in full of all of the Secured Obligations with respect to a Loan and upon termination of this Agreement.

**H. *Servicing and Loan Administration Decisions.***

(i) *B Participant Decisions.* B Participant shall have full power and authority, acting alone or through sub-servicers (it being understood that use of a subservicer will not release B Participant of its obligations under this Agreement), to do or cause to be done any and all things in connection with the servicing and administration of the Loans that it may deem necessary or desirable, may make all servicing decisions in its sole and absolute discretion, subject to the Servicing Standards, including, without limitation, the following:

(a) (i) Modify or amend in any material respect any of the Loan Documents, (ii) waive any of the Lenders' material rights thereunder, (iii) waive any material condition to any Borrower's right to receive Disbursements, insurance proceeds, condemnation awards or other sums pursuant to the Loan Documents or to the completion of the Renovations or any restoration following a casualty or condemnation or to the entering into of any Condo Purchase Agreement or to closing any sale of any Condo Unit or obtaining a partial release in connection therewith, (iv) determine if any Holdback is In Balance, and (v) grant any material approvals or determinations with respect to Cost Savings, or modifications of or reallocations within the Sources and Uses Schedule.

- (b) Forgive or reduce the Indebtedness of a Borrower under any of the Loan Documents (including interest at the Default Rate and late fees), increase the Indebtedness (including the Protective Advances (subject to the limitations contained herein)) evidenced by the Notes or any of the other Loan Documents, and permit the Loan Documents to secure any indebtedness other than the Indebtedness.
- (c) Reduce the Interest Rate under, or modify the maturity date of, any Note.
- (d) Release or approve a transfer or encumbrance of any of the Collateral or accept substitute collateral for the Loan or agree to reduce any of the Condo Minimum Sales Prices or the Condo Release Prices.
- (e) Release any party or parties now or hereafter liable for the payment of the Loan or the performance of any other obligation relating thereto, including, without limitation, in connection with any guaranty or any environmental indemnity.
- (f) Permit the Collateral, or any portion thereof or any interest therein, or the beneficial ownership of Borrower, or any portion thereof, to be conveyed or transferred to any other person or persons or permit the Indebtedness, or any portion thereof, to be assumed by any other person or persons.
- (g) Cancel or agree to the termination of any of the Loan Documents.
- (h) Approve any change order which would materially alter the use, type or construction quality of the Collateral or reduce the number of Condo Units set forth in the Condo Plan or any other Material Change Order.
- (i) Consent to any agreement in any Insolvency Proceeding relating to any Loan, any Borrower, any Guarantor, or any Collateral, including, without limitation, voting for a plan of reorganization. Notwithstanding the foregoing, B Participant may take any and all actions reasonably necessary to obtain relief from any stay imposed as part of (or seek dismissal of) any Insolvency Proceeding relating to any Loan, any Borrower, any Guarantor or any Collateral.
- (j) Consent to any direct or indirect transfers or pledges of the ownership interests in any Borrower, any change in management of any Borrower (or its permitted successors and assigns), any material change in the organizational documents of any Borrower or any Mezzanine Borrower (or any successor manager), or any transfers of the equity interests of any Mezzanine Borrower (or any successor manager).
- (k) Approve any material modification, extension or termination of any Lease to the extent such material modification, extension or termination requires Lender's consent pursuant to the terms of the Loan Documents.
- (l) Subordinate the liens of the Security Instrument or any other Loan Document.
- (m) Consent to any senior or subordinate financing affecting Borrower or the Collateral, or any mezzanine financing affecting Borrower or any direct or indirect member of Borrower.
- (n) Waive any material default under the Loan Documents.
- (o) Consent to material alterations of the Condo Plans or any material physical alterations of the Collateral.
- (p) Settle, or consent to the settlement of, (1) any insurance claim or (2) any condemnation claim.

(q) Consent to the application of condemnation awards or insurance proceeds for any purpose for the restoration of any Project in accordance with the terms of the Loan Documents or application to the Secured Obligations.

(r) Materially amend, or waive any material provision of, any Mezzanine Intercreditor Agreement or Third Party Intercreditor Agreement, consent to any material amendment to, or waiver of any material obligation under, any Mezzanine Loan Documents, and make all decisions with respect to the Loans under any Intercreditor Agreement and Third Party Intercreditor Agreement.

(s) Consent to any change in any Project that would result in the termination or unavailability of any material Entitlement, franchise, license or approval for the Project contemplated by the Loan Documents.

(t) Take any Enforcement Action.

(u) Sell any Loan to a third party, free of the participation interests created hereunder, that is considered by B Participant to be expensive or time consuming to service or to present unusual servicing difficulties in comparison to the average Loans in the portfolio, or credit impaired or likely to become credit impaired, so long as the Net Collections of such sale are distributed as set forth in *Section 7D* hereof or otherwise sell any Loan with the consent of A Participant, such consent not to be unreasonably withheld.

(v) Accept a deed in lieu or in aid of foreclosure.

(w) If applicable, approve a Mezzanine Loan on the terms set forth in the Loan Agreement and enter into a Mezzanine Intercreditor Agreement in connection therewith.

(x) If the applicable Loan is subject to a Third Party Intercreditor Agreement with any entity other than Affiliate of B Participant, exercise any buy-sell rights, redemption rights or similar rights.

**I. Reporting.** B Participant shall furnish A Participant, on the fifteenth day of each month (or the first Business Day thereafter) a report on the Loans in the form set forth on *Exhibit F*.

**J. Servicing Fees Payable to B Participant.** B Participant shall perform its loan servicing obligations and exercise its rights under this Agreement at no cost or expense to A Participant other than B Participant's reasonable, actual, out-of-pocket costs and expenses incurred in connection with its loan servicing obligations and rights hereunder, which shall be advanced by B Participant, bear interest at the Interest Rate for the applicable Loan and be repaid from any principal payments on the affected Loan before any distribution of principal to Lenders with respect to the Loan.

**K. Nonrecoverability.** Notwithstanding anything to the contrary contained herein, in no event shall B Participant be obligated to advance any Borrower Reimbursable Cost, interest payments with respect to a Loan, Protective Advance or Post-Acquisition Cost if B Participant determines, in its sole discretion, that such amount, when combined with all previous such advances for such Loan, would not ultimately be recoverable from insurance proceeds, condemnation proceeds, liquidation proceeds or proceeds from the sale of such Loan or Collateral.

