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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2010

OR

- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 1-15371

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**iSTAR FINANCIAL INC.**

(Exact name of registrant as specified in its charter)

**Maryland**

(State or other jurisdiction of  
incorporation or organization)

**95-6881527**

(I.R.S. Employer Identification Number)

**1114 Avenue of the Americas, 39<sup>th</sup> Floor  
New York, NY**

(Address of principal executive offices)

**10036**

(Zip code)

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

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Indicate by check mark whether the registrant: (i) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve months (or for such shorter period that the registrant was required to file such reports); and (ii) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

As of July 30, 2010, there were 93,413,570 shares of common stock, \$0.001 par value per share of iStar Financial Inc., ("Common Stock") outstanding.

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## PART I. CONSOLIDATED FINANCIAL INFORMATION

## Item 1. Financial Statements

## iStar Financial Inc.

## Consolidated Balance Sheets

(In thousands, except per share data)

(unaudited)

	As of June 30, 2010	As of December 31, 2009
<b>ASSETS</b>		
Loans and other lending investments, net	\$ 6,115,092	\$ 7,661,562
Corporate tenant lease assets, net	1,849,423	2,885,896
Other investments	422,203	433,130
Real estate held for investment, net	636,239	422,664
Other real estate owned	890,881	839,141
Assets held for sale	—	17,282
Cash and cash equivalents	531,520	224,632
Restricted cash	12,744	39,654
Accrued interest and operating lease income receivable, net	50,929	54,780
Deferred operating lease income receivable	65,825	122,628
Deferred expenses and other assets, net	79,048	109,206
Total assets	<u>\$ 10,653,904</u>	<u>\$ 12,810,575</u>
<b>LIABILITIES AND EQUITY</b>		
Liabilities:		
Accounts payable, accrued expenses and other liabilities	\$ 182,937	\$ 252,110
Debt obligations, net	8,619,955	10,894,903
Total liabilities	<u>8,802,892</u>	<u>11,147,013</u>
Commitments and contingencies	—	—
Redeemable noncontrolling interests	7,441	7,444
Equity:		
iStar Financial Inc. shareholders' equity:		
Preferred Stock Series D, E, F, G and I, liquidation preference \$25.00 per share (see Note 11)	22	22
High Performance Units	9,800	9,800
Common Stock, \$0.001 par value, 200,000 shares authorized, 138,123 issued and 93,382 outstanding at June 30, 2010 and 137,868 issued and 94,216 outstanding at December 31, 2009	138	138
Additional paid-in capital	3,800,637	3,791,972
Retained earnings (deficit)	(1,858,829)	(2,051,376)
Accumulated other comprehensive income (see Note 14)	133	6,145
Treasury stock, at cost, \$0.001 par value, 44,741 shares at June 30, 2010 and 43,652 shares at December 31, 2009	(154,932)	(151,016)
Total iStar Financial Inc. shareholders' equity	<u>1,796,969</u>	<u>1,605,685</u>
Noncontrolling interests	46,602	50,433
Total equity	<u>1,843,571</u>	<u>1,656,118</u>
Total liabilities and equity	<u>\$ 10,653,904</u>	<u>\$ 12,810,575</u>

The accompanying notes are an integral part of the consolidated financial statements.

**iStar Financial Inc.**

**Consolidated Statements of Operations**

(In thousands, except per share data)

(unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Revenue:</b>				
Interest income	\$ 86,469	\$ 142,181	\$ 203,085	\$ 319,408
Operating lease income	44,365	45,351	89,264	92,429
Other income	5,962	5,557	14,253	8,064
Total revenue	<u>136,796</u>	<u>193,089</u>	<u>306,602</u>	<u>419,901</u>
<b>Costs and expenses:</b>				
Interest expense	82,313	110,532	169,529	225,162
Operating costs—corporate tenant lease assets	2,570	3,881	6,764	8,556
Depreciation and amortization	16,726	16,034	32,867	30,910
General and administrative	25,114	33,691	52,330	69,314
Provision for loan losses	109,359	435,016	198,828	693,112
Impairment of other assets	12,195	22,232	13,209	47,563
Other expense	19,309	58,861	36,993	69,184
Total costs and expenses	<u>267,586</u>	<u>680,247</u>	<u>510,520</u>	<u>1,143,801</u>
Income (loss) before earnings (loss) from equity method investments and gain on early extinguishment of debt	(130,790)	(487,158)	(203,918)	(723,900)
Gain on early extinguishment of debt, net	70,054	200,879	108,780	355,256
Earnings (loss) from equity method investments	13,750	1,864	25,180	(18,636)
Income (loss) from continuing operations	(46,986)	(284,415)	(69,958)	(387,280)
Income from discontinued operations	10,877	2,442	17,704	6,618
Gain from discontinued operations	265,960	—	265,960	11,617
Net income (loss)	229,851	(281,973)	213,706	(369,045)
Net (income) loss attributable to noncontrolling interests	(544)	271	1	1,514
Net income (loss) attributable to iStar Financial Inc.	229,307	(281,702)	213,707	(367,531)
Preferred dividends	(10,580)	(10,580)	(21,160)	(21,160)
Net income (loss) attributable to iStar Financial Inc. and allocable to common shareholders, HPU holders and Participating Security holders(1)(2)(3)	<u>\$ 218,727</u>	<u>\$ (292,282)</u>	<u>\$ 192,547</u>	<u>\$ (388,691)</u>
<b>Per common share data(3):</b>				
Income (loss) attributable to iStar Financial Inc. from continuing operations:				
Basic and diluted	\$ (0.60)	\$ (2.87)	\$ (0.94)	\$ (3.85)
Net income (loss) attributable to iStar Financial Inc.:				
Basic and diluted	\$ 2.27	\$ (2.85)	\$ 2.00	\$ (3.68)
Weighted average number of common shares—basic and diluted	93,382	99,769	93,651	102,671
<b>Per HPU share data(1)(3):</b>				
Income (loss) attributable to iStar Financial Inc. from continuing operations:				
Basic and diluted	\$ (114.27)	\$ (543.53)	\$ (177.33)	\$ (729.81)
Net income (loss) attributable to iStar Financial Inc.:				
Basic and diluted	\$ 430.13	\$ (539.00)	\$ 378.93	\$ (697.07)
Weighted average number of HPU shares—basic and diluted	15	15	15	15

**Explanatory Notes:**

- (1) HPU holders are current and former Company employees who purchased high performance common stock units under the Company's High Performance Unit Program.
- (2) Participating Security holders are Company employees and directors who hold unvested restricted stock units and common stock equivalents granted under the Company's Long Term Incentive Plans.
- (3) See Note 13 for amounts attributable to iStar Financial Inc. for income (loss) from continuing operations and further details on the calculation of earnings per share.

The accompanying notes are an integral part of the consolidated financial statements.

**iStar Financial Inc.**  
**Consolidated Statement of Changes in Equity**  
**For the Six Months Ended June 30, 2010**  
**(In thousands)**  
**(unaudited)**

iStar Financial Inc. Shareholders' Equity									
	Preferred Stock(1)	HPU's	Common Stock at Par	Additional Paid-In Capital	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income	Treasury Stock at cost	Noncontrolling Interests	Total Equity
Balance at December 31, 2009	\$ 22	\$ 9,800	\$ 138	\$ 3,791,972	\$ (2,051,376)	\$ 6,145	\$ (151,016)	\$ 50,433	\$ 1,656,118
Dividends declared— preferred	—	—	—	—	(21,160)	—	—	—	(21,160)
Repurchase of stock	—	—	—	—	—	—	(3,916)	—	(3,916)
Restricted stock unit amortization, net	—	—	—	8,665	—	—	—	—	8,665
Net income for the period(2)	—	—	—	—	213,707	—	—	2	213,709
Contributions from noncontrolling interests	—	—	—	—	—	—	—	10	10
Distributions to noncontrolling interests	—	—	—	—	—	—	—	(3,843)	(3,843)
Change in accumulated other comprehensive income	—	—	—	—	—	(6,012)	—	—	(6,012)
Balance at June 30, 2010	\$ 22	\$ 9,800	\$ 138	\$ 3,800,637	\$ (1,858,829)	\$ 133	\$ (154,932)	\$ 46,602	\$ 1,843,571

**Explanatory Notes:**

- (1) See Note 11 for details on the Company's Cumulative Redeemable Preferred Stock.
- (2) For the six months ended June 30, 2010, net income presented above excludes \$3 of net loss attributable to redeemable noncontrolling interests.

The accompanying notes are an integral part of the consolidated financial statements.

**iStar Financial Inc.**
**Consolidated Statements of Cash Flows**
**(In thousands)**
**(unaudited)**

	For the Six Months Ended June 30,	
	2010	2009
Cash flows from operating activities:		
Net income (loss)	\$ 213,706	\$ (369,045)
Adjustments to reconcile net income (loss) to cash flows from operating activities:		
Provision for loan losses	198,828	693,112
Non-cash expense for stock-based compensation	9,714	13,051
Impairment of other assets	13,506	50,148
Depreciation and amortization	39,125	48,598
Amortization of discounts/premiums and deferred financing costs on debt	(13,859)	3,950
Amortization of discounts/premiums, deferred interest and costs on lending investments	(51,171)	(66,257)
Discounts, loan fees and deferred interest received	10,384	4,821
(Earnings)/losses from equity method investments	(25,180)	18,636
Distributions from operations of equity method investments	19,819	18,149
Deferred operating lease income	(6,447)	(8,340)
Gain from discontinued operations	(265,960)	(11,617)
Gain on early extinguishment of debt, net	(109,932)	(355,256)
Other non-cash adjustments	(1,574)	423
Changes in assets and liabilities:		
Changes in accrued interest and operating lease income receivable, net	3,852	19,748
Changes in deferred expenses and other assets, net	1,781	9,362
Changes in accounts payable, accrued expenses and other liabilities	(46,239)	(29,557)
Cash flows from operating activities	<u>(9,647)</u>	<u>39,926</u>
Cash flows from investing activities:		
Add-on fundings under existing loan commitments	(240,423)	(734,107)
Repayments of and principal collections on loans	725,053	382,895
Purchase of securities	(223)	(11,137)
Net proceeds from sales of loans	201,497	399,720
Net proceeds from sales of CTL assets	1,309,942	36,455
Net proceeds from sales of other real estate owned	239,826	145,572
Net proceeds from repayments and sales of securities	213,018	16,328
Contributions to unconsolidated entities	(13,914)	(18,673)
Distributions from unconsolidated entities	5,582	5,811
Capital improvements for build-to-suit facilities	—	(7,152)
Capital expenditures on corporate tenant lease assets	(7,713)	(1,691)
Capital expenditures on real estate held for investment	(6,650)	(1,085)
Other investing activities, net	(4,362)	(6,773)
Cash flows from investing activities	<u>2,421,633</u>	<u>206,163</u>
Cash flows from financing activities:		
Borrowings under revolving credit facilities	499	115,039
Repayments under revolving credit facilities	—	(350,896)
Borrowings under secured term loans	—	1,000,000
Repayments under secured term loans	(1,125,187)	(305,758)
Repayments under unsecured notes	(264,388)	(383,399)
Repurchases and redemptions of secured and unsecured notes	(696,276)	(423,691)
Net distributions to noncontrolling interests	(3,781)	(1,183)
Changes in restricted cash held in connection with debt obligations	9,111	114,300
Payments for deferred financing costs	—	(51,802)
Preferred dividends paid	(21,160)	(21,160)
Purchase of treasury stock	(3,916)	(16,724)
Cash flows from financing activities	<u>(2,105,098)</u>	<u>(325,274)</u>
Changes in cash and cash equivalents	306,888	(79,185)
Cash and cash equivalents at beginning of period	224,632	496,537
Cash and cash equivalents at end of period	<u>\$ 531,520</u>	<u>\$ 417,352</u>

The accompanying notes are an integral part of the consolidated financial statements.

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements**

**(unaudited)**

**Note 1—Business and Organization**

**Business**—iStar Financial Inc., or the "Company," is a publicly-traded finance company focused on the commercial real estate industry. The Company primarily provides custom-tailored financing to high-end private and corporate owners of real estate, including senior and mezzanine real estate debt, senior and mezzanine corporate capital, as well as corporate net lease financing and equity. The Company, which is taxed as a real estate investment trust, or "REIT," provides innovative and value-added financing solutions to its customers. The Company delivers customized financing products to sophisticated real estate borrowers and corporate customers who require a high level of flexibility and service. The Company's two primary lines of business are lending and corporate tenant leasing.

**Organization**—The Company began its business in 1993 through private investment funds and became publicly traded in 1998. Since that time, the Company has grown through the origination of new lending and leasing transactions, as well as through corporate acquisitions, including the acquisition of TriNet Corporate Realty Trust, Inc. in 1999, the acquisitions of Falcon Financial Investment Trust and of a significant non-controlling interest in Oak Hill Advisors, L.P. and affiliates in 2005, and the acquisition of the commercial real estate lending business and loan portfolio which the Company refers to as "Fremont CRE," of Fremont Investment and Loan, or "Fremont," a division of Fremont General Corporation, in 2007.

**Note 2—Basis of Presentation and Principles of Consolidation**

**Basis of Presentation**—The accompanying unaudited Consolidated Financial Statements have been prepared in conformity with the instructions to Form 10-Q and Article 10-01 of Regulation S-X for interim financial statements. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles in the United States of America ("GAAP") for complete financial statements. These unaudited Consolidated Financial Statements and related Notes should be read in conjunction with the Consolidated Financial Statements and related Notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

In the opinion of management, the accompanying Consolidated Financial Statements contain all adjustments, consisting of normal recurring adjustments necessary for a fair statement of the results for the interim periods presented. Such operating results may not be indicative of the expected results for any other interim periods or the entire year.

Certain prior year amounts have been reclassified in the Consolidated Financial Statements and the related Notes to conform to the 2010 presentation.

**Principles of Consolidation**—The Consolidated Financial Statements include the financial statements of the Company, its wholly owned subsidiaries, controlled partnerships and variable interest entities ("VIEs") for which the Company is the primary beneficiary (see Note 3). All significant intercompany balances and transactions have been eliminated in consolidation.

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

**(unaudited)**

**Note 3—Summary of Significant Accounting Policies**

As of June 30, 2010, the Company's significant accounting policies, which are detailed in the Company's Annual Report on Form 10-K for the year ended December 31, 2009, have not changed, except for the following:

**Consolidation—Variable interest entities**—The Company adopted Accounting Standards Update ("ASU") 2009-17 on January 1, 2010. In accordance with the standard, the Company evaluated its investments and other contractual arrangements to determine if they constitute variable interests in a VIE. A VIE is an entity where a controlling financial interest is achieved through means other than voting rights. A VIE is consolidated by the primary beneficiary, which is the party that has the power to direct matters that most significantly impact the activities of the VIE and has the obligation to absorb losses or the right to receive benefits of the VIE that could potentially be significant to the VIE. This overall consolidation assessment includes a review of, among other factors, which interests create or absorb variability, contractual terms, the key decision making powers, their impact on the VIE's economic performance, and related party relationships. Where qualitative assessment is not conclusive, the Company performs a quantitative analysis. The Company reassesses its evaluation of the primary beneficiary of a VIE on an ongoing basis and assesses its evaluation of an entity as a VIE upon certain reconsideration events.

The Company has investments in certain funds that meet the deferral criteria in ASU 2010-10 and will continue to assess consolidation of these entities under the overall guidance on the consolidation of VIEs in Accounting Standards Codification ("ASC") 810-10. The consolidation evaluation is similar to the process noted above, except that the primary beneficiary is the party that will receive a majority of the VIE's anticipated losses, a majority of the VIE's expected residual returns, or both. In addition, for entities that meet the deferral criteria, the Company reassesses its initial evaluation of the primary beneficiary and whether an entity is a VIE upon the occurrence of certain reconsideration events.

**Consolidated VIEs**—The Company did not consolidate new entities resulting from the adoption of ASU 2009-17. The Company continues to consolidate OHA Strategic Credit Fund Parallel I, L.P. ("OHA SCF"), which was created to invest in distressed and undervalued loans, bonds, equities and other investments. As of June 30, 2010, OHA SCF had \$41.4 million of total assets, no debt and \$0.1 million of noncontrolling interest. The investments held by this entity are presented in "Other investments" on the Company's Consolidated Balance Sheets. As of June 30, 2010, the Company had a total unfunded commitment of \$26.8 million to this entity.

The Company also continues to consolidate Madison Deutsche Andau Holdings, LP ("Madison DA"), which was created to invest in mortgage loans secured by real estate in Europe. As of June 30, 2010, Madison DA had \$53.6 million of total assets, no debt and \$8.0 million of noncontrolling interest. The investments held by this entity are presented in "Loans and other lending investments, net" on the Company's Consolidated Balance Sheets.

**Unconsolidated VIEs**—On January 1, 2010, the Company deconsolidated Moor Park Real Estate Partners II, L.P. Incorporated ("Moor Park") as a result of the adoption of ASU 2009-17. Moor Park is a third-party managed fund that was created to make investments in European real estate as a 33% investor alongside a sister fund. The Company determined it did not have the power to direct matters that most significantly impact the activities of the VIE due to its interest as a limited partner. There was no cumulative effect adjustment resulting from the deconsolidation and the investment continues to be classified in "Other investments" on the Company's Consolidated Balance Sheets. As of June 30, 2010, the



**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

**(unaudited)**

**Note 3—Summary of Significant Accounting Policies (Continued)**

Company's carrying value in Moor Park was \$11.1 million. The Company's maximum exposure to loss from this investment would not exceed the carrying value of its investment.

In addition, the Company determined 26 of its other investments were VIEs where it is not the primary beneficiary and accordingly the VIEs have not been consolidated in the Company's Consolidated Financial Statements. As of June 30, 2010, the Company's maximum exposure to loss from these investments would not exceed the sum of the \$154.3 million carrying value of the investments and \$33.4 million of related unfunded commitments.

In addition, the Company has included supplemental disclosure on its reserve for loan losses policy, as follows:

**Reserve for loan losses**—The reserve for loan losses reflects management's estimate of loan losses inherent in the loan portfolio as of the balance sheet date. The reserve is increased through the "Provision for loan losses" on the Company's Consolidated Statements of Operations and is decreased by charge-offs when losses are confirmed through the receipt of assets such as cash in a pre-foreclosure sale or via ownership control of the underlying collateral in full satisfaction of the loan upon foreclosure or when significant collection efforts have ceased. The reserve for loan losses includes a general, formula-based component and an asset-specific component.

The general reserve component covers performing loans and reserves for loan losses are recorded when (i) available information as of each balance sheet date indicates that it is probable a loss has occurred in the portfolio and (ii) the amount of the loss can be reasonably estimated. The formula-based general reserve is derived from estimated principal default probabilities and loss severities applied to groups of loans based upon risk ratings assigned to loans with similar risk characteristics during the Company's quarterly loan portfolio assessment. During this assessment the Company performs a comprehensive analysis of its loan portfolio and assign risk ratings to loans that incorporate management's current judgments about their credit quality based on all known relevant internal and external factors that may affect collectability. The Company considers, among other things, payment status, lien position, borrower financial resources and investment in collateral, collateral type, project economics and geographical location as well as national and regional economic factors. This methodology results in loans being segmented by risk classification into risk rating categories that are associated with estimated probabilities of default and principal loss. The Company estimates loss rates based on historical realized losses experienced within its portfolio and takes into account current economic conditions affecting the commercial real estate market when establishing appropriate time frames to evaluate loss experience.

The asset-specific reserve component relates to reserves for losses on impaired loans. The Company considers a loan to be impaired when, based upon current information and events, it believes that it is probable that the Company will be unable to collect all amounts due under the contractual terms of the loan agreement. This assessment is made on a loan-by-loan basis each quarter based on such factors as payment status, lien position, borrower financial resources and investment in collateral, collateral type, project economics and geographical location as well as national and regional economic factors. A reserve is established for an impaired loan when the present value of payments expected to be received, observable market prices, or the estimated fair value of the collateral (for loans that are dependent on the collateral for repayment) is lower than the carrying value of that loan.

Substantially all of the Company's impaired loans are collateral dependent and impairment is measured using the estimated fair value of collateral, less costs to sell. The Company generally uses the

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 3—Summary of Significant Accounting Policies (Continued)**

income approach through internally developed valuation models to estimate the fair value of the collateral for such loans. In more limited cases, the Company obtains external "as is" appraisals for loan collateral, generally when third party participations exist. Valuations are performed or obtained at the time a loan is determined to be impaired and designated non-performing, and they are updated if circumstances indicate that a significant change in value has occurred. In limited cases, appraised values may be discounted when real estate markets rapidly deteriorate.

A loan is also considered impaired if its terms are modified in a troubled debt restructuring ("TDR"). A TDR occurs when the Company grants a concession to a borrower in financial difficulty by modifying the original terms of the loan. Impairments on TDR loans are generally measured based on the present value of expected future cash flows discounted at the effective interest rate of the original loan.

**New accounting standards**

In June 2010, Financial Accounting Standards Board ("FASB") issued ASU 2010-20, "Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses," ("ASU 2010-20"), which outlines specific disclosures that will be required for the allowance for credit losses and all finance receivables. Finance receivables includes loans, lease receivables and other arrangements with a contractual right to receive money on demand or on fixed or determinable dates that is recognized as an asset on an entity's statement of financial position. ASU 2010-20 will require companies to provide disaggregated levels of disclosure by portfolio segment and class to enable users of the financial statement to understand the nature of credit risk, how the risk is analyzed in determining the related allowance for credit losses and changes to the allowance during the reporting period. Required disclosures under ASU 2010-20 as of the end of a reporting period are effective for the Company's December 31, 2010 reporting period and disclosures regarding activities during a reporting period are effective for the Company's March 31, 2011 interim reporting period. The Company is currently evaluating the impact of these disclosures on its Consolidated Financial Statements.

In February 2010, the FASB issued ASU 2010-10, "Consolidation (Topic 810): Amendments for Certain Investments Funds" ("ASU 2010-10"), which amended certain provisions of ASC 810-10. ASU 2010-10 defers the effective date of ASU 2009-17 for reporting enterprises' interest in certain entities and for certain money market mutual funds. An entity that qualifies for the deferral will continue to be assessed under the overall guidance on the consolidation of variable interest entities in ASC 810-10 (previously Statement of Financial Accounting Standards ("SFAS") No. 167) or other applicable consolidation guidance. In addition, ASU 2010-10 amended certain provisions to change how a decision maker or service provider determines whether its contract represents a variable interest. The Company adopted ASU 2010-10 on January 1, 2010, as required, and as a result, deferred the effective date of ASC 810-10 for certain entities that met the criteria.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)" ("ASU 2009-17"), which eliminates the exemption for qualifying special purpose entities, creates a new approach for determining who should consolidate a VIE and requires an ongoing reassessment to determine if a company should consolidate a VIE. The standard is effective for interim and annual periods beginning after November 15, 2009. The Company adopted ASU 2009-17 on January 1, 2010, as required.

In June 2009, the FASB issued SFAS No. 166, "Accounting for Transfers of Financial Assets—an amendment of FASB Statement No. 140" ("ASU 2009-16"), which eliminates the qualifying special-

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

**(unaudited)**

**Note 3—Summary of Significant Accounting Policies (Continued)**

purpose entity concept, creates a new unit of account definition that must be met for transfers of portions of financial assets to be eligible for sale accounting, clarifies and changes the de-recognition criteria for a transfer to be accounted for as a sale, changes the amount of recognized gain or loss on a transfer of financial assets accounted for as a sale when beneficial interests are received by the transferor and requires new disclosures. The Company adopted ASU 2009-16 on January 1, 2010, as required, and it did not have a significant impact on the Company's Consolidated Financial Statements.

**iStar Financial Inc.**
**Notes to Consolidated Financial Statements (Continued)**
**(unaudited)**
**Note 4—Loans and Other Lending Investments, net**

The following is a summary of the Company's loans and other lending investments (\$ in thousands):

Type of Investment(1)	As of June 30, 2010					As of December 31, 2009				
	Loan Count	Performing Loans	Loan Count	Non-performing Loans(2)	Total	Loan Count	Performing Loans	Loan Count	Non-performing Loans(2)	Total
Senior Mortgages	100	\$3,282,614	56	\$2,740,030	\$ 6,022,644	108	\$3,791,633	73	\$ 4,049,300	\$ 7,840,933
Subordinate Mortgages	15	315,637	2	91,909	407,546	17	401,532	4	89,881	491,413
Corporate/Partnership Loans	18	860,507	4	124,219	984,726	19	887,555	6	70,074	957,629
Managed Loan Value(3)	133	4,458,758	62	2,956,158	7,414,916	144	5,080,720	83	4,209,255	9,289,975
Participated portion of loans(3)		(59,826)		(75,335)	(135,161)		(174,936)		(298,333)	(473,269)
Total Loans		\$4,398,932		\$2,880,823	7,279,755		\$4,905,784		\$3,910,922	8,816,706
Reserves for loan losses					(1,181,288)					(1,417,949)
Total Loans, net					6,098,467					7,398,757
Other lending investments—securities					16,625					262,805
Total Loans and other lending investments, net					\$ 6,115,092					\$ 7,661,562

**Explanatory Notes:**

- (1) Loans and other lending investments are presented net of unearned income, unamortized discounts and premiums and net unamortized deferred fees and costs. In total, these amounts represented a net discount of \$128.9 million and \$97.0 million as of June 30, 2010 and December 31, 2009, respectively.
- (2) Substantially all of the Company's impaired loans are collateral dependent and impairment has been measured using the fair value of collateral less costs to sell. Additionally, substantially all of the Company's specific reserves relate to loans where impairment was measured based on the estimated fair value of the loans' collateral. Non-performing loans have been determined to be impaired in accordance with the Company's policy and are on non-accrual status. As of June 30, 2010 and December 31, 2009, the Company had non-accrual loans with a total carrying value of \$3.05 billion and \$4.13 billion, respectively, which included non-performing loans and certain loans that were restructured in troubled debt restructurings.
- (3) Managed Loan Value represents the Company's carrying value of a loan and the outstanding participation interest on loans in the Fremont CRE portfolio. The structure of the participation puts the Company in the first loss position on these participated loans and Managed Loan Value is the most relevant measure of the Company's exposure to risk of loss on loans in the Fremont CRE portfolio.

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 4—Loans and Other Lending Investments, net (Continued)**

Changes in the Company's reserve for loan losses were as follows (in thousands):

<b>Reserve for loan losses, December 31, 2008</b>	<b>\$ 976,788</b>
Provision for loan losses	1,255,357
Charge-offs	<u>(814,196)</u>
<b>Reserve for loan losses, December 31, 2009(1)</b>	<b>1,417,949</b>
Provision for loan losses	198,828
Charge-offs	<u>(435,489)</u>
<b>Reserve for loan losses, June 30, 2010(1)</b>	<b><u>\$ 1,181,288</u></b>

**Explanatory Note:**

- 
- (1) Total reserve for loan losses at June 30, 2010 and December 31, 2009, included asset specific reserves of \$1.01 billion and \$1.24 billion, respectively, and general reserves of \$174.1 million and \$174.9 million, respectively.

During the six months ended June 30, 2010, the Company funded \$240.4 million under existing loan commitments and received gross principal repayments of \$1.09 billion, of which a portion of these repayments were allocable to the Fremont Participation (as defined below). During the six months ended June 30, 2010, the Company sold loans with a total carrying value of \$266.9 million, for which it recognized charge-offs of \$65.4 million. Additionally, the Company provided \$105.6 million of mezzanine loans associated with financing the sale of a portfolio of 32 CTL assets (see Note 6).

During the six months ended June 30, 2010, the Company received title to properties in full or partial satisfaction of non-performing mortgage loans with a carrying value of \$782.6 million for which the properties had served as collateral, and recorded charge-offs totaling \$268.9 million related to these loans. These properties were recorded as Other real estate owned ("OREO") and Real estate held for investment ("REHI") on the Company's Consolidated Balance Sheets (see Note 5).

The carrying value of impaired loans was \$3.09 billion and \$4.20 billion as of June 30, 2010 and December 31, 2009, respectively. As of June 30, 2010, the Company assessed the impaired loans for specific impairment and determined that non-performing loans with a carrying value of \$2.38 billion required specific reserves totaling \$1.01 billion and that the remaining impaired loans did not require any specific reserves. The average carrying value of total impaired loans was approximately \$3.63 billion and \$3.83 billion during the six months ended June 30, 2010 and 2009, respectively. The Company recorded interest income from cash payments received on impaired loans of \$3.9 million and \$23.5 million for the three and six months ended June 30, 2010, respectively, and \$5.9 million and \$8.9 million for the three and six months ended June 30, 2009.

**Fremont Participation**—On July 2, 2007, the Company sold a \$4.20 billion participation interest ("Fremont Participation") in the \$6.27 billion Fremont CRE portfolio. Under the terms of the participation, the Company pays 70% of all principal collected from the Fremont CRE portfolio, including principal collected from amounts funded on the loans subsequent to the acquisition of the portfolio and proceeds received from asset sales, until the participation is fully repaid. The Fremont Participation receives floating interest at LIBOR + 1.50%.

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 4—Loans and Other Lending Investments, net (Continued)**

Changes in the outstanding Fremont Participation balance were as follows (in thousands):

<b>Loan participation, December 31, 2009</b>	<b>\$ 473,269</b>
Principal repayments(1)	(338,108)
<b>Loan participation, June 30, 2010</b>	<b>\$ 135,161</b>

**Explanatory Note:**

- (1) Includes \$36.6 million of principal repayments received by the Company as of June 30, 2010 that had not yet been remitted to the Fremont Participation holder and are reflected as a payable in "Accounts payable, accrued expenses and other liabilities" on the Company's Consolidated Balance Sheets.

**Loans acquired with deteriorated credit quality**—The Company holds certain loans initially acquired at a discount, for which it was probable, at acquisition, that all contractually required payments would not be received. As of June 30, 2010 and December 31, 2009, these loans had cumulative principal balances of \$174.3 million and \$168.6 million, respectively, and cumulative carrying values of \$154.2 million and \$148.3 million, respectively. The Company does not have a reasonable expectation about the timing and amount of cash flows expected to be collected on these loans and is recognizing income when cash is received or applying cash to reduce the carrying value of the loans. The majority of these loans were acquired in the acquisition of Fremont CRE.

**Securities**—During the six months ended June 30, 2010, the Company recognized \$9.0 million in net gains resulting from a \$205.0 million prepayment of held-to-maturity debt securities and sales of its remaining available-for-sale debt securities.

During the six months ended June 30, 2009, the Company determined that unrealized credit related losses on certain held-to-maturity and available-for-sale debt securities were other-than-temporary and recorded impairment charges totaling \$9.5 million in "Impairment of other assets" on the Company's Consolidated Statements of Operations.

**Encumbered loans**—As of June 30, 2010 and December 31, 2009, loans and other lending investments with a carrying value of \$3.55 billion and \$4.39 billion, respectively, were pledged as collateral under the Company's secured indebtedness.

**Note 5—Real estate held for investment, net and Other real estate owned**

During the six months ended June 30, 2010, the Company received title to properties in full or partial satisfaction of non-performing mortgage loans with an aggregate estimated fair value of \$513.7 million, for which those properties had served as collateral. Of that amount, properties with a value of \$197.8 million were classified as REHI and \$315.9 million as OREO, based on management's strategy to either hold the properties over a longer period or to market them for sale.

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 5—Real estate held for investment, net and Other real estate owned (Continued)****Real estate held for investment, net**—REHI consisted of the following (in thousands):

	As of June 30, 2010	As of December 31, 2009
Land held for investment and development	\$ 453,539	\$ 290,283
Other operating properties	187,976	135,281
Less: accumulated depreciation and amortization	(5,276)	(2,900)
Real estate held for investment, net	<u>\$ 636,239</u>	<u>\$ 422,664</u>

For the three and six months ended June 30, 2010, the Company recorded REHI operating income of \$4.4 million and \$8.5 million, respectively, in "Other income" and REHI operating expenses of \$6.0 million and \$12.2 million, respectively, in "Other expense," on the Company's Consolidated Statements of Operations.

**Other real estate owned**—During the six months ended June 30, 2010, the Company sold OREO assets with a carrying value of \$237.9 million. For the three and six months ended June 30, 2010, the Company recorded impairment charges to OREO properties totaling \$12.2 million and \$17.1 million, respectively, and recorded net expenses related to holding costs for OREO properties of \$7.3 million and \$13.9 million, respectively.

For the three and six months ended June 30, 2009, the Company recorded impairment charges to OREO properties totaling \$22.2 million and \$28.9 million, respectively, and recorded net expenses related to holding costs for OREO properties of \$7.0 million and \$13.4 million, respectively.

**Encumbered OREO and REHI assets**—As of June 30, 2010 and December 31, 2009, OREO assets with a carrying value of \$371.6 million and \$232.7 million, respectively, and REHI assets with a carrying value of \$26.5 million and \$27.1 million, respectively were pledged as collateral under the Company's secured indebtedness.