## **6. DEFAULTS; ACQUISITION OF COLLATERAL.**

**A. Notice of Default to Other Lender.** Each Lender shall give prompt telephonic and written notice to the other Lender of any material default by a Borrower under any of the Loan Documents of which the first Lender acquires knowledge, whether such knowledge is acquired by reason of notice or otherwise. Each Lender shall promptly forward to the other Lender copies of any and all notices, correspondence and other materials that may be sent to or received by the first Lender in connection with any such default by a Borrower.



**B. Discretion of B Participant in Responding to Defaults of Borrower.** Upon the occurrence of an Event of Default under any of the Loan Documents, B Participant shall determine the response to such default and course of action with respect to such default, and B Participant shall have no such duty to consult with A Participant, including, without limitation, (i) the selection of attorneys to be used in connection with any action, whether judicial or otherwise, to protect the respective interests of the Lenders in the Loan and the Collateral, (ii) the declaration and recording of a notice of such default and the acceleration of the maturity of the Loan, (iii) the institution of proceedings to foreclose the Loan Documents securing the Loan pursuant to the power of sale contained therein or through a judicial action, (iv) the institution of proceedings against any Guarantor, (v) the acceptance of a deed in lieu of foreclosure, (vi) the purchase of the real property Collateral at a foreclosure sale or trustee's sale or the purchase of the personal property Collateral at a Uniform Commercial Code sale, and (vii) the institution or continuation of proceedings to obtain a deficiency judgment against such Borrower or any Guarantor.

**C. Acquisition of Collateral.** If title to any or all of the Collateral is now owned or hereafter acquired by B Participant by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise, title to all such Collateral so acquired shall be held in the name of a limited liability company or such other entity as may be approved by the B Participant (the "**Ownership Entity**") (whether already in existence or formed by B Participant for such purpose), in which B Participant or its wholly-owned subsidiary or Affiliate shall be the sole managing member and in which B Participant (or its wholly-owned subsidiary or Affiliate) shall have a membership interest and A Participant shall have a membership interest that allows it to receive interest and principal payments in accordance with *Sections 4 and 7D* hereof. The purposes of the Ownership Entity shall be to hold the Collateral pending sale, complete construction of such Project, sell any Condo Units, and operate the Collateral as efficiently as possible in order to minimize financial loss to the Lenders and to sell the Collateral as promptly as practicable in a way designed to minimize financial loss to the Lenders. If so determined by B Participant, in its sole discretion, B Participant may cause its interest in any Ownership Entity, but not that of the A Participant, to be held through a Taxable REIT Subsidiary (as defined in the Tax Code) with respect to B Participant, and B Participant shall have the right to make the necessary elections under the Tax Code. Nothing in this *Section 6C* or anything else in this Agreement shall be deemed to affirmatively require B Participant to acquire all or any portion of the Collateral in the event of significant environmental contamination thereof.

**D. Management and Disposition of Acquired Collateral; Expenses.** All decisions concerning the management and maintenance of the Collateral acquired by the Ownership Entity shall be made in the manner set forth in *Section 7* hereof. During the period that the Collateral acquired by any Ownership Entity is subject to A Participant's and B Participant's Participation interests, all expenses shall be funded by B Participant (to the extent not payable out of revenues) and shall accrue interest at the Interest Rate.

**7. ASSET MANAGEMENT OBLIGATIONS OF B PARTICIPANT.** After foreclosure of the Security Instrument or acceptance of a deed in lieu of foreclosure or acquisition of the Collateral by power of sale or pursuant to the Uniform Commercial Code, B Participant shall serve as asset manager for the acquired Collateral and shall manage such Collateral in accordance with the Servicing Standards and *Section 7F*, subject to the specific rights and obligations set forth herein. B Participant shall perform such asset management obligations at no cost or expense to the Lenders other than the Asset Management Fees payable to B Participant by the lenders pursuant to *Section 7I* hereof and reimbursement for the reasonable expenses referred to in *Section 7D* hereof that are advanced or incurred by B Participant in connection with its obligations under this *Section 7* in accordance with said *Section 7D*. B Participant may perform, at no additional cost to Lenders, any of its obligations hereunder by or through its Affiliates, agents, employees or attorneys (but the B Participant shall remain liable therefor). B Participant shall supervise and coordinate the construction, ownership,

management, leasing and preservation of the Collateral as well as all other matters involved in the administration and preservation of the Collateral. Without limiting the generality of the foregoing, B Participant shall administer the Collateral in accordance with the following:

**A. Management of Collateral by B Participant.** B Participant's asset management obligations hereunder, in its capacity as the manager of the Ownership Entity, shall include the following:

- (i) B Participant shall cause the Ownership Entity to retain property management and leasing firms and other agents and contractors.
- (ii) B Participant shall cause the Ownership Entity to prepare, or cause to be prepared, quarterly operating statements, quarterly financial statements and annual income tax returns for the Collateral and the Ownership Entity, all in accordance with generally accepted accounting principles consistently applied in the United States.
- (iii) B Participant shall cause the Ownership Entity to prepare, or cause to be prepared, (y) annual operating and capital budgets for the operation of the Collateral and, if construction of the Project is not yet completed, a construction budget ("**REO Budget**"), and (z) sales reports, progress reports and other similar types of reports customary for entities of the same type as the Ownership Entity, and B Participant shall cause the agents and contractors described in *subsection (i)* above to comply with the REO Budget.
- (iv) B Participant shall cause the Ownership Entity to distribute monthly reports to the Lenders reflecting any net operating income (less reasonable reserves as set forth in the REO Budget) from the Collateral.
- (v) If required because the Project has not been completed, or if set forth in the REO Budget, B Participant shall cause the Ownership Entity to enter into contracts for the completion and maintenance of the Project, including contracts with the general contractor, the Project architect and the major subcontractors.
- (vi) B Participant shall cause the Ownership Entity to enter into and consummate contracts for the sale of Condo Units pursuant to parameters determined by B Participant, which parameters need not require a minimum selling price for any such Condo Unit greater than the Condo Minimum Sales Price for such Condo Unit. The guidelines described in this *Section 7A(vi)* shall collectively be referred to herein as the "**Sales Guidelines**".
- (vii) Following acquisition of the Collateral as provided herein, B Participant (A) shall have the right but not the obligation to terminate the property manager or the exclusive sales agent (if any) and (B) shall have the sole right to hire and terminate property managers, sales agents and, if the Project is not then fully complete at the time in question, contractors, architects and other design and construction professionals and consultants.
- (viii) B Participant shall cause the Ownership Entity to maintain property, casualty and liability insurance that is materially similar to the insurance required to be provided by Borrower immediately prior to the acquisition of the Collateral and materially similar to the insurance customarily maintained for similar properties in the relevant market.
- (ix) B Participant shall cause the Ownership Entity to use its reasonable efforts to sell the Collateral to an unaffiliated third party for cash within three (3) years after the date of the Ownership Entity's acquisition of the Collateral.
- (x) B Participant shall cause the Ownership Entity to hire legal counsel when necessary or desirable.

**B. Books and Records.** B Participant shall cause the Ownership Entity at all times to keep proper books of account and records regarding the Collateral. Such books and records shall be available for inspection by A Participant or its representatives and agents at the office of Participant described in *Section 19* hereof at all reasonable times during B Participant's normal business hours and on any Business Day upon not less than ten (10) Business Days' prior notice to Participant; further, upon request by A Participant, B Participant, at the sole cost and expense of A Participant, shall promptly send copies (the number of which shall be reasonable) of such books and records to A Participant.

**C. Collection of Revenue.** Subject to the terms of this Agreement, B Participant shall have the exclusive right and obligation to collect any and all revenues generated by the Collateral (including proceeds from the sale of Condo Units), deposit such revenues into an interest bearing account for the benefit of the Lenders, and pay all Post-Acquisition Costs from such revenues. All such revenues shall be distributed at the times and in the manner provided in *Section 7D* hereof.

**D. Allocation of Expenses.** B Participant shall use its reasonable efforts to recover from the operation of the Collateral all reasonable expenses incurred by B Participant in connection with the management of the Collateral in accordance with this Agreement. No less frequently than once each calendar month, subject to the immediately preceding sentence of this *Section 7D*, all net cash flow from the Collateral shall be distributed in the following order:

(i) First, to pay unpaid Post-Acquisition Costs incurred in accordance with this Agreement in connection with the preservation, operation and management of the Collateral, and any unpaid Borrower Reimbursable Costs for the affected Loan, together with interest thereon at the Interest Rate for the affected Loan.

(ii) Second, to pay any unpaid Asset Management Fees, in accordance with this Agreement.

(iii) Third, to fund such reserves for the payment of real property taxes, insurance premiums and the like and operating expenses and capital expenditures, and in such amounts, as are set forth in the REO Budget.

(iv) Fourth, to be applied, along with all other amounts received on the other Loans except for principal repayments, as set forth in *Section 4*.

(v) Fifth, with respect to any Net Collections received under *Section 7H*, seventy percent (70%) to A Participant and thirty percent (30%) to B Participant.

**E. B Participant's Duty To Advise A Participant.** In addition to the requirements of *Section 7A* hereof, after acquisition of the Collateral, B Participant shall deliver to A Participant such monthly reports relating to the Collateral as A Participant may reasonably request. B Participant shall also use its reasonable efforts promptly to advise A Participant of any matter of which B Participant becomes aware relating to any of the Collateral that, in B Participant's reasonable judgment, materially affects the interests of the Lenders hereunder.

**F. Standard of Care.** B Participant shall exercise the same degree of care in the management of the Collateral that B Participant would exercise if such Collateral were being held by B Participant for its own account alone, and B Participant shall manage the Collateral in accordance with all applicable regulatory requirements. Neither B Participant nor any of its officers, directors, employees, attorneys or agents shall be liable for any action taken or omitted to be taken by them or any one of them under this Agreement or in connection with the Collateral or any portion thereof, except for gross negligence, willful misconduct or material breach of this Agreement. B Participant shall incur no liability to A Participant by acting in good faith upon any notice, consent, certificate or other instrument or writing (including telegram, cable, telex or telecopy) reasonably believed by B Participant to be genuine and to have been signed or sent by the proper party.

**G. Post Acquisition Major Decisions.** Subject to the standard of care set forth in *Section 7F* above, B Participant may take all of the following actions, without consultation with or approval of A Participant:

(i) Enter into any capital transaction, including the sale, transfer or release of a portion of the Collateral or purchase money financing in connection with the sale of a portion of the Collateral (the sale, transfer or release of all or substantially all of the Collateral shall be governed by the provisions of *Section 7H* hereof).

(ii) Incur indebtedness for borrowed money.

(iii) Authorize capital improvements and physical or structural changes to the Collateral.

(iv) Authorize any easements or other changes to title, other than recordation of the Declaration or substantially similar declaration of condominium, subordination of the lien of the Security Instrument to the Declaration or such substantially similar declaration, and the recording of documents contemplated therein.

(v) Settle any insurance claim and settle any condemnation awards.

(vi) Execute any written release of a Borrower, any Guarantor, any Mezzanine Lender, or any other party now or hereafter liable for the payment of a Loan or the performance of any other obligation relating thereto, including in connection with any Guaranty, any Environmental Indemnity, or the Mezzanine Intercreditor Agreement, or amend in any way any Mezzanine Intercreditor Agreement or Third Party Intercreditor Agreement or enter into any other agreement with a Mezzanine Lender.

(vii) Enter into any lease for the Collateral or any new property management agreement relating to the Project, or approve any modification to a Lease, property management agreement, exclusive sales agreement, architect's agreement, construction agreement, or other material agreements relating to the Project.

(viii) Obtain any insurance for the Ownership Entity or the Collateral consistent with insurance customarily maintained for similar properties in the relevant market except as required by applicable Law after submission of the Project to a condominium form of ownership.

(ix) Make any changes in the Ownership Entity's accounting methods (from generally accepted accounting principles consistently applied) or make any tax elections (including an election to have the Ownership Entity taxed as a "pass-through" entity).

(x) Make expenditures for any REO Budget line item.

(xi) Permit any change in the Project that would result in the termination or unavailability of any material Entitlement, franchise, license or approval for the Project as contemplated by the Loan Documents.

(xii) Enter into any financing affecting the Collateral or the Ownership Entity.

(xiii) Institute any new Enforcement Action against a Borrower, any Guarantor or any other Person.