**Note 6—Corporate Tenant Lease Assets, net**

The Company's investments in CTL assets, at cost, were as follows (in thousands):

	As of June 30, 2010	As of December 31, 2009
Facilities and improvements	\$ 1,698,188	\$ 2,761,083
Land and land improvements	461,345	639,581
Less: accumulated depreciation	(310,110)	(514,768)
Corporate tenant lease assets, net	<u>\$ 1,849,423</u>	<u>\$ 2,885,896</u>

On June 25, 2010, the Company completed the sale of a portfolio of 32 CTL assets to a single purchaser for a gross purchase price of \$1.35 billion that resulted in a net gain of \$250.3 million. The aggregate carrying value of the 32 CTL assets was \$1.05 billion. In relation to this transaction, the Company reduced its gain on sale and recorded a liability of \$30.0 million based upon certain contingent

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 6—Corporate Tenant Lease Assets, net (Continued)**

obligations potentially owing to the purchaser. Proceeds from this transaction were used to repay a \$947.9 million term loan collateralized by the properties being sold that was scheduled to mature in April 2011, as well as for general corporate purposes. See Note 9 for additional details on the repayment of the debt collateralized by these assets. As part of the purchaser's financing for the transaction, the Company provided the purchaser with \$105.6 million of mezzanine loans with initial blended rates of 8.8% per annum and effective maturities of three to five years.

Summarized financial information for discontinued operations related to the sale of the portfolio of 32 CTL assets is as follows (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
Total revenues	\$ 26,923	\$ 28,596	\$ 55,558	\$ 57,193
Income from discontinued operations	\$ 10,715	\$ 3,520	\$ 16,382	\$ 5,733

In addition to the sale of the portfolio of 32 CTL assets, as noted above, during the three and six months ended June 30, 2010, the Company sold CTL assets with carrying values of \$53.9 million and \$71.1 million, respectively, which resulted in gains of \$15.6 million and \$15.6 million, respectively. During the three and six months ended June 30, 2009, the Company sold CTL assets with carrying values of \$4.1 million and \$24.8 million, respectively, which resulted in no gains or losses for the three months ended June 30, 2009 and gains of \$11.6 million for the six months ended June 30, 2009.

The Company receives reimbursements from customers for certain facility operating expenses including common area costs, insurance and real estate taxes. Customer expense reimbursements were \$9.0 million and \$17.7 million for the three and six months ended June 30, 2010, respectively, and \$10.4 million and \$18.9 million for the three and six months ended June 30, 2009, respectively. Of these amounts, \$6.5 million and \$12.4 million for the three and six months ended June 30, 2010, respectively, and \$7.1 million and \$12.4 million for the three and six months ended June 30, 2009, respectively, were included as a reduction of "Operating costs—corporate tenant lease assets," and the remainder was included in "Income from discontinued operations" on the Company's Consolidated Statements of Operations.

**Allowance for doubtful accounts**—As of June 30, 2010 and December 31, 2009, the total allowance for doubtful accounts related to tenant receivables was \$2.1 million and \$2.8 million, respectively.

**Encumbered CTL assets**—As of June 30, 2010 and December 31, 2009, CTL assets with a carrying value of \$1.42 billion and \$2.59 billion, respectively, were encumbered with mortgages or pledged as collateral under the Company's secured indebtedness.



## iStar Financial Inc.

## Notes to Consolidated Financial Statements (Continued)

(unaudited)

## Note 7—Other Investments

Other investments consist of the following items (in thousands):

	As of June 30, 2010	As of December 31, 2009
Equity method investments	\$ 386,373	\$ 339,002
CTL in-place lease intangibles, net(1)(2)	27,879	48,751
Cost method investments	7,657	6,923
Marketable securities	294	38,454
Other investments	<u>\$ 422,203</u>	<u>\$ 433,130</u>

## Explanatory Note:

- (1) Accumulated amortization for these assets was \$23.2 million and \$33.1 million as of June 30, 2010 and December 31, 2009, respectively. Amortization expense related to these assets was \$1.6 million and \$3.2 million for the three and six months ended June 30, 2010, respectively, and \$2.4 million and \$4.0 million for the three and six months ended June 30, 2009, respectively.
- (2) During the three months ended June 30, 2010, \$14.8 million of CTL in-place lease intangibles were disposed of in connection with the sale of a portfolio of 32 CTL assets (see Note 6).

## Equity method investments

The Company's equity method investments and its proportionate share of their results were as follows (in thousands):

	Carrying value		Equity in earnings			
	As of June 30, 2010	As of December 31, 2009	For three months ended June 30,		For six months ended June 30,	
			2010	2009	2010	2009
Oak Hill	\$ 170,688	\$ 180,372	\$ 4,414	\$ 2,603	\$ 8,490	\$ 4,860
Madison Funds	87,428	75,096	4,376	941	6,054	(7,579)
Other	128,257	83,534	4,960	(1,680)	10,636	(15,917)
Total	<u>\$ 386,373</u>	<u>\$ 339,002</u>	<u>\$ 13,750</u>	<u>\$ 1,864</u>	<u>\$ 25,180</u>	<u>\$ (18,636)</u>

During the six months ended June 30, 2009, the Company recorded a non-cash out-of-period charge of \$9.4 million to recognize additional losses from an equity method investment as a result of additional depreciation expense that should have been recorded at the equity method entity. This adjustment was recorded as a reduction to "Other investments" on the Company's Consolidated Balance Sheets and a decrease to "Earnings (losses) from equity method investments," on the Company's Consolidated Statements of Operations. The Company concluded that the amount of losses that should have been recorded in periods beginning in July 2007 were not material to any of its previously issued financial statements. The Company also concluded that the cumulative out-of-period charge was not material to the fiscal year in which it has been recorded. As such, the charge was recorded in the Company's Consolidated Statements of Operations for the six months ended June 30, 2009, rather than restating prior periods.

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 8—Other Assets and Other Liabilities**

Deferred expenses and other assets, net, consist of the following items (in thousands):

	As of June 30, 2010	As of December 31, 2009
Deferred financing fees, net(1)	\$ 26,447	\$ 41,959
Other receivables	13,247	15,235
Corporate furniture, fixtures and equipment, net(2)	12,219	14,550
Leasing costs, net(3)	7,150	14,830
Other assets	19,985	22,632
Deferred expenses and other assets, net	<u>\$ 79,048</u>	<u>\$ 109,206</u>

**Explanatory Notes:**

- (1) Accumulated amortization on deferred financing fees was \$28.7 million and \$30.3 million as of June 30, 2010 and December 31, 2009, respectively.
- (2) Accumulated depreciation on corporate furniture, fixture and equipment was \$6.8 million and \$5.6 million as of June 30, 2010 and December 31, 2009, respectively.
- (3) Accumulated amortization on leasing costs was \$5.0 million and \$11.2 million as of June 30, 2010 and December 31, 2009, respectively.

Accounts payable, accrued expenses and other liabilities consist of the following items (in thousands):

	As of June 30, 2010	As of December 31, 2009
Accrued interest payable	\$ 38,851	\$ 49,697
Fremont Participation payable (see Note 4)	36,919	67,711
Accrued expenses	29,184	37,388
Unearned operating lease income	14,158	17,153
Deferred tax liabilities	9,676	9,336
Security deposits from customers	5,879	24,763
Property taxes payable	4,309	5,211
Other liabilities	43,961	40,851
Accounts payable, accrued expenses and other liabilities	<u>\$ 182,937</u>	<u>\$ 252,110</u>

**iStar Financial Inc.**
**Notes to Consolidated Financial Statements (Continued)**
**(unaudited)**
**Note 9—Debt Obligations, net**

As of June 30, 2010 and December 31, 2009, the Company's debt obligations were as follows (in thousands):

	Carrying Value as of		Stated Interest Rates	Scheduled Maturity Date
	June 30, 2010	December 31, 2009		
<b>Secured revolving credit facilities:</b>				
Line of credit(1)	\$ 609,485	\$ 625,247	LIBOR + 1.50%	June 2011
Line of credit(1)	334,180	334,180	LIBOR + 1.50%	June 2012
<b>Unsecured revolving credit facilities:</b>				
Line of credit	496,479	504,305	LIBOR + 0.85%	June 2011
Line of credit	242,915	244,295	LIBOR + 0.85%	June 2012
Total revolving credit facilities	1,683,059	1,708,027		
<b>Secured term loans:</b>				
Collateralized by CTLs	—	947,862	6.25%	April 2011
Collateralized by loans, CTLs, REHI and OREO(1)	1,055,000	1,055,000	LIBOR + 1.50%	June 2011
Collateralized by loans, CTLs, REHI and OREO(1)	596,047	621,221	LIBOR + 1.50%	June 2012
Collateralized by loans, CTLs, REHI and OREO(2)	1,000,000	1,000,000	LIBOR + 2.50%	June 2012
Collateralized by CTLs	—	114,279	11.438%	December 2020
Collateralized by CTLs and OREO	197,935	260,980	LIBOR + 1.65%	Various through 2029
			6.4%—8.4%	
Total secured term loans	2,848,982	3,999,342		
<b>Secured notes:</b>				
8.0% senior notes(3)	—	155,253	8.0%	March 2011
10.0% senior notes(3)(4)	312,329	479,548	10.0%	June 2014
Total secured notes	312,329	634,801		
<b>Unsecured notes:</b>				
LIBOR + 0.35% senior notes	—	158,699	LIBOR + 0.35%	March 2010
5.375% senior notes	—	143,509	5.375%	April 2010
6.0% senior notes	131,934	251,086	6.0%	December 2010
5.80% senior notes	151,358	192,890	5.80%	March 2011
5.125% senior notes	146,356	175,168	5.125%	April 2011
5.65% senior notes	220,673	286,787	5.65%	September 2011
5.15% senior notes	350,436	406,996	5.15%	March 2012
5.50% senior notes	111,770	146,470	5.50%	June 2012
LIBOR + 0.50% senior convertible notes(5)	787,750	787,750	LIBOR + 0.50%	October 2012
8.625% senior notes	501,701	508,701	8.625%	June 2013
5.95% senior notes	448,453	459,453	5.95%	October 2013
6.5% senior notes	67,055	75,635	6.5%	December 2013
5.70% senior notes	200,601	206,601	5.70%	March 2014
6.05% senior notes	105,765	105,765	6.05%	April 2015
5.875% senior notes	261,403	261,403	5.875%	March 2016
5.85% senior notes	99,722	99,722	5.85%	March 2017
Total unsecured notes	3,584,977	4,266,635		
Other debt obligations	100,000	100,000	LIBOR + 1.5%	October 2035
<b>Total debt obligations</b>	<b>8,529,347</b>	<b>10,708,805</b>		
Debt premiums/(discounts), net(4)(5)	90,608	186,098		
<b>Total debt obligations, net</b>	<b>\$ 8,619,955</b>	<b>\$ 10,894,903</b>		

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 9—Debt Obligations, net (Continued)****Explanatory Notes:**

- 
- (1) Represents outstanding borrowings under the Company's Second Priority Credit Agreements. Under these agreements, the participating lenders have a second priority lien on the same collateral pool securing the First Priority Credit Agreement (see below). As of June 30, 2010, there was approximately \$41.2 million that was immediately available to draw under the Second Priority Credit Agreements. These revolving and term loan commitments have an annual commitment fee of 0.20%.
  - (2) Represents outstanding secured term loans under the Company's First Priority Credit Agreement. Borrowings under this agreement are collateralized by a first-priority lien on a pool of collateral consisting of loans, debt securities, corporate tenant lease assets and other assets pledged under the First and Second Priority Credit Agreements and the Second Priority Secured Exchange Notes (see below).
  - (3) Represents the Company's Second Priority Secured Exchange Notes which are collateralized by a second priority lien on the same pool of collateral pledged under the First and Second Priority Credit Agreements.
  - (4) As of June 30, 2010, debt premiums/(discounts), net includes unamortized debt premiums of \$125.2 million associated with the Second Priority Secured Exchange Notes, which resulted from the unsecured/secured note exchange transactions completed in May 2009.
  - (5) As of June 30, 2010, the outstanding principal balance of the Company's senior convertible notes was \$787.8 million, the unamortized discount was \$27.4 million and the net carrying amount of the liability was \$760.4 million. As of June 30, 2010, none of the conversion triggers have been met and the carrying value of the additional paid-in-capital, or equity component of the convertible notes, was \$37.4 million. For the three and six months ended June 30, 2010, the Company recognized interest expense on the convertible notes of \$4.2 million and \$8.3 million, respectively, in "Interest expense" on its Consolidated Statements of Operations, of which \$2.7 million and \$5.3 million, respectively, related to the amortization of the debt discount. For the three and six months ended June 30, 2009, the Company recognized interest expense on the convertible notes of \$5.9 million and \$12.1 million, respectively, in "Interest expense" on its Consolidated Statements of Operations, of which \$2.5 million and \$4.9 million, respectively, related to the amortization of the debt discount.

**Future Scheduled Maturities**—As of June 30, 2010, future scheduled maturities of outstanding long-term debt obligations, net are as follows (in thousands):

2010 (remaining six months)(1)	\$ 136,185
2011(1)	2,742,754
2012(1)	3,423,098
2013	1,072,634
2014	512,930
Thereafter	641,746
<b>Total principal maturities</b>	<b>8,529,347</b>
Unamortized debt premiums/(discounts), net	90,608
<b>Total long-term debt obligations, net</b>	<b>\$ 8,619,955</b>

**Explanatory Note:**

- 
- (1) As further discussed in Debt Covenants below, although due in 2012, as presented above, if the Company does not pay down the outstanding balance of its \$1.0 billion First Priority Credit Agreement by \$500 million by September 30, 2010 and an additional \$500 million by March 31, 2011, payments of principal and net sale proceeds received by the Company in respect of assets constituting collateral for its obligation under this agreement must be applied towards the mandatory prepayment of the loan and commitment reductions under the agreement.

**Repayments and Note Repurchases**—During the six months ended June 30, 2010, the Company retired \$457.5 million par value of our senior secured and unsecured notes through open market repurchases, and redeemed \$282.3 million of senior secured notes with various maturities ranging from March 2010 to June 2014. In connection with these repurchases and redemptions, the Company recorded an aggregate gain on early extinguishment of debt of \$77.7 million and \$116.4 million for the three and six months ended

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

**(unaudited)**

**Note 9—Debt Obligations, net (Continued)**

June 30, 2010, respectively. The Company also repaid \$264.4 million of unsecured notes at maturity during the first half of 2010.

During the same period, the Company repaid secured term loans, including a \$947.9 million non-recourse loan that was collateralized by the portfolio of 32 CTL assets sold during the period, as well as \$149.0 million of other term loans with various maturities. In connection with these repayments, the Company wrote-off unamortized deferred financing costs and incurred other expenses totaling \$7.6 million, which reduced net gain on early extinguishment of debt during the three and six months ended June 30, 2010.

**Debt Covenants**

The Company's ability to borrow under its secured credit facilities depends on maintaining compliance with various covenants, including a minimum tangible net worth covenant and specified financial ratios, such as fixed charge coverage, unencumbered assets to unsecured indebtedness, eligible collateral coverage and leverage ratios. All of these covenants in the Company's facilities are maintenance covenants and, if breached could result in an acceleration of the Company's facilities if a waiver or modification is not agreed upon with the required lenders (see Business Risks and Uncertainties in Note 10). The Company's secured credit facilities also impose limitations on repayments, repurchases, refinancings and optional redemptions of its existing unsecured and secured debt securities, as well as limitations on repurchases of its Common Stock. Specifically, the Company may refinance its outstanding senior unsecured notes using up to \$1.0 billion of second priority secured notes (of which \$634.8 million principal amount has been issued to date) and an unlimited amount of third priority secured notes in exchange transactions, or new unsecured notes subject to certain limitations. In addition, while there are outstanding borrowings under the Company's First Priority Credit Agreement, the Company may use up to an aggregate of \$350.0 million to repurchase its senior unsecured notes maturing after June 26, 2012 and its Common Stock; provided, however, that no more than \$50.0 million may be used for Common Stock repurchases prior to December 31, 2010 and no more than \$100.0 million may be used for all Common Stock repurchases. There is no limitation on the Company's ability to repurchase senior unsecured notes maturing on or before June 26, 2012. Upon repayment of all borrowings under the Company's First Priority Credit Agreement, the aggregate limitation is increased to \$750.0 million. Through June 30, 2010, the Company has used \$346.0 million of its \$350.0 million basket to repurchase senior unsecured notes maturing after June 26, 2012 and Common Stock, of which \$33.4 million was used to purchase Common Stock.

For so long as the Company maintains its qualification as a REIT, the secured credit facilities permit the Company to distribute 100% of its REIT taxable income on an annual basis. The Company may not pay common dividends if it ceases to qualify as a REIT.

The Company's outstanding debt securities also contain covenants that include fixed charge coverage and unencumbered assets to unsecured indebtedness ratios and its secured debt securities have an eligible collateral coverage requirement. The fixed charge coverage ratio in the Company's debt securities is an incurrence test. If the Company does not meet the fixed charge coverage ratio, its ability to incur additional indebtedness will be restricted. The unencumbered assets to unsecured indebtedness covenant and the eligible collateral coverage covenant are maintenance covenants and, if breached and not cured within applicable cure periods, could result in acceleration of the Company's debt securities unless a waiver

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

**(unaudited)**

**Note 9—Debt Obligations, net (Continued)**

or modification is agreed upon with the requisite percentage of the bondholders. Based on the Company's unsecured credit ratings at June 30, 2010, the financial covenants in its debt securities, including the fixed charge coverage ratio and maintenance of unencumbered assets to unsecured indebtedness ratio, are operative.

The Company's secured credit facilities contain cross default provisions that would allow the lenders to declare an event of default and accelerate the Company's indebtedness to them if the Company fails to pay amounts due in respect of the Company's other recourse indebtedness in excess of specified thresholds, or if such other recourse indebtedness is accelerated or the lenders under such other indebtedness are otherwise permitted to accelerate such indebtedness for any reason. The Company's unsecured credit facilities and the indentures governing its debt securities provide that the lenders thereunder may declare an event of default and accelerate the indebtedness to them if a payment default occurs at maturity under the Company's other recourse indebtedness in excess of specified thresholds or if such indebtedness is otherwise accelerated for any reason.

Under certain circumstances, the First and Second Priority Credit Agreements require that payments of principal and net sale proceeds received by the Company in respect of assets constituting collateral for the Company's obligations under these agreements be applied toward the mandatory prepayment of loans and commitment reductions under them. The Company would be required to make such prepayments (i) during any time that the fixed charge coverage ratio, as defined under the agreements, is less than 1.25 to 1.00, (ii) if, after receiving a payment of principal or net sale proceeds in respect of collateral, the Company has insufficient eligible assets available to pledge as replacement collateral or (iii) if, and for so long as, the aggregate principal amount of loans outstanding under the First Priority Credit Agreement exceeds \$500 million at any time on or after September 30, 2010, or zero at any time on or after March 31, 2011. The First and Second Priority Credit Agreements and indentures governing the Second Priority Secured Exchange Notes contain a number of covenants, including that the Company maintain collateral coverage of at least 1.3x the aggregate borrowings and letters of credit outstanding under the First Priority Credit Agreement, the Second Priority Credit Agreements and the Second Priority Secured Exchange Notes.

The Company believes it is in full compliance with all the covenants in its debt obligations as of June 30, 2010.

**Ratings Triggers**

The Company's First and Second Priority Secured Credit Agreements and unsecured credit agreements bear interest at LIBOR based rates plus an applicable margin which varies between the Credit Agreements and is determined based on the Company's corporate credit ratings. The Company's ability to borrow under its credit facilities is not dependent on the level of its credit ratings. Based on the Company's current credit ratings, further downgrades in the Company's credit ratings will have no effect on its borrowing rates under these facilities.

**Note 10—Commitments and Contingencies**

**Business Risks and Uncertainties**—Financial market conditions, including the economic recession and tightening of credit markets, have continued to significantly impact the commercial real estate market and

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 10—Commitments and Contingencies (Continued)**

financial services industry. The severe economic downturn led to a decline in commercial real estate values which, combined with a lack of available debt financing for commercial and residential real estate assets, have limited borrowers' ability to repay or refinance their loans. Further, the ability of many of the Company's borrowers to sell units in residential projects has been adversely impacted by the difficult economic conditions and the lack of end loan financing available to residential unit purchasers. These factors have adversely affected the Company's business, financial condition and operating performance resulting in significant levels of non-performing assets and provisions for loan losses, increasing amounts of real estate owned and real estate held for investment as the Company has foreclosed on defaulting borrowers, and a reduction in available liquidity. The economic conditions and their effect on the Company's operations have also resulted in increases in the Company's financing costs, a continuing inability to access the unsecured debt markets, depressed prices for the Company's Common Stock, the continued suspension of quarterly Common Stock dividends and narrower margins of compliance by the Company with its debt covenants.

The Company has responded to the adverse market conditions by implementing various initiatives, including curtailing its asset origination activities in favor of asset management, reducing its balance sheet through asset sales, repurchasing its debt at a discount to par and deleveraging. The Company has been able to partially mitigate the impact of the decline in operating results through the recognition of gains associated with sales of assets and the repurchase and retirement of debt at a discount, which have enabled it to maintain compliance with its debt covenants and to reduce outstanding indebtedness. The Company expects to use such initiatives and other strategies, as available, to offset declines in operating results; however, the Company's ability to retire additional debt at a discount is limited by covenants in the Company's secured bank credit facilities, as described further in the Debt Covenants section of Note 9. There can be no assurance that the Company's efforts in this regard will be successful. The Company's plans are dynamic and it expects to adjust its plans as market conditions change.

From a liquidity perspective, the Company expects to continue to experience significant uncertainty with respect to its sources of funds. The Company's capital sources in today's financing environment primarily include repayments from its loan assets, proceeds from asset sales, secured financings and possibly other capital raising transactions. These sources may be affected by a variety of factors, many of which are outside of the Company's control, including general economic and financing conditions, volatility in the financial markets, the Company's borrowers' ability to repay their obligations and levels of demand from buyers of commercial real estate assets. As of June 30, 2010, the Company had \$531.5 million of unrestricted cash. The Company has approximately \$136.2 million aggregate principal amount of indebtedness maturing during the remainder of 2010 and approximately \$2.66 billion aggregate principal amount of indebtedness maturing on or before June 30, 2011. The Company will need additional liquidity to supplement expected loan repayments and cash generated from operations in order to meet its debt maturities and funding obligations. The Company expects to continue to utilize asset sales and other available capital sources as means of generating liquidity to reduce its outstanding debt obligations, while at the same time exploring alternatives for realigning the long-term structure of the Company's assets and liabilities. In May 2010, the Company announced that it retained a third party advisor to assist the Company in exploring such alternatives which could include, among other things, refinancing and/or restructuring some or all of the Company's outstanding indebtedness. There can be no assurance that the Company will be able to execute such alternatives or generate sufficient liquidity to meet its cash needs.

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 10—Commitments and Contingencies (Continued)**

The Company's primary recourse debt instruments include its secured and unsecured bank credit facilities and its secured and unsecured debt securities. The Company believes it is in compliance with all the covenants in those debt instruments as of June 30, 2010, however, the Company's financial results have put pressure on its ability to maintain compliance with certain of its debt covenants. The Company intends to operate its business in order to remain in compliance with its debt covenants; however, it is possible that the Company will not be able to do so.

A failure by the Company to refinance or repay its indebtedness as it comes due, or to satisfy a covenant, would likely trigger a default or an event of default which could give the lenders under the affected indebtedness the ability to accelerate the debt. Most of the Company's recourse debt instruments contain cross default and/or cross-acceleration provisions which may be triggered by defaults or accelerations of the Company's recourse debt above specified thresholds. If the Company is unable to refinance or repay its debt as it comes due, the Company's business, financial condition, results of operations and Common Stock price will be materially and adversely affected.

**Unfunded Commitments**—The Company has certain off-balance sheet unfunded commitments. The Company generally funds construction and development loans and build-outs of CTL space over a period of time if and when the borrowers and tenants meet established milestones and other performance criteria. The Company refers to these arrangements as Performance-Based Commitments. In addition, the Company will sometimes establish a maximum amount of additional fundings which it will make available to a borrower or tenant for an expansion or addition to a project if it approves of the expansion or addition at its sole discretion. The Company refers to these arrangements as Discretionary Fundings. Finally, the Company has committed to invest capital in several real estate funds and other ventures. These arrangements are referred to as Strategic Investments. As of June 30, 2010, the maximum amounts of the fundings the Company may make under each category, assuming all performance hurdles and milestones are met under Performance-Based Commitments, that it will approve all Discretionary Fundings and that 100% of its capital committed to Strategic Investments is drawn down are as follows (in thousands):

	<u>Loans</u>	<u>CTL</u>	<u>Total</u>
Performance-Based Commitments	\$ 215,505	\$ 3,174	\$ 218,679
Discretionary Fundings	251,843	—	251,843
Strategic Investments	N/A	N/A	61,022
Total	<u>\$ 467,348</u>	<u>\$ 3,174</u>	<u>\$ 531,544</u>

**Other Commitments**—In 2009, as a result of the Company's decision to remain in its current space that is leased through 2021, the Company entered into a settlement agreement with a landlord regarding a separate long-term lease for new headquarters space. Under the settlement, the Company agreed to pay the landlord a \$42.4 million settlement payment in order to settle all disputes between the Company and the landlord relating to the lease and the landlord agreed among other things, to terminate the lease. For the six months ended June 30, 2009, the Company recognized a \$42.4 million lease termination expense in "Other expense" on the Company's Consolidated Statements of Operations.



## iStar Financial Inc.

## Notes to Consolidated Financial Statements (Continued)

(unaudited)

## Note 11—Equity

**Preferred Stock**—The Company had the following series of Cumulative Redeemable Preferred Stock outstanding as of June 30, 2010 and December 31, 2009:

Series	Shares Authorized, Issued and Outstanding (in thousands)	Par Value	Cumulative Preferential Cash Dividends(1)(2)	
			Rate per Annum of the \$25.00 Liquidation Preference	Equivalent to Fixed Annual Rate (per share)
D	4,000	\$ 0.001	8.00%	\$ 2.00
E	5,600	\$ 0.001	7.875%	1.97
F	4,000	\$ 0.001	7.8%	1.95
G	3,200	\$ 0.001	7.65%	1.91
I	5,000	\$ 0.001	7.50%	1.88
	21,800			

## Explanatory Notes:

- (1) Holders of shares of the Series D, E, F, G and I preferred stock are entitled to receive dividends, when and as declared by the Board of Directors, out of funds legally available for the payment of dividends. Dividends are cumulative from the date of original issue and are payable quarterly in arrears on or before the 15th day of each March, June, September and December or, if not a business day, the next succeeding business day. Any dividend payable on the preferred stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as of the close of business on the first day of the calendar month in which the applicable dividend payment date falls or on another date designated by the Board of Directors of the Company for the payment of dividends that is not more than 30 nor less than ten days prior to the dividend payment date.
- (2) The Company declared and paid dividends aggregating \$4.0 million, \$5.5 million, \$3.9 million, \$3.1 million and \$4.7 million on its Series D, E, F, G, and I preferred stock, respectively, during the six months ended June 30, 2010. There are no dividend arrearages on any of the preferred shares currently outstanding.

**Dividends**—In order to maintain its election to qualify as a REIT, the Company must currently distribute, at a minimum, an amount equal to 90% of its taxable income and must distribute 100% of its taxable income to avoid paying corporate federal income taxes. The Company has recorded net operating losses and may record net operating losses in the future, which may reduce its taxable income in future periods and lower or eliminate entirely the Company's obligation to pay dividends for such periods in order to maintain its REIT qualification. Because taxable income differs from cash flow from operations due to non-cash revenues and expenses (such as depreciation and certain asset impairments), in certain circumstances, the Company may generate operating cash flow in excess of its dividends or, alternatively, may be required to borrow to make sufficient dividend payments. The Company's secured credit facilities permit the Company to distribute 100% of its REIT taxable income on an annual basis, for so long as the Company maintains its qualification as a REIT. The secured credit facilities restrict the Company from paying any common dividends if it ceases to qualify as a REIT. The Company did not declare or pay any Common Stock dividends for the six months ended June 30, 2010.

**Stock Repurchase Program**—During the six months ended June 30, 2010, the Company repurchased 1.1 million shares of its outstanding Common Stock for approximately \$3.9 million, at an average cost of \$3.57 per share, and the repurchases were recorded at cost. As of June 30, 2010, the Company had

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 11—Equity (Continued)**

\$17.7 million of Common Stock available to repurchase under the authorized stock repurchase programs. The Company's Common Stock repurchases are further restricted by limitations imposed by the Company's secured bank credit facilities, as discussed further in the Debt Covenants section of Note 9.

**Noncontrolling Interest**—The following table presents amounts attributable to iStar Financial Inc. and allocable to common shareholders, HPU holders and Participating Security holders and excludes amounts attributable to noncontrolling interests (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Amounts attributable to iStar Financial Inc. and allocable to common shareholders, HPU holders and Participating Security holders</b>				
Income (loss) from continuing operations	\$ (47,530)	\$ (284,144)	\$ (69,957)	\$ (385,766)
Income from discontinued operations	10,877	2,442	17,704	6,618
Gain from discontinued operations	265,960	—	265,960	11,617
Net income (loss)	229,307	(281,702)	213,707	(367,531)
Preferred dividends	(10,580)	(10,580)	(21,160)	(21,160)
Net income (loss) allocable to common shareholders, HPU holders and Participating Security holders	<u>\$ 218,727</u>	<u>\$ (292,282)</u>	<u>\$ 192,547</u>	<u>\$ (388,691)</u>

**Note 12—Stock-Based Compensation Plans and Employee Benefits**

**Stock-based Compensation**—The Company recorded stock-based compensation expense of \$5.0 million and \$9.7 million for the three and six months ended June 30, 2010, respectively, and \$7.5 million and \$13.1 million for the three and six months ended June 30, 2009, respectively in "General and administrative" on the Company's Consolidated Statements of Operations. As of June 30, 2010, there was \$24.2 million of total unrecognized compensation cost related to all non-vested restricted stock units. That cost is expected to be recognized over a weighted average remaining vesting/service period of 1.15 years. As of June 30, 2010, an aggregate of 3.1 million shares remain available for issuance pursuant to future awards under the Company's 2006 and 2009 Long-Term Incentive Plans.

**Restricted Stock Units**

**2010 Awards**—On February 17, 2010, the Company granted 1,516,074 service-based restricted stock units to employees that represent the right to receive an equivalent number of shares of the Company's Common Stock (after deducting shares for minimum required statutory withholdings) if and when the units vest. These units will cliff vest on February 17, 2012 if the employee is employed by the Company on that date and carry dividend equivalent rights that entitle the holder to receive dividend payments prior to vesting, if and when dividends are paid on shares of the Company's Common Stock. The grant date fair value of these awards was \$4.7 million. As of June 30, 2010, 1,401,837 of these awards remained outstanding.

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 12—Stock-Based Compensation Plans and Employee Benefits (Continued)**

On March 2, 2010, the Company granted 806,518 performance-based restricted stock units to its Chairman and Chief Executive Officer. These units represent the right to receive an equivalent number of shares of the Company's Common Stock (after deducting shares for minimum required statutory withholdings) if and when the units vest. The performance-based units will cliff vest on March 2, 2012 if certain performance and service conditions have been achieved, relating to reduction in the Company's general and administrative expenses, retirement of debt and continued employment. Upon achievement of the performance conditions prior to the cliff vesting date, these performance-based units thereafter carry dividend equivalent rights that entitle the holder to receive dividend payments, if and when dividends are paid on shares of the Company's Common Stock. The grant date fair value of these performance based units was \$3.2 million. As of June 30, 2010, all of these awards remained outstanding.

**Other Outstanding Awards**—In addition to the awards granted in 2010, noted above, the following awards remained outstanding as of June 30, 2010:

- 2,001,929 service-based restricted stock units with original vesting terms ranging from two to five years that are entitled to be paid dividends if and when dividends are paid on shares of the Company's Common Stock.
- 8,510,000 market-condition based restricted stock units granted to executives and other officers of the Company on December 19, 2008. These units will vest only if specified price targets for the Company's Common Stock are achieved and if the employee is thereafter employed on the vesting date, as follows: (a) if the Common Stock achieves an average price of \$7.00 or more (average NYSE closing price over 20 consecutive trading days) prior to December 19, 2010, the units will vest in two equal installments on January 1, 2011 and January 1, 2012; and (b) if the units do not achieve the \$7.00 average price target, but the Common Stock achieves an average price of \$10.00 or more (average NYSE closing price over 20 consecutive trading days) prior to December 19, 2011, the units will vest in one installment on January 1, 2012. These awards established a \$4.00 average price target for the initial period ended December 19, 2009, which was not achieved, therefore, only the \$7.00 and \$10.00 average price targets remain applicable. If an applicable price target has been achieved, the units will thereafter be entitled to dividend equivalent payments as dividends are paid on the Company's Common Stock.
- 2,000,000 market-condition based restricted stock units contingently awarded to the Company's Chairman and Chief Executive Officer on October 9, 2008 and approved by shareholders on May 27, 2009. These units will cliff vest in one installment on October 9, 2011 only if the total shareholder return on the Company's Common Stock is at least 25% per year (compounded at the end of the three year vesting period, including dividends). Total shareholder return will be based on the average NYSE closing prices for the Company's Common Stock for the 20 days prior to: (a) the date of the award on October 9, 2008 (which was \$3.38); and (b) the vesting date (which must be at least \$6.58 if no dividends are paid). No dividends will be paid on these units prior to vesting.
- 341,199 market-condition based restricted stock units outstanding that were granted to employees on January 18, 2008 and cliff vest on December 31, 2010, only if the total shareholder return on the Company's Common Stock is at least 20% (compounded annually, including dividends) from the date of the award through the end of the vesting period. Total shareholder return will be based on the average NYSE closing prices for the Company's Common Stock for the 20 days prior to (a) the

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 12—Stock-Based Compensation Plans and Employee Benefits (Continued)**

date of the award on January 18, 2008 (which was \$25.04) and (b) the vesting date. No dividends will be paid on these units prior to vesting.