**H. Sale of Collateral.** If the B Participant elects to accept a written offer from an unaffiliated third party for the sale of the Collateral, B Participant shall proceed to final documentation and shall use reasonable efforts to effect the sale. Net Collections shall be applied in the order of priority set forth in *Section 7D* hereof, and B Participant shall wire transfer to A Participant, within five (5) Business Days after B Participant's receipt, seventy percent (70%) of the Net Collections received by B Participant after first deducting therefrom any sums required by the purchase agreement (i) to be held back in order to cover post-closing re-prorations and/or (ii) to be deposited into escrow in order

to cover the Ownership Entity's contingent liabilities, if any, under the purchase agreement for representations and warranties that survive the closing. Upon release to the Ownership Entity of any amounts referred to in clauses (i) or (ii) above, B Participant shall send A Participant 70% thereof.

**I. Asset Management Fee and Other Compensation Payable to B Participant.** In consideration of B Participant's performing its obligations under this Section 7, the Lenders shall pay to B Participant, in lieu of any servicing fees, a monthly asset management fee (the "**Asset Management Fee**") in an amount equal to one-twelfth of 0.25% multiplied by the outstanding, principal balance of the affected Loan or the outstanding principal balance immediately prior to foreclosure. The Asset Management Fee shall be payable monthly in advance to B Participant, from the revenues generated by the Collateral, and B Participant is hereby authorized to deduct the Asset Management Fee from such revenues generated by the Collateral in accordance with Section 7D hereof. To the extent such fee is not paid from revenues generated from the Collateral, such fee shall be advanced by B Participant as a Protective Advance or Post-Acquisition Cost, such amount shall accrue interest at the Interest Rate for the applicable Loan and shall be paid to B Participant on a monthly basis or at the time of sale of the Collateral before any distribution of Net Collections to Lenders in accordance with Section 7D hereof.

**J. Participant REIT Compliance.** A Participant acknowledges it has been advised by B Participant that B Participant is a REIT or owned by REIT and that the manner in which mortgaged property taken through foreclosure or other means is managed could subject the REIT to a 100% tax on its net income from "prohibited transactions" such as the sale of inventory. A Participant further acknowledges that it has been advised by B Participant that there is an election that the REIT can make for foreclosure property that can allow it to avoid having prohibited transaction income, but only if the property is managed in accordance with the rules for that election. Any such election and the attendant tax return filings shall be the sole responsibility of B Participant, and A Participant shall have no responsibility or liability in connection therewith. B Participant acknowledges that A Participant does not have expertise in this area. B Participant shall be solely responsible for determining the specifics of how to comply with the REIT provisions of the Tax Code. A Participant shall have no obligation to determine how to comply with the relevant Tax Code provisions. B Participant shall only comply with the REIT provisions of the Code to the extent such compliance is reasonable, practical, and consistent with the terms of this Agreement. A Participant shall have no obligations under this Section 7J. B Participant's specific approval shall be required for continued construction on the property except as otherwise permitted under this Agreement, for the engagement of a manager for the property other than a third party manager not affiliated with A Participant or B Participant, for any sales or business plan that entails a holding period of more than 3 years for the property and for any leasing of the property except in accordance with this Agreement. This Section 7J shall terminate from and after the date on which the B Participant is no longer wholly or partially owned by a REIT.

## **8. PAYMENTS.**

**A. Application of Principal and Certain Other Payments by A Participant.** If after the Effective Date B Participant receives principal payments (except to the extent such payments are entitled to be retained by B Participant as expressly provided herein) under a Loan then after payment of any Borrower Reimbursable Costs with respect to such Loan, B Participant shall forward to A Participant on the fifteenth (15) day of each month (or if the fifteen (15th) day is not a Business Day, the immediately following Business Day of the month) A Participant's seventy percent (70%) interest in such principal payments received in the prior calendar month, and B Participant shall retain the remainder of such payments received in the prior calendar month. Payments which are not received in immediately available funds shall not be deemed to have been received by B Participant until B Participant shall have fully collected such principal payments. B Participant shall not be required to remit to A Participant any amount not actually collected by B Participant. If B Participant receives reimbursements for Borrower Reimbursable Costs (including Protective Advances) from a Borrower, B Participant shall first use such funds to reimburse itself for Borrower Reimbursable Costs (and any

accrued and unpaid interest thereon). If B Participant receives any insurance proceeds or condemnation payments under a Loan, which funds are not used to repair, rebuild or restore the related Project in accordance with the terms of the Loan Documents, or if there are insurance or condemnation proceeds that have not been disbursed following such repair, restoration or rebuilding, then, subject to the terms of the Loan Documents, after payment of any unreimbursed Borrower Reimbursable Expenses and Protective Advances, B Participant shall forward to A Participant on the fifteenth (15th) day of each month (or if the fifteen (15th) day is not a Business Day, the immediately following Business Day of the month) following receipt, A Participant's seventy percent (70%) interest in such proceeds or payments, and B Participant shall retain the remainder of such payments. All payments of principal, insurance and condemnation proceeds received by A Participant shall be used to reduce the principal amount of the A Participation.

**B. Application of Other Payments.** Each payment received by B Participant on account of a Loan other than payments described in Section 8A above,, whether received directly from a Borrower or any other Person liable for the payment of all or any portion of such Loan shall be applied as follows: first, to B Participant's Borrower Reimbursable Costs and other permitted Loan costs payable to B Participant (and accrued and unpaid interest thereon); second, described in Section 4.

## **9. REPRESENTATIONS OF B PARTICIPANT TO A PARTICIPANT.**

**A. Representations and Warranties.** In addition to any representations of and warranties of B Participant set forth in the Purchase Agreement, B Participant hereby represents and warrants to A Participant, as of the Effective Date, as follows:

(i) *Ownership of Participation Interest.* Upon the Effective Date, B Participant will be the owner of the B Participation; B Participant has not sold, transferred, hypothecated or otherwise disposed of all or any portion of the Participation Interest; and B Participant has acquired the B Participation for its own account for the purpose of investment and not with a view to, or for sale in connection with, any distribution thereof, *provided, however*, that B Participant has the full right to grant participations in the B Participation and to assign its interest in the B Participation, subject to and in accordance with Section 12 hereof.

(ii) *Authorization.* B Participant has received all authorizations of such other bodies or Persons as are necessary to authorize (i) B Participant's execution and delivery of this Agreement, and (ii) the consummation by B Participant of the transactions contemplated hereby, and all such authorizations remain in full force and effect.

(iii) *Relationship Between B Participant and Borrowers.* B Participant is not a partner or joint venturer with any Borrower, nor is B Participant an agent of any Borrower, or vice versa; and, except as set forth in the Loan Documents or as otherwise disclosed to A Participant in writing, B Participant has no interest whatsoever in any Borrower or, except pursuant to this Agreement, any of the Collateral.

(iv) *Contravention.* Neither the execution and delivery of this Agreement nor consummation by B Participant of the transactions contemplated hereby nor compliance by B Participant with the terms, conditions and provisions herein set forth (or any of them) will conflict with or result in a breach of any of the material terms, conditions or provisions of (a) any material contractual obligation to which B Participant is now a party or the terms of the Loan Documents, (b) any judgment or order, writ, injunction, decree or demand of any court applicable to B Participant, or (c) any applicable requirement of law in any material respect.

(v) *Brokers.* B Participant has not dealt with any broker, investment banker, agent (excluding counsel), or other Person who may be entitled to any commission or compensation in connection with the sale of the Loans to B Participant.

**B. No Warranty of Payment.** The representations and warranties of B Participant set forth in *Section 9A* hereof or otherwise contained in this Agreement shall in no event be construed as a warranty or guarantee by B Participant as to (i) future payments by any Borrower or Guarantor, (ii) any Borrower's or any Guarantor's future compliance with or performance of any of the terms and conditions contained in the Loan Documents, or (iii) the collectibility of the Loans. B Participant does not warrant or guaranty to A Participant that Fremont has transferred and assigned the Loans and the Loan Documents with good title or without any encumbrances.

#### **10. REPRESENTATIONS OF A PARTICIPANT TO B PARTICIPANT.**

**A. Representations and Warranties.** As used in this *Section 10*, "A Participant's knowledge" and words of similar import shall mean the current, actual knowledge, without any duty of inquiry or investigation, of A Participant's asset managers responsible for the administration of the Loans. In addition to the representations and warranties of Fremont set forth in the Purchase Agreement, A Participant hereby represents and warrants to B Participant, as of the Effective Date, as follows:

(i) *Authorization.* A Participant has received all such authorizations of A Participant's board of directors and such other bodies or Persons as are necessary to authorize (i) A Participant's execution of this Agreement, and (ii) the consummation by A Participant of the transactions contemplated hereby, and all such authorizations remain in full force and effect.

(ii) *Relationship Between A Participant and Borrowers.* A Participant is not a partner or joint venturer with any Borrower, nor is A Participant an agent of any Borrower, or vice versa; and, except as set forth in the Loan Documents or as otherwise disclosed to B Participant in writing, A Participant has no interest whatsoever in any Borrower or, except pursuant to this Agreement, any of the Collateral.

(iii) *No Cross-Default or Cross-Collateralization.* No Loan is cross-defaulted with any other loan from A Participant and the Collateral does not secure any other loan from A Participant.

(iv) *Brokers.* A Participant has not dealt with any broker, investment banker, agent (excluding counsel) or other Person who may be entitled to any commission or compensation in connection with the sale of the Loans to B Participant.

(v) *Contravention.* Neither the execution and delivery of this Agreement nor consummation by A Participant of the transactions contemplated hereby nor compliance by A Participant with the terms, conditions and provisions herein set forth (or any of them) will conflict with or result in a breach of any of the material terms, conditions or provisions of (a) any material contractual obligation to which A Participant is now a party or the terms of the Loan Documents, (b) any judgment or order, writ, injunction, decree or demand of any court applicable to A Participant, or (c) any applicable requirement of law in any material respect.

(vi) *Solvency.* As of the Effective Date and after giving effect to the consummation of the transactions contemplated by this Agreement, A Participant: (a) owns and will own assets the fair saleable value of which are (1) greater than the total amount of liabilities (including contingent obligations) of A Participant, and (2) greater than the amount that will be required to pay the probable liabilities of A Participant's then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to A Participant; (b) has capital that is not insufficient in relation to its business as presently conducted or any contemplated or undertaken transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due. A Participant has not entered into this Agreement or the transactions contemplated under this Agreement with the actual intent to hinder, delay, or defraud any creditor.

**B. No Warranty of Payment.** The representations and warranties of A Participant set forth in *Section 10A* hereof or otherwise contained in this Agreement shall in no event be construed as a warranty or guarantee by A Participant as to (i) future payments by any Borrower or Guarantor, (ii) any Borrower's or Guarantor's future compliance with or performance of any of the terms and conditions contained in the Loan Documents, or (iii) the collectibility of any Loan.

**11. RELATIONSHIP BETWEEN LENDERS.** It is expressly understood and agreed that, with respect to this Agreement and the transactions contemplated hereby, as between themselves the Lenders shall occupy the status of, act as and be considered independent contractors and neither Lender shall in any event be considered an agent, creditor, partner or employee of the other Lender, it being the intent of the Lenders that this Agreement shall not constitute nor be construed to create a security agreement or partnership or joint venture of any kind between A Participant and B Participant. Neither Lender shall have a fiduciary relationship of any kind with the other Lender, and nothing in this Agreement, whether express or implied, is intended or shall be construed to impose upon either Lender any obligations with respect to the transactions contemplated hereby except as expressly set forth herein. No REMIC election shall be made in respect of any of the Loans.

**12. ASSIGNMENT; OTHER LOANS BY LENDERS; PURCHASE BY MEZZANINE LENDER.**

**A. In General, No Assignment.** Except as otherwise provided in *Section 21* hereof with respect to B Participant's right to use an Affiliate to perform one or more of its obligations under this Agreement, or as otherwise provided in this *Section 12* with respect to each Lender's right to sell sub-participation interests in the Loans or assign its entire interest in this Agreement, or as otherwise expressly provided in this Agreement, neither Lender shall sell participations in its participation interest or assign this Agreement, or any rights hereunder, to any other Person whomsoever, without the prior written consent of the other Lender, which consent may be given or withheld in the other Lender's reasonable discretion. Any such sale, sub-participation or assignment without the consent of the other Lender shall be absolutely void and of no force or effect whatsoever. Notwithstanding anything to the contrary contained in this Agreement, neither B Participant nor A Participant shall sell, transfer or assign any interest in a Loan or any servicing in the Loans if such sale, assignment or transfer is not permitted under the related Loan Agreement. B Participant may not assign its rights and obligations as servicer (other than to an Affiliate and without relief from B Participant's servicing obligations hereunder without the prior written consent of A Participant). Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of A Participant and B Participant and their respective successors and permitted assigns.