**Stock Options**—As of June 30, 2010, the Company had 142,788 stock options outstanding and exercisable with a weighted average strike price of \$24.87 and a weighted average remaining contractual life of 1.09 years.

**Common Stock Equivalents ("CSEs")**—During the three months ended June 30, 2010, the Company granted 84,573 CSEs to members of the Board of Directors at a grant date fair value of \$5.91 per share. These CSEs have a one-year service vesting period and pay dividends in an amount equal to the dividends paid on the equivalent number of shares of the Company's Common Stock from the date of grant, as and when dividends are paid on the Common Stock. As of June 30, 2010, 281,958 CSEs granted to members of the Company's Board of Directors remained outstanding and had an aggregate intrinsic value of \$1.3 million.

**401(k) Plan**—The Company made gross contributions to its 401(k) Plan of approximately \$0.2 million and \$0.8 million for the three and six months ended June 30, 2010, respectively, and \$0.2 million and \$1.0 million for the three and six months ended June 30, 2009.

**Note 13—Earnings Per Share**

The following table presents a reconciliation of income (loss) from continuing operations used in the basic and diluted EPS calculations (in thousands, except for per share data):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
Income (loss) from continuing operations	\$ (46,986)	\$ (284,415)	\$ (69,958)	\$ (387,280)
Net (income) loss attributable to noncontrolling interests	(544)	271	1	1,514
Preferred dividends	(10,580)	(10,580)	(21,160)	(21,160)
Income (loss) from continuing operations attributable to iStar Financial Inc. and allocable to common shareholders and HPU holders	<u>\$ (58,110)</u>	<u>\$ (294,724)</u>	<u>\$ (91,117)</u>	<u>\$ (406,926)</u>

**iStar Financial Inc.**
**Notes to Consolidated Financial Statements (Continued)**
**(unaudited)**
**Note 13—Earnings Per Share (Continued)**

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
<b>Earnings allocable to common shares:</b>				
<i>Numerator for basic and diluted earnings per share:</i>				
Income (loss) from continuing operations attributable to iStar Financial Inc. and allocable to common shareholders(1)	\$ (56,396)	\$ (286,571)	\$ (88,457)	\$ (395,979)
Income from discontinued operations	10,556	2,374	17,183	6,440
Gain from discontinued operations	258,115	—	258,137	11,304
Net income (loss) attributable to iStar Financial Inc. and allocable to common shareholders	<u>\$ 212,275</u>	<u>\$ (284,197)</u>	<u>\$ 186,863</u>	<u>\$ (378,235)</u>
<i>Denominator (basic and diluted):</i>				
Weighted average common shares outstanding for basic and diluted earnings per common share	<u>93,382</u>	<u>99,769</u>	<u>93,651</u>	<u>102,671</u>
<b>Basic and diluted earnings per common share:</b>				
Income (loss) from continuing operations attributable to iStar Financial Inc. and allocable to common shareholders(1)	\$ (0.60)	\$ (2.87)	\$ (0.94)	\$ (3.85)
Income from discontinued operations	0.11	0.02	0.18	0.06
Gain from discontinued operations	2.76	—	2.76	0.11
Net income (loss) attributable to iStar Financial Inc. and allocable to common shareholders	<u>\$ 2.27</u>	<u>\$ (2.85)</u>	<u>\$ 2.00</u>	<u>\$ (3.68)</u>
<b>Earnings allocable to High Performance Units:</b>				
<i>Numerator for basic and diluted earnings per HPU share:</i>				
Income (loss) from continuing operations attributable to iStar Financial Inc. and allocable to HPU holders(1)	\$ (1,714)	\$ (8,153)	\$ (2,660)	\$ (10,947)
Income from discontinued operations	321	68	521	178
Gain from discontinued operations	7,845	—	7,823	313
Net income (loss) attributable to iStar Financial Inc. and allocable to HPU holders	<u>\$ 6,452</u>	<u>\$ (8,085)</u>	<u>\$ 5,684</u>	<u>\$ (10,456)</u>
<i>Denominator (basic and diluted):</i>				
Weighted average High Performance Units outstanding for basic and diluted earnings per share	<u>15</u>	<u>15</u>	<u>15</u>	<u>15</u>
<b>Basic and diluted earnings per HPU share:</b>				
Income (loss) from continuing operations attributable to iStar Financial Inc. and allocable to HPU holders(1)	\$ (114.27)	\$ (543.53)	\$ (177.33)	\$ (729.81)
Income from discontinued operations	21.40	4.53	34.73	11.87
Gain from discontinued operations	523.00	—	521.53	20.87
Net income (loss) attributable to iStar Financial Inc. and allocable to HPU holders	<u>\$ 430.13</u>	<u>\$ (539.00)</u>	<u>\$ 378.93</u>	<u>\$ (697.07)</u>

**Explanatory Note:**

- (1) Income (loss) from continuing operations attributable to iStar Financial Inc. and allocable to common shareholders and High Performance Units has been adjusted for net (income) loss attributable to noncontrolling interests and preferred dividends (see preceding table).

## iStar Financial Inc.

## Notes to Consolidated Financial Statements (Continued)

(unaudited)

## Note 13—Earnings Per Share (Continued)

For the three and six months ended June 30, 2010 and 2009, the following shares were anti-dilutive (in thousands):

	For the Three and Six Months Ended June 30,	
	2010	2009
Joint venture shares	298	298
Stock options	143	520
Restricted stock units(1)	11,658	12,593

## Explanatory Note:

(1) Anti-dilutive restricted stock units exclude unvested restricted stock units that have dividend equivalent rights as they are considered Participating Securities.

## Note 14—Comprehensive Income (Loss)

The statement of comprehensive income (loss) attributable to iStar Financial, Inc. is as follows (in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
Net income (loss)	\$ 229,851	\$ (281,973)	\$ 213,706	\$ (369,045)
Other comprehensive income:				
Reclassification of (gains)/losses on available-for-sale securities into earnings upon realization	—	—	(4,206)	4,058
Reclassification of (gains)/losses on cash flow hedges into earnings upon realization	(198)	(2,112)	(418)	(3,593)
Unrealized gains/(losses) on available-for-sale securities	(55)	3,472	40	3,472
Unrealized gains/(losses) on cash flow hedges	—	—	—	(30)
Unrealized gains/(losses) on cumulative translation adjustment	(744)	650	(1,428)	(1,232)
Comprehensive income (loss)	228,854	(279,963)	207,694	(366,370)
Net (income) loss attributable to noncontrolling interests	(544)	271	1	1,514
Comprehensive income (loss) attributable to iStar Financial Inc.	\$ 228,310	\$ (279,692)	\$ 207,695	\$ (364,856)

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 14—Comprehensive Income (Loss) (Continued)**

Accumulated other comprehensive income reflected in the Company's shareholders' equity is comprised of the following (in thousands):

	As of	
	June 30, 2010	December 31, 2009
Unrealized gains/(losses) on available-for-sale securities	\$ (207)	\$ 3,959
Unrealized gains on cash flow hedges	3,738	4,156
Unrealized losses on cumulative translation adjustment	(3,398)	(1,970)
Accumulated other comprehensive income	<u>\$ 133</u>	<u>\$ 6,145</u>

**Note 15—Fair Values**

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The following fair value hierarchy prioritizes the inputs used in valuation techniques to measure fair value:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability;

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

Certain of the Company's assets and liabilities are recorded at fair value either on a recurring or non-recurring basis. Assets required to be marked-to-market and reported at fair value every reporting period are classified as being valued on a recurring basis. Other assets not required to be recorded at fair value every period may be recorded at fair value if a specific provision or other impairment is recorded within the period to mark the carrying value of the asset to market as of the reporting date. Such assets are classified as being valued on a non-recurring basis.

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

(unaudited)

**Note 15—Fair Values (Continued)**

The following table summarizes the Company's assets and liabilities recorded at fair value on a recurring and non-recurring basis by the above categories (in thousands):

	Total	Fair Value Using		
		Quoted market prices in active markets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
<b>As of June 30, 2010:</b>				
<b>Recurring basis:</b>				
Financial Assets:				
Derivative assets	\$ 1,233	\$ —	\$ 1,233	\$ —
Marketable securities—equity securities	\$ 294	\$ 294	\$ —	\$ —
<b>Non-recurring basis:</b>				
Financial Assets:				
Impaired loans	\$ 654,365	\$ —	\$ —	\$ 654,365
Non-financial Assets:				
Impaired OREO	\$ 262,459	\$ —	\$ —	\$ 262,459
<b>As of December 31, 2009:</b>				
<b>Recurring basis:</b>				
Financial Assets:				
Derivative assets	\$ 800	\$ —	\$ 800	\$ —
Other lending investments—available-for-sale debt securities	\$ 6,800	\$ 6,800	\$ —	\$ —
Marketable securities—trading debt and equity securities	\$ 38,454	\$ 254	\$ 38,200	\$ —
Financial Liabilities:				
Derivative liabilities	\$ 254	\$ —	\$ 254	\$ —
<b>Non-recurring basis:</b>				
Financial Assets:				
Impaired loans	\$ 1,167,498	\$ —	\$ —	\$ 1,167,498
Non-financial Assets:				
Impaired OREO	\$ 181,540	\$ —	\$ —	\$ 181,540
Impaired assets held for sale	\$ 17,282	\$ —	\$ —	\$ 17,282
Impaired CTL assets	\$ 48,000	\$ —	\$ —	\$ 48,000



**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 15—Fair Values (Continued)**

In addition to the Company's disclosures regarding assets and liabilities recorded at fair value in the financial statements, it is also required to disclose the estimated fair values of all financial instruments, regardless of whether they are recorded at fair value in the financial statements.

The book and estimated fair values of financial instruments were as follows (in thousands)(1):

	<u>As of June 30, 2010</u>		<u>As of December 31, 2009</u>	
	<u>Book Value</u>	<u>Fair Value</u>	<u>Book Value</u>	<u>Fair Value</u>
<b>Financial assets:</b>				
Loans and other lending investments, net	\$ 6,115,092	\$ 5,293,229	\$ 7,661,562	\$ 6,638,840
<b>Financial liabilities:</b>				
Debt obligations, net	\$ 8,619,955	\$ 7,195,828	\$ 10,894,903	\$ 8,115,023

**Explanatory Note:**

- (1) The carrying values of other financial instruments including cash and cash equivalents, restricted cash, accrued interest receivable, accounts payable, accrued expenses and other liabilities approximate the fair values of the instruments. The fair value of other financial instruments, including derivative assets and liabilities and marketable securities are included in the previous table.

Given the nature of certain assets and liabilities, clearly determinable market based valuation inputs are often not available, therefore, these assets and liabilities are valued using internal valuation techniques. Subjectivity exists with respect to these internal valuation techniques, therefore, the fair values disclosed may not ultimately be realized by the Company if the assets were sold or the liabilities were settled with third parties. The methods the Company used to estimate the fair values presented in the two tables are described more fully below for each type of asset and liability.

**Derivatives**—The Company uses interest rate swaps, interest rate caps and foreign currency derivatives to manage its interest rate and foreign currency risk. The valuation of these instruments is determined using discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves, foreign exchange rates, and implied volatilities. The Company incorporates credit valuation adjustments to appropriately reflect both its own non-performance risk and the respective counterparty's non-performance risk in the fair value measurements. In adjusting the fair value of its derivative contracts for the effect of non-performance risk, the Company has considered the impact of netting and any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees. The Company has determined that the significant inputs used to value its derivatives fall within Level 2 of the fair value hierarchy.

**Securities**—All of the Company's available-for-sale and impaired held-to-maturity debt and equity securities are actively traded and have been valued using quoted market prices. The Company's traded marketable securities are valued using market quotes, to the extent they are available, or broker quotes that fall within Level 2 of the fair value hierarchy.

**Impaired loans**—The Company's loans identified as being impaired are generally collateral dependent loans and are evaluated for impairment by comparing the estimated fair value of the underlying collateral,

**iStar Financial Inc.****Notes to Consolidated Financial Statements (Continued)****(unaudited)****Note 15—Fair Values (Continued)**

less costs to sell, to the carrying value of each loan. Due to the nature of the individual properties collateralizing the Company's loans, the Company generally uses a discounted cash flow approach through internally developed valuation models to estimate the fair value of the collateral. This approach requires the Company to make significant judgments in respect to discount rates, capitalization rates and the timing and amounts of estimated future cash flows that are all considered Level 3 inputs. These cash flows generally include property revenues, lot and unit sale prices, operating costs, and costs of completion. In more limited cases, the Company obtains external "as is" appraisals for loan collateral and appraised values may be discounted when real estate markets rapidly deteriorate.

**Impaired OREO**—The Company periodically evaluates its OREO assets to determine if events or changes in circumstances have occurred during the reporting period that may have a significant adverse effect on their fair value. Due to the nature of the individual properties in the OREO portfolio, the Company uses a discounted cash flow approach through internally developed valuation models to estimate the fair value of the assets. This approach requires the Company to make significant judgments with respect to discount rates, capitalization rates and the timing and amounts of estimated future cash flows that are all considered Level 3 inputs. These cash flows include costs of completion, operating costs, and lot and unit sale prices.

**Impaired assets held for sale**—The estimated fair value of impaired assets held for sale is determined using observable market information, typically including bids from prospective purchasers.

**Impaired CTL assets**—If the Company determines a CTL asset is impaired it records an impairment charge to mark the asset to its estimated fair market value. Due to the nature of the individual properties in the CTL portfolio, the Company generally uses the income approach through internally developed valuation models to estimate the fair value of the assets. This approach requires the Company to make significant judgments with respect to discount rates, capitalization rates and the timing and amounts of estimated future cash flows that are all considered Level 3 inputs. These cash flows are primarily based on expected future leasing rates and operating costs.

**Loans and other lending investments**—For the Company's interest in performing loans and other lending investments, the fair values were determined using a discounted cash flow methodology. This method discounts future estimated cash flows using rates management determined best reflect current market interest rates that would be offered for loans with similar characteristics and credit quality.

**Debt obligations, net**—For debt obligations traded in secondary markets, the Company uses market quotes, to the extent they are available to determine fair value. For debt obligations not traded in secondary markets, the Company determines fair value using the discounted cash flow methodology, whereby contractual cash flows are discounted at rates that management determined best reflect current market interest rates that would be charged for debt with similar characteristics and credit quality.

**Note 16—Segment Reporting**

The Company has determined that it has two reportable operating segments: Real Estate Lending and Corporate Tenant Leasing. The reportable segments were determined based on the management approach, which looks to the Company's internal organizational structure. These two lines of business require different support infrastructures. The Real Estate Lending segment includes all of the Company's

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

(unaudited)

**Note 16—Segment Reporting (Continued)**

activities related to senior and mezzanine real estate debt and corporate capital investments, OREO and REHI. The Corporate Tenant Leasing segment includes all of the Company's activities related to the ownership and leasing of corporate facilities.

The Company evaluates performance based on the following financial measures for each segment (in thousands):

	Real Estate Lending(1)	Corporate Tenant Leasing(2)	Corporate/ Other(3)	Company Total
<b>Three months ended June 30, 2010:</b>				
Total revenues(4)	\$ 91,645	\$ 44,363	\$ 788	\$ 136,796
Earnings from equity method investments	—	638	13,112	13,750
Total operating and interest expense(5)	136,190	20,971	110,425	267,586
Net operating income (loss)(6)	(44,545)	24,030	(96,525)	(117,040)
<b>Three months ended June 30, 2009:</b>				
Total revenues(4)	\$ 140,774	\$ 46,348	\$ 5,967	\$ 193,089
Earnings from equity method investments	—	606	1,258	1,864
Total operating and interest expense(5)	469,785	26,322	184,140	680,247
Net operating income (loss)(6)	(329,011)	20,632	(176,915)	(485,294)
<b>Six months ended June 30, 2010:</b>				
Total revenues(4)	\$ 216,131	\$ 89,258	\$ 1,213	\$ 306,602
Earnings from equity method investments	—	1,268	23,912	25,180
Total operating and interest expense(5)	240,760	45,370	224,391	510,520
Net operating income (loss)(6)	(24,629)	45,156	(199,266)	(178,738)
<b>Six months ended June 30, 2009:</b>				
Total revenues(4)	\$ 317,405	\$ 93,781	\$ 8,715	\$ 419,901
Earnings (loss) from equity method investments	—	1,268	(19,904)	(18,636)
Total operating and interest expense(5)	756,410	53,978	333,413	1,143,801
Net operating income (loss)(6)	(439,005)	41,071	(344,602)	(742,536)
<b>As of June 30, 2010:</b>				
Total long-lived assets(7)	\$ 7,642,212	\$ 1,849,423	\$ —	\$ 9,491,635
Total assets	7,703,948	1,982,554	967,402	10,653,904
<b>As of December 31, 2009:</b>				
Total long-lived assets(7)	\$ 8,923,367	\$ 2,903,178	\$ —	\$ 11,826,545
Total assets	8,999,558	3,149,783	661,234	12,810,575

**Explanatory Notes:**

- 
- (1) Real Estate Lending includes the Company's OREO and REHI assets and related operating revenue and expenses.
- (2) Net operating income (loss) excludes amounts related to discontinued operations as these amounts have been reclassified to "Income from discontinued operations" on the Company's Consolidated Statements of Operations (see Note 6).

**iStar Financial Inc.**

**Notes to Consolidated Financial Statements (Continued)**

**(unaudited)**

**Note 16—Segment Reporting (Continued)**

- (3) Corporate/Other represents all corporate level items, including general and administrative expenses and any intercompany eliminations necessary to reconcile to the consolidated Company totals. This caption also includes the Company's non-CTL related joint venture investments and strategic investments.
- (4) Total revenue represents all revenue earned during the period from the assets in each segment. Revenue from the Real Estate Lending segment primarily represents interest income and revenue from the Corporate Tenant Leasing segment primarily represents operating lease income.
- (5) Total operating and interest expense primarily includes provision for loan losses for the Real Estate Lending business and operating costs on CTL assets for the Corporate Tenant Leasing business, as well as interest expense specifically related to each segment. Interest expense on secured and unsecured notes, secured and unsecured revolving credit facilities and general and administrative expense are included in Corporate/Other for all periods. Depreciation and amortization of \$16.7 million and \$32.9 million for the three and six months ended June 30, 2010, respectively, and \$16.0 million and \$30.9 million for the three and six months ended June 30, 2009, respectively, are included in the amounts presented above.
- (6) Net operating income (loss) represents income attributable to iStar Financial Inc. before gain on early extinguishment of debt, income from discontinued operations and gain from discontinued operations.
- (7) Total long-lived assets include Loans and other lending investments, net, REHI and OREO for the Real Estate Lending segment, and Corporate tenant lease assets, net and Assets held for sale for the Corporate Tenant Leasing segment.

**Note 17—Subsequent Events**

On July 29, 2010, the Company acquired an ownership interest of approximately 24% in LNR Property Corporation ("LNR") as part of its recapitalization. LNR is a servicer and special servicer of commercial mortgage loans and CMBS and a diversified real estate, investment, finance and management company. In the transaction, the Company and a group of investors, including other creditors of LNR, acquired 100% of the common stock of LNR in exchange for cash and the extinguishment of existing senior notes of LNR's parent holding company (the "Holdco Notes"). The Company's share of the consideration paid was \$100 million in cash and \$100 million aggregate principal amount of Holdco Notes. LNR used the cash proceeds received from the issuance of the common stock plus other cash on hand to pay down a portion of its existing senior term loan. As a lender under the senior term loan, the Company's loan was paid down from an original principal balance of \$102.0 million to \$50.8 million. As part of the recapitalization, for so long as the Company maintains a specified ownership interest in LNR, the Company will have the right to designate two members to LNR's board of managers (or the equivalent thereof).

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Certain statements in this report, other than purely historical information, including estimates, projections, statements relating to our business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements are included with respect to, among other things, iStar Financial Inc.'s (the "Company's") current business plan, business strategy, portfolio management, prospects and liquidity. These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "plan," "may," "should," "will," "would," "will be," "will continue," "will likely result," and similar expressions. Forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results or outcomes to differ materially from those contained in the forward-looking statements. We undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise. In assessing all forward-looking statements, readers are urged to read carefully all cautionary statements contained in this Form 10-Q and the uncertainties and risks described in Item 1a—"Risk Factors" in our 2009 Annual Report (as defined below), all of which could affect our future results of operations, financial condition and liquidity. For purposes of Management's Discussion and Analysis of Financial Condition and Results of Operations, the terms "we," "our" and "us" refer to iStar Financial Inc. and its consolidated subsidiaries, unless the context indicates otherwise.

The discussion below should be read in conjunction with our consolidated financial statements and related notes in this quarterly report on form 10-Q and our annual report on Form 10-K for the year ended December 31, 2009 (the "2009 Annual Report"). These historical financial statements may not be indicative of our future performance. We have reclassified certain items in our consolidated financial statements of prior periods to conform to our current financial statements presentation.

### **Introduction**

iStar Financial Inc. is a publicly traded finance company focused on the commercial real estate industry. We primarily provide custom tailored financing to high-end private and corporate owners of real estate, including senior and mezzanine real estate debt, senior and mezzanine corporate capital, as well as corporate net lease financing and equity. We are taxed as a real estate investment trust, or "REIT" and provide innovative and value added financing solutions to our customers. We deliver customized financial products to sophisticated real estate borrowers and corporate customers who require a high level of flexibility and service. Our two primary lines of business are lending and corporate tenant leasing. As discussed below, our business has been severely affected by the financial crisis. We have significantly curtailed our asset origination activities and have focused our resources on asset management and seeking to maximize recoveries from asset resolutions.

Our loan portfolio is primarily comprised of senior and mezzanine real estate loans that typically range in size from \$20 million to \$150 million and have original terms generally ranging from three to ten years. These loans may be either fixed-rate (based on the U.S. Treasury rate plus a spread) or variable-rate (based on LIBOR plus a spread) and are structured to meet the specific financing needs of the borrowers. Our portfolio also includes senior and subordinated loans to corporations, particularly those engaged in real estate or real estate related businesses. These financings may be either secured or unsecured, typically range in size from \$20 million to \$150 million and have initial maturities generally ranging from three to ten years. We also own whole loans, loan participations and debt securities.

Our corporate tenant leases ("CTLs") provide capital to corporations and other owners who control facilities leased to single creditworthy customers. Our net leased assets are generally mission critical

headquarters or distribution facilities that are subject to long-term leases with public companies, many of which are rated corporate credits. Most of the leases provide for expenses at the facility to be paid by the corporate customer on a triple net lease basis. CTL transactions have initial terms generally ranging from 15 to 20 years and typically range in size from \$20 million to \$150 million. As discussed below, we sold a significant portion of our CTL assets in a portfolio sale transaction that closed in June 2010.

Our primary sources of revenues are interest income, which is the interest that borrowers pay on loans, and operating lease income, which is the rent that corporate customers pay to lease our CTL properties. We primarily generate income through the "spread" or "margin," which is the difference between the revenues generated from loans and leases and interest expense and the cost of CTL operations.

We began our business in 1993 through private investment funds and became publicly traded in 1998. Since that time, we have grown through the origination of new lending and leasing transactions, as well as through corporate acquisitions, including the acquisition of TriNet Corporate Realty Trust, Inc. in 1999, the acquisitions of Falcon Financial Investment Trust and of a significant non-controlling interest in Oak Hill Advisors, L.P. and affiliates in 2005, and the acquisition of the commercial real estate lending business and loan portfolio, or "Fremont CRE," of Fremont Investment and Loan, or "Fremont," a division of Fremont General Corporation, in 2007.

### ***Executive Overview***

During the quarter ended June 30, 2010, we recorded net income of \$229.3 million primarily driven by the recognition of a \$250.3 million in gain from discontinued operations, resulting from the sale of a portfolio of 32 CTL assets and recognized \$70.1 million in net gains on the early extinguishment of debt resulting from repayments and repurchases of debt. This was offset by a provision for loan losses of \$109.4 million and impairments of other assets of \$12.2 million that were recognized during the quarter. Non-performing loans decreased to \$2.96 billion or 39.9% of Managed Loan Value (as defined below in "Risk Management") as of June 30, 2010, compared to \$4.21 billion or 45.3% of Managed Loan Value at December 31, 2009. The level of non-performing loans is a result of the continued distress in the commercial and residential real estate markets and weakened economic conditions impacting our borrowers, who continue to have difficulty servicing their debt and refinancing or selling their projects in order to repay their loans in a timely manner. The balance of our real estate held for investment ("REHI") and other real estate owned ("OREO") assets have increased from \$1.26 billion as of December 31, 2009 to \$1.53 billion as of June 30, 2010, as we have obtained title to properties through foreclosure or through deed-in-lieu of foreclosure as part of our effort to resolve non-performing loans.

Financial market conditions, including the economic recession and tightening of credit markets, have continued to significantly impact the commercial real estate market and financial services industry. The severe economic downturn led to a decline in commercial real estate values which, combined with a lack of available debt financing for commercial and residential real estate assets, have limited borrowers' ability to repay or refinance their loans. Further, the ability of many of our borrowers to sell units in residential projects has been adversely impacted by the difficult economic conditions and the lack of end loan financing available to residential unit purchasers. These factors have adversely affected our business, financial condition and operating performance, resulting in significant levels of non-performing assets and provisions for loan losses, increasing amounts of real estate owned and real estate held for investment as we have foreclosed on defaulting borrowers and a reduction in available liquidity. The economic conditions and their effect on our operations have also resulted in increases in our financing costs, a continuing inability to access the unsecured debt markets, depressed prices for our Common Stock, the continued suspension of quarterly Common Stock dividends and narrower margins of compliance by us with our debt covenants.

We have responded to the adverse market conditions by implementing various initiatives, including curtailing our asset origination activities in favor of asset management, reducing our balance sheet through asset sales, repurchasing our debt at a discount to par and deleveraging. We have been able to partially mitigate the impact of the decline in operating results through the recognition of gains associated with sales of assets and the repurchase and retirement of debt at a discount, which have enabled us to maintain compliance with our debt covenants and to reduce outstanding indebtedness. We expect to use such initiatives and other strategies, as available, to offset declines in operating results; however our ability to retire additional debt at a discount is limited by covenants in our secured bank credit facilities, as described further in Debt Covenants below. There can be no assurance that our efforts in this regard will be successful. Our plans are dynamic and we expect to adjust our plans as market conditions change.

From a liquidity perspective, we expect to continue to experience significant uncertainty with respect to our sources of funds. Our capital sources in today's financing environment primarily include repayments from our loan assets, proceeds from asset sales, secured financings and possibly other capital raising transactions. These sources may be affected by a variety of factors, many of which are outside of our control, including general economic and financing conditions, volatility in the financial markets, our borrowers' ability to repay their obligations and levels of demand from buyers of commercial real estate assets. As of June 30, 2010, we had \$531.5 million of unrestricted cash. We had approximately \$136.2 million aggregate principal amount of indebtedness maturing during the remainder of 2010 and approximately \$2.66 billion aggregate principal amount of indebtedness maturing on or before June 30, 2011. We will need additional liquidity to supplement expected loan repayments and cash generated from operations in order to meet our debt maturities and funding obligations. During the quarter ended June 30, 2010, we generated \$1.56 billion in proceeds from asset sales and retired \$1.76 billion of debt. We expect to continue to utilize asset sales and other available capital sources as means of generating liquidity to reduce our outstanding debt obligations, while at the same time exploring alternatives for realigning the long-term structure of our assets and liabilities. In May 2010, we announced that we retained a third party advisor to assist us in exploring such alternatives which could include, among other things, refinancing and/or restructuring some or all of our outstanding indebtedness. There can be no assurance that we will be able to execute such alternatives or generate sufficient liquidity to meet our cash needs.

Our primary recourse debt instruments include our secured and unsecured bank credit facilities and our secured and unsecured debt securities. We believe we are in compliance with all the covenants in those debt instruments as of June 30, 2010, however, our financial results have put pressure on our ability to maintain compliance with certain of our debt covenants. We intend to operate our business in order to remain in compliance with our debt covenants; however, it is possible that we will not be able to do so.

A failure by us to refinance or repay our indebtedness as it comes due, or to satisfy a covenant, would likely trigger a default or an event of default which could give the lenders under the affected indebtedness the ability to accelerate the debt. Most of our recourse debt instruments contain cross default and/or cross-acceleration provisions which may be triggered by defaults or accelerations of our recourse debt above specified thresholds. If we are unable to refinance or repay our debt as it comes due, our business, financial condition, results of operations and Common Stock price will be materially and adversely affected.

**Results of Operations for the Three Months Ended June 30, 2010 compared to the Three Months Ended June 30, 2009**

	For the Three Months Ended June 30,		\$ Change	% Change
	2010	2009		
	(in thousands)			
Interest income	\$ 86,469	\$ 142,181	\$ (55,712)	(39)%
Operating lease income	44,365	45,351	(986)	(2)%
Other income	5,962	5,557	405	7%
Total revenue	<u>136,796</u>	<u>193,089</u>	<u>(56,293)</u>	<u>(29)%</u>
Interest expense	82,313	110,532	(28,219)	(26)%
Operating costs—corporate tenant lease assets	2,570	3,881	(1,311)	(34)%
Depreciation and amortization	16,726	16,034	692	4%
General and administrative	25,114	33,691	(8,577)	(25)%
Provision for loan losses	109,359	435,016	(325,657)	(75)%
Impairment of other assets	12,195	22,232	(10,037)	(45)%
Other expense	19,309	58,861	(39,552)	(67)%
Total costs and expenses	<u>267,586</u>	<u>680,247</u>	<u>(412,661)</u>	<u>(61)%</u>
Gain on early extinguishment of debt, net	70,054	200,879	(130,825)	(65)%
Earnings from equity method investments	13,750	1,864	11,886	>100%
Income from discontinued operations	10,877	2,442	8,435	>100%
Gain from discontinued operations	265,960	—	265,960	100%
Net income (loss)	<u>\$ 229,851</u>	<u>\$ (281,973)</u>	<u>\$ 511,824</u>	<u>&gt;100%</u>

*Revenue*—The decrease in interest income is primarily a result of a decline in the balance of performing loans to \$4.40 billion at June 30, 2010 from \$6.62 billion at June 30, 2009. The primary factors that contributed to the decline in income generating loans were performing loans moving to non-performing status and, to a lesser extent, a smaller asset base resulting from loan repayments and sales (see "Risk Management" for additional discussion of non-performing loans).

*Costs and expenses*—The significant decline in our provision for loan losses was primarily due to fewer loans moving to non-performing status during the three months ended June 30, 2010 as compared to the same period of 2009, resulting in lower specific reserve provisions. Additionally, the decline in the performing loan asset base, resulting primarily from loan repayments and sales, resulted in a lower general reserve provision. See "Risk Management."

Interest expense decreased primarily due to the repayment and retirement of debt during the last twelve months as well as the exchange of senior unsecured notes for new second-lien senior secured notes completed during the three months ended June 30, 2009. The carrying value of our debt declined 27.1% to \$8.62 billion at June 30, 2010 from \$11.83 billion at June 30, 2009. In addition, average rates decreased to 4.05% for the three months ended June 30, 2010 from 4.11% during the same period in 2009.

Other expense was lower primarily due to a \$42.4 million charge incurred in 2009 pursuant to a settlement agreement under which we terminated a long-term lease for new headquarters space and settled all disputes with the landlord. This charge was partially offset by increased holding costs associated with the increasing number of OREO and REHI properties.

Impairment of other assets declined primarily due to lower impairment charges recorded on our OREO assets during the three months ended June 30, 2010 as compared to the same period in 2009.

General and administrative expenses decreased \$5.0 million related to lower payroll and compensation expenses, primarily driven by a reduction in headcount, and \$2.1 million due to rent expense



incurred during the second quarter of 2009 relating to a lease for new headquarters space which was terminated in May 2009.

*Gain on early extinguishment of debt, net*—During the three months ended June 30, 2010, we retired \$234.9 million par value of our senior unsecured notes through open market repurchases, and redeemed \$282.3 million of senior secured notes, all of which resulted in an aggregate gain on early extinguishment of debt of \$77.7 million. These gains were offset by \$7.6 million associated with the write-off of unamortized deferred financing costs and other expenses incurred in connection with the repayments of our \$947.9 million non-recourse term loan and another secured term loan that were collateralized by CTL assets we sold during the period.

During the same period in 2009, we repurchased and retired \$384.3 million par value of our senior unsecured notes and completed our secured note exchange transactions which resulted in an aggregate gain on early extinguishment of debt of \$200.9 million.

*Earnings from equity method investments*—The increase in earnings from equity method investments was primarily attributable to better market performance that affected our strategic investments during the three months ended June 30, 2010 as compared to the same period in 2009.

*Income from discontinued operations*—The increase in income from discontinued operations was primarily due to lower depreciation expense on the portfolio of 32 CTL assets that was sold during the three months ended June 30, 2010.

*Gain from discontinued operations*—We sold a total of 36 CTL assets during the three months ended June 30, 2010, and recognized aggregate gains of \$266.0 million. During the three months ended June 30, 2009, we sold one asset and recognized no gains or losses on the sale.