**B. Assignments.** Notwithstanding *Section 12A*, either Lender (a "**Transferring Lender**") may, in the ordinary course of its business and in accordance with applicable Law, at any time assign all or a portion of its rights and obligations under this Agreement (including, without limitation, all of its commitment to make Disbursements) to the other Lender, any Affiliate of the other Lender or to a Permitted Transferee (each an "**Acquiring Lender**"), subject to the following provisions:

(i) If B Participant is the Transferring Lender, such assignment shall be of the entire interest of such Transferring Lender's rights and obligations under this Agreement, the Loans, the Loan Agreements and the other Loan Documents. If A Participant (or any assignee of A Participant) is the Transferring Lender, such assignment shall be of the entire interest or a portion of the interest of such Transferring Lender's rights and obligations under this Agreement, the Loans, the Loan Agreements and the other Loan Documents, provided that in no event may there be more than ten (10) owners of the A Participation and the holders of the A Participation shall designate in writing one entity as the directing holder of such interest with full power and authority to bind all of the other holders for all purposes of this Agreement. B Participant may fully rely on all consents, approvals and other determinations made by such directing holder.



(ii) Such assignment shall be made pursuant to a Transfer Supplement in substantially the form attached hereto as *Exhibit D*, duly completed, with such immaterial changes thereto as the Transferring Lender and the transferee shall agree upon (a "**Transfer Supplement**").

(iii) Any transfer to a Person which is not (a) a Lender, (b) an Affiliate of a Lender, or (c) otherwise a Permitted Transferee shall require the prior written consent of B Participant if such transfer is by A Participant, or by A Participant if such transfer is by B Participant, which consent may be withheld by A Participant and B Participant in its reasonable discretion.

(iv) If B Participant is the Transferring Lender, then such assignment shall be subject to the A Participation and all of A Participant's rights under this Agreement.

**C. Assignment Procedures.** In order to effect any such assignment the Transferring Lender and the Acquiring Lender shall execute and deliver to B Participant, with a copy to A Participant (if the Transferring Lender is B Participant) a duly completed Transfer Supplement; and, upon receipt thereof, B Participant shall accept such Transfer Supplement. Upon such execution, delivery and acceptance, from and after the close of business at B Participant's office in New York, New York, on the Transfer Effective Date specified in such Transfer Supplement:

(i) The Acquiring Lender shall be a party hereto and, to the extent provided in such Transfer Supplement, shall have the rights and obligations of a Lender hereunder.

(ii) The Transferring Lender thereunder shall be released from its obligations under this Agreement and shall cease to be a party to this Agreement from and after the Transfer Effective Date specified in such Transfer Supplement.

**D. Tax Treatment.** No assignment shall be effective if, in the judgment of that Lender which is not the Transferring Lender (based upon an opinion of counsel or as otherwise determined by such Lender in its reasonable discretion), such assignment would otherwise cause this participation arrangement to be a "taxable mortgage pool" under the Tax Code or otherwise be taxable as a corporation.

**E. Release of Obligations.** Upon the consummation of the purchase and sale of the Transferring Lender's interest in the Loans as aforesaid, the Transferring Lender shall be released from all obligations and liabilities under this Agreement and the Loan Documents arising on or after the consummation of the sale contemplated by this *Section 12*.

**F. Other Loans by A Participant or B Participant; Conflicts of Interest.** B Participant shall have the right in the future to enter into additional credit arrangements and/or lending relationships with some or all of Borrowers, Borrowers' principals or any Affiliates thereof, *provided* that (i) the entering into of such additional credit arrangements and/or lending relationships is not prohibited by the Loan Documents and (ii) such other credit arrangements are not cross-defaulted with any Loan or cross-collateralized with any of the Collateral. Nothing contained in this Agreement shall limit or preclude the right of B Participant to exercise any rights or remedies available to it with respect to any such arrangements or relationships. In addition, A Participant and B Participant recognize that if a future dispute or controversy should arise between them regarding the subject matter of this Agreement, and such dispute or controversy occurs at a time when such other lending relationships have been established by either or both of the Lenders, then either Lender may potentially claim that the other Lender has been induced by improper or conflicting motivations to make administrative decisions regarding the Loan which are not in the best interests of the Lender asserting the claim, but which may instead have been calculated to protect or advance the position of the accused Lender in its overall relationship with Borrower or its principals or Affiliates. Finally, both Lenders acknowledge that such a claim would be impossible, as a practical matter, to disprove or refute even if untrue, and both Lenders have determined for that reason to acknowledge and assume the risks that are inherent in the circumstances described above. Accordingly, subject to the proviso at the end of this sentence, each

Lender hereby approves all such business relationships in which the other Lender may choose to participate, and hereby agrees for the benefit of the other Lender that, if any dispute or controversy should hereafter arise between them regarding or in any way relating to the Loans, such Lender shall not assert or raise against the other Lender any claim or defense based upon any alleged conflict of interest or improper disregard by the other Lender of the best interests of the first Lender due in whole or in part to a desire to protect or advance a greater or conflicting interest of the sort described above, and any and all such claims and defenses are hereby expressly waived and released absolutely and forever; *provided* that the foregoing acknowledgments, agreements and waivers shall not (i) diminish the Lenders' duties to comply with their obligations set forth herein, including, without limitation, B Participant's obligation hereunder to comply with the Servicing Standards, or (ii) otherwise apply to a breach of this Agreement by either Lender.

**G. Sharing of Payments.** Except as otherwise expressly set forth herein (including, without limitation, with respect to costs and expenses due and payable solely to B Participant), neither Lender shall obtain any payment or payments (whether voluntary or involuntary, through the exercise of any right of set-off or otherwise) to be applied on account of its Participation interest unless such payment or payments shall be shared by both Lenders in accordance with the terms of this Agreement. If any such payment or payments are rescinded, set aside or otherwise recovered by or on behalf of the person or entity from whom the payment or payments are received, or by or for the creditors of such person or entity, then any such payment or payments made to the other Lender pursuant to the preceding sentence shall be returned to the Lender against whom such recovery is made.