### Results of Operations for the Six Months Ended June 30, 2010 compared to the Six Months Ended June 30, 2009

	For the Six Months Ended June 30,		\$ Change	% Change
	2010	2009		
	(in thousands)			
Interest income	\$ 203,085	\$ 319,408	\$ (116,323)	(36)%
Operating lease income	89,264	92,429	(3,165)	(3)%
Other income	14,253	8,064	6,189	77%
Total revenue	306,602	419,901	(113,299)	(27)%
Interest expense	169,529	225,162	(55,633)	(25)%
Operating costs—corporate tenant lease assets	6,764	8,556	(1,792)	(21)%
Depreciation and amortization	32,867	30,910	1,957	6%
General and administrative	52,330	69,314	(16,984)	(25)%
Provision for loan losses	198,828	693,112	(494,284)	(71)%
Impairment of other assets	13,209	47,563	(34,354)	(72)%
Other expense	36,993	69,184	(32,191)	(47)%
Total costs and expenses	510,520	1,143,801	(633,281)	(55)%
Gain on early extinguishment of debt, net	108,780	355,256	(246,476)	(69)%
Earnings (loss) from equity method investments	25,180	(18,636)	43,816	>100%
Income from discontinued operations	17,704	6,618	11,086	>100%
Gain from discontinued operations	265,960	11,617	254,343	>100%
Net income (loss)	\$ 213,706	\$ (369,045)	\$ 582,751	>100%

*Revenue*—The significant decrease in interest income is primarily a result of a decline in the balance of performing loans to \$4.40 billion at June 30, 2010 from \$6.62 billion at June 30, 2009. The primary

factors that contributed to the decline in income generating loans were performing loans moving to non-performing status and, to a lesser extent, a smaller asset base resulting from loan repayments and sales (see "Risk Management" for additional discussion of non-performing loans). The decrease was partially offset by \$15.1 million of interest income recorded during the six months ended June 30, 2010, related to a non-performing loan that was repaid in full, including interest not previously recorded due to the loan being on non-accrual status.

Operating lease income from our CTL assets decreased due to an increase in tenant vacancies and lower rent on lease restructurings.

The change in other income was primarily driven by an increase in prepayment penalties received and operating income from real estate held for investment.

*Costs and expenses*—The significant decline in our provision for loan losses was primarily due to fewer loans moving to non-performing status during the six months ended June 30, 2010 as compared to the same period in 2009 resulting in lower specific reserve provisions. Additionally, the decline in the performing loan asset base, resulting from loan repayments and sales, resulted in a lower general reserve provision. See "Risk Management."

Interest expense decreased primarily due to the repayment and retirement of debt during the last twelve months as well as the exchange of senior unsecured notes for new second-lien senior secured notes completed in the second quarter of 2009. The carrying value of our debt declined 27.1% to \$8.62 billion at June 30, 2010 from \$11.83 billion at June 30, 2009. In addition, average rates decreased to 4.09% for the six months ended June 30, 2010 from 4.14% during the same period in 2009.

Impairment of other assets declined primarily because we recognized \$14.5 million of impairment charges during the six months ended June 30, 2009 for certain of our securities and equity investments which did not recur in 2010. We also recorded an impairment of goodwill of \$4.2 million during the six months ended June 30, 2009 to eliminate the remaining goodwill that we had related to our corporate tenant leasing reporting unit. The remaining decrease is due to lower impairment charges on our OREO assets.

Other expense was lower primarily due to a \$42.4 million charge incurred in 2009 pursuant to a settlement agreement under which we terminated a long-term lease for new headquarters space and settled all disputes with the landlord. This charge was partially offset by increased holding costs, associated with the increasing number of OREO and REHI properties.

General and administrative expenses decreased \$10.1 million related to lower payroll and compensation expenses, primarily driven by a reduction in head count, and \$5.9 million due to rent expense incurred during the first half of 2009 relating to a lease for new headquarters space which was terminated in May 2009.

*Gain on early extinguishment of debt, net*—During the six months ended June 30, 2010, we retired \$457.5 million par value of our senior secured and unsecured notes through open market repurchases, and we redeemed \$282.3 million of senior secured notes, all of which resulted in an aggregate gain on early extinguishment of debt of \$116.4 million. These gains were offset by \$7.6 million associated with the write-off of unamortized deferred financing costs and other expenses incurred in connection with the repayments of our \$947.9 million non-recourse term loan and another secured term loan that were collateralized by CTL assets we sold during the period.

During the same period in 2009, we repurchased and retired \$670.7 million par value of our senior unsecured notes and completed our secured note exchange transactions which resulted in an aggregate gain on early extinguishment of debt of \$355.3 million.

*Earnings (loss) from equity method investments*—The increase in earnings from equity method investments was primarily attributable to better market performance that affected our strategic investments for the six months ended June 30, 2010 as compared to the same period in 2009. In addition, during the six months ended June 30, 2009, we recorded a \$9.4 million non-cash out of period charge to

recognize losses from an equity method investment as a result of additional depreciation expense that should have been recorded at the equity method entity in prior periods.

*Income from discontinued operations*—The increase in income from discontinued operations was primarily due to lower depreciation expense on the portfolio of 32 CTL assets that was sold during the six months ended June 30, 2010.

*Gain from discontinued operations*—We sold a total of 38 CTL assets during the six months ended June 30, 2010, and recognized aggregate gains of \$266.0 million. During the six months ended June 30, 2009, we sold three CTL assets and recognized gains of approximately \$11.6 million.

### Adjusted Earnings

We measure our performance using adjusted earnings in addition to net income. Adjusted earnings represent net income attributable to iStar Financial Inc. and allocable to common shareholders, HPU holders and Participating Security holders computed in accordance with GAAP, before depreciation, amortization, gain from discontinued operations, impairments of goodwill and intangible assets and extraordinary items. Adjustments for joint ventures reflect our share of adjusted earnings calculated on the same basis.

We believe that adjusted earnings is a helpful measure to consider, in addition to net income (loss), because this measure helps us to evaluate how our commercial real estate finance business is performing compared to other commercial finance companies, without the effects of certain GAAP adjustments that are not necessarily indicative of current operating performance.

The most significant GAAP adjustments that we exclude in determining adjusted earnings are depreciation and amortization which are typically non-cash charges. As a commercial finance company that focuses on real estate lending and corporate tenant leasing, we record significant depreciation on our real estate assets, and deferred financing amortization associated with our borrowings. Depreciation and amortization do not affect our daily operations, but they do impact financial results under GAAP. Adjusted earnings is not an alternative or substitute for net income (loss) in accordance with GAAP as a measure of our performance. Rather, we believe that adjusted earnings is an additional measure that helps us analyze how our business is performing. Adjusted earnings should not be viewed as an alternative measure of either our operating liquidity or funds available for our cash needs or for distribution to our shareholders. In addition, we may not calculate adjusted earnings in the same manner as other companies that use a similarly titled measure.

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2010	2009	2010	2009
	(In thousands)			
Adjusted earnings:				
Net income (loss)	\$ 229,851	\$ (281,973)	\$ 213,706	\$ (369,045)
Add: Depreciation and amortization	16,934	24,579	38,687	48,078
Add: Joint venture depreciation and amortization	1,848	3,506	3,731	14,194
Add: Impairment of goodwill and intangible assets	—	—	—	4,186
Add: Net (income) loss attributable to noncontrolling interests	(544)	271	1	1,514
Less: Gain from discontinued operations	(265,960)	—	(265,960)	(11,617)
Less: Deferred financing amortization	(57,518)	6,966	(79,905)	12,126
Less: Preferred dividends	(10,580)	(10,580)	(21,160)	(21,160)
Adjusted diluted earnings (loss) attributable to iStar Financial, Inc. and allocable to common shareholders and HPU holders	<u>\$ (85,969)</u>	<u>\$ (257,231)</u>	<u>\$ (110,900)</u>	<u>\$ (321,724)</u>

**Risk Management**

**Loan Credit Statistics**—The table below summarizes our non-performing loans and details the reserve for loan losses associated with our loans:

	As of June 30, 2010	As of December 31, 2009
<b>Non-performing loans</b>		
Carrying value	\$ 2,880,823	\$ 3,910,922
Participated portion	75,335	298,333
Managed Loan Value(1)	\$ 2,956,158	\$ 4,209,255
As a percentage of Managed Loan Value of total loans(2)	39.9%	45.3%
<b>Watch list loans</b>		
Carrying value	\$ 1,016,911	\$ 697,138
Participated portion	9,819	20,561
Managed Loan Value(1)	\$ 1,026,730	\$ 717,699
As a percentage of Managed Loan Value of total loans(2)	13.8%	7.7%
<b>Reserve for loan losses</b>	<b>\$ 1,181,288</b>	<b>\$ 1,417,949</b>
As a percentage of Managed Loan Value of total loans(2)	15.9%	15.3%
As a percentage of Managed Loan Value of non-performing loans	40.0%	33.7%
<b>Other real estate owned</b>		
Carrying value	\$ 890,881	\$ 839,141
<b>Real estate held for investment, net</b>		
Carrying value	\$ 636,239	\$ 422,664

**Explanatory Notes:**

- (1) Managed Loan Value of a loan is computed by adding our carrying value of the loan and the participation interest sold on the Fremont CRE portfolio. The participation receives 70% of all loan principal payments including principal that we have funded. Therefore we are in the first loss position and we believe that presentation of the Managed Loan Value is more relevant than a presentation of our carrying value when discussing our risk of loss on the loans in the Fremont CRE Portfolio.
- (2) Managed Loan Value of total loans was \$7,414,916 and \$9,289,975 as of June 30, 2010 and December 31, 2009, respectively.

As of June 30, 2010, non-performing loans and OREO and REHI assets had the following collateral and property type characteristics (\$ in thousands):

Collateral/Property Type	Non-performing Loans	OREO	REHI	Total	% of Total
Land	\$ 847,759	\$ 110,802	\$ 453,711	\$ 1,412,272	32.0%
<b>Condo:</b>					
Construction—Completed	554,095	394,864	—	948,959	21.5%
Construction—In Progress	168,413	21,311	—	189,724	4.3%
Conversion	36,755	113,093	—	149,848	3.4%
Subtotal Condo	759,263	529,268	—	1,288,531	29.2%
Mixed Use/Mixed Collateral	316,264	69,100	19,103	404,467	9.2%
Retail	311,730	45,644	8,679	366,053	8.3%
Entertainment/Leisure	268,145	—	—	268,145	6.1%
Hotel	88,796	49,800	68,425	207,021	4.7%
Corporate—Real Estate	165,873	—	—	165,873	3.8%
Multifamily	40,900	81,067	29,588	151,555	3.4%
Industrial/R&D	27,008	5,200	49,380	81,588	1.9%
Office	53,009	—	7,353	60,362	1.4%
Other	2,076	—	—	2,076	0.0%
Gross carrying value	\$ 2,880,823	\$ 890,881	\$ 636,239	\$ 4,407,943	100.0%

**Non-Performing Loans**—We designate loans as non-performing at such time as: (1) the loan becomes 90 days delinquent; (2) the loan has a maturity default; or (3) management determines it is probable that it will be unable to collect all amounts due according to the contractual terms of the loan. All non-performing loans are placed on non-accrual status and income is only recognized in certain cases upon actual cash receipt. As of June 30, 2010, we had non-performing loans with an aggregate carrying value of \$2.88 billion and an aggregate Managed Loan Value of \$2.96 billion, or 39.9% of the Managed Loan Value of total loans. Our non-performing loans decreased during the first half of 2010, primarily due to sales and repayments as well as transfers of non-performing loans to OREO and REHI. Due to the continued volatility of the commercial real estate market, the process of estimating collateral values and reserves continues to require significant judgment on the part of management. Management currently believes there is adequate collateral and reserves to support the carrying values of the loans.

**Watch List Assets**—We conduct a quarterly credit review resulting in an individual risk rating being assigned to each asset in our portfolio. This review is designed to enable management to evaluate and manage asset-specific credit issues and identify credit trends on a portfolio-wide basis. As of June 30, 2010, we had assets on the watch list, (excluding non-performing loans), with an aggregate carrying value of \$1.02 billion and an aggregate Managed Loan Value of \$1.03 billion, or 13.8% of total Managed Loan Value.

**Reserve for Loan Losses**—As of June 30, 2010, the reserve for loan losses represented 15.9% of Managed Loan Value compared to 15.3% at December 31, 2009. This was the result of \$198.8 million of provisioning for loan losses, reduced by \$435.5 million of charge-offs during the first half of 2010 and combined with a lower loan portfolio balance. The reserve is increased through the provision for loan losses, which reduces income in the period recorded and the reserve is reduced through charge-offs.

The reserve for loan losses includes an asset-specific component and a formula-based component. An asset-specific reserve is established for an impaired loan when the estimated fair value of the loan's collateral less costs to sell is lower than the carrying value of the loan. As of June 30, 2010, we had asset-specific reserves of \$1.01 billion or 34.1% of non-performing loans compared to asset-specific reserves of \$1.24 billion or 29.5% of non-performing loans at December 31, 2009. The decrease in asset-specific reserves during the six months ended June 30, 2010 was primarily due to charge-offs recorded upon sale, repayment or transfers of loans to OREO and REHI.

The formula-based general reserve is derived from estimated principal default probabilities and loss severities applied to groups of loans based upon risk ratings assigned to loans with similar risk characteristics during our quarterly loan portfolio assessment. During this assessment we perform a comprehensive analysis of our loan portfolio and assign risk ratings to loans that incorporate management's current judgments about their credit quality based on all known relevant internal and external factors that may affect collectability. We consider, among other things, payment status, lien position, borrower financial resources and investment in collateral, collateral type, project economics and geographical location as well as national and regional economic factors. This methodology results in loans being segmented by risk classification into risk rating categories that are associated with estimated probabilities of default and principal loss. We estimate loss rates based on historical realized losses experienced within our portfolio and take into account current economic conditions affecting the commercial real estate market when establishing appropriate time frames to evaluate loss experience.

The general reserve was \$174.1 million or 3.9% of performing loans as of June 30, 2010, compared to \$174.9 million or 3.4% of performing loans at December 31, 2009. The decrease in the general reserve balance resulted from the decrease in the population of performing loans outstanding from \$5.1 billion to \$4.5 billion, offset in part by a slight weakening in the weighted average risk ratings of performing loans outstanding during that same period.

**Real Estate Held for Investment, net and Other Real Estate Owned**—During the six months ended June 30, 2010, we received title to properties in full or partial satisfaction of non-performing mortgage loans with a

carrying value of \$782.6 million, for which the properties had served as collateral, and recorded charge-offs totaling \$268.9 million related to these loans. Of this total, we recorded properties with a carrying value of \$197.8 million to REHI and \$315.9 million to OREO based on our strategy to either hold the properties over a longer period or to market them for sale. During the six months ended June 30, 2010, we sold OREO assets with a carrying value of \$237.9 million and recorded impairment charges totaling \$17.1 million due to changing market conditions.

**CTL—Tenant Characteristics**—As of June 30, 2010, our CTL assets consisted of 83 leases among 65 different tenants. GAAP rental income generated by these leases is 45% from government agencies and public companies and 55% from private companies. The CTL portfolio has a weighted average lease term of 13 years.

### **Liquidity and Capital Resources**

For the remainder of 2010, we have \$136.2 million of debt maturities and we currently expect to use approximately \$300.0 million in other net uses of cash for loan commitments, investment activities and operating expenses. However, the timing of funding these commitments and the amounts of the individual fundings are largely dependent on construction projects meeting certain milestones, and therefore they are difficult to predict with certainty. In addition, under the terms of our First Priority Credit Agreement, (as discussed below), if we do not pay down the outstanding balance of that loan by \$500 million by September 30, 2010 and an additional \$500 million by March 31, 2011, payments of principal and net sale proceeds received by us in respect of assets constituting collateral for our obligations under this agreement must be applied toward the mandatory prepayment of the loan and commitment reductions under the agreement. In addition, we have approximately \$2.66 billion of 2011 debt maturities, which comes due on or before June 30, 2011.

Our capital sources in today's financing environment include repayments from our loan assets, proceeds from asset sales, secured financings and possibly other capital raising transactions. From a liquidity perspective, we expect to continue to experience significant uncertainty with respect to our sources of funds. Historically we have also issued unsecured corporate debt, convertible debt and preferred and common equity; however, current market conditions have effectively eliminated our access to these sources of capital in the near term.

During the quarter ended June 30, 2010, we received gross principal repayments of \$508.8 million and \$1.56 billion in proceeds from asset sales. We funded \$131.0 million of pre-existing commitments, provided \$105.6 million of mezzanine loans associated with financing the sale of a portfolio of 32 CTL assets, and repaid outstanding debt of \$1.76 billion, including repurchases and redemptions of senior secured and unsecured notes, resulting in the recognition of \$70.1 million in net gain on the early extinguishment of debt during the quarter. To date, we have been able to partially mitigate the impact of increased expenses associated with our loan loss reserves and other impairments on some of our financial covenants through the recognition of gains associated with the extinguishment of debt and asset sales. Subject to certain limitations imposed by our secured bank credit facilities, we may from time to time seek to retire or repurchase additional outstanding debt through cash purchases and/or exchanges, which may take the form of open market purchases, privately negotiated transactions or otherwise, however, there can be no assurance that our efforts in this regard will be successful.

As of June 30, 2010, we had \$531.5 million of unrestricted cash. We will need additional liquidity over the coming year to supplement loan repayments and cash generated from operations in order to meet our debt maturities and funding obligations. We actively manage our liquidity and continually work on initiatives to address both our debt covenants compliance and our liquidity needs. We expect proceeds from asset sales to supplement loan repayments and intend to continue to analyze additional asset sales, secured financing alternatives and other available capital sources as means of generating liquidity to reduce our outstanding debt obligations, while at the same time exploring alternatives for realigning the long-term structure of our assets and liabilities. In May 2010, we announced that we retained a third party

advisor to assist us in exploring such alternatives which could include, among other things, refinancing and/or restructuring some or all of our outstanding indebtedness. There can be no assurance we will be able to execute such alternatives or generate sufficient liquidity to meet our cash needs.

In addition, under the terms of our credit agreements, we can issue a total of up to \$1.0 billion of second priority secured notes in exchange or refinancing transactions involving our unsecured notes. After giving effect to the private exchange offers in May 2009, we can issue up to \$365.2 million of new notes in exchange or refinancing transactions. Our liquidity plan is dynamic and we expect to monitor the markets and adjust our plan as market conditions change. There is a risk that we will not be able to meet all of our funding and debt service obligations or maintain compliance with our debt covenants. Management's failure to successfully implement our liquidity plan would have a material adverse effect on our business, financial condition, results of operations, cash flows and common stock price.

Compliance with our debt covenants will also impact our ability to obtain additional debt and equity financing. In addition, any decision by our lenders and investors to provide us with additional financing or to restructure our existing indebtedness may depend upon a number of other factors, such as our compliance with the terms of existing credit arrangements, our financial performance, our credit ratings, industry or market trends, the general availability of and rates applicable to financing transactions, such lenders' and investors' resources and policies concerning the terms under which they make capital commitments and the relative attractiveness of alternative investment or lending opportunities.

The following table outlines the contractual obligations related to our long-term debt agreements and operating lease obligations as of June 30, 2010.

	Principal And Interest Payments Due By Period					
	Total	Less Than 1 Year(1)	2 - 3 Years(1)	4 - 5 Years	6 - 10 Years	After 10 Years
(In thousands)						
<b>Long-Term Debt Obligations:</b>						
Unsecured notes	\$ 2,797,227	\$ 429,648	\$ 1,184,580	\$ 821,874	\$ 361,125	\$ —
Secured notes	312,329	—	—	312,329	—	—
Convertible notes	787,750	—	787,750	—	—	—
Unsecured revolving credit facilities	739,395	496,479	242,916	—	—	—
Secured term loans(2)	2,848,981	1,122,654	1,651,471	—	20,977	53,879
Secured revolving credit facilities	943,665	609,485	334,180	—	—	—
Trust preferred	100,000	—	—	—	—	100,000
Total principal maturities	8,529,347	2,658,266	4,200,897	1,134,203	382,102	153,879
<b>Interest Payable(3)</b>	918,251	309,511	396,597	126,036	51,552	34,555
<b>Operating Lease Obligations</b>	43,690	2,506	11,097	8,744	17,987	3,356
Total(4)	<u>\$ 9,491,288</u>	<u>\$ 2,970,283</u>	<u>\$ 4,608,591</u>	<u>\$ 1,268,983</u>	<u>\$ 451,641</u>	<u>\$ 191,790</u>

#### Explanatory Notes:

- (1) Future long-term debt obligations due during the years ended December 31, 2011 and 2012 are \$2.74 billion and \$3.42 billion, respectively.
- (2) As further discussed in Debt Covenants below, if we do not pay down the outstanding balance of our \$1.0 billion First Priority Credit Agreement by \$500 million by September 30, 2010 and an additional \$500 million by March 31, 2011, payments of principal and net sale proceeds received by us in respect of assets constituting collateral for our obligation under this agreement must be applied towards the mandatory prepayment of the loan and commitment reductions under the agreement. These amounts have been included in years 2-3 based on its contractual maturity.
- (3) All variable-rate debt assumes a 30-day LIBOR rate of 0.35% (the 30-day LIBOR rate at June 30, 2010).
- (4) See "Off-Balance Sheet Transactions" below, for a discussion of certain unfunded commitments related to our lending and CTL business.

**Repayments and Note Repurchases**—During the six months ended June 30, 2010, we retired \$457.5 million par value of our senior secured and unsecured notes through open market repurchases, and we redeemed \$282.3 million of senior secured notes with various maturities ranging from March 2010 to June 2014. In connection with these repurchases and redemptions, we recorded an aggregate gain on early extinguishment of debt of \$77.7 million and \$116.4 million for the three and six months ended June 30, 2010, respectively. We also repaid \$264.4 million of unsecured notes at maturity during the first half of 2010.

During the same period, we repaid secured term loans, including a \$947.9 million non-recourse loan that was collateralized by the portfolio of 32 CTL assets we sold, as well as \$149.0 million of other term loans with various maturities. In connection with these repayments, we wrote-off unamortized deferred financing costs and incurred other expenses totaling \$7.6 million, which reduced our net gain on early extinguishment of debt during the three and six months ended June 30, 2010.

**Debt Covenants**—Our ability to borrow under our secured credit facilities depends on maintaining compliance with various covenants, including a minimum tangible net worth covenant and specified financial ratios, such as fixed charge coverage, unencumbered assets to unsecured indebtedness, eligible collateral coverage and leverage. Our recent financial results have put pressure on our ability to maintain compliance with certain of the debt covenants in our secured bank credit facilities. We intend to operate our business in order to remain in compliance with the covenants in our debt instruments; however, there can be no assurance that we will be able to do so. All of these covenants in our facilities are maintenance covenants and, if breached could result in an acceleration of our facilities if a waiver or modification is not agreed upon with the required lenders. Our secured credit facilities also impose limitations on repayments, repurchases, refinancings and optional redemptions of our existing unsecured notes and secured debt securities, as well as limitations on repurchases of our Common Stock. Specifically, we may refinance our outstanding senior unsecured notes using up to \$1.0 billion of second priority secured notes (of which \$634.8 million principal amount has been issued to date) and an unlimited amount of third priority secured notes in exchange transactions, or new unsecured notes subject to certain limitations. In addition, while there are outstanding borrowings under our First Priority Credit Agreement, we may use up to an aggregate of \$350.0 million to repurchase our senior unsecured notes maturing after June 26, 2012 and our Common Stock; provided, however, that no more than \$50.0 million may be used for Common Stock repurchases prior to December 31, 2010 and no more than \$100.0 million may be used for all Common Stock repurchases. There is no limitation on our ability to repurchase senior unsecured notes maturing on or before June 26, 2012. Upon repayment of all borrowings under our First Priority Credit Agreement, the aggregate limitation is increased to \$750.0 million. Through June 30, 2010, we have used \$346.0 million of our \$350.0 million basket to repurchase senior unsecured notes maturing after June 26, 2012 and Common Stock, of which \$33.4 million was used to purchase Common Stock.

For so long as we maintain our qualification as a REIT, the secured credit facilities permit us to distribute 100% of our REIT taxable income on an annual basis. We may not pay common dividends if we cease to qualify as a REIT.

Our outstanding debt securities also contain covenants that include fixed charge coverage and unencumbered assets to unsecured indebtedness ratios and our secured debt securities have an eligible collateral coverage requirement. The fixed charge coverage ratio in our debt securities is an incurrence test. If we do not meet the fixed charge coverage ratio, our ability to incur additional indebtedness will be restricted. The unencumbered assets to unsecured indebtedness covenant and the eligible collateral coverage covenant are maintenance covenants and, if breached and not cured within applicable cure periods, could result in acceleration of our debt securities unless a waiver or modification is agreed upon with the requisite percentage of the bondholders. Based on our unsecured credit ratings at June 30, 2010, the financial covenants in our debt securities, including the fixed charge coverage ratio and maintenance of unencumbered assets to unsecured indebtedness ratio, are operative.



Our secured credit facilities contain cross default provisions that would allow the lenders to declare an event of default and accelerate our indebtedness to them if we fail to pay amounts due in respect of our other recourse indebtedness in excess of specified thresholds, or if such other recourse indebtedness is accelerated or the lenders under such other indebtedness are otherwise permitted to accelerate such indebtedness for any reason. Our unsecured credit facilities and the indentures governing our debt securities provide that the lenders thereunder may declare an event of default and accelerate the indebtedness to them if a payment default occurs at maturity under our other recourse indebtedness in excess of specified thresholds or if such indebtedness is otherwise accelerated for any reason.

The First and Second Priority Credit Agreements and the indentures governing the Second Priority Secured Exchange Notes contain a number of covenants, including that we maintain collateral coverage of at least 1.3x the aggregate borrowings and letters of credit outstanding under the First Priority Credit Agreement, the Second Priority Credit Agreements and the Second Priority Secured Exchange Notes. Under certain circumstances, the First and Second Priority Credit Agreements require that payments of principal and net sale proceeds received by us in respect of assets constituting collateral for our obligations under these agreements be applied toward the mandatory prepayment of loans and commitment reductions under them. We would be required to make such prepayments (i) during any time that the fixed charge coverage ratio, as defined under the agreements, is less than 1.25 to 1.00, (ii) if, after receiving a payment of principal or net sale proceeds in respect of collateral, we have insufficient eligible assets available to pledge as replacement collateral or (iii) if, and for so long as, the aggregate principal amount of loans outstanding under the First Priority Credit Agreement exceeds \$500 million at any time on or after September 30, 2010, or zero at any time on or after March 31, 2011.

We believe we are in full compliance with all the covenants in our debt instruments as of June 30, 2010.

**Ratings Triggers**—Our First and Second Priority Secured Credit Agreements and unsecured credit agreements bear interest at LIBOR based rates plus an applicable margin which varies between the Credit Agreements and is determined based on our corporate credit ratings. Our ability to borrow under our credit facilities is not dependent on the level of our credit ratings. Based on our current credit ratings, further downgrades in our credit ratings will have no effect on our borrowing rates under these facilities.

**Off-Balance Sheet Transactions**—We are not dependent on the use of any off-balance sheet financing arrangements for liquidity.

**Unfunded commitments**—We generally fund construction and development loans and build-outs of CTL space over a period of time if and when the borrowers and tenants meet established milestones and other performance criteria. We refer to these arrangements as Performance-Based Commitments. In addition, we sometimes establish a maximum amount of additional funding which we will make available to a borrower or tenant for an expansion or addition to a project if we approve of the expansion or addition in our sole discretion. We refer to these arrangements as Discretionary Fundings. Finally, we have committed to invest capital in several real estate funds and other ventures. These arrangements are referred to as Strategic Investments. As of June 30, 2010, the maximum amounts of the fundings we may make under each category, assuming all performance hurdles and milestones are met under Performance-Based Commitments, that we approve all Discretionary Fundings and that 100% of our capital committed to Strategic Investments is drawn down are as follows (in thousands):

	<u>Loans</u>	<u>CTL</u>	<u>Total</u>
Performance-Based Commitments	\$ 215,505	\$ 3,174	\$ 218,679
Discretionary Fundings	251,843	—	251,843
Strategic Investments	N/A	N/A	61,022
Total	<u>\$ 467,348</u>	<u>\$ 3,174</u>	<u>\$ 531,544</u>

**Transactions with Related Parties**—We have substantial investments in non-controlling interests of Oak Hill Advisors, L.P. and 12 related entities (see Note 7 of the Notes to our Consolidated Financial Statements) and a controlling interest in OHA Strategic Credit Fund Parallel I, L.P. In relation to our investment in these entities, we appointed to our Board of Directors a member that holds a substantial investment in these same entities. As of June 30, 2010, our carrying value in these entities was \$213.5 million. We recorded equity in earnings from these investments of \$6.8 million and \$14.9 million for the three and six months ended June 30, 2010. We have also invested directly in six funds managed by Oak Hill Advisors, L.P., which have a cumulative carrying value of \$1.1 million as of June 30, 2010 and for which we recorded income of \$0.1 million and \$0.2 million for the three and six months ended June 30, 2010, respectively. In addition, we have paid \$0.1 million to certain of these entities representing management fees as well as advisory service related fees in conjunction with our debt repurchase transactions.

**Stock Repurchase Program**—During the six months ended June 30, 2010, we repurchased 1.1 million shares of our outstanding Common Stock for approximately \$3.9 million, at an average cost of \$3.57 per share, and the repurchases were recorded at cost. As of June 30, 2010, we had \$17.7 million of Common Stock available to repurchase under authorized stock repurchase programs. Our Common Stock repurchases are further restricted by limitations imposed by our secured bank credit facilities, as discussed in the Debt Covenants section above.

**Subsequent Events**—On July 29, 2010, we acquired an ownership interest of approximately 24% in LNR Property Corporation ("LNR") as part of its recapitalization. LNR is a servicer and special servicer of commercial mortgage loans and CMBS and a diversified real estate, investment, finance and management company. In the transaction, a group of investors, including other creditors of LNR and us, acquired 100% of the common stock of LNR in exchange for cash and the extinguishment of existing senior notes of LNR's parent holding company (the "Holdco Notes"). Our share of the consideration paid was \$100.0 million in cash and \$100.0 million aggregate principal amount of Holdco Notes. LNR used the cash proceeds received from the issuance of the common stock plus other cash on hand to pay down a portion of its existing senior term loan. As a lender under the senior term loan, our loan was paid down from an original principal balance of \$102.0 million to \$50.8 million. As part of the recapitalization, for so long as we maintain a specified ownership interest in LNR, we will have the right to designate two members to LNR's board of managers (or the equivalent thereof).

### **Critical Accounting Estimates**

The preparation of financial statements in accordance with GAAP requires management to make estimates and judgments in certain circumstances that affect amounts reported as assets, liabilities, revenues and expenses. We have established detailed policies and control procedures intended to ensure that valuation methods, including any judgments made as part of such methods, are well controlled, reviewed and applied consistently from period to period. We base our estimates on historical corporate and industry experience and various other assumptions that we believe to be appropriate under the circumstances. For all of these estimates, we caution that future events rarely develop exactly as forecasted, and, therefore, routinely require adjustment.

A summary of our critical accounting estimates is included in our Annual Report on Form 10-K for the year ended December 31, 2009 in Management's Discussion and Analysis of Financial Condition. There have been no significant changes to our critical accounting estimates as of June 30, 2010.

**Recently Issued Accounting Pronouncements**—For a discussion of the impact of new accounting pronouncements on our financial condition or results of operations, see Note 3 of the Notes to the Consolidated Financial Statements.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.**

There have been no material changes in Quantitative and Qualitative Disclosures About Market Risk for the first six months of 2010 as compared to the disclosures included in our Annual Report on Form 10-K for the year ended December 31, 2009. See discussion of quantitative and qualitative disclosures about market risk under Item 7a—"Quantitative and Qualitative Disclosures about Market Risk," included in our Annual Report on Form 10-K for the year ended December 31, 2009.

### **ITEM 4. CONTROLS AND PROCEDURES**

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Accounting Officer (who is our principal financial officer), as appropriate, to allow timely decisions regarding required disclosure. The Company has formed a disclosure committee that is responsible for considering the materiality of information and determining the disclosure obligations of the Company on a timely basis. The disclosure committee reports directly to the Company's Chief Executive Officer. The Chief Accounting Officer is currently a member of the disclosure committee.

As of the end of the period covered by this report, the Company carried out an evaluation, under the supervision and with the participation of the disclosure committee and other members of management, including its Chief Executive Officer and Chief Accounting Officer, of the effectiveness of the Company's disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b) or Rule 15d-15. Based upon that evaluation, the Chief Executive Officer and Chief Accounting Officer concluded that the Company's disclosure controls and procedures are effective to provide reasonable assurance that the information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (ii) accumulated and communicated to management, including the Chief Executive Officer and Chief Accounting Officer, as appropriate, to allow timely decisions regarding disclosure.

There have been no changes during the last fiscal quarter in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Notwithstanding the foregoing, a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that it will detect or uncover failures within the Company to disclose material information otherwise required to be set forth in the Company's periodic reports.

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## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

#### Legal Proceedings

##### **Citiline Holdings, Inc., et al. v. iStar Financial, Inc., et al.**

In April 2008, two putative class action complaints were filed in the United States District Court for the Southern District of New York naming the Company and certain of its current and former executive officers as defendants and alleging violations. Both suits were purportedly filed on behalf of the same putative class of investors who purchased common stock in the Company's December 13, 2007 public offering (the "Company's Offering"). The two complaints were consolidated in a single proceeding (the "Citiline Action") on April 30, 2008.

On November 17, 2008, Plumbers Union Local No. 12 Pension Fund and Citiline Holdings, Inc. were appointed Lead Plaintiffs to pursue the Citiline Action. Plaintiffs filed a Consolidated Amended Complaint on February 2, 2009, purportedly on behalf of a putative class of investors who purchased the Company's common stock between December 6, 2007 and March 6, 2008 (the "Complaint"). The Complaint named as defendants the Company, certain of its current and former executive officers, and certain investment banks who served as underwriters in the Company's Offering. The Complaint reasserted claims for alleged violations of Sections 11, 12(a)(2) and 15 of the Securities Act, and added claims for alleged violations of Sections 10(b) and 20(a) of the Exchange Act. Plaintiffs allege the defendants made certain material misstatements and omissions relating to the Company's continuing operations, including the value of the Company's loan portfolio and certain debt securities held by the Company. The Complaint seeks certification as a class action, unspecified compensatory damages plus interest and attorneys fees, and rescission of the public offering. No class has been certified. The Company and its current and former officers filed a motion to dismiss the Complaint on April 27, 2009 and, on March 26, 2010, the Court issued its order granting, in part, the dismissal of certain Securities Act claims against certain of the Company's current and former officers, but denying the motion as to all claims asserted against the Company. Accordingly, the discovery process has commenced. The Company believes the Citiline Action has no merit and intends to continue defending itself vigorously against it.

#### Shareholder Derivative Actions

In April and May 2010, three separate shareholder derivative complaints were filed, purportedly on the Company's behalf against the Company's Board of Directors and certain current and former executive officers. These actions arise out of the same facts and circumstances alleged in the Citiline Action and all claim that the individual defendants breached their fiduciary duties to the Company and are liable to the Company for unjust enrichment, abuse of control, gross mismanagement and waste of corporate assets. Two of these complaints were filed in the United States District Court for the Southern District of New York and the third was filed in Supreme Court of New York, County of New York. In June 2010, the New York state court action was voluntarily dismissed by the plaintiff. Plaintiffs in the remaining two derivative actions seek monetary damages, reimbursement for professional fees, improvements in governance and controls and disgorgement of profits. The Company, as a nominal defendant on whose behalf the plaintiffs claim they are acting, intends to move to dismiss these actions because neither shareholder has established the right to usurp the board of directors' power to decide whether and when a suit should be filed. The individual defendants, who are separately represented by counsel, believe these claims have no merit and intend to defend themselves vigorously against these actions.

#### Shareholder Letters

On two occasions in 2009, the Company received letters from persons claiming to own Company shares and demanding that the Company address certain compensation, disclosure and other issues. In

response to these demands, the Company appointed a special committee of independent directors. The committee, with the assistance of independent counsel, investigated the claims and concluded that the claimants either had not sustained damages or had not demonstrated they had standing to raise claims. One of these individuals, who repeatedly refused to provide any satisfactory evidence that she owned stock in the Company, has since filed suit against the Company (one of the pending derivative actions described in the preceding paragraph), alleging that certain current and former officers and directors breached their fiduciary duties to the Company, and that the special committee improperly refused her demand to initiate suit against these officers and directors on behalf of the Company. The Company recently received letters from two other individuals claiming to own Company shares and demanding that the Company take action against current and former officers and directors named in the letter to recover damages arising from alleged breaches of fiduciary duties. The allegations in these two recent letters are materially the same as those made in the pending shareholder derivative actions described in the preceding paragraph. At least one of the individuals has substantiated standing by demonstrating that they have owned, and continue to own, stock in the Company. Accordingly, the special committee of independent directors will review the claims made in the two recent letters.

#### **Lease Dispute**

On July 14, 2010, Northrop Grumman Systems Corporation ("Northrop") filed a complaint in Circuit Court of Fairfax County, Virginia against iStar NG LP (a former subsidiary of the Company), the Company, the purchaser of the CTL portfolio that we sold on June 25, 2010, and two of the purchaser's affiliates. The complaint arises out of a dispute regarding a purported right of first offer in respect of a property leased to Northrop which Northrop claims was triggered by the portfolio transaction. The complaint asserts claims for, among other things, (i) specific performance and other equitable relief; (ii) breach of the right of first offer (against iStar NG LP only); (iii) declaratory judgment as to the applicability of the right of first offer; (iv) tortious interference with contractual relations (against all defendants except iStar NG LP); (v) unjust enrichment; (vi) violation of the Virginia Business Conspiracy Act; (vii) conversion; and (viii) other injunctive and equitable relief. The complaint seeks, among other relief, specific performance of the right of first offer, a constructive trust, compensatory damages, treble damages for breach of the conspiracy statute, punitive damages, and recovery of attorneys' fees and interest.

The Company and the other defendants have not yet been required to file an answer or otherwise respond to the complaint in this matter. The Company believes the claims asserted in this complaint have no merit and intends to defend itself vigorously in this action.

#### **ITEM 1A. RISK FACTORS**

See the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

#### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None

#### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None

#### **ITEM 4. (REMOVED AND RESERVED)**

None

**ITEM 5. OTHER INFORMATION**

None

**ITEM 6. EXHIBITS**

a. Exhibits

<b>Exhibit Number</b>	<b>Document Description</b>
10.1	Purchase and Sale Agreement by and among iStar Financial Inc., the entities set forth therein and TRT Acquisitions LLC, dated May 3, 2010.*
10.2	Member Interest Purchase and Sale Agreement by and among iStar Financial Inc., iStar Harborside LLC and TRT Acquisitions LLC, dated May 3, 2010.*†
10.3	First Amendment to Purchase and Sale Agreement by and among iStar Financial Inc., the entities set forth therein and TRT Acquisitions LLC, dated May 11, 2010.
10.4	Second Amendment to Purchase and Sale Agreement by and among iStar Financial Inc., the entities set forth therein and TRT Acquisitions LLC, dated May 21, 2010.*
10.5	Third Amendment to Purchase and Sale Agreement by and among iStar Financial Inc., the entities set forth therein and TRT Acquisitions LLC, dated June 24, 2010.
10.6	Partnership Interests Purchase and Sale Agreement by and among iStar Financial Inc., iStar NG Inc., iStar NG GenPar Inc. and TRT Acquisitions LLC, dated June 25, 2010.*
10.7	Member Interest Purchase and Sale Agreement by and among iStar Financial Inc., iStar CTL Holdco LLC and TRT Acquisitions LLC, dated June 25, 2010.*
10.8	Fourth Amendment to Purchase and Sale Agreement by and among iStar Financial Inc., the entities set forth therein and TRT Acquisitions LLC, dated June 25, 2010.*
31.0	Certifications pursuant to Section 302 of the Sarbanes-Oxley Act.
32.0	Certifications pursuant to Section 906 of the Sarbanes-Oxley Act.

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\* This filing excludes schedules and exhibits pursuant to Item 601(b)(2) of Regulation S-K, which the issuer agrees to furnish supplementally to the Securities and Exchange Commission upon request by the Commission.

† Certain amendments to this filing are not being filed because they are substantially similar to the amendments to Exhibit 10.1 which are filed herein. The issuer agrees to furnish any such amendments upon request by the Commission.

**SIGNATURES**

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

iSTAR FINANCIAL INC.  
*Registrant*

Date: August 6, 2010

/s/ JAY SUGARMAN

---

Jay Sugarman  
*Chairman of the Board of Directors and Chief  
Executive Officer (principal executive officer)*

iSTAR FINANCIAL INC.  
*Registrant*

Date: August 6, 2010

/s/ DAVID DISTASO

---

David DiStaso  
*Chief Accounting Officer  
(principal financial officer)*





## PURCHASE AND SALE AGREEMENT

BETWEEN

THE ENTITIES SET FORTH ON SCHEDULE 1.1.1,  
AS SELLER

AND

TRT ACQUISITIONS LLC,  
AS PURCHASER

DATED: MAY 3, 2010

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## PURCHASE AND SALE AGREEMENT

### 32 PROPERTIES DESCRIBED GENERALLY ON SCHEDULE 1.1.1

This Purchase and Sale Agreement (this "**Agreement**") is made and entered into by and between Purchaser and Seller.

#### RECITALS

A. Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein, whether or not such terms are used before or after the definitions are set forth.

B. Purchaser desires to purchase the Property and Seller desires to sell the Property, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

#### ARTICLE 1 BASIC INFORMATION

1.1 **Certain Basic Terms.** The following defined terms shall have the meanings set forth below:

1.1.1 "**Seller**": means each of the parties listed on **Schedule 1.1.1**. It is understood and agreed that each Seller owns the property generally described by common address listed opposite such Seller party on **Schedule 1.1.1** and, with respect to all references in this Agreement to Seller and each and every reference to the "**Property**", "**Land**", "**Improvements**", "**Real Property**", "**Leases**", "**Guaranty**", "**Guaranties**", "**Tangible Personal Property**", "**Service Contracts**", "**Intangible Personal Property**", "**License Agreements**", "**Property Information**" (and each component thereof), "**Property Documents**" (and each component thereof), "**Updated Property Information**" (and each component thereof), "**Permitted Exceptions**", "**Reports**", "**Title Commitment**", "**Title Policy**", "**Lease Casualty Event**", "**Material Damage**", "**Materially Damaged**", "**Condemnation**", "**Lease Condemnation Event**", "**Purchase Price Adjustment Notice**", "**Price Adjustment Period**", "**Operating Expenses**", "**Tenant Receivables**", "**Unbilled Tenant Receivables**", "**Uncollected Delinquent Tenant Receivables**", "**Taxes**" and "**Hazardous Materials**", such reference shall be limited to each of such items as they relate solely to the property generally described by common address and the Seller associated therewith. Additionally, all exhibits referencing any of the foregoing listed items will indicate the common address to which such exhibit, or portion thereof relates.

1.1.2 "**Purchaser**": TRT Acquisitions LLC, a Delaware limited liability company.

1.1.3 "**Purchase Price**": \$1,190,500,000.00; subject to adjustment as provided herein, and as allocated as set forth on **Schedule 1.1.3** (the "**Allocated Purchase Price**"). The Allocated Purchase Price of each Property is only for (A) purposes of determining (i) the amount of transfer taxes payable in connection with the transfer of such Property, (ii) the amount of the reduction in the Purchase Price due to the termination of this Agreement with respect to such Property pursuant to the terms hereof and (iii) compliance with the Estoppel Requirement, and (B) tax reporting and accounting

purposes. In no event shall the Allocated Purchase Price of any individual Property be deemed or construed to reflect the sales price of such individual Property in a stand alone transaction.

1.1.4 **“Earnest Money”**: \$46,200,000.00, including all interest earned thereon, to be deposited in accordance with Section 3.1 below together with the Harborside Earnest Money if added thereto pursuant to Section 3.1. All references herein to Earnest Money shall be deemed to include only such portions thereof as have been deposited with Escrow Agent in accordance with Section 3.1.

1.1.5 **“Title Company”**:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Chicago, Illinois 60602

Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

And

Fidelity Title Insurance Company  
8450 E. Crescent Parkway, Suite 410  
Greenwood Village, CO 80111  
Attn: Ms. Valena Bloomquist  
Telephone number: (303) 244-9198  
Facsimile number: (720) 489-7593  
E-mail: valena.bloomquist@fnf.com

1.1.6 **“Escrow Agent”**:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

1.1.7 **“Financial Advisor”**: HFF Securities L.P., an affiliate of Holliday Fenoglio Fowler, LP.

1.1.8 **“Effective Date”**: The date on which this Agreement is executed by the latter to sign of Purchaser or Seller, as indicated on the signature page of this Agreement. If the execution date is left blank by either Purchaser or Seller, the Effective Date shall be the execution date inserted by the other party.

1.1.9 **“Title and Survey Review Period”**: The period ending on May 11, 2010.

1.1.10 **“Inspection Period”**: The period beginning on the Effective Date and ending on May 11, 2010, subject to extension as provided in Section 6.1.4(1).

1.1.11 **“Closing Date”**: The date which is ten (10) days after the expiration of the Inspection Period, subject to extension as provided in Section 4.3.2.

1.1.12 **“Confidentiality Agreement”**: The letter agreement dated March 31, 2010 between iStar Financial Inc., an affiliate of Seller (“iStar”), and Purchaser.

1.1.13 **“Harborside”**: The property commonly known as Harborside Financial Center Plaza X, Jersey City, New Jersey.

1.1.14 **“Harborside Membership Interests”**: The one hundred percent (100%) membership interests of American Financial Exchange L.L.C. owned by Harborside Seller.

1.1.15 **“Harborside Purchase and Sale Agreement”**: That certain Member Interest Purchase and Sale Agreement between Purchaser and Harborside Seller dated as of the date hereof.

1.1.16 **“Harborside Seller”**: iStar Harborside LLC, a Delaware limited liability company.

1.2 **“Closing Costs”**. Closing costs shall be allocated and paid as follows:

Cost	Responsible Party
Title Commitments required to be delivered pursuant to Section 5.1	Seller
Premium for standard form Title Policies with extended coverage and Co-Insurance (subject to this Section 1.2 and Section 5.4) required to be delivered pursuant to Section 5.4	Seller

Premium for any upgrade of Title Policies for additional coverage, including, without limitation, the premium for any re-insurance, and any endorsements to the Title Policies desired by Purchaser, any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges other than those required in connection with satisfying any liens which are not Permitted Exceptions	Purchaser
Any increase in the premium for the Title Policies attributable to obtaining Co-Insurance as provided in Section 5.4	Purchaser
Any costs required to cause the Title Company to issue the Title Policies with extended coverage	Seller
Costs of new surveys and/or any revisions, modifications or recertifications to the existing Surveys.	Seller
Costs for UCC Searches	Purchaser
Recording Fees	Paid in accordance with local custom
Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments	Paid in accordance with <b>Schedule 1.2</b>
Any escrow fee charged by Escrow Agent for holding the Earnest Money or conducting the Closing	Purchaser ½ Seller ½
Real Estate Fee to Financial Advisor	Seller

All other closing costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring the same.

### 1.3 **Notice Addresses:**

All notices required or permitted to be sent hereunder shall be sent as follows:

Purchaser:	TRT Acquisitions LLC	Copies to:	TRT Acquisitions LLC
	518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202		518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202
Attention:	Mr. John Blumberg Mr. Greg Moran		Attention: Joshua J. Widoff, Esq.
Telephone:	303-228-2200		Telephone: 303-228-2200
Facsimile:	303-577-9797		Facsimile: 303-869-4602
E-mail:	gmoran@dividendcapital.com		E-mail: jwidoff@dividendcapital.com
			and
			Greenberg Traurig, LLP

			200 Park Avenue New York, NY 10166 Attention: Robert J. Ivanhoe, Esq. Telephone: 212-801-9333 Facsimile: 212-801-6400 E-mail: ivanhoer@gtlaw.com
Seller:	c/o iStar Financial Inc. 1114 Avenue of the Americas New York, NY 10036 Attention: Samantha Garbus Telephone: 212-930-9407 Facsimile: 212-930-9494 E-mail: sgarbus@istarfinancial.com	Copies to:	iStar Financial Inc. 1114 Avenue of the Americas New York, NY 10036 Attn: Mary-Beth Roselle, Esq. Telephone: 212-930-9481 Facsimile: 212-930-9494 E-mail: mroselle@istarfinancial.com
			iStar Asset Services Inc. 180 Glastonbury Boulevard Glastonbury, CT 06033 Attn: President Telephone: 860-815-5910 Facsimile: 860-815-5901 E-mail: brubin@istarfinancial.com
			Katten Muchin Rosenman LLP 525 West Monroe St. Chicago, IL 60661-3693 Attn: Gregory P.L. Pierce, Esq. Phone: 312-902-5541 Fax: 312-577-8893 Email: greg.pierce@kattenlaw.com

**ARTICLE 2**  
**PROPERTY**

2.1 **Property.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (individually and/or collectively, as the context may require, the “**Property**”):

2.1.1 **Real Property.** The land described in Exhibit A hereto (individually and/or collectively, as the context may require, the “**Land**”), together with (a) all improvements located thereon, but expressly excluding improvements and structures owned by any tenant or other third party pursuant to Leases (individually and/or collectively, as the context may require, the “**Improvements**”), (b) all right, title and interest of Seller, if any, in and to the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, including without limitation, any and all minerals and mineral rights, oil, gas, and oil and gas rights, development rights, air rights, water and water rights, wells, well rights and well permits, water and sewer taps, and sanitary or storm sewer capacity,

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and (c) all right, title, and interest of Seller, if any, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining the Land (the Land, together with items (a), (b) and (c) of this Section 2.1.1, individually and/or collectively, as the context may require, the “**Real Property**”).

2.1.2 **Leases and Guaranties.** All of Seller’s right, title and interest, without warranty except as set forth herein, in those leases, including any amendments to such leases, described on **Schedule 2.1.2** and all leases which may be made by Seller after the Effective Date and prior to Closing as permitted by this Agreement (individually a “**Lease**” and collectively the “**Leases**”), all guaranties of such Leases, including any amendments to such guaranties, described on **Schedule 2.1.2** (individually a “**Guaranty**” and collectively the “**Guaranties**”), and all other collateral securing the Leases or Guaranties, including without limitation all security deposits and letters of credit.

2.1.3 **Tangible Personal Property.** All of Seller’s right, title and interest, without warranty, except as set forth herein, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by Seller and now or hereafter located in and used in connection with the operation, ownership or management of the Real Property, but specifically excluding any items of personal property owned or leased by any tenants at or on the Real Property and further excluding any items of personal property owned by third parties and leased to Seller (collectively, the “**Tangible Personal Property**”), which excluded items of personal property are listed on **Schedule 2.1.3**.

2.1.4 **Intangible Personal Property.** All of Seller’s right, title and interest, if any, without warranty, except as set forth herein, in all intangible personal property related to the Real Property and the Improvements, including, without limitation: all trade names and trade marks associated with the Real Property and the Improvements, including Seller’s rights and interests, if any, in the name of the Real Property; the plans and specifications and other architectural and engineering drawings for the Improvements, if any (to the extent assignable without cost to Seller); contract rights related to the operation, ownership or management of the Real Property, including maintenance, service, construction, supply and equipment rental contracts, if any, but not including Leases or License Agreements (collectively, the “**Service Contracts**”) (but only to the extent assignable without cost to Seller; warranties (to the extent assignable without cost to Seller); governmental permits, approvals and licenses, if any (to the extent assignable without cost to Seller); and telephone exchange numbers (to the extent assignable without cost to Seller) (all of the items described in this Section 2.1.4 collectively referred to as the “**Intangible Personal Property**”). To the extent any items of Intangible Personal Property cannot be assigned to Purchaser without cost to Seller, Purchaser shall have the option, to be exercised in writing on or before the Closing Date, to accept such assignment and pay any cost associated therewith, or to cause Seller to terminate the same (if applicable) at Seller’s expense, or to permit Seller to retain the same. Tangible Personal Property and Intangible Personal Property shall not include (a) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including, without limitation, budgets prepared by or on behalf of Seller or any affiliate of Seller, (b) any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property and/or Seller, or which are subject to a confidentiality agreement, (c) such documents, materials or information received by

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Seller from tenants and covered by confidentiality agreements between such tenants and Seller, except that such documents, materials or information shall be included in Tangible Personal Property if Purchaser shall have agreed in writing to be bound by the terms of such confidentiality agreements prior to Seller’s delivery of such documents, materials and information to Purchaser, and (d) any trade name, mark or other identifying material that includes the name “iStar” or any derivative thereof.

2.1.5 **License Agreements.** All of Seller’s right, title and interest, without warranty, except as set forth herein, in and to all agreements (other than the Leases and the Guaranties), if any, for the leasing or licensing of rooftop space or equipment, telecommunications equipment, cable access and other space, equipment and facilities that are located on or within the Real Property and generate income to Seller as the owner of the Real Property, including agreements which may be made by Seller after the Effective Date and prior to Closing as permitted by this Agreement (the “**License Agreements**”).

**ARTICLE 3**  
**EARNEST MONEY**

3.1 **Deposit and Investment of Earnest Money.** Within two (2) Business Days after the Effective Date, Purchaser shall deposit Twenty-Three Million One Hundred Thousand and no/100 Dollars (\$23,100,000.00) with Escrow Agent and deliver a completed, executed Form W-9 to the Escrow Agent and the Seller. Within two (2) Business Days after Purchaser has delivered the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof, Purchaser shall deposit Twenty-Three Million One Hundred Thousand and no/100 Dollars (\$23,100,000.00) with Escrow Agent. Escrow Agent shall invest the Earnest Money in the Federated Prime Obligations Fund (NASDAQ: POIXX), shall not commingle the Earnest Money with any funds of Escrow Agent or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. Such account shall have no penalty for early withdrawal, and Purchaser accepts all risks with regard to the investment of the Earnest Money. Upon any termination of the Harborside Purchase and Sale Agreement prior to the closing thereunder except pursuant to Section 4.3.1, Section 4.3.2 or Article X thereof, Seller and Purchaser hereby direct Escrow Agent to immediately add the earnest money held by Escrow Agent pursuant to the Harborside Purchase and Sale Agreement (the “**Harborside Earnest**



**Money”)** to the Earnest Money and thereafter all references herein to the Earnest Money shall be deemed to refer to the Earnest Money as increased by the Harborside Earnest Money.

3.2 **Independent Consideration.** If this Agreement terminates for any reason and Purchaser is entitled to receive a return of the Earnest Money pursuant to the terms hereof, the Escrow Agent shall first disburse to Seller One Hundred and No/100 Dollars (\$100.00) as independent consideration for Seller’s performance under this Agreement (“**Independent Consideration**”), which shall be retained by Seller in all instances.

3.3 **Form; Failure to Deposit.** The Earnest Money shall be paid by wire transfers to Escrow Agent of immediately available U.S. federal funds. If Purchaser fails to timely deposit all of the Earnest Money within the time periods required, Seller may terminate this Agreement by written notice to Purchaser and Escrow Agent, in which event any Earnest Money that has previously been deposited by Purchaser with Escrow Agent shall be immediately delivered to

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Seller and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

3.4 **Disposition of Earnest Money.** The Earnest Money shall be applied as a credit to the Purchase Price at Closing. However, if this Agreement terminates pursuant to Sections 4.3.1 or 4.3.2, Escrow Agent shall pay the entire Earnest Money (less the Independent Consideration) to Purchaser one (1) Business Day following the end of the Inspection Period (as long as the current investment can be liquidated and disbursed in one (1) Business Day). No notice to Escrow Agent from Seller shall be required for the release of the Earnest Money to Purchaser by Escrow Agent if this Agreement terminates pursuant to Section 4.3.1 or 4.3.2. In the event of a termination of this Agreement by either Seller or Purchaser other than pursuant to Section 4.3.1 or 4.3.2, the party (the “**Demanding Party**”) seeking to terminate this Agreement shall give written notice of such election to Escrow Agent and the other party (the “**Non-Demanding Party**”) to this Agreement. Upon receipt of any such notice of termination, Escrow Agent shall give notice to the Non-Demanding Party of Escrow Agent’s receipt of such notice, enclosing a copy of the notice in question. If within five (5) Business Days after the Non-Demanding Party is given or deemed to have been given notice of Escrow Agent’s receipt of the notice in question, Escrow Agent has not received from the Non-Demanding Party its notice of objection to the notice, then Escrow Agent shall disburse the Earnest Money as requested by the notice in question, on the sixth (6th) Business Day following its giving of such notice to the Non-Demanding Party. If within said five (5) Business Day period Escrow Agent receives from the Non-Demanding Party notice of objection, then Escrow Agent shall notify the Demanding Party of the objection, and continue to hold the Earnest Money until Escrow Agent is in receipt of a joint order direction or a court order instructing Escrow Agent to disburse the Earnest Money. In such event of objection, Escrow Agent may interplead the Earnest Money into a court of competent jurisdiction in a New York state court or federal court located in the State, City and County of New York. All attorneys’ fees and costs and Escrow Agent’s costs and expenses incurred in connection with such interpleader shall be assessed against the party that is not awarded the Earnest Money, or if the Earnest Money is distributed in part to both parties, then in the inverse proportion of such distribution.

#### **ARTICLE 4 DUE DILIGENCE**

4.1 **Due Diligence Materials To Be Delivered.** Seller has delivered to Purchaser complete (to Seller’s knowledge) copies of, or made electronic copies available to Purchaser on Seller’s iPortal internet site relating to the Property (“**iPortal**”), the following (the “**Property Information,**” or the “**Property Documents**”):

4.1.1 **Rent Roll.** A current rent roll in Seller’s standard form (“**Rent Roll**”) for the Property;

4.1.2 **Financial Information.** A copy of operating statements and a summary of capital expenditures pertaining to each Property for the 12 months preceding the Effective Date (collectively, “**Operating Statements**”);

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4.1.3 **Environmental Reports.** A copy of any environmental reports or environmental site assessments related to each Property prepared for the benefit of Seller, it being acknowledged by Purchaser that Purchaser shall not be entitled to rely thereon absent an express reliance letter from the company issuing such environmental reports or environmental site assessments obtained by Purchaser at Purchaser’s sole cost and expense;

4.1.4 **Tax Statements.** A copy of ad valorem tax statements relating to each Property for the current tax period;

4.1.5 **Surveys.** A copy of the most current survey, if any, of each Property in Seller’s possession (collectively, the “**Surveys**”);

4.1.6 **Service Contracts.** Copies of any Service Contracts for each Property;

4.1.7 **Personal Property.** A list of Tangible Personal Property for each Property;

4.1.8 **License Agreements.** Copies of any License Agreements for each Property;

4.1.9 **Lease Files.** The lease file for each Lease affecting each Property, including, without limitation, the Lease, any amendments thereto, the Guaranty (if applicable), any amendments thereto, any letter agreements, any assignments which are then in effect and any letters of credit which are then in effect (collectively, the “**Lease Files**”);

4.1.10 **Maintenance Records and Warranties.** Maintenance work orders for each Property for the 12 months preceding the Effective Date and warranties for each Property, if any, on roofs, air conditioning units, fixtures and equipment;

4.1.11 **Plans and Specifications.** Building plans and specifications relating to each Property, if any;

4.1.12 **Licenses, Permits and Certificates of Occupancy.** Licenses, permits and certificates of occupancy relating to each Property;

and

4.1.13 **Insurance Certificates.** Copies of certificates evidencing the existing liability and casualty insurance coverage for each Property including any liability and casualty insurance maintained by affiliates of Seller.

Except for the Rent Roll contemplated in Section 4.1.1, Seller's obligation to deliver the items listed in this Section 4.1 shall be limited to the extent such items are in the possession of Seller or its property management company.

4.2 **Physical Due Diligence.** Commencing on the Effective Date and continuing until the Closing, subject to the terms of the Leases, Purchaser shall have reasonable access to the Property at all reasonable times during normal business hours, upon appropriate notice to tenants as permitted or required under the Leases, for the purpose of conducting reasonably necessary tests, including surveys and architectural, engineering, geotechnical and environmental

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inspections and tests, provided that (a) Purchaser must give Seller the greater of (i) two (2) full Business Days' or (ii) the minimum notice period required by the applicable Lease(s) for such Property, written notice of any such inspection or test, and with respect to any intrusive inspection or test (i.e., core sampling) must obtain Seller's prior written consent (which consent shall not be unreasonably withheld or conditioned), (b) prior to performing any inspection or test, Purchaser must deliver a certificate of insurance to Seller evidencing that Purchaser and its contractors, agents and representatives have in place (and Purchaser and its contractors, agents and representatives shall maintain during the pendency of this Agreement) (1) commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury or death and property damage insurance including coverage for contractual liability and personal and advertising injury with respect to Purchaser's obligations hereunder, and (2) workers' compensation and employers' liability insurance with limits of at least \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit, all covering any accident arising in connection with the presence of Purchaser, its contractors, agents and representatives on the Property, which insurance, except for workers' compensation and employers' liability, shall (A) name as additional insureds thereunder Seller and such other parties holding insurable interests as Seller may designate and (B) be written by a reputable insurance company having a rating of at least "A+:VII" by Best's Rating Guide (or a comparable rating by a successor rating service), and (C) otherwise be subject to Seller's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, and (c) all such tests shall be conducted by Purchaser in compliance with Purchaser's responsibilities set forth in Section 4.9 below. The requirement to carry the insurance specified in the preceding sentence may be satisfied through blanket or umbrella insurance policies carried by Purchaser or its affiliates. Purchaser shall bear the cost of all such inspections or tests and shall be responsible for and act as the generator with respect to any wastes generated by those tests, which obligation shall survive the termination of this Agreement. Subject to the provisions of Section 4.7 hereof, Purchaser or Purchaser's representatives may communicate with any Seller-designated tenant representative; provided, however, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any Seller-designated tenant representative and allow Seller the opportunity to participate in such communication if Seller desires. No assurance or guaranty is afforded by Seller that any Seller-designated tenant representative will communicate with Purchaser or Purchaser's representatives. Subject to the provisions of Section 4.7 hereof, Purchaser or Purchaser's representatives may, without Seller's consent or participation, communicate with any governmental authority for the sole purpose of gathering information regarding current zoning compliance of the Real Property and current entitlements with respect to the Real Property in connection with the transaction contemplated by this Agreement. Other than as set forth in the previous sentence, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any governmental authority and to allow Seller the opportunity to participate in such communication if Seller desires. As used in this Section 4.2, "communicate" and "communication" shall mean the initiation of, response to, or sharing or exchange of information, knowledge or messages, whether by oral, written or electronic methods or media, or by any other means in person or otherwise, and includes requests for inspections or other access to any Property.

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4.3 **Due Diligence/Financing Contingency Termination Rights.**

4.3.1 Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate on the last day of the Inspection Period unless Purchaser gives written notice waiving such termination and containing such other information required by Section 4.3.2 hereof and Section 4.3.2 of the Harborside Purchase and Sale Agreement to Seller, Harborside Seller and Escrow Agent (the "**Due Diligence Waiver Notice**") on or before the last day of the Inspection Period. If Purchaser delivers a Due Diligence Waiver Notice, this Agreement, and the Harborside Purchase and Sale Agreement pursuant to the terms thereof, shall continue in full force and effect, subject to the provisions of this Agreement and the Harborside Purchase and Sale Agreement, including Section 4.3.2 hereof and thereof, and Purchaser shall be deemed to have acknowledged that it has received or had access to all Property Documents (as defined herein and in the Harborside Purchase and Sale Agreement) and conducted all inspections and tests of the Property and Harborside that it considers important.