**H. Purchase of Affected Loan by Mezzanine Lender.** The Lenders hereby acknowledge and agree that if there is a Mezzanine Lender, the Mezzanine Lender may have the right, under certain circumstances, to purchase, in whole but not in part, one or more of the Loans in accordance with the terms of the applicable Mezzanine Intercreditor Agreement (the "**Mezzanine Lender Loan Purchase**"). Notwithstanding anything to the contrary contained in this Agreement, A Participant agrees that B Participant shall have the right, without any further consent from A Participant, to sell the entire affected Loan (including, without limitation, A Participant's interest in the affected Loan) to Mezzanine Lender (or its designee) in accordance with the terms of the Mezzanine Intercreditor Agreement (and by such agreement, A Participant agrees that B Participant has the full power and authority to sell the entire affected Loan in accordance with the terms of the Mezzanine Intercreditor Agreement). In connection with such Mezzanine Lender Loan Purchase, each Lender shall have a right to the amounts due and payable to such Lender under this Agreement from the loan purchase price provided for in the Mezzanine Intercreditor Agreement, payable in accordance with the provisions of *Section 8* hereof. In connection with the Mezzanine Lender Loan Purchase, and in time for the closing of such sale, A Participant shall (i) cause its interest in the affected Loan to be free and clear of all liens and encumbrances thereon, and upon the written request of B Participant, shall promptly deliver a written representation to B Participant that its interest in the affected Loan is so free and clear, and (ii) deliver to B Participant any original Loan Documents held by A Participant, or any of Borrower's funds escrowed with A Participant in connection with the Loan.

**I. Exercise of Buy-Sell and Redemption Rights under Third Party Intercreditor Agreements.** The Lenders hereby acknowledge and agree that pursuant to certain of the Third Party Intercreditor Agreements, the other parties (and B Participant) may have the right, under certain circumstances, to initiate buy-sell and redemption procedures in accordance with the terms of the applicable Third Party Intercreditor Agreement (the "**Third Party Rights**"). Notwithstanding anything to the contrary contained in this Agreement, A Participant agrees that B Participant shall have the right, without any further consent from A Participant, to elect to buy or sell or to redeem or accept a redemption of, the entire affected Loan (including, without limitation, A Participant's interest in the affected Loan) to or from such third party not affiliated with B Participant in accordance with the terms of the Third Party Intercreditor Agreement (and by such agreement, A Participant agrees that B Participant has the full

power and authority to elect to buy or sell or to redeem or accept a redemption of the affected Loan in accordance with the terms of the applicable Third Party Intercreditor Agreement). In connection with such Third Party Rights, each Lender shall have a right to the amounts due and payable to such Lender under this Agreement from the purchase or redemption price provided for in the Third Party Intercreditor Agreement, payable in accordance with the provisions of *Section 8* hereof. In connection with the Third Party Rights, if the action taken is to sell the Loan or accept a redemption of the Loan, and in time for the closing of such sale, A Participant shall (i) cause its interest in the affected Loan to be free and clear of all liens and encumbrances thereon, and upon the written request of B Participant, shall promptly deliver a written representation to B Participant that its interest in the affected Loan is so free and clear, and (ii) deliver to B Participant any original Loan Documents held by A Participant, or any of Borrower's funds escrowed with A Participant in connection with the Loan. If B Participant elects to purchase or redeem the portion of the affected Loan not owed by B Participant, B Participant shall fund the purchase by means of a Protective Advance, and such Protective Advance shall bear interest at the Interest Rate for the affected Loan.

**13. LENDERS' TITLE INSURANCE.** The Lenders hereby acknowledge and agree that the Title Policy insuring the lien of the Security Instrument securing the Loan which is required by the Loan Documents was issued in favor of A Participant as the only insured thereunder; and has been or will be endorsed to reflect B Participant as the only insured, but that A Participant shall share in B Participant's interest therein, including any recovery thereunder, in accordance with the terms of this Agreement.

**14. TERMINATION.** At such time as the outstanding principal amount of the A Participation has been reduced to zero, A Participant shall have no further rights or remedies under this Agreement or with respect to the loans.

**15. NO THIRD PARTY BENEFICIARY.** This Agreement is made for the sole benefit of A Participant and B Participant and their respective permitted successors and permitted assigns and no other Person or Persons (including, without limitation, Borrower and any other Lender) shall have any rights or remedies under or by reason of this Agreement.

**16. LEGAL FEES RELATING TO THIS AGREEMENT.** No party to this agreement shall be responsible for the payment of the legal fees or expenses incurred by the other party hereto in connection with the negotiation and execution of this Agreement or any subsequent modifications or supplements hereto.

**17. LITIGATION EXPENSES.** If any lawsuit or proceeding is brought by any party hereto to enforce the terms of this Agreement, the unsuccessful party or parties to any such lawsuit or proceeding shall pay to the party or parties prevailing therein all of such prevailing party's or parties' court costs and reasonable legal fees and costs incurred in the prosecution or defense of such lawsuit or proceeding.

**18. BROKERAGE COMMISSIONS AND FINDER'S FEES.** Each party to this Agreement hereby warrants to the other party hereto that the warranting party has had no dealings with any agent, broker or finder in connection with the negotiation of this Agreement, and each party hereto hereby agrees to indemnify, defend and hold the other party hereto harmless from and against any and all losses, costs, liabilities or expenses for any compensation, commission, charge or fee claimed by any such agent, broker or finder with respect to this Agreement or the creation of the interests in the loan pursuant to the provisions hereof.

**19. NOTICES.** All notices, requests, demands and consents of any kind which either of the parties hereto may be required or may desire to serve upon the other party hereto in connection with this Agreement shall be in writing and shall be delivered (as an alternative to personal service) by registered or certified mail, or by recognized overnight courier service. Any such notice, request,

demand or consent so to be served by registered or certified mail, or recognized overnight courier service, shall be delivered with all applicable delivery charges thereon fully prepaid and shall be addressed to the party so to be served as follows:

If to A Participant: Fremont Investment & Loan  
2727 East Imperial Highway  
Brea, California 92821  
Attn: Commercial Real Estate Asset Management

with a copy to: Fremont Investment & Loan  
2425 Olympic Boulevard  
3<sup>rd</sup> Floor—East  
Santa Monica, California 90404  
Attn: Alec G. Nedelman, Esq.

with a copy to Alan Faigin

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If to B Participant: iStar Financial Inc.  
1114 Avenue of the Americas  
27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Chief Operating Officer

with a copy to: iStar Financial Inc  
1114 Avenue of the Americas  
27<sup>th</sup> Floor  
New York, New York 10036  
Attn: Nina B. Matis, Esq.  
General Counsel

with a copy to: iStar Asset Services Inc.  
180 Glastonbury Boulevard  
Suite 201  
Glastonbury, Connecticut 06033  
Attn: President

with a copy to: Katten Muchin Rosenman LLP  
525 West Monroe Street  
Suite 1600  
Chicago, Illinois 60661  
Attn: Marcia W. Sullivan, Esq.  
Katten Reference: 208972-664

Service of any such notice, request, demand or consent so made by mail or courier shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt, as applicable, or at the expiration of the third (3<sup>rd</sup>) Business Day after the date of dispatch, whichever is earlier in time. Any of the parties hereto may from time to time, by notice in writing served upon the other parties as aforesaid, designate a different mailing address to which or a different person to whose attention all such notices, requests, demands and consents are thereafter to be addressed.