4.3.2 Notwithstanding anything to the contrary in this Agreement, this Agreement, and the Harborside Purchase and Sale Agreement pursuant to the terms thereof, shall automatically terminate on the last day of the Inspection Period (as defined herein and in the Harborside Purchase and Sale Agreement) unless Purchaser shall notify Seller and Harborside Seller in the Due Diligence Waiver Notice that Purchaser (i) was able to obtain a financing commitment for the transaction described herein and in the Harborside Purchase and Sale Agreement from any lender which lender and the terms of such loan are satisfactory to Purchaser in its sole and absolute discretion (the "**Term Financing Commitment**") and Purchaser has provided Seller and Harborside Seller with a fully executed copy of the Term Financing Commitment, in which case Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement, Purchaser shall proceed to closing the acquisition of the Harborside Membership Interests pursuant to the Harborside Purchase and Sale Agreement and iStar shall have no obligation to provide the Mezzanine Loan and iStar's providing the Mezzanine Loan and the closing of the loan contemplated by the Term Financing Commitment shall not be conditions to Purchaser's obligation to close hereunder or under the Harborside Purchase and Sale Agreement, (ii) was able to obtain a financing commitment or commitments for the GE Bridge Loan from General Electric Capital Corporation ("**GECC**") pursuant to the terms of this Agreement and the Harborside Purchase and Sale Agreement (such single or multiple commitments are referred to herein collectively as the "**GE Bridge Financing Commitment**"), which GE Bridge Financing Commitment is satisfactory to Purchaser in its sole and absolute discretion and must specify all major business terms of the GE Bridge Loan, including, without limitation, all major amendments to the GE Loan, and Purchaser has provided Seller and Harborside Seller with a fully executed copy of the GE Bridge Financing Commitment, in which case iStar shall, subject to the terms of this Section 4.3.2 and Section 4.3.2 of the Harborside Purchase and Sale Agreement, provide the Mezzanine Loan simultaneously with the closing of the GE Bridge Loan, Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement, Purchaser shall

proceed to closing the acquisition of the Harborside Membership Interests pursuant to the Harborside Purchase and Sale Agreement and, provided Purchaser has not subsequently elected to obtain alternative financing, (x) iStar's providing the Mezzanine Loan simultaneously with the closing of the GE Bridge Loan and (y) GECC's closing of the GE Bridge Loan under the terms of the GE Bridge Financing Commitment on the Closing Date (unless the GE Bridge Loan fails to close as a result of (A) Purchaser's uncured default under the GE Bridge Financing Commitment, (B) the failure of one or more conditions to close which are within Purchaser's

reasonable control to satisfy, or (C) Purchaser's failure to accept documentation for the GE Bridge Loan that is commercially reasonable for debt assumption transactions) shall be conditions to Purchaser's obligation to close hereunder and under the Harborside Purchase and Sale Agreement, (iii) was able to obtain a financing commitment for a Bridge Loan from GECC or any alternative senior lender the terms of which loan and identity of such lender are satisfactory to Purchaser in its sole and absolute discretion ("**Senior Lender**") pursuant to the terms of this Agreement and the Harborside Purchase and Sale Agreement (the "**Bridge Financing Commitment**") and Purchaser has provided Seller and Harborside Seller with a fully executed copy of the Bridge Financing Commitment, in which case iStar shall, subject to the terms of this Section 4.3.2 and Section 4.3.2 of the Harborside Purchase and Sale Agreement, provide the Mezzanine Loan simultaneously with the closing of the Bridge Loan, Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement and Purchaser shall proceed to closing the acquisition of the Harborside Membership Interests pursuant to the Harborside Purchase and Sale Agreement but the closing of the Bridge Loan and the Mezzanine Loan (so long as iStar is not in default of its obligation to provide the Mezzanine Loan as set forth herein and in the Harborside Purchase and Sale Agreement) shall not be conditions to Purchaser's obligations to close hereunder or under the Harborside Purchase and Sale Agreement, or (iv) has not obtained the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment on terms that are yet acceptable to Purchaser in Purchaser's sole and absolute discretion but that Purchaser (A) desires to proceed to Closing hereunder and under the Harborside Purchase and Sale Agreement notwithstanding that Purchaser does not have the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment on terms that are yet acceptable to Purchaser in Purchaser's sole and absolute discretion and (B) requests an additional ten (10) day period (the "**Financing Commitment Extension Period**") within which to obtain the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment on terms acceptable to Purchaser, in which case Purchaser shall be deemed to have acknowledged that it has received or had access to all Property Documents (as defined herein and in the Harborside Purchase and Sale Agreement), conducted all inspections and tests of the Property and Harborside that it considers important, and completed its due diligence of, the Property and the Membership Interests (items (i), (ii) and (iii) above are each referred to herein individually as a "**Financing Commitment Status Statement**"). If the Due Diligence Waiver Notice contains the information set forth in this subsection (iv) above, prior to the end of the Financing Commitment Extension Period, Purchaser shall deliver to Seller and Harborside Seller a notice setting forth the Financing Commitment Status Statement applicable as of the last day of the Financing Commitment Extension Period and the terms and conditions in this subsection (iv) and in Section 4.3.2 of the Harborside Purchase and Sale Agreement related thereto shall apply. If Purchaser fails to deliver the applicable Financing Commitment Status Statement and a fully executed copy of either the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment prior to the end of the Financing Commitment Extension Period, this Agreement, and the Harborside Purchase and Sale Agreement pursuant to the terms thereof, shall automatically terminate as of the last day of the Financing Commitment Extension Period, in which case the Earnest Money shall be immediately returned to Purchaser and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement. Any Financing Commitment Status Statement delivered by Purchaser pursuant to the terms hereof shall be the same as the

Financing Commitment Status Statement delivered by Purchaser pursuant to the Harborside Purchase and Sale Agreement. If Purchaser obtains either the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment pursuant to the terms of, and within the timeframes set forth in, this Section 4.3.2 and Section 4.3.2 of the Harborside Purchase and Sale Agreement, then Purchaser or Seller may elect to extend the then current Closing Date from time to time to a date that is not more than ten (10) days following the then current Closing Date by delivering written notice to the other party at least two (2) days prior to the then current Closing Date, respectively, solely in order for (A) Purchaser to comply with the terms of the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment (as applicable) or to obtain alternative financing and (B) Seller to satisfy the conditions to Purchaser's obligations to close set forth in Section 7.2.2 of this Agreement (the foregoing items (A) and (B) are each referred to herein individually as, a "**Closing Date Extension Condition**"); provided, however, neither Purchaser nor Seller shall have the right to extend the Closing Date beyond the earlier of June 24, 2010 and the required closing date of the lender providing the financing for Purchaser's acquisition of the Property and the Harborside Membership Interests as described in the Financing Commitment Status Statement; provided, further, no election by Purchaser or Seller to extend the Closing Date shall be valid unless either Purchaser or Seller shall have simultaneously elected to extend the closing date of the Harborside Purchase and Sale Agreement in accordance with the terms thereof. As used in this Section 4.3.2, "**GE Bridge Loan**" shall mean the assumption of the existing loans from GECC secured by the Property and Harborside (collectively, the "**GE Loan**") less a \$100,000,000.00 pay down (or an assumption by Purchaser of such amount of the GE Loan (following the \$100,000,000.00 pay down) which when added to the Mezzanine Loan would equal sixty-five percent (65%) of the aggregate Purchase Price of the Property and the Harborside Membership Interests), which GE Bridge Loan shall be secured by the documents and instruments evidencing the GE Loan, as amended to reflect the assumption of the GE Loan by Purchaser, the \$100,000,000.00 pay down, and the terms of the GE Bridge Financing Commitment; "**Bridge Loan**" shall mean a loan of Eight Hundred Million and no/100 Dollars (\$800,000,000.00) (or such other amount which when added to the Mezzanine Loan would equal sixty-five (65%) percent of the aggregate Purchase Price of the Property and the Harborside Membership Interests) from Senior Lender, which Bridge Loan shall (1) be secured by a first mortgage or deed of trust on the Real Property and Harborside on terms no less favorable to Purchaser and iStar than those set forth on **Schedule 4.3.2**, and (2) reflect the terms of the Bridge Financing Commitment; and "**Mezzanine Loan**" shall mean a loan from iStar in the amount of the lesser of (a) One Hundred Twenty Five Million and no/100 Dollars (\$125,000,000.00) and (b) the difference between the GE Bridge Loan or the Bridge Loan (as applicable) and sixty-five (65%) percent of the aggregate Purchase Price of the Property and the Harborside Membership Interests, which Mezzanine Loan shall be (x) on terms no less favorable to Purchaser and iStar than those set forth on **Schedule 4.3.2** and (y) secured by indirect pledges of the equity interests in the affiliates of Purchaser acquiring fee simple title to the Real Property and in AFE, PXR, PXURA and PXL.A. iStar shall provide the Mezzanine Loan so long as (a) the terms of the GE Bridge Loan or the Bridge Loan (as applicable) generally comply with the terms of this Section 4.3.2 and Section 4.3.2 of the Harborside Purchase and Sale Agreement, and, with respect to the Bridge Loan, **Schedule 4.3.2** and (b) GECC with respect to the GE Bridge Loan or Senior Lender with respect to the Bridge Loan (as applicable), enters into an intercreditor agreement with iStar on such commercially reasonable terms and provisions, and evidenced by commercially reasonable documents, which terms and provisions

shall include, without limitation, the right but not the obligation of iStar to cure defaults under the Mezzanine Loan and following an event of default under the Mezzanine Loan to foreclose on the collateral securing the Mezzanine Loan. Notwithstanding anything contained in this Section 4.3.2 to the contrary, in the event the Harborside Purchase and Sale Agreement is terminated pursuant to the terms thereof (other than Article X), (w) the GE Bridge Loan shall be deemed to mean only the assumption of that portion of the GE Loan secured by the Property but shall otherwise be in the terms set forth in this Section 4.3.2, (x) all references to the aggregate Purchase Price of the Property and the Harborside Membership Interests shall be deemed to only mean the Purchase Price of the Property and (y) all references to Harborside Seller, the Harborside Purchase and Sale Agreement, Harborside, AFE, PXR, PXURA and PXLA and any similar references set forth in this Section 4.3.2 shall be deemed deleted.

4.4 **Updated Property Information.** From the Effective Date through the Closing Date, if and to the extent that Seller receives from an unaffiliated third-party any additional Property Information not previously provided to Purchaser, or if and to the extent that Seller receives any document, notice or correspondence from an unaffiliated third-party or otherwise obtains actual knowledge from an unaffiliated third-party source of a condition arising after the Effective Date that would render any of the representations and warranties of Seller in Section 9.1 untrue if and to the extent remade after the Effective Date, Seller shall promptly so notify Purchaser and shall make electronic copies of all such documents, notices, correspondence or other information in Seller's possession ("**Updated Property Information**") available to Purchaser on iPortal. Updated Property Information may include any information disclosed in the Tenant Estoppel Certificate, but such updated information shall remain subject to Purchaser's rights pursuant to Section 7.2.1(1) and 7.2.3. The representations and warranties of Seller in Section 9.1 shall be deemed amended to reflect such Updated Property Information, provided that if the amendment or deemed amendment of any representation or warranty reflects a fact or circumstance that would trigger a termination, extension or other right of Purchaser under this Agreement, the amendment or deemed amendment of any representation or warranty to reflect such fact or circumstance shall not vitiate such right of Purchaser.

4.5 **Return of Documents and Reports.** As additional consideration for the transaction contemplated herein, if Purchaser terminates this Agreement, Purchaser shall provide to Seller, if requested by Seller, promptly following the receipt of notice from Seller after the termination of this Agreement, copies of all "Reports". "**Reports**" mean (a) written third-party reports, tests, investigations and studies that pertain to contamination of, or environmental concerns regarding, the Property delivered to Purchaser or its affiliates, and (b) all other written third party reports, investigations and studies, other than economic analyses in each case under (a) and (b) prepared for Purchaser in connection with its due diligence review of the Property, including, without limitation, any and all Reports involving structural or geological conditions, environmental, hazardous waste or hazardous substances contamination of the Property, if any. The Reports shall not include any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property and/or Purchaser, or which are subject to a confidentiality agreement. The Reports shall be delivered to Seller at no cost to Seller and without any representation or warranty as to the completeness or accuracy of the Reports or any other matter relating thereto. Purchaser's obligation to deliver the Reports to Seller shall survive the termination of this Agreement.

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4.6 **Service Contracts.** On or prior to the Closing Date, Purchaser will advise Seller in writing which Service Contracts Purchaser requests that Seller terminate at or prior to Closing, provided Seller shall have no obligation to terminate, and Purchaser shall be obligated to assume, any Service Contracts which by their terms cannot be terminated without penalty or payment of a fee (unless Purchaser agrees in writing to pay such fee). Seller shall deliver at Closing notices of termination of all Service Contracts that Purchaser so directs. Purchaser shall assume the obligations arising from and after the Closing Date under those Service Contracts (a) that Purchaser has elected not to have Seller terminate, and (b) for which a termination notice is delivered as of or prior to Closing but for which termination is not effective until after Closing. Notwithstanding the foregoing, Seller shall, at its expense, terminate all Service Contracts which are management agreements, other than with respect to Harborside.

4.7 **Proprietary Information; Confidentiality.** Purchaser agrees that it is bound by the Confidentiality Agreement as if it were a party thereto, and the Confidentiality Agreement remains in full force and effect. Notwithstanding anything to the contrary set forth in the Confidentiality Agreement, (a) each party acknowledges that the other party shall be allowed to disclose the existence of this Agreement and the contents thereof in order to comply with certain disclosure requirements relating to public companies and their affiliates and (b) provided Purchaser has delivered the Due Diligence Waiver Notice pursuant to Section 4.3.1 hereof, Purchaser shall be allowed to disclose the existence of this Agreement, and deliver the Property Information and Updated Property Information, to third parties in connection with such third parties' potential acquisition from Purchaser of one or more of the Properties or interests therein after the Closing Date so long as such third parties have agreed in writing to be bound by the terms of the Confidentiality Agreement prior to Purchaser's disclosure of the existence of this Agreement, and delivery of the Property Information and Updated Property Information, to such third parties. The parties shall coordinate, in advance, with respect to any such public filings and/or press releases. After the Closing there shall be no restriction as between Purchaser and Seller on Purchaser's disclosure of Property Information or Updated Property Information.

4.8 **No Representation or Warranty by Seller.** Purchaser acknowledges that, except as expressly set forth in this Agreement, Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Property Documents, the Updated Property Information or the source(s) thereof. Purchaser further acknowledges that some if not all of the Property Documents and Updated Property Information were prepared by third parties other than Seller. Except as expressly set forth in this Agreement or in any of the documents delivered at the Closing, (a) Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents or Updated Property Information, or in any other written or oral communications transmitted or made available to Purchaser, (b) Purchaser shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto, and (c) Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and Updated Property Information and is providing the Property Documents and Updated Property Information solely as an accommodation to Purchaser.

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4.9 **Purchaser's Responsibilities.** In conducting any inspections, investigations or tests of the Property, Property Documents and/or Updated Property Information, Purchaser and its agents and representatives shall: (a) not disturb the tenants or interfere with their use of the Property pursuant to their respective Leases; (b) not interfere with the operation and maintenance of the Property; (c) not damage any part of the Property or any personal property owned or held by any tenant or any third party; (d) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees or any tenants or their agents, guests, invitees, contractors and employees; (e) comply with all applicable laws; (f) promptly pay when due the

costs of all tests, investigations, and examinations done with regard to the Property; (g) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (h) subject to the provisions of Section 4.10, repair any damage to the Real Property resulting directly or indirectly from any such inspection or tests; and (i) not reveal or disclose prior to Closing any information obtained during the Inspection Period concerning the Property, the Property Documents and the Updated Property Information to anyone other than the Permitted Recipients (as defined in the Confidentiality Agreement), in accordance with the confidentiality standards set forth in Section 4.7 above, or except as may be otherwise required by law. Purchaser's obligations under this Section 4.9 shall survive the termination of this Agreement.

4.10 **Purchaser's Agreement to Indemnify.** Purchaser hereby agrees to indemnify, defend and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Purchaser's inspections or tests permitted under this Agreement or any violation of the provisions of Sections 4.2, 4.7, and 4.9; provided, however, the indemnity shall not protect Seller from any liabilities for matters merely discovered by Purchaser (i.e., environmental contamination) so long as Purchaser's actions do not aggravate any pre-existing liability of Seller it being agreed by Purchaser and Seller that the mere discovery by Purchaser of such matters shall not constitute an aggravation of any pre-existing liability of Seller. Purchaser also hereby agrees to indemnify, defend and hold any tenant harmless from and against any and all claims, causes of action, damages, liabilities and expenses which such tenant may suffer or incur due to Purchaser's breach of its obligation under Sections 4.7 and 4.9 above to maintain the confidential nature of any Property Documents, Updated Property Information or other information relative to such tenant. Purchaser's obligations under this Section 4.10 shall survive the termination of this Agreement and shall survive the Closing.

## **ARTICLE 5** **TITLE AND SURVEY**

5.1 **Title Commitments.** Purchaser acknowledges that copies of current commitments for title insurance or preliminary title reports with respect to the Property, together with copies of all documents of record referred to therein (individually, a "**Title Commitment**" and collectively, the "**Title Commitments**") issued by First American on ALTA 2006 Owners Forms or state promulgated forms have been delivered or made available to Purchaser.

5.2 **Updated Surveys.** Purchaser has arranged, at Seller's expense, for the preparation of new surveys or the revision, modification, or re-certification of the existing

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Surveys as necessary in order for First American to delete the survey exceptions from the Title Policies.

5.3 **Title Review.** During the Title and Survey Review Period, Purchaser shall review title to the Property as disclosed by the Title Commitments and the Surveys. Seller shall have no obligation to cure title objections except liens of an ascertainable amount created by, under or through Seller, or assumed by Seller, which liens Seller shall cause to be released at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose), and Seller shall deliver the Property free and clear of any such liens; provided, however, that the foregoing requirement to discharge liens shall not apply to liens on any tenant's leasehold estate. Seller further agrees to remove any exceptions or encumbrances to title which are voluntarily created by, under or through Seller after the Effective Date without Purchaser's consent (if requested, such consent shall not be unreasonably withheld or delayed). The term "**Permitted Exceptions**" shall mean: (A) the exceptions (i) that are part of the promulgated title insurance form for each Title Commitment, (ii) that the Title Company is unable to remove under applicable insurance regulations, (iii) that the Title Company has not agreed to remove from the Title Commitments notwithstanding that Seller has delivered the Title Affidavits to the Title Company, (iv) that Purchaser consents to, or is deemed to have consented to, as of the end of the Title and Survey Review Period and (v) that Seller is not required to remove as provided above; (B) matters created by, through or under Purchaser; (C) items shown on the Surveys which have not been removed as of the end of the Inspection Period (or if Purchaser does not obtain new Surveys, all matters that current, accurate surveys of the Property would show); (D) real estate taxes not yet due and payable; (E) rights of tenants under the Leases; and (F) any encumbrances relating to the Property created by, though or under any tenant of the Property that does not render title to such Property unmarketable, provided such tenant is not otherwise in default under its Lease.

5.4 **Delivery of Title Policies at Closing.** The parties acknowledge that First American Title Insurance Company, National Commercial Services — Chicago ("**First American**") and Fidelity Title Insurance Company ("**Fidelity**") constitute the Title Company. First American shall act as the lead Title Company and underwriter and shall issue the Title Policies (as hereinafter defined); provided, however, that Purchaser may obtain co-insurance from Fidelity in the amount of up to fifty percent (50%) of the Allocated Purchase Price of each Property in the form of co-insurance endorsements ("**Co-Insurance**") so long as (i) the cost of such Co-Insurance does not increase the total cost of title insurance that Seller would otherwise pay to First American if First American were insuring the full Purchase Price unless Purchaser pays for such increased cost of title insurance and (ii) the issuance of such Co-Insurance does not delay the Closing. Purchaser, at Purchaser's sole cost and expense, may obtain re-insurance with respect to the Title Policies from such third parties as Purchaser may elect so long as obtaining such re-insurance does not delay the Closing. In the event that the Title Company does not issue at Closing, or unconditionally commit at Closing to issue, to Purchaser, owner's title insurance policies and Co-Insurance in accordance with the Title Commitments with extended coverage, insuring Purchaser's title interest in each Real Property in the amount of the Allocated Purchase Price, subject only to the exclusions from coverage contained in the applicable policy and the applicable Permitted Exceptions (individually, a "**Title Policy**" and collectively, the "**Title Policies**"), Purchaser shall have the right to terminate this Agreement in its entirety, in which case the Earnest Money shall be immediately returned to Purchaser and the parties hereto shall

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have no further rights or obligations, other than those that by their terms survive the termination of this Agreement, or, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), in part with respect only to those Properties with respect to which the Title Company is unable to deliver such Title Policies, in which event the Purchase Price shall be reduced by the aggregate Allocated Purchase Price for such Properties; provided, however, if either Title Company alone is willing to deliver Title Policies with respect to such Properties in the amount of the aggregate Allocated Purchase Price for such Properties, Purchaser agrees to accept such Title Policies and Purchaser shall have no right to terminate this Agreement with respect to such Properties and receive any reduction in the Purchase Price.

## **ARTICLE 6** **OPERATIONS AND RISK OF LOSS**

6.1 **Ongoing Operations.** From the Effective Date through Closing:

6.1.1 **Leases, Service Contracts and License Agreements.** Seller will perform its material obligations under the Leases, Service Contracts and License Agreements unless Seller is excused from performing such obligations pursuant to such Leases, Services Contracts and License Agreements.

6.1.2 **New Contracts.** Except as provided in Section 6.1.4, Seller will not enter into any contract that will be an obligation affecting the Property subsequent to the Closing, except contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than 30 days' prior notice.

6.1.3 **Maintenance of Improvements; Removal of Personal Property.** Subject to Sections 6.2 and 6.3, Seller shall maintain or use reasonable efforts to cause the tenants under the Leases to maintain all Improvements substantially in their present condition (ordinary wear and tear and casualty excepted) and in a manner consistent with Seller's maintenance of the Improvements during Seller's period of ownership. Seller will not remove any Tangible Personal Property except as may be required for necessary repair or replacement or with respect to items that, in Seller's judgment are obsolete, and replacement shall be of approximately equal quality and quantity as the removed item of Tangible Personal Property.

6.1.4 **Leasing; License Agreements.** Seller will not (i) amend or terminate any existing Lease or License Agreement, (ii) consent to the assignment of any Lease or License Agreement, (iii) enter into any new Lease or new License Agreement or (iv) grant its consent, to the extent Seller's consent is required, to a sublease of the Property, a modification or assignment of a sublease covering the Property, a substitution of the Property covered by the Lease with The Goodyear Tire & Rubber Company as a result of a Casualty or any other item for which a consent is required under any Lease or License Agreement (the foregoing items (i), (ii), (iii) and (iv) are each referred to herein as, a "**Lease Event**") after the Effective Date and prior to the Closing Date without first providing Purchaser (a) all relevant supporting documentation, as reasonably determined by Seller, including, without limitation, financial information for the assignee, tenant, subtenant and any guarantor to the extent in Seller's possession, and (b) as to any Lease Event which is to be executed or granted after the expiration of the Inspection Period, Seller's request for Purchaser's approval. If Purchaser's approval is requested by Seller as to any

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Lease Event, Purchaser shall be held to the same standard for approval as Seller is held to in the document giving rise to such approval or consent right, and Purchaser agrees to give Seller written notice of its approval or disapproval of a proposed Lease Event within three (3) Business Days after Purchaser's receipt of the items in Section 6.1.4(a) and Section 6.1.4(b). If Purchaser does not respond to Seller's request within such time period, then Purchaser will be deemed to have approved such Lease Event. Purchaser's approval rights and obligations will vary depending on whether such Lease Event is to be executed or granted before or after the expiration of the Inspection Period, as follows:

(1) Purchaser's approval shall not be required with regard to any Lease Event which is to be executed or granted on or prior to the end of the Inspection Period. If Seller gives Purchaser notice of the execution or grant of a Lease Event during the final three (3) Business Days of the Inspection Period, the Inspection Period will be extended to the third (3<sup>rd</sup>) Business Day following the date such notice is given to Purchaser.

(2) With respect to a request for approval delivered by Seller to Purchaser for the execution or grant of a Lease Event after the expiration of the Inspection Period, so long as Purchaser has complied with its standard for review described above, Purchaser may withhold its approval in its reasonable discretion, and Seller may not execute or grant such Lease Event without Purchaser's written approval.

Seller shall not apply any tenant or licensee security deposits on account of any alleged default by any tenant or licensee after the earlier of three (3) Business Days before the end of the Inspection Period and the date when Purchaser has delivered the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof unless Seller has terminated the applicable Lease or License Agreement and obtained possession of the demised or licensed premises. All tenant and licensee security deposits collected and not applied by Seller as of the Effective Date are set forth on **Schedule 6.1.4**. Seller shall deliver to Purchaser three (3) Business Days before the end of the Inspection Period an update to **Schedule 6.1.4** to reflect the current amount of all security deposits collected and not applied by Seller as of such date.

6.1.5 **Insurance.** Seller will not terminate or allow any insurance with respect to the Properties maintained by Seller or its affiliate to lapse unless replaced by equivalent coverage. Promptly upon Purchaser's delivery of the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof, Seller shall name Purchaser as an additional insured on all insurance maintained by Seller or its affiliates with respect to the Properties and shall provide to Purchaser evidence of same. .

6.2 **Casualty.** If after the Effective Date and prior to the Closing any Property is damaged by fire or other casualty (a "**Casualty**"), Seller shall, promptly upon receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Casualty, (a) the tenant of such Property other than the Property commonly known as 1500/1600 Riveredge Parkway, Atlanta, GA (the "**IBM Property**") is entitled to and elects to terminate its Lease with respect to such Property or (b) International Business Machines ("**IBM**") is entitled to and elects to terminate its Lease with respect to the IBM Property (each a "**Casualty Tenant Termination**

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**Event**"), then Seller shall promptly upon receiving notice of such Casualty Tenant Termination Event notify Purchaser of the same (a "**Casualty Tenant Termination Notice**"). Within five (5) days after receipt of the Casualty Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser's election to either (i) subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), terminate this Agreement with respect to such Property, in which case the Purchase Price shall be reduced by the Allocated Purchase Price for such Property, or (ii) to acquire such Property notwithstanding the Casualty Tenant Termination Event. If (i) Purchaser elects to acquire such Property notwithstanding the Casualty Tenant Termination Event or fails to terminate this Agreement with respect to such Property within such five (5) day period, or (ii) such Casualty does not give rise to a Casualty Tenant Termination Event, then Purchaser shall proceed to Closing, and as of Closing, (1) Seller shall (A) assign to Purchaser, without representation or warranty by or recourse against Seller, all of Seller's rights in and to any resulting insurance proceeds (including any rent loss insurance and rent abatement insurance applicable to any period beginning with the Closing Date) due Seller as a result of such Casualty, and (B) provide written confirmation from GECC

that such insurance proceeds can be assigned to Purchaser and will be available after Closing to Purchaser to effectuate the needed repairs, (2) Purchaser shall assume full responsibility for all needed repairs (as between Purchaser and Seller, but subject to the terms of the applicable Lease with respect to any rights of the applicable tenant), and (3) Purchaser shall receive a credit at Closing for any deductible amount under such insurance policies to the extent not payable by the applicable tenant under the applicable Lease. Notwithstanding anything contained herein to the contrary, if a Casualty shall occur to any Property and, as a result of such Casualty, the lender providing the Term Financing Commitment will not close the loan contemplated by the Term Financing Commitment with respect to such Property, GECC will not close the GE Bridge Loan with respect to such Property or GECC or Senior Lender (as applicable) will not close the Bridge Loan with respect to such Property (as applicable pursuant to Section 4.3.2), then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate with respect to such Property and the Purchase Price shall be reduced by the Allocated Purchase Price of such Property.

6.3 **Condemnation.** If after the Effective Date and prior to the Closing Seller receives notice of, or proceedings are instituted for, eminent domain with respect to any Property or any portion thereof (a “**Condemnation**”), Seller shall, promptly upon receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Condemnation, (a) the tenant of such Property other than the IBM Property is entitled to and elects to terminate its Lease with respect to such Property or (b) IBM is entitled to and elects to terminate its Lease with respect to the IBM Property (each a “**Condemnation Tenant Termination Event**”), then Seller shall promptly upon receiving notice of such Condemnation Tenant Termination Event notify Purchaser of the same (a “**Condemnation Tenant Termination Notice**”). Within five (5) days after receipt of the Condemnation Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser’s election to either (i) subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), terminate this Agreement with respect to such Property, in which case the Purchase Price shall be reduced by the Allocated Purchase Price for such Property, or (ii) to acquire such Property notwithstanding the Condemnation Tenant Termination Event. If (i) Purchaser elects to acquire such Property notwithstanding the Condemnation Tenant Termination Event or fails to terminate this Agreement with respect to such Property within such five (5) day period, or (ii) such Condemnation does not give rise to a Condemnation Tenant Termination Event, then Purchaser shall proceed to Closing, and as of

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Closing, Seller shall assign to Purchaser, without representation or warranty by or recourse against Seller, all of Seller’s right, title and interest in and to any condemnation award and resulting insurance proceeds due as a result of such Condemnation (including any rent loss insurance and rent abatement insurance applicable to any period beginning with the Closing Date), and Purchaser shall have the sole right after the Closing (as between Purchaser and Seller, but subject to the terms of the applicable Lease with respect to any rights of the applicable tenant) to negotiate and otherwise deal with the condemning authority in respect of such Condemnation. Notwithstanding anything contained herein to the contrary, if a Condemnation shall occur to any Property and, as a result of such Condemnation, the lender providing the Term Financing Commitment will not close the loan contemplated by the Term Financing Commitment with respect to such Property, GECC will not close the GE Bridge Loan with respect to such Property or Senior Lender will not close the Bridge Loan with respect to such Property (as applicable pursuant to Section 4.3.2), then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate with respect to such Property and the Purchase Price shall be reduced by the Allocated Purchase Price of such Property.

#### 6.4 **Estoppel Certificates/SNDAs.**

6.4.1 Purchaser and Seller acknowledge and agree that as of the Effective Date Seller has sent to each tenant (with a copy to Purchaser) to which space in the Improvements is leased a request for an estoppel certificate in the form approved by Purchaser (such estoppel certificates are referred to herein individually as, a “**Tenant Estoppel Certificate**”) and collectively as, the “**Tenant Estoppel Certificates**”). Purchaser acknowledges that it has approved the form of each Tenant Estoppel Certificate sent to each tenant as of the Effective Date. Seller shall not be obligated to expend any funds in connection with obtaining any such Tenant Estoppel Certificates, declare any default under any Lease or commence any legal action for enforcement of any Lease in order to obtain any such Tenant Estoppel Certificates. Seller shall copy Purchaser on the initial correspondence soliciting the Tenant Estoppel Certificates and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the tenants in connection with the tenants’ execution of the Tenant Estoppel Certificates. With respect to any executed Tenant Estoppel Certificate dated more than thirty (30) days prior to the Closing Date, Seller agrees, upon the request of Purchaser, to send to the tenant who executed such Tenant Estoppel Certificate a request for an updated Tenant Estoppel Certificate or a letter of no change to the executed Tenant Estoppel Certificate; provided, however, obtaining such updated Tenant Estoppel Certificate or letter of no change shall (i) not be a condition to Purchaser’s obligation to close pursuant to Section 7.2.2 and (ii) in no way delay the Closing, it being agreed by Purchaser that any Tenant Estoppel Certificate executed and delivered in the form approved by Purchaser regardless of the date executed by the applicable tenant shall satisfy Purchaser’s condition to close pursuant to Section 7.2.2 with respect to such tenant.

6.4.2 Upon receipt from Purchaser of drafts of estoppel certificates addressed to the parties listed on **Schedule 6.4.2** (individually, a “**Third Party Estoppel Certificate**” and collectively, the “**Third Party Estoppel Certificates**”), Seller shall promptly send such Third Party Estoppel Certificates to the parties listed on **Schedule 6.4.2**. Seller shall not be obligated to expend any funds in connection with obtaining any such Third Party Estoppel Certificates,

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declare any default under any agreement or commence any legal action for enforcement of any agreement in order to obtain any such Third Party Estoppel Certificates. Seller shall copy Purchaser on the initial correspondence soliciting the Third Party Estoppel Certificates and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the third parties in connection with the third parties’ execution of the Third Party Estoppel Certificates.

6.4.3 Seller shall promptly after the date on which Purchaser obtains the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment send to each tenant to which space in the Improvements is leased a request for a subordination, non-disturbance and attornment agreement substantially in the form executed by such tenant in connection with the closing of the GE Loan, or if any tenant did not execute a subordination, non-disturbance and attornment agreement in connection with the GE Loan, a subordination, non-disturbance and attornment agreement in a form otherwise approved by Purchaser (such subordination, non-disturbance and attornment agreements are referred to herein individually as, an “**SNDA**” and collectively as, the “**SNDAs**”). Notwithstanding the foregoing, Seller shall not be obligated to request an SNDA from any tenant of the IBM Property other than IBM and PBS&J. Seller shall not be obligated to expend any funds in connection with obtaining any such SNDAs, declare any default under any Lease or commence any legal action for enforcement of any Lease in order to obtain any such SNDAs. Seller shall copy Purchaser on the initial

correspondence soliciting the SNDAs and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the tenants in connection with the tenants' execution of the SNDAs.

6.5 **Acknowledgments.** Seller has previously requested acknowledgments from each tenant listed on **Schedule 6.5** (each, a “**ROFO Tenant**” and collectively, the “**ROFO Tenants**”) that the rights of first refusal or rights of first offer to purchase the applicable Property set forth in such tenants' respective Leases do not apply to Purchaser's acquisition of the applicable Property pursuant to this Agreement (each, a “**ROFO Acknowledgment**” and collectively, the “**ROFO Acknowledgements**”). Purchaser acknowledges (i) that it has approved the form of each ROFO Acknowledgment sent to each tenant as of the Effective Date, (ii) that it has received and approved a copy of the ROFO Acknowledgment executed by each of IBM, Arbella Capital Corporation, Northrop Grumman Space & Mission, and Sybase Inc. and (iii) Purchaser will accept either a ROFO Acknowledgment or a Tenant Estoppel Certificate containing a ROFO Acknowledgment (forms of which Purchaser has reviewed and approved as of the Effective Date) executed by all other ROFO Tenants for purposes of satisfying the requirement set forth in Section 7.2.2(7) of this Agreement. Seller shall not be obligated to expend any funds in connection with obtaining any such ROFO Acknowledgments, declare any default under the applicable Lease or commence any legal action for enforcement of the applicable Lease in order to obtain any such ROFO Acknowledgments. Seller shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the ROFO Tenants in connection with the ROFO Tenants' execution of the remaining ROFO Acknowledgments. If any ROFO Tenant exercises its right to purchase any Property, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall terminate with respect to

such Property on the date of such notice, in which event the Purchase Price shall be reduced by the Allocated Purchase Price for such Property.

## **ARTICLE 7** **CLOSING**

7.1 **Closing.** The consummation of the transaction contemplated herein (“**Closing**”) shall occur on the Closing Date at the offices of Escrow Agent (or such other location as may be mutually agreed upon by Seller and Purchaser). Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record those closing documents which are to be recorded, and deliver originals or copies of the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

7.2 **Conditions to Parties' Obligation to Close.** In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are conditioned upon the following:

### **7.2.1 Conditions to Seller's Obligations to Close.**

- (1) **Representations and Warranties.** Purchaser's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date;
- (2) **Deliveries.** As of the Closing Date, Purchaser shall have tendered all deliveries to be made by Purchaser at Closing;
- (3) **Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Purchaser that would materially and adversely affect Purchaser's ability to perform its obligations under this Agreement; and
- (4) **Property.** It shall be a condition to Seller's obligation to close hereunder that this Agreement and the Harborside Purchase and Sale Agreement (as applicable) shall not have been terminated with respect to (x) more than three Properties or (y) any two of the Harborside, Goodyear (it being understood that a termination of this Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of this Agreement with respect to only one Property notwithstanding the Goodyear Lease and the CEVA Lease cover multiple Properties) or Northrop (McLean, VA) Properties; provided, however, that a termination of this Agreement with respect to a Property by reason of the exercise of a right to purchase such Property by a ROFO Tenant shall be disregarded for purposes of the application of the provisions of this Section 7.2.1(4). For clarification, the parties agree that while both this Agreement and the Harborside Purchase and Sale Agreement must both

proceed towards Closing at the same time, or both terminate at the end of the Inspection Period together, it is possible for a closing condition under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect Harborside but proceed to closing under this Agreement.