**20. ENTIRE AGREEMENT.** This Agreement and the Purchase Agreement contain the entire agreement between A Participant and B Participant with respect to the subject matter hereof and supersede any and all other prior agreements, whether oral or written.

**21. PERFORMANCE BY B PARTICIPANT AFFILIATE.** At B Participant's option, any obligations to be performed by B Participant hereunder may be performed by an Affiliate of B Participant. In the event B Participant elects at any time upon notice to A Participant during the term of this Agreement to use such Affiliate, at B Participant's sole cost and expense and without reimbursement from A Participant or deduction from any amounts paid by any Borrower that would otherwise be payable to A Participant, (a) B Participant shall cause every item or document that is required hereunder to be delivered, assigned, submitted or supplied to B Participant to name such Affiliate in lieu of B Participant where appropriate and shall further cause every such item or document to be delivered, assigned, submitted or supplied to such Affiliate and (b) A Participant shall cooperate with B Participant to do so. Notwithstanding B Participant's election to use such Affiliate as described above, B Participant shall remain liable for the payment and performance of all of its obligations under this Agreement.

**22. COUNTERPARTS.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement.

**23. SECTION HEADINGS.** The headings of the several sections and paragraphs hereof are included only for convenience of reference and are not intended to govern or aid in the construction of any provision of the several sections and paragraphs hereof.

**24. GOVERNING JURISDICTION.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

**25. TIME OF ESSENCE.** Time is hereby declared to be of the essence of this Agreement and of every part hereof.

**26. RIGHT TO SPECIFIC PERFORMANCE.** BOTH LENDERS HEREBY ACKNOWLEDGE AND AGREE THAT THE DAMAGES TO BE INCURRED BY ANY ONE LENDER, AS THE CASE MAY BE, AS A RESULT OF THE OTHER LENDER'S DEFAULT AS DESCRIBED ABOVE WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND, THEREFORE, THAT IT IS BOTH NECESSARY AND APPROPRIATE FOR THE REMEDY OF SPECIFIC PERFORMANCE TO BE AVAILABLE TO THE NON-DEFAULTING PARTY.

**27. REGISTER.** The B Participant shall maintain a register in which ownership of each Participation is recorded. B Participant and any agent of the B Participant may treat as the owner of a Participation the person in whose name such Participation is registered on the register on any applicable date for the purpose of receiving payments of principal of and interest and other amounts under such Participation and on any other date for all other purposes whatsoever, and none of B Participant nor any agent of B Participant shall be affected by notice to the contrary.

**28. WITHHOLDING.** Each Lender (and any assignee) must certify to B Participant that it is either (i) a corporation organized under the laws of the United States or any State thereof (or a subsidiary of such a corporation, the separate existence of which is disregarded for federal income tax purposes) or (ii) entitled to complete exemption from United States withholding tax imposed on or with respect to any payments to be made to it hereunder in respect of any extensions of credit made pursuant to any Loan Agreement (x) under an applicable provision of a tax convention to which the United States is a party or (y) because it is acting through a branch, agency or office in the United States and any payment to be received by it hereunder is effectively connected with a trade or business in the United States. On or prior to the first date that any payment is to be made to an Acquiring

Lender hereunder, or at such other times as required by United States law or as B Participant reasonably request, (i) if it is a corporation organized under the laws of the United States or any State thereof (or a subsidiary of such a corporation, the separate existence of which is disregarded for federal income tax purposes) it shall deliver to B Participant a written statement attesting that it is a corporation so organized and (ii) if it is not a corporation organized under the laws of the United States or any state thereof it shall deliver to B Participant two accurate and complete original signed copies of either (x) Internal Revenue Service Form W-8ECI (or successor form) certifying that all payments to be made to it hereunder will be effectively connected to a united states trade or business (the "**Form W-8ECI Certification**") or (y) Internal Revenue Service Form W-8BEN (or successor form) certifying that it is entitled to the benefits of a provision of a tax convention to which the United States is a party which completely exempts from United States withholding tax all payments to be made to it hereunder (the "**Form W-8BEN Certification**"). in addition, if lender previously filed a Form W-8BEN Certification it will deliver to B Participant a new Certification prior to the first payment date falling in the third year following the previous filing of such certification; and if it previously filed a Form W-8ECI Certification it will deliver to B Participant, each time upon request, a new Form W-8ECI Certification prior to the first payment date occurring in each of its subsequent taxable years. Each Lender agrees to deliver to B Participant such other or supplemental forms as may at any time be required as a result of changes in applicable law or regulation in order to confirm or maintain in effect its entitlement to exemption from U.S. withholding tax on any payments hereunder. B Participant may withhold and pay to applicable governmental authorities any withholding tax required from distributions to Lenders, and no payments to any lender shall be required to be grossed-up as a consequence of such withholding. If any withholding amounts are required to be advanced on behalf of any Lender that is a non-U.S. person, such Lender shall promptly upon written notice reimburse the Lender making such advance for the withheld amount.

(Signatures Appear on Next Page(s))

**"A PARTICIPANT"**

**FREMONT INVESTMENT & LOAN,**  
a California Industrial Bank,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**"B PARTICIPANT"**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_, 2007

**JOINDER**

iStar Financial Inc., a Maryland corporation ("iStar"), hereby agrees that, subject to the terms and conditions of the Participation Agreement, to the extent that B Participant has not funded any Disbursement, Borrower Reimbursable Cost or Post Acquisition Cost as and when required by the Participation Agreement, that it will fund such Disbursement, Borrower Reimbursable Cost or Post Acquisition Cost.

iStar Financial Inc.

By:

\_\_\_\_\_

Its:

\_\_\_\_\_



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