### **7.2.2 Conditions to Purchaser's Obligations to Close.**

- (1) **Representations and Warranties.** Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date, subject to the provisions of Sections 4.4 and 9.3. Notwithstanding Sections 4.4 and 9.3, Seller and Purchaser acknowledge and agree that Section 7.2.3 shall apply (subject to the limitations of Sections 7.2.1(4) and 7.2.2(9)) to any material change in the representations and warranties of Seller with respect to a particular Property due to any Updated Property Information or changes that are not a result of a breach by Seller or any of its covenants;
- (2) **Deliveries.** As of the Closing Date, Seller shall have tendered all deliveries to be made by Seller at Closing;
- (3) **Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Seller that would



materially and adversely affect Seller's ability to perform its obligations under this Agreement;

(4) Tenant Estoppel Certificates. Seller shall have delivered to Purchaser Tenant Estoppel Certificates from (A) each of the following tenants: The Goodyear Tire & Rubber Company, Sybase, Inc., WellPoint, Inc. (which WellPoint, Inc. Tenant Estoppel Certificate shall include an acknowledgement by WellPoint, Inc., in a form approved by Purchaser, that WellPoint, Inc.'s right of first refusal and/or right of first offer to purchase the Property leased by WellPoint, Inc. has terminated by its terms) and Northrop Grumman Information Technology, Inc. (collectively, the "**Prime Tenants**"), and (B) the tenants of single tenant buildings and tenants of more than 25,000 square feet in multi-tenanted buildings, in all cases not leased to the Prime Tenants, for those Properties which represent not less than seventy percent (70%) of the Purchase Price allocated to all portions of the Property not leased to the Prime Tenants (collectively, the "**Non-Prime Tenants**") (this item 7.2.2(4)(B) is referred to herein as, the "**Estoppel Requirement**"). Notwithstanding the foregoing, to the extent the Estoppel Requirement has not been satisfied on or prior to the Closing Date (the "**Estoppel Shortfall**"), iStar shall execute and deliver, and Purchaser agrees to accept, estoppel certificates ("**Seller Estoppels**") with respect to the Estoppel Shortfall, subject to the Seller Estoppel Cap, in the form attached hereto as Exhibit I, in which event such Seller Estoppels together with the Tenant Estoppel Certificates shall satisfy the Estoppel Requirement; provided, however,

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that (i) the Seller Estoppels shall not be subject to the "basket" or "cap" provisions with respect to Seller's liability set forth in Section 9.3, (ii) the Seller Estoppels shall not represent more than twenty (20%) percent of the Estoppel Requirement (the "**Seller Estoppel Cap**") and (iii) a Seller Estoppel shall in no event eliminate the need for Seller to deliver a ROFO Acknowledgment from all tenant from which a ROFO Acknowledgment otherwise is required. A response from a tenant which materially contradicts the information set forth in such tenant's Lease or in the Exhibits attached hereto or in the representations of Seller set forth herein shall not constitute a Tenant Estoppel Certificate for purposes of this Section 7.2.2(4);

(5) Occupancy/Non Bankruptcy. It shall be a condition to Purchaser's obligations to close hereunder that (a) as of the Closing Date, no tenant shall have terminated, or given notice of intent to terminate, its Lease, except with respect to a Casualty Tenant Termination Event or a Condemnation Tenant Termination Event and (b) from the end of the Inspection Period through the Closing Date, no tenant shall have vacated, abandoned or ceased operations at any Real Property, or filed for voluntary or involuntary bankruptcy or similar protection;

(6) Closing of GE Bridge Loan/Mezzanine Loan. If Purchaser has elected pursuant to Section 4.3.2 to proceed to Closing with (i) the GE Bridge Financing Commitment and has not elected thereafter to take an alternative financing, (A) the closing of the Mezzanine Loan simultaneously with the Closing and (B) the closing of the GE Bridge Loan on the Closing Date (unless the GE Bridge Loan fails to close as a result of (x) Purchaser's uncured default under the GE Bridge Financing Commitment, (y) the failure of one or more conditions to close which are within Purchaser's reasonable control to satisfy, or (z) Purchaser's failure to accept documentation for the GE Bridge Loan that is commercially reasonable for debt assumption transactions and implementation of such modifications to the GECC Loan as are more specifically set forth in the GE Bridge Financing Commitment) be conditions to Purchaser's obligation to close hereunder or (ii) the Bridge Financing Commitment and has not elected thereafter to take an alternative financing, iStar being ready, willing and able to close the Mezzanine Loan on the Closing Date is a condition to Closing and, if the Bridge Loan closes, the closing of the Mezzanine Loan simultaneously therewith is a condition to Closing. In no event shall the closing of (w) the loan contemplated by the Term Financing Commitment, (x) the Bridge Loan or (y) any alternative financing be a condition of Purchaser's obligation to close hereunder;

(7) ROFO Acknowledgments. It shall be a condition to Purchaser's obligations to close hereunder that Seller shall have delivered the ROFO Acknowledgements, subject to the last sentence of Section 6.5 with respect to any ROFO Tenant that exercises its right to purchase any Property;

(8) Title Policies. It shall be a condition to Purchaser's obligations to close hereunder that the Title Company shall have issued the Title Policies and Co-Insurance subject to, and in accordance, with Section 5.4;

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(9) Property. It shall be a condition to Purchaser's obligation to close hereunder that this Agreement or the Harborside Purchase and Sale Agreement (as applicable) shall not have been terminated with respect to (x) more than three Properties or (y) any two of the Harborside, Goodyear (it being understood that a termination of this Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of this Agreement with respect to only one Property notwithstanding the Goodyear Lease and the CEVA Lease cover multiple Properties) or Northrop (McLean, VA) Properties; provided, however, that a termination of this Agreement with respect to a Property by reason of the exercise of a right to purchase such Property by a ROFO Tenant shall be disregarded for purposes of the application of the provisions of this Section 7.2.1(9). For clarification, the parties agree that while both this Agreement and the Harborside Purchase and Sale Agreement must both proceed towards Closing at the same time, or both terminate at the end of the Inspection Period together, it is possible for a closing condition under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect Harborside but proceed to Closing under this Agreement; and

(10) SNDAs. It shall be a condition to Purchaser's obligation to close hereunder that Seller shall have delivered SNDAs from all tenants required by the terms of their respective Leases to provide SNDAs and all tenants whose Leases are not automatically subordinate to any financing on the applicable Property; provided, however, Seller shall not be obligated to deliver an SNDA from any tenant of the IBM Property other than IBM and PBS&J.

7.2.3 Failure to Satisfy Conditions. So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date (or such earlier date as is provided herein), subject to any applicable notice and cure periods provided in Sections 10.1 and 10.2, such party may, in its sole discretion: (a) terminate this Agreement with respect only to those Properties as to which the condition(s) to proceed have not been satisfied (subject to the limitations of Sections 7.2.1(4) and 7.2.2(9)); or (b) if the condition(s) to close have not been satisfied as to under Section 7.2.1(4) and 7.2.1(4) or where in this Agreement provides for a termination of this Agreement in its entirety, to

terminate this Agreement in its entirety, in each case by delivering written notice to the other party and Escrow Agent on or before the Closing Date (or such earlier date as is provided herein), or elect to close notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close, notwithstanding the non-satisfaction of such condition, said party shall be deemed to have waived said condition, and there shall be no liability on the part of any other party hereto for breaches of representations and warranties of which the party electing to close had knowledge at the Closing. In the event this Agreement is terminated in part with respect to certain Properties (subject to the limitations of Sections 7.2.1(4) and 7.2.2(9)), the Purchase Price shall be reduced by the Allocated Purchase Price for such Properties.

7.3 **Seller's Deliveries in Escrow.** As of or prior to the Closing Date, Seller shall deliver in escrow to Escrow Agent the following:

7.3.1 **Deeds.** A special or limited warranty deed in substantially the form of Exhibit B hereto, warranting title only against any party claiming by, through or under Seller, for each Real Property (individually, a "**Deed**" and collectively, the "**Deeds**"). Each Deed shall (i) be in form acceptable for recordation under the laws of the state where the applicable Real Property is located, (ii) include a list of the Permitted Exceptions to which the applicable conveyance shall be subject, (iii) be executed and acknowledged by Seller and (iv) convey to Purchaser Seller's interest in the applicable Real Property. The Deed for each Property shall use as its legal description of such Property the description contained in Seller's vesting deed for such Property. If such description differs from the description derived from the updated survey, Seller shall also deliver a quit-claim deed using the description derived from the updated survey.

7.3.2 **Assignments.** A Bill of Sale, Assignment and Assumption of Leases and Contracts in the form of Exhibit C hereto for each Property (individually, as "**Assignment**" and collectively, the "**Assignments**"). Each Assignment shall be executed and acknowledged by Seller, vesting in Purchaser, without warranty except as set forth herein, Seller's right, title and interest in and to the property described therein free of any claims, except for the Permitted Exceptions to the extent applicable;

7.3.3 **Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local laws in connection with the conveyance of each Real Property;

7.3.4 **FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit in the form of Exhibit D hereto executed by Seller;

7.3.5 **Authority.** Evidence of the existence and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to First American;

7.3.6 **Title Affidavits.** A title affidavit in form reasonably required by First American as to the rights of tenants in occupancy, the status of mechanics' liens and "gap" indemnities, and such other matters as the First American may reasonably require in order to issue the Title Policies (collectively, the "**Title Affidavits**");

7.3.7 **Additional Documents.** Any additional documents that First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement);

7.3.8 **Tenant Estoppel Certificates/Seller Estoppels.** Such Tenant Estoppel Certificates as Seller shall have received and such Seller Estoppels as are necessary to satisfy the Estoppel Requirement, it being agreed that the failure of Seller to obtain any such Tenant

Estoppel Certificates shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.9 **Third Party Estoppel Certificates.** Such Third Party Estoppel Certificates as Seller shall have received, it being agreed that the failure of Seller to obtain any such Third Party Estoppel Certificates shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.10 **ROFO Acknowledgments.** Such ROFO Acknowledgments as Seller shall have received;

7.3.11 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Seller in Section 9.1 are true and accurate as of the Closing Date, subject to Section 4.4 and the first sentence of Section 9.3;

7.3.12 **Updated Rent Roll.** A Rent Roll updated to the Closing Date, or as close as possible; and

7.3.13 **SNDAs.** Such SNDAs as Seller shall have received.

7.4 **Purchaser's Deliveries in Escrow.** As of or prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

7.4.1 **Assignments.** The Assignments, executed and acknowledged by Purchaser;

7.4.2 **ERISA Letter.** Intentionally Deleted.

7.4.3 **Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Purchaser by applicable state and local laws in connection with the conveyance of each Real Property;

7.4.4 **Authority.** Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to First American;

7.4.5 **Additional Documents.** Any additional documents that Seller, Escrow Agent or First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement); and

7.4.6 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Purchaser in Section 9.2 are true and accurate as of the Closing Date.

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7.5 **Closing Statements.** As of or prior to the Closing Date, Seller and Purchaser shall deposit with Escrow Agent an executed closing statement consistent with this Agreement in the form required by Escrow Agent. Seller shall provide a draft of the same at least one week prior to the scheduled Closing Date.

7.6 **Purchase Price.** At or before 3:00 p.m. (Eastern Time) on the Closing Date, Purchaser shall deliver to Escrow Agent the Purchase Price, less the Earnest Money, plus or minus applicable prorations and any adjustment to the Purchase Price made in accordance with the terms of this Agreement, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds must be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); in the event that Escrow Agent is unable to deliver good funds to Seller or its designee prior to 4:00 p.m. (Eastern Time) on the Closing Date, then the closing statements and related prorations will be revised as necessary. To the extent that Escrow Agent is unable to provide the amount of interest constituting part of the Earnest Money up to the Closing Date, Escrow Agent shall promptly remit any such interest not applied against the Purchase Price to Purchaser after the Closing.

7.7 **Possession.** Seller shall deliver possession of the Property to Purchaser at the Closing subject only to the Permitted Exceptions.

7.8 **Delivery of Books and Records.** Within ten (10) Business Days after the Closing, Seller shall deliver to the offices of Purchaser: (i) original Lease Files; (ii) original Service Contracts and License Agreements, (iii) to the extent in Seller's possession: (a) maintenance records and warranties; (b) plans and specifications; (c) licenses, permits and certificates of occupancy; (d) copies or originals of all books and records of account, contracts, and copies of correspondence with tenants and suppliers; (e) advertising materials; (f) booklets; and (g) keys.

7.9 **Notice to Tenants.** Seller and Purchaser shall each execute, and Purchaser shall deliver to each tenant immediately after the Closing, a notice regarding the sale in substantially the form of Exhibit G hereto, or such other form as may be required by applicable state law. This obligation on the part of Purchaser shall survive the Closing.

## **ARTICLE 8**

### **PRORATIONS, DEPOSITS, COMMISSIONS**

8.1 **Prorations for Taxes.** To the extent tenants are required to pay real and personal ad valorem taxes ("Taxes") directly under their respective Leases, Taxes will not be prorated, and accordingly, Purchaser shall look solely to the tenants under their respective Leases for payment of all Taxes. To the extent tenants are not required to pay Taxes directly under their respective Leases, then the following shall apply with respect to the proration of Taxes:

8.1.1 If Taxes for the year of Closing are not known or cannot be reasonably estimated, Taxes shall be prorated based on Taxes for the year prior to Closing; and

8.1.2 Any additional Taxes relating to the year of Closing arising out of a change in ownership shall be assumed by Purchaser effective as of Closing and paid by

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Purchaser when due and payable, and Purchaser shall indemnify Seller from and against any and all such Taxes, which indemnification obligation shall survive the Closing.

8.2 **Prorations for Tenant-Paid Operating Expenses.** To the extent tenants are required to pay operating costs and expenses of the Property ("Operating Expenses") directly under their respective Leases, which Operating Expenses may include, without limitation, fees and assessments; prepaid expenses; obligations under Service Contracts; any assessments by private covenant; insurance; utilities; common area maintenance expenses; and other operating costs and expenses incurred in connection with the ownership, operation, maintenance and management of the Real Property, Operating Expenses will not be prorated, and accordingly, Purchaser shall look solely to the tenants under such Leases for payment of all Operating Expenses.

8.3 **Prorations for Non-Tenant Paid Items.** To the extent tenants are not required to pay Operating Expenses or Taxes directly under their respective Leases, but are required to escrow Operating Expenses or Taxes under their respective Leases and/or to reimburse their landlord for all or any portion of such Operating Expenses or Taxes, then the following items shall be prorated as of the Closing Date with all items of income and expense for such Property being borne by Purchaser from and after (and including) the Closing Date and Seller prior to the Closing Date:

8.3.1 **Utilities.** Purchaser shall take all steps necessary to effectuate the transfer of utilities to its name as of the Closing Date, and where necessary, post deposits with the utility companies. Seller shall ensure that all utility meters are read as of the Closing Date. Seller shall be entitled to recover any and all deposits held by any utility company as of the Closing Date.

8.3.2 **Tenant Receivables.** Rents due from tenants under Leases and from tenants or licensees under License Agreements and Operating Expenses and Taxes payable by tenants under Leases and licenses under License Agreements (collectively, "Tenant Receivables") and not

collected by Seller as of Closing shall not be prorated between Seller and Purchaser at Closing but shall be apportioned on the basis of the period for which the same is payable and if, as and when collected, as follows:

(a) Tenant Receivables and other income received from tenants under Leases, and/or tenants or licensees under License Agreements after Closing shall be applied in the following order of priority: (1) first, to payment of the current Tenant Receivables then due for the month in which the Closing Date occurs, which amount shall be apportioned between Purchaser and Seller as of the Closing Date as set forth in Section 8.3 hereof (with Seller's portion thereof to be delivered to Seller); (2) second, to payment of Tenant Receivables first coming due after Closing but applicable to the period of time before Closing, (collectively, "**Unbilled Tenant Receivables**"), which amount shall be delivered to Seller; (3) third, to Tenant Receivables first coming due after Closing and applicable to the period of time after Closing, which amount shall be retained by Purchaser; and (4) thereafter, to delinquent Tenant Receivables which were due and payable as of Closing but not collected by Seller as of Closing (collectively, "**Uncollected Delinquent Tenant Receivables**"), which amount shall be delivered to Seller. Notwithstanding the foregoing, Seller shall have the right to pursue the collection

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of Uncollected Delinquent Tenant Receivables for a period of six (6) months after Closing without prejudice to Seller's rights or Purchaser's obligations hereunder, provided, however, Seller shall have no right to cause any such tenant or licensee to be evicted or to exercise any other "landlord" remedy (as set forth in such tenant's Lease or licensee's License Agreement) against such tenant other than to sue for collection. Any sums received by Purchaser to which Seller is entitled shall be held in trust for Seller on account of such past due rents payable to Seller, and Purchaser shall remit to Seller any such sums received by Purchaser to which Seller is entitled within ten (10) Business Days after receipt thereof less reasonable, actual costs and expenses of collection, including reasonable attorneys' fees, court costs and disbursements, if any. Seller expressly agrees that if Seller receives any amounts after the Closing Date which are attributable, in whole or in part, to any period from and after the Closing Date, Seller shall hold the same in trust for Purchaser and remit to Purchaser that portion of the monies so received by Seller to which Purchaser is entitled within ten Business Days after receipt thereof. With respect to Unbilled Tenant Receivables, Purchaser covenants and agrees to (A) bill the same when billable and (B) cooperate with Seller to determine the correct amount of operating expenses and/or taxes due. Seller shall provide Purchaser with the necessary information to bill the same when billable and cooperate with Purchaser to maximize collection of the Unbilled Tenant Receivables. The provisions of this Section 8.3.2(a) shall survive the Closing.

(b) Purchaser acknowledges that Seller, as landlord under the Leases (and/or as licensor under the License Agreements) may be collecting from tenants under the Leases (and/or licensees under the License Agreements) additional rent relating to Operating Expenses or Taxes. To the extent that any such additional rent is paid by any tenants to the landlord under the Leases (and/or by any licensees to the licensor under the License Agreements) based on an estimated payment basis (whether monthly, quarterly, or otherwise) for which a future reconciliation of actual Operating Expenses or Taxes to estimated payments of Operating Expenses or Taxes is required to be performed at the end of a reconciliation period, Purchaser and Seller shall determine prior to the Closing whether such tenants and/or licensees have, in the aggregate, made an overpayment or underpayment of additional rent relating to Operating Expenses or Taxes (such determination to be based on a comparison of reasonable estimates of actual annual Operating Expenses and Taxes to the estimated payments being made by such tenants and/or licensees). If such determination indicates that such tenants and/or licensees have made an overpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall receive a credit toward the Purchase Price in the amount of such overpayment and Purchaser shall assume all obligations and liabilities relating to such overpayment. If, however, such determination indicates that such tenants and/or licensees have made an underpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall bill the tenants for the same promptly after the Closing and remit the same to Seller as and when collected. If such review indicates that it cannot be determined as of the Closing Date whether a tenant has overpaid or underpaid its additional rent relating to Operating Expenses or Taxes, Purchaser shall bill the tenant for the same at the end of the reconciliation period, and any overpayment with respect to the period prior to the Closing Date shall be paid by Seller to Purchaser or any underpayment with respect to the period prior to the Closing Date, when received from the tenant, shall

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be paid by Purchaser to Seller. Notwithstanding anything contained herein to the contrary, to the extent Purchaser or Seller receives a check or wire transfer from any tenant in the exact amount of the item payable by such tenant or referencing the item to which the check or wire transfer relates, such check or wire transfer shall be (i) applied directly to the applicable item or (ii) if such item was previously paid by Seller or Purchaser, reimbursed to Seller or Purchaser, as applicable.

8.4 **Miscellaneous Prorations.** Without duplication of, and to the extent not addressed by Sections 8.1, 8.2 and 8.3, all other items that are customarily subject to proration and adjustment, including without limitation, "Base Rent", shall be prorated as of the Closing Date, it being agreed that for purposes of prorations and adjustments, Purchaser shall be deemed the owner of the Property on the Closing Date.

8.5 **Leasing Costs.** Seller agrees to pay or discharge at or prior to Closing (and provide Purchaser with evidence of payment thereof), or provide Purchaser with a credit at Closing in the amount of, all leasing commissions, costs for tenant improvements, lease buyout costs, moving allowances, design allowances, legal fees and other costs, expenses and allowances incurred in order to induce a tenant to enter into a Lease or Lease renewal or extension or to induce a licensee to enter into a License Agreement (collectively, the "**Leasing Costs**") that are indicated on **Schedule 9.1.5** as being payable by Seller. Purchaser agrees to pay all Leasing Costs indicated on **Schedule 9.1.5** as being payable by Purchaser as and when they become due. Seller shall have no obligation to pay, and as of Closing Purchaser shall assume, the obligation to pay, all Leasing Costs payable with respect to any option to renew or option to expand that has not been exercised prior to the Effective Date, which obligation shall survive the Closing. Additionally, as of Closing, Purchaser shall assume Seller's obligations for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

8.6 **Closing Costs.** Closing costs shall be allocated between Seller and Purchaser in accordance with Section 1.2.

8.7 **Final Adjustment After Closing.** If final bills are not available or cannot be issued prior to Closing for any item being prorated under Sections 8.1, 8.3 and 8.5, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

8.8 **Tenant Deposits.** All tenant and licensee security deposits collected and not applied by Seller (and interest thereon if required by law or contract) shall be transferred or credited to Purchaser at Closing. As of the Closing, Purchaser shall assume Seller's obligations related to tenant and licensee security deposits, but only to the extent they are credited or transferred to Purchaser. Notwithstanding the foregoing provisions of this Section 8.8, deposits in the form of letters of credit will not be transferred or credited at the Closing. Rather, at the Closing, Seller shall deliver the letters of credit to Purchaser and will cooperate with Purchaser to effect a transfer of the letters of credit to Purchaser. Purchaser and Seller shall each pay one-half

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(1/2) of the costs and expenses (including transfer and other fees imposed by the issuer of the letter of credit) of transferring the letters of credit to Purchaser. In the event that prior to a transfer of any such letter of credit to Purchaser, Purchaser deems it advisable to draw on the same, Seller will cooperate in such presentation, and direct payment by virtue of any such presentation to Purchaser, and if Seller receives any such payment it will promptly deliver such payment in the form received and endorsed, without recourse, to Purchaser. Purchaser shall defend, indemnify and hold Seller harmless from all claims, causes of actions, actions, damages, costs, liabilities and expenses, including (without limitation) reasonable attorneys' fees, that may arise out of any such presentation or related payment, other than by reason of any actions of Seller other than at the written direction of Purchaser. If any Security Deposit is held in a form other than cash or letter of credit, for example debt or equity securities, at Closing Seller shall deliver to Purchaser such security, or record evidence of Seller's interest therein, and execute and deliver to Purchaser such documents and instruments as are necessary to vest in Purchaser the same ownership or security interest in such security deposit as held by Seller, but in no event less than what was required to be granted by the applicable tenant under and in accordance with the terms of the applicable Lease.

8.9 **Commissions.** Seller is responsible to Financial Advisor for a real estate fee at Closing in accordance with a separate agreement between Seller and Financial Advisor and at Closing Seller shall pay to Financial Advisor the entire real estate fee due under the separate agreement between Seller and Financial Advisor. Financial Advisor may share its commission with any other financial advisor or licensed broker involved in this transaction. Subject to Seller's representations in this Section 8.9, under no circumstances shall Seller owe a commission or other compensation directly to any financial advisor, broker, agent or person other than Financial Advisor. No affiliate, subsidiary or party related in any way to Purchaser shall claim a commission or fee from Seller or Financial Advisor. Seller represents and warrants to Purchaser that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby other than Financial Advisor, and agrees to and does hereby indemnify and hold Purchaser harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Seller including Financial Advisor. Purchaser represents and warrants to Seller that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby, and agrees to and does hereby indemnify and hold Seller harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Purchaser excluding Financial Advisor. The foregoing indemnifications shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

## **ARTICLE 9 REPRESENTATIONS AND WARRANTIES**

9.1 **Seller's Representations and Warranties.** Each Seller represents and warrants to Purchaser that:

9.1.1 **Organization and Authority.** Seller is validly existing, and in good standing in the state in which it was formed. Seller has the full right and authority and has

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obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

9.1.2 **No Conflicts.** The execution, delivery and performance by Seller of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Seller or any portion of the Property is bound.

9.1.3 **Consents; Binding Obligations.** No approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Seller to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

9.1.4 **Pending Actions.** To Seller's knowledge, except as set forth on **Schedule 9.1.4**, there is no action or proceeding pending or threatened against Seller or relating to the applicable Property.

9.1.5 **Leases, Guaranties, Tenants and Guarantors.** **Schedule 2.1.2** is a true, correct and complete list of all Leases, Guaranties, tenants and guarantors in effect as of the Effective Date. Seller has delivered or made available to Purchaser true, correct and complete copies of the Leases and the Guaranties. To Seller's knowledge, no tenant or guarantor of any Lease has been released or discharged, voluntarily or involuntarily, or by operation of law, from any obligation related to such Lease. To Seller's knowledge, Seller has not received notice of any default under, and to Seller's knowledge, no other party is in default under, any of its obligations under any of the Leases or Guaranties, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller's knowledge, Seller has not received any notice from any tenant or guarantor under the Guaranties asserting any presently accrued defenses, offsets or disputes thereunder (other than with respect to the curtain wall on the Northrop Property as referenced in that certain Curtain Wall Snap Cover Failure Investigation prepared by Wiss, Janney, Elstner Associates, Inc. dated April 23, 2010, which Purchaser has knowledge of). The Rent Roll is true and correct in all material respects. Except as disclosed on **Schedule 9.1.5**, there are no Leasing Costs or other obligations to brokers due or which will become due under any of the Leases, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed

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License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

9.1.6 **Service Contracts and License Agreements.** To Seller's knowledge, **Schedule 9.1.6** is a true, correct and complete list of all Service Contracts and License Agreements with respect to the Property. To Seller's knowledge, Seller has delivered true, correct and complete copies of the Service Contracts and License Agreements to Purchaser. To Seller's knowledge, Seller has not received notice of any default under, and to Seller's knowledge, no other party is in default under, any of its obligations under any of the Service Contracts or License Agreements, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller's knowledge, Seller has not received any notice from any party under the Service Contracts or License Agreements asserting any presently accrued defenses, offsets or disputes thereunder.

9.1.7 **Notices from Governmental Authorities.** To Seller's knowledge, except as set forth on **Schedule 9.1.7** or as may be reflected by the Property Documents or otherwise disclosed by Seller to Purchaser in writing, Seller has not received from any governmental authority written notice of any violation of any laws applicable (or alleged to be applicable) to the Real Property, or any part thereof, that has not been corrected.

9.1.8 **Prohibited Persons and Transactions.** Neither Seller nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.1.9 **Operating Statements.** The Operating Statements delivered by Seller or made available pursuant to Purchaser are true and complete copies of the operating statements for the Property which the Seller relies upon for the purposes of operating the Property.

9.1.10 **Insurance.** **Schedule 9.1.10** is a true, correct and complete list of the insurance maintained by Seller with respect to the Property. Seller has not received any written notice or request from any insurance company requesting the performance of any work or alteration with respect to the Property, which have not been fully and completely corrected. Seller has not received written notice from any insurance company concerning any defects or inadequacies in the Property, which, if not corrected, would result in the termination of insurance coverage or increase its cost.

9.1.11 **Employees.** There are no employees of Seller employed in connection with the use, management, maintenance or operation of the Property whose employment will continue after the Closing Date. There is no bargaining unit or union contract relating to any employees of Seller.

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9.1.12 **Third Party Agreements.** To Seller's knowledge, other than the Leases, the License Agreements, the Service Contracts, the Permitted Exceptions and the agreements set forth on **Schedule 9.1.12**, there are no agreements related to the operation, maintenance or use of the Property. To Seller's knowledge, except as set forth on **Schedule 9.1.12**, Seller is not in default of, and no other party is in default of, any of its obligations under any of the agreements set forth on **Schedule 9.1.12**, and there is no event which, with the giving of notice or passage of time, or both, would be a default thereunder.

9.1.13 **Seller's Representatives.** Seller's Representatives are the individuals involved in supervising Seller's ownership, operation, and maintenance of the Properties, have knowledge of the operation and maintenance of the Properties and have reviewed the representations of Seller set forth in, and the schedules and exhibits referenced in, this Section 9.1.

9.1.14 **Subleases.** **Schedule 9.1.14** is a true, correct and complete list of all subleases covering the Real Property acknowledged, or consented to, by Seller and such additional subleases as to which Seller has knowledge of.

9.2 **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

9.2.1 **Organization and Authority.** Purchaser is validly existing as a limited liability company in good standing in the State of Delaware. Subject to obtaining approval of Purchaser's Board of Directors prior to Purchaser's delivery of the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof, (a) Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby, and (b) this Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

9.2.2 **No Conflicts.** The execution, delivery and performance by Purchaser of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Purchaser is bound.

9.2.3 **Consents; Binding Obligations.** Except as set forth in Section 9.2.1, (a) no approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Purchaser to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Purchaser to consummate the transaction contemplated hereby, and (b) this Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

9.2.4 **Pending Actions.** There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

9.2.5 **ERISA.** (a) Purchaser is neither (i) an "employee benefit plan" (as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended ("ERISA")) which is subject to Title I of ERISA (an "ERISA Plan"), nor (ii) a "plan" (as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code")) which is subject to Section 4975 of the Code (a "Code Plan"); (b) the assets of Purchaser do not constitute "plan assets" (as defined in Section 3(42) of ERISA) of one or more ERISA Plans or Code Plans ("Plan Assets") because, at the time of the Closing, the stock of Purchaser's parent constitutes "publicly offered securities" (as defined in 29 C.F.R. Section 2510.3-101(b)(2)), which parent owns one hundred percent (100%) of the issued and outstanding equity of Purchaser; (c) Purchaser is not using Plan Assets in the performance or discharge of its obligations under this Agreement; (d) Purchaser is not a "governmental plan" (within the meaning of Section 3(32) of ERISA) and assets of Purchaser do not constitute plan assets of one or more such plans; and (e) transactions by or with Purchaser are not in violation of state statutes applicable to Purchaser regulating investments of and fiduciary obligations with respect to governmental plans.

9.2.6 **Prohibited Persons and Transactions.** Neither Purchaser nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.2.7 **Availability of Funds.** Subject to obtaining the financing contemplated by either (x) the Term Financing Commitment, (y) the GE Bridge Loan and the Mezzanine Loan or (z) the Bridge Loan and the Mezzanine Loan as provided in Section 4.3.2, Purchaser currently has available and will at the Closing have available sufficient funds to pay the Purchase Price and to pay any and all other amounts payable by Purchaser pursuant to this Agreement and to effect the transactions contemplated hereby.

9.3 **Survival of Representations and Warranties.** The representations and warranties set forth in this ARTICLE 9 are made as of the Effective Date, are remade as of the Closing Date (subject to update for Updated Property Information pursuant to Section 4.4 and, changes that are not the result of a breach by Seller or Purchaser or any of their covenants in this Agreement), and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of nine (9) months (the "Survival Period"). Terms such as "to Seller's knowledge," "to the best of Seller's knowledge" or like phrases mean, (A) with respect to all Properties, the actual knowledge of the following persons with respect to all Properties: Barclay Jones, Executive Vice President, Michael Dorsch, Executive Vice President, Samantha Garbus, Senior Vice President, Nancy Zoetler, Senior Vice President, Mary-Beth Roselle, Senior Vice President, Scott Quigle, Vice President, and Carrie Crain, Vice President,

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and (B) with respect to each Property, the actual knowledge of the applicable persons whose names are set forth opposite each Property on **Schedule 9.3** (the persons identified in the foregoing items (A) and (B) are referred to herein collectively as, the "**Seller's Representatives**"), without any duty of inquiry or investigation except in connection with such persons' review of the representations and warranties of Seller set forth in Section 9.1 hereof as provided in Section 9.1.13 hereof; provided that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Seller's Representatives, or any of them, or any other officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. No financial advisor, broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Subject to Section 9.4 of the Harborside Purchase and Sale Agreement, each party shall have the right to bring an action against the other on the breach of a representation or warranty or covenant hereunder or in the documents delivered by Seller at the Closing, but only on the following conditions: (1) the party bringing the action for breach first learns of the breach after Closing and files such action within the Survival Period, (2) Seller shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Seller on account of such breach (individually or when combined with damages from other breaches including damages on account of breaches by Purchaser under the Harborside Purchase and Sale Agreement) equals or exceeds \$5,000,000, in which event Purchaser shall be liable to Seller for one-half of all such damage up to \$5,000,000 and for all damage above \$5,000,000, and (3) Purchaser shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Purchaser on account of such breach (individually or in the aggregate), (i) equals or exceeds (A) \$1,000,000 if such breach relates to a Property with an Allocated Purchase Price of less than \$50,000,000, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$1,000,000 and for all such damage above \$1,000,000 with respect to such Property, or (B) \$2,000,000 if such breach relates to a Property with an Allocated Purchase Price equal to or greater than \$50,000,000, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$2,000,000 and for all such damage above \$2,000,000 with respect to such Property, or (ii) without duplication of any claims made pursuant to subclause (i) of this clause (3), equals or exceeds \$5,000,000 with respect to all Properties (including damages on account of breaches by Harborside Seller under the Harborside Purchase and Sale Agreement), in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$5,000,000 and for all such damage above \$5,000,000 with respect to all Properties, subject to the further provisions of this Section 9.3. Neither party shall have any liability after Closing for the breach of a representation or warranty or covenant hereunder of which the other party hereto had actual knowledge as of Closing. Notwithstanding any other provision of this Agreement, any closing deliveries of Seller contemplated by this Agreement: (a) subject to Section 9.4 of the Harborside Purchase and Sale Agreement and other than the Seller Estoppels and Leasing Costs, or any rights which Purchaser might otherwise have at law, equity, or by statute, whether based on contract or some other claim, Purchaser agrees that any liability of Seller to Purchaser pursuant to this Section 9.3 and any liability of Harborside Seller to Purchaser pursuant to Section 9.3 of the Harborside Purchase and Sale Agreement will in the aggregate be limited to five percent (5%) of the aggregate Purchase Price of the Property and the Harborside Membership Interests and (b) there shall be no threshold or limitation or limitation on

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survival on Seller's obligation to pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs), whether or not the obligations to pay any Leasing Costs first becomes known to Purchaser before, at or after the Closing; i.e., Seller shall pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs) regardless of the amount thereof and regardless of when the Leasing Cost becomes known to Purchaser. In no event shall either

party be liable to the other party for incidental, consequential, or punitive damages as a result of the breach of any or all representations or warranties set forth in this Agreement. The provisions of this Section 9.3 shall survive the Closing. Any breach of a representation or warranty or covenant that occurs prior to Closing shall be governed by ARTICLE 10.

## **ARTICLE 10** **DEFAULT AND REMEDIES**

10.1 **Seller's Remedies.** If Purchaser defaults on its obligations hereunder, or under the Harborside Purchaser and Sale Agreement, at or prior to Closing for any reason, or if prior to Closing any one or more of Purchaser's representations or warranties or covenants hereunder, or under the Harborside Purchase and Sale Agreement, are breached in any material respect that impairs Purchaser's ability to close under this Agreement or under the Harborside Purchase and Sale Agreement, and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Seller or Harborside Seller (as applicable) or the Closing Date (except no notice or cure period shall apply if Purchaser fails to consummate the purchase of the Property hereunder or the Harborside Membership Interests pursuant to the Harborside Purchase and Sale Agreement), Seller shall be entitled, as its sole remedy hereunder (except as provided in Sections 4.10, 8.8, 10.3 and 10.4 hereof), to terminate this Agreement and recover the Earnest Money as liquidated damages and not as a penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. Notwithstanding anything in this Section 10.1 to the contrary, in the event of Purchaser's default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible and marketable title to the Property. In all other events Seller's remedies shall be limited to those described in this Section 10.1 and Sections 4.10, 8.8, 10.3 and 10.4 hereof. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Purchaser fails to perform any obligation of Purchaser under this Agreement. IN NO EVENT SHALL PURCHASER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

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10.2 **Purchaser's Remedies.** If Seller defaults on its obligations hereunder, or Harborside Seller defaults in its obligations under the Harborside Purchase and Sale Agreement, at or prior to Closing for any reason, or if prior to Closing any one or more of Seller's, or, with respect to the Harborside Purchase and Sale Agreement, Harborside Seller's, representations or warranties or covenants are breached in any material respect (subject to the provisions of Section 4.4 hereof and of the Harborside Purchase and Sale Agreement and the first Sentence of Section 9.3 hereof and of the Harborside Purchase and Sale Agreement) and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Purchaser or the Closing Date (except no notice or cure period shall apply if Seller fails to consummate the sale of the Property hereunder or Harborside Seller fails to consummate the sale of Harborside Membership Interests under the Harborside Purchase and Sale Agreement), Purchaser shall elect, as its sole remedy hereunder, either to (a) terminate this Agreement in its entirety by giving Seller timely written notice of such election prior to or at Closing and recover the Earnest Money, in which event Seller shall be liable to Purchaser for its out of pocket expenses incurred in connection with the transaction contemplated hereby, but not to exceed \$1,700,000.00, (b) terminate this Agreement in part with respect to the Properties with respect to which Seller's representations or warranties or covenants are breached (subject to Sections 7.2.1(4) and 7.2.2(9)), in which event the Purchase Price shall be reduced by the Allocated Purchase Price for such Properties, (c) enforce specific performance to consummate the sale of the Property hereunder, or (d) waive said failure or breach and proceed to Closing without any reduction in the Purchase Price. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement in its entirety if Purchaser fails to deliver to Seller written notice of its intent to proceed otherwise on or before ten (10) Business Days following the scheduled Closing Date or, having given notice that it intends to seek specific performance, fails to file a lawsuit asserting such claim or cause of action in New York County, New York within two months following the scheduled Closing Date. EXCEPT FOR ISTAR'S POTENTIAL LIABILITY PURSUANT TO THE SELLER ESTOPPELS AND/OR THE MEZZANINE LOAN, IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.3 **Attorneys' Fees.** In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such claims.

10.4 **Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to Escrow Agent for holding the Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Title Commitments.

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## **ARTICLE 11** **DISCLAIMERS, RELEASE AND INDEMNITY**

11.1 **Disclaimers By Seller.** Except as expressly set forth in this Agreement and/or the Closing documents, it is understood and agreed that Seller and Seller's agents or employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to (a) matters of title (other than Seller's special warranty of title to be contained in the Deeds), (b) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Property, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil



conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) zoning or building entitlements to which the Property or any portion thereof may be subject, (i) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (j) usages of adjoining property, (k) access to the Property or any portion thereof, (l) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (m) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (n) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (o) any other matter affecting the stability and integrity of the Property, (p) the potential for further development of the Property, (q) the merchantability of the Property or fitness of the Property for any particular purpose, (r) the truth, accuracy or completeness of the Property Documents or Updated Property Information, (s) tax consequences, or (t) any other matter or thing with respect to the Property.

11.2 **Sale “As Is, Where Is”.** Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Property “AS IS, WHERE IS, WITH ALL FAULTS,” except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Purchaser at Closing. Except as expressly set forth in this Agreement or such Closing documents, Purchaser has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, financial advisor, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Purchaser

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represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Purchaser’s consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Property as Purchaser deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser’s inspections and investigations. Purchaser hereby represents and warrants to Seller that: (a) Purchaser is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Purchaser is purchasing the Property for business, commercial, investment or other similar purpose and not for use as Purchaser’s residence. Purchaser waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

11.3 **Seller Released from Liability.** Purchaser acknowledges that it will have the opportunity to inspect the Property during the Inspection Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Purchaser deems necessary, and, except as set forth herein or in any Closing document, Purchaser hereby FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability, including without limitation, liabilities and responsibilities for the landlord’s obligations under the Leases relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date, and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended (“**CERCLA**”), regarding the condition, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Except as set forth herein or in any closing documents, Purchaser further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property,

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including, without limitation, the landlord’s obligations under the Leases relating to the physical, environmental or legal compliance status of the Property, whether arising before or after the Effective Date. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

11.4 **“Hazardous Materials” Defined.** For purposes hereof, “**Hazardous Materials**” means “Hazardous Material,” “Hazardous Substance,” “Pollutant or Contaminant,” and “Petroleum” and “Natural Gas Liquids,” as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

11.5 **Intentionally Deleted.**

11.6 **Survival.** The terms and conditions of this ARTICLE 11 shall expressly survive the Closing, and shall not merge with the provisions of any closing documents.

Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Purchaser for the Purchase Price without the disclaimers and other agreements set forth above.

**ARTICLE 12**  
**MISCELLANEOUS**

12.1 **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may, at Purchaser's sole cost and expense and at no cost or expense to Seller, assign its rights under this Agreement in whole or in part with respect to any Property upon the following conditions: (a) the assignee of Purchaser must be (i) an entity controlling, controlled by, or under common control with Purchaser or (ii) an entity advised by an affiliate of Purchaser's advisor, Dividend Capital Total Advisors LLC, (b) all of the Earnest Money must have been delivered in accordance herewith, (c) the Inspection Period shall have (or be deemed to have) ended, (d) the assignee of Purchaser shall assume all obligations of Purchaser hereunder, but Purchaser shall remain primarily liable for the performance of Purchaser's obligations, (e) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at least five (5) Business Days prior to Closing, (f) the requirements in Section 12.17 are satisfied and (g) such assignment shall in no event delay the Closing.

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12.2 **Headings.** The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

12.3 **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

12.4 **Governing Law.** This Agreement shall be governed in all respects, including validity, construction, interpretation and effect, by the laws of the State of New York, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction. Each of Purchaser and Seller hereby (i) irrevocably submits to the jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the State, City and County of New York for the purpose of any action or proceeding arising out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a New York state court or federal court located in the State, City and County of New York. Each of Purchaser and Seller hereby consents to and grants any such court jurisdiction over the person of such party and over the subject matter of any such dispute and agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.10, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof on such party.

12.5 **Survival.** The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing (other than any unfulfilled closing conditions which have been waived or deemed waived by the other party) shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

12.6 **Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property, except that letter of intent dated April 2, 2010 between iStar Financial Inc., on behalf of Seller, and Purchaser shall survive the execution of this Agreement to the extent of the exclusivity obligations and covenants under such letter. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Schedules and Exhibits hereto are incorporated herein by this reference for all purposes. All information disclosed on any one Schedule and not disclosed on the other Schedules shall, to the extent applicable, be deemed to be disclosed on such other Schedules.

12.7 **Time.** Time is of the essence in the performance of this Agreement.

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12.8 **Intentionally Omitted.**

12.9 **No Electronic Transactions.** The parties hereby acknowledge and agree this Agreement shall not be executed, entered into, altered, amended or modified by electronic means. Without limiting the generality of the foregoing, the parties hereby agree the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in the "Notices" section of this Agreement.

12.10 **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by Portable Document Format (PDF) so long as a copy thereof is also sent by one of the other delivery methods set forth in Sections 12.10(a), (b) or (c). Notice given in accordance herewith for all permitted forms of notice other than by electronic mail, shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee. In no event shall this Agreement be altered, amended or modified by electronic mail or electronic record. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

12.11 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.12 **Calculation of Time Periods; Business Day.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless

such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described herein shall be deemed to end at midnight local time in New York, New York. As used herein, the term “**Business Day**” means any day that is not a Saturday, Sunday or legal holiday for national banks in the City of New York, New York or Colorado.

12.13 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

12.14 **Recordation.** Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum or affidavit by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser,

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whereupon Seller shall have the remedies set forth in Section 10.1 hereof. In addition to any such remedies, Purchaser shall be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit, and Purchaser’s obligations pursuant to this Section 12.14 shall survive any termination of this Agreement as a surviving obligation.

12.15 **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

12.16 **Discharge of Obligations.** The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

12.17 **ERISA.** Under no circumstances shall Purchaser have the right to assign this Agreement to any person or entity owned or controlled by an “employee benefit plan” (as defined in Section 3(3) of ERISA) if Seller’s sale of the Property to such person or entity would, in the reasonable opinion of Seller’s ERISA advisors or consultants, create or otherwise cause a “prohibited transaction” under ERISA or any other applicable law with an effect similar to that of Section 406 of ERISA including, but not limited to, Section 4975 of the Code (each such law, a “**Similar Law**”). In the event Purchaser assigns this Agreement or transfers any ownership interest in Purchaser, and such assignment or transfer would make the consummation of the transaction hereunder a “prohibited transaction” under ERISA or any Similar Law and would therefore either (a) necessitate the termination of this Agreement, or (b) cause Seller to incur liability under ERISA or such Similar Law if the transaction were consummated, then, in either case, notwithstanding any contrary provision which may be contained herein, Seller shall have the right to terminate this Agreement. Anything in this Section 12.17 to the contrary notwithstanding, Seller shall have no right to terminate this Agreement under this Section 12.17 if Purchaser’s assignee expressly reaffirms in a writing addressed to Seller the representation in Section 9.2.5.

12.18 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing, except that a tenant of the Property may enforce Purchaser’s indemnity obligation under Section 4.10 hereof.

12.19 **Reporting Person.** Purchaser and Seller hereby designate First American as the “reporting person” pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986, as amended.

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12.20 **Post-Closing Access.** From and after the Closing, the Purchaser will, at Seller’s sole cost and expense, permit Seller and Seller’s agents and representatives access (and will permit copying of materials pertaining to the period prior to the Closing), during business hours from time to time, to the Lease Files and other Property-related information upon reasonable advance notice to the Purchaser. This Section 12.20 shall survive the Closing.

12.21 **Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN SELLER AND PURCHASER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN SELLER AND PURCHASER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12.22 **Information and Audit Cooperation.** Within 75 days after the Closing Date, Seller, at Purchaser’s sole cost and expense and at no cost or expense to Seller, shall allow Purchaser’s auditors access to the books and records of Seller relating to the operation of the Properties for the two year period prior to the Closing Date to enable Purchaser to comply with any financial reporting requirements applicable to Purchaser, upon at least three (3) Business Days prior written notice to Seller. In addition, Seller shall provide Purchaser’s designated independent auditors a representation letter regarding the books and records of the Properties in substantially the form attached hereto as Exhibit H.

12.23 **Bulk Sales Laws.** Seller shall (i) comply with the bulk transfer requirements of the states in which the Property is located, (ii) keep Purchaser apprised of Seller’s compliance with such requirements and (iii) indemnify, defend and hold Purchaser harmless of and from any and all liabilities,

claims, demands and expenses of any kind or nature which arise out of the failure of Seller to so comply with such requirements.

12.24 **Radon.** The following statements apply to any Property located in the State of Florida: (A) Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. (B) Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. (C) Additional information regarding radon and radon testing may be obtained from

your county health department. (D) Note: This provision is provided for informational purposes pursuant to section 404.056(6), Florida Statutes.

**[SIGNATURE PAGES, SCHEDULES AND EXHIBITS TO FOLLOW]**

**SIGNATURE PAGE TO AGREEMENT OF  
PURCHASE AND SALE  
BY AND BETWEEN  
THE ENTITIES SET FORTH ON SCHEDULE 1.1.1,  
AND  
TRT ACQUISITIONS LLC,  
AS PURCHASER**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**PURCHASER:**

**TRT ACQUISITIONS LLC**, a Delaware limited liability company

By: DCTRTR Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran  
Name: Greg Moran  
Title: SVP  
Date: May 3, 2010

**SELLER:**

**iSTAR CTL SOUTH HAVANA — ENGLEWOOD LLC**, a Delaware limited liability company

**iSTAR CTL WATERVIEW — DALLAS LLC**, a Delaware limited liability company

**iSTAR CTL SHADELANDS — WALNUT CREEK LLC**, a Delaware limited liability company

**iSTAR CTL NORTH GLENVILLE — RICHARDSON LLC**, a Delaware limited liability company

**iSTAR CTL SHEILA — COMMERCE LLC**, a Delaware limited liability company

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**iSTAR CTL COLUMBIA — RICHFIELD LLC**, a Delaware limited liability company

**iSTAR CTL COTTONWOOD — MILPITAS LLC**, a Delaware limited liability company

**iSTAR CTL NORTH FAIRWAY DRIVE — VERNON HILLS LLC**, a Delaware limited liability company

**iSTAR CTL DOOLITTLE — REDONDO BEACH LLC**, a Delaware limited liability company

**iSTAR CTL CROWN COLONY — QUINCY LLC**, a Delaware limited liability company

**iSTAR CTL RUE FERRARI — SAN JOSE LLC**, a Delaware limited liability company

**iSTAR CTL CORPORATE CENTER DRIVE — NEWBURY PARK LLC**, a Delaware limited liability company

**iSTAR CTL COLUMBIA — CAMPBELLSVILLE LLC**, a Delaware limited liability company

**iSTAR CTL SUNSET HILLS — RESTON LLC**, a Delaware limited liability company

**iSTAR CTL EAGLE LLC**, a Delaware limited liability company

**iSTAR CTL SYLVAN WAY — PARSIPPANY LLC**, a Delaware limited liability company

**iSTAR CTL INVERNESS — ENGLEWOOD LLC**, a Delaware limited liability company

**iSTAR CTL CORPORATE DRIVE — DIXON LLC**, a Delaware limited liability company

**iSTAR CTL RIVEREDGE SUMMIT — ATLANTA LLC**, a Delaware limited liability company

**iSTAR CTL CONNECTION — IRVING LLC**, a Delaware limited liability company

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**iSTAR CTL CHARLESTON — MOUNTAIN VIEW LLC**, a Delaware limited liability company

**iSTAR CTL DUBLIN LLC**, a Delaware limited liability company

**iSTAR GT, L.P.**, a Delaware limited partnership

**iSTAR NG LP**, a Delaware limited partnership

**iSTAR CTL MAPLE — EL SEGUNDO LLC**, a Delaware limited liability company

**iSTAR CTL SW 80 — PLANTATION LLC**, a Delaware limited liability company

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: May 3, 2010

**AGREED TO FOR PURPOSES OF SECTIONS 4.3.2  
AND 7.2.2(4):**

**iSTAR FINANCIAL INC.**, a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: May 3, 2010

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## MEMBER INTEREST PURCHASE AND SALE AGREEMENT

BETWEEN

iSTAR HARBORSIDE LLC,  
AS SELLER

AND

TRT ACQUISITIONS LLC,  
AS PURCHASER

DATED: MAY 3, 2010

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## **MEMBER INTEREST PURCHASE AND SALE AGREEMENT**

This Member Interest Purchase and Sale Agreement (this “**Agreement**”) is made and entered into by and between Purchaser and Seller.

### **RECITALS**

A. Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein, whether or not such terms are used before or after the definitions are set forth.

B. Purchaser desires to purchase the Membership Interests and Seller desires to sell the Membership Interests, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

### **ARTICLE 1 BASIC INFORMATION**

1.1 **Certain Basic Terms.** The following defined terms shall have the meanings set forth below:

1.1.1 “**Seller**”: iStar Harborside LLC, a Delaware limited liability company.

1.1.2 “**Purchaser**”: TRT Acquisitions LLC, a Delaware limited liability company.

1.1.3 “**Purchase Price**”: \$212,000,000.00, subject to adjustment as provided herein.

1.1.4 **“Earnest Money”**: \$3,800,000.00, including all interest earned thereon, to be deposited in accordance with Section 3.1 below. All references herein to Earnest Money shall be deemed to include only such portions thereof as have been deposited with Escrow Agent in accordance with Section 3.1.

1.1.5 **“Title Company”**:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Chicago, Illinois 60602

Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

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And

Fidelity Title Insurance Company  
8450 E. Crescent Parkway, Suite 410  
Greenwood Village, CO 80111  
Attn: Ms. Valena Bloomquist  
Telephone number: (303) 244-9198  
Facsimile number: (720) 489-7593  
E-mail: valena.bloomquist@fnf.com

1.1.6 **“Escrow Agent”**:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

1.1.7 **“Financial Advisor”**: HFF Securities L.P., an affiliate of Holliday Fenoglio Fowler, LP.

1.1.8 **“Effective Date”**: The date on which this Agreement is executed by the latter to sign of Purchaser or Seller, as indicated on the signature page of this Agreement. If the execution date is left blank by either Purchaser or Seller, the Effective Date shall be the execution date inserted by the other party.

1.1.9 **“Title and Survey Review Period”**: The period ending on May 11, 2010.

1.1.10 **“Inspection Period”**: The period beginning on the Effective Date and ending on May 11, 2010, subject to extension as provided in Section 6.1.4(1).

1.1.11 **“Closing Date”**: The date which is ten (10) days after the expiration of the Inspection Period, subject to extension as provided in Section 4.3.2.

1.1.12 **“Confidentiality Agreement”**: The letter agreement dated March 31, 2010 between iStar Financial Inc., an affiliate of Seller (“iStar”), and Purchaser.

1.1.13 **“AFE”**: American Financial Exchange L.L.C., a New Jersey limited liability company.

1.1.14 **“PXR”**: Plaza X Realty L.L.C., a New Jersey limited liability company.

1.1.15 **“PXURA”**: Plaza X Urban Renewal Associates L.L.C., a New Jersey limited liability company.

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1.1.16 **“PXLA”**: Plaza X Leasing Associates L.L.C., a New Jersey limited liability company.

1.1.17 **“The Subsidiaries”**: collectively, PXR, PXURA and PXLA. Each of PXR, PXURA and PXLA are sometimes referred to herein as a **“Subsidiary”**.

1.1.18 **“Portfolio Purchase and Sale Agreement”**: That certain Purchase and Sale Agreement between Purchaser and certain sellers a party thereto (individually or collectively as the contest requires, **“Portfolio Seller”**) dated as of the date hereof.

1.1.19 **“Portfolio Property”**: Those certain properties described in the Portfolio Purchase and Sale Agreement.

1.1.20 **“Real Property”**: The land described in Exhibit A hereto (the **“Land”**), together with (a) all improvements located thereon, including, without limitation, that certain office building, but expressly excluding improvements and structures owned by any tenant or other third party pursuant to Leases (the **“Improvements”**), (b) all right, title and interest of AFE, if any, in and to the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, including without limitation, any and all minerals and mineral rights, oil, gas, and oil and gas rights, development rights, air rights, water and water rights, wells, well rights and well permits, water and sewer taps, and sanitary or storm sewer capacity, and (c) all right, title, and interest of AFE and, as applicable, PXURA, as ground lessor of the Real Property, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, if any, adjoining the Land (the Land, together with items (a), (b) and (c) of this Section 1.1.20, collectively, the **“Real Property”**).

1.1.21 **“Leases and Guaranties”**: All of AFE’s and the Subsidiaries’ (in each case, as applicable) right, title and interest, without warranty except as set forth herein, in those existing leases and subleases, including any amendments to such leases and subleases made by AFE and the Subsidiaries (in each case, as applicable), described on **Schedule 1.1.21** and all leases or subleases which may be made by AFE and the Subsidiaries’ (in each case, as applicable) after the Effective Date and prior to Closing as permitted by this Agreement (individually a **“Lease”** and collectively the **“Leases”**), all guaranties of such Leases, including any amendments to such guaranties, described on **Schedule 1.1.21** (individually a **“Guaranty”** and collectively the **“Guaranties”**), and all other collateral securing the Leases or Guaranties, including without limitation all security deposits and letters of credit.

1.1.22 **“Tangible Personal Property”**: All of AFE’s and the Subsidiaries’ (in each case, to the extent applicable) right, title and interest, without warranty, except as set forth herein, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by AFE or the Subsidiaries’ (in each case, to the extent applicable) and now or hereafter located in and used in connection with the operation, ownership or management of the Real Property, but specifically excluding any items of personal property owned or leased by any tenants at or on the Real Property (other than the Subsidiaries) and further excluding any items of personal property owned by third parties and leased to AFE or the Subsidiaries (in each case, to the extent applicable) (collectively, the **“Tangible Personal Property”**), which excluded items of personal property are listed on **Schedule 1.1.22**.

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1.1.23 **“Intangible Personal Property”**: All of AFE’s and the Subsidiaries’ (in each case, to the extent applicable) right, title and interest, if any, without warranty, except as set forth herein, in all intangible personal property related to the Real Property and the Improvements, including, without limitation: all trade names and trade marks associated with the Real Property and the Improvements, including AFE’s and the Subsidiaries’ (in each case, to the extent applicable) rights and interests, if any, in the name of the Real Property; the plans and specifications and other architectural and engineering drawings for the Improvements, if any; contract rights related to the operation, ownership or management of the Real Property, including maintenance, service, construction, supply and equipment rental contracts, if any, but not including Leases or License Agreements (collectively, the **“Service Contracts”**) warranties; governmental permits, approvals and licenses, if any; and telephone exchange numbers (all of the items described in this Section 1.1.22 collectively referred to as the **“Intangible Personal Property”**). Tangible Personal Property and Intangible Personal Property shall not include (a) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including, without limitation, budgets prepared by or on behalf of Seller, AFE, the Subsidiaries or any affiliate of Seller, AFE or the Subsidiaries, (b) any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property, Seller, AFE and/or the Subsidiaries or which are subject to a confidentiality agreement, (c) such documents, materials or information received by Seller, AFE or the Subsidiaries from tenants and covered by confidentiality agreements between such tenants and Seller, AFE or the Subsidiaries, except that such documents, materials or information shall be included in Tangible Personal Property if Purchaser shall have agreed in writing to be bound by the terms of such confidentiality agreements prior to Seller’s delivery of such documents, materials and information to Purchaser, and (d) any trade name, mark or other identifying material that includes the name “iStar” or any derivative thereof.

1.1.24 **“License Agreements”**: All of AFE’s and the Subsidiaries’ (in each case, to the extent applicable) right, title and interest, without warranty, except as set forth herein, in and to all agreements (other than the Leases and the Guaranties), if any, for the leasing or licensing of rooftop space or equipment, telecommunications equipment, cable access and other space, equipment and facilities that are located on or within the Real Property and generate income to AFE or the Subsidiaries as the owner and tenants of the Real Property, including agreements which may be made by AFE or the Subsidiaries after the Effective Date and prior to Closing as permitted by this Agreement (the **“License Agreements”**).

1.1.25 **“Schwab”**: Charles Schwab & Co., Inc., a California corporation.

1.1.26 **“Financial Agreement”**: that certain Financial Agreement, together with all exhibit and schedules annexed thereto, dated as of November 15, 2000 between PXURA and the City of Jersey City, as amended by that certain Addendum to Financial Agreement, dated as of November 15, 2000 as further amended by that certain Amendment to Financial Agreement, effective as of September 23, 2003.

1.1.27 **“AFE LLC Agreement”**: that certain Second Amended and Restated Limited Liability Company Agreement of American Financial Exchange L.L.C., dated June 26, 2008 and any amendments thereto, if any.

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1.1.28 **“Books and Records”**: collectively, all books and records maintained by AFE and the Subsidiaries and all books and records maintained by Seller or Mack-Cali as the property manager on behalf of AFE and the Subsidiaries (in each case, to the extent applicable) in connection with the ownership or operation of the Real Property or Improvements or with respect to the corporate matters of AFE and the Subsidiaries.

1.1.29 **“Subsidiary LLC Agreements”**: collectively, (i) that certain Second Amended and Restated Limited Liability Company Agreement of PXR, dated June 26, 2008, and any amendments thereto, if any, (ii) that certain Second Amended and Restated Limited Liability Company Agreement of PXURA, dated June 26, 2008, and any amendments thereto, if any, and (iii) that certain Second Amended and Restated Limited Liability Company Agreement of Plaza X Leasing Associates L.L.C., dated June 26, 2008, and any amendments thereto, if any.

1.1.30 **“Extended Coverage”**: means the deletion of exceptions 2, 3, 4 and 5 from Schedule B — Section 2 of the Title Commitment.

1.1.31 **“Mack-Cali”**: Mack-Cali Realty, L.P., a Delaware limited partnership, in its capacity as property manager under the Mack-Cali Management Agreement.

1.1.32 “**Mack-Cali Management Agreement**”: Property Management Agreement dated September 29, 2003 by and between PXLA and Mack-Cali.

1.1.33 “**Seller’s Ownership Period**”: The period beginning on the date Seller acquired the Membership Interests and continuing through the Closing Date.

1.1.34 “**Contracting Agreement**”: that certain Project Employment and Contracting Agreement between the City of Jersey City and PXURA dated November 15, 2000.

1.2 **Closing Costs.** Closing costs shall be allocated and paid as follows:

<u>Cost</u>	<u>Responsible Party</u>
Title Commitment required to be delivered pursuant to Section 5.1	Seller
Premium for standard form Title Policy with Extended Coverage, Co-Insurance and one-half (1/2) of the Non-Imputation Endorsement (subject to this Section 1.2 and Section 5.4) required to be delivered pursuant to Section 5.4	Seller
Premium for any upgrade of the Title Policy for additional coverage, including, without limitation, the premium for any re-insurance, and any endorsements to the Title Policy desired by Purchaser (except that Purchaser shall pay only one-half (1/2) of the premium for the Non-Imputation Endorsement), any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges other than those required in connection with satisfying any liens which are not Permitted Exceptions	Purchaser

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Any increase in the premium for the Title Policy attributable to obtaining Co-Insurance as provided in Section 5.4	Purchaser
Any costs required to cause the Title Company to issue the Title Policy with Extended Coverage	Seller
Costs of a new survey and/or any revisions, modifications or recertifications to the existing Survey.	Seller
Costs for UCC Searches	Purchaser
Recording Fees	Paid in accordance with local custom
Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments	Paid in accordance with <b>Schedule 1.2</b>
Any escrow fee charged by Escrow Agent for holding the Earnest Money or conducting the Closing	Purchaser ½ Seller ½
Real Estate Fee to Financial Advisor	Seller
All other closing costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring the same.	

1.3 **Notice Addresses.** All notices required or permitted to be sent hereunder shall be sent as follows:

Purchaser:	TRT Acquisitions LLC	Copies to:	TRT Acquisitions LLC
	518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202		518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202
Attention:	Mr. John Blumberg Mr. Greg Moran	Attention:	Joshua J. Widoff, Esq.
Telephone:	303-228-2200	Telephone:	303-228-2200
Facsimile:	303-577-9797	Facsimile:	303-869-4602
E-mail:	gmoran@dividendcapital.com	E-mail:	jwidoff@dividendcapital.com

and

Greenberg Traurig, LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Robert J. Ivanhoe, Esq.  
Telephone: 212-801-9333  
Facsimile: 212-801-6400  
E-mail: ivanhoer@gtlaw.com

Seller:	c/o iStar Financial Inc. 1114 Avenue of the Americas New York, NY 10036	Copies to:	iStar Financial Inc. 1114 Avenue of the Americas New York, NY 10036
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Attention: Samantha Garbus  
Telephone: 212-930-9407  
Facsimile: 212-930-9494  
E-mail: sgarbus@istarfinancial.com

Attn: Mary-Beth Roselle, Esq.  
Telephone: 212-930-9481  
Facsimile: 212-930-9494  
E-mail: mroselle@istarfinancial.com

iStar Asset Services Inc.  
180 Glastonbury Boulevard  
Glastonbury, CT 06033  
Attn: President  
Telephone: 860-815-5910  
Facsimile: 860-815-5901  
E-mail: brubin@istarfinancial.com

Katten Muchin Rosenman LLP  
525 West Monroe St.  
Chicago, IL 60661-3693  
Attn: Gregory P.L. Pierce, Esq.  
Phone: 312-902-5541  
Fax: 312-577-8893  
Email: greg.pierce@kattenlaw.com

## **ARTICLE 2**

### **MEMBERSHIP INTERESTS**

2.1 **Membership Interests.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, one hundred percent (100%) of the membership interests in AFE (the “**Membership Interests**”).

## **ARTICLE 3**

### **EARNEST MONEY**

3.1 **Deposit and Investment of Earnest Money.** Within two (2) Business Days after the Effective Date, Purchaser shall deposit One Million Nine Hundred Thousand and no/100 Dollars (\$1,900,000.00) with Escrow Agent and deliver a completed, executed Form W-9 to the Escrow Agent and the Seller. Within two (2) Business Days after Purchaser has delivered the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof, Purchaser shall deposit One Million Nine Hundred Thousand and no/100 Dollars (\$1,900,000.00) with Escrow Agent. Escrow Agent shall invest the Earnest Money in the Federated Prime Obligations Fund (NASDAQ: POIXX), shall not commingle the Earnest Money with any funds of Escrow Agent or others, and shall promptly provide Purchaser and Seller with confirmation of the investments made. Such account shall have no penalty for early withdrawal, and Purchaser accepts all risks with regard to the investment of the Earnest Money.

3.2 **Independent Consideration.** If this Agreement terminates pursuant to Section 4.3.1, 4.3.2 or Article 10 hereof and Purchaser is entitled to receive a return of the Earnest Money pursuant to the terms hereof, the Escrow Agent shall first disburse to Seller One Hundred

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and No/100 Dollars (\$100.00) as independent consideration for Seller’s performance under this Agreement (“**Independent Consideration**”), which shall be retained by Seller in all instances.

3.3 **Form; Failure to Deposit.** The Earnest Money shall be paid by wire transfers to Escrow Agent of immediately available U.S. federal funds. If Purchaser fails to timely deposit all of the Earnest Money within the time periods required, Seller may terminate this Agreement by written notice to Purchaser and Escrow Agent, in which event any Earnest Money that has previously been deposited by Purchaser with Escrow Agent shall be immediately delivered to Seller and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

3.4 **Disposition of Earnest Money.** The Earnest Money shall be applied as a credit to the Purchase Price at Closing. However, if this Agreement terminates pursuant to Section 4.3.1 or 4.3.2, Escrow Agent shall pay the entire Earnest Money (less the Independent Consideration) to Purchaser one (1) Business Day following the end of the Inspection Period (as long as the current investment can be liquidated and disbursed in one (1) Business Day). No notice to Escrow Agent from Seller shall be required for the release of the Earnest Money to Purchaser by Escrow Agent if this Agreement terminates pursuant to Section 4.3.1 or 4.3.2. In the event of a termination of this Agreement by either Seller or Purchaser other than pursuant to Section 4.3.1, 4.3.2 or Article 10, Seller and Purchaser hereby direct Escrow Agent to immediately add the Earnest Money held by Escrow Agent pursuant to the terms of this Agreement to the earnest money held by Escrow Agent pursuant to the Portfolio Purchase and Sale Agreement and thereafter the Earnest Money shall be held by Escrow Agent pursuant to the terms of the Portfolio Purchase and Sale Agreement. In the event of a termination of this Agreement by either Seller or Purchaser pursuant to Article 10, the party (the “**Non-Demanding Party**”) seeking to terminate this Agreement pursuant to Article 10 shall give written notice of such election to Escrow Agent and the other party (the “**Non-Demanding Party**”) to this Agreement. Upon receipt of such notice of termination pursuant to Article 10, Escrow Agent shall give notice to the Non-Demanding Party of Escrow Agent’s receipt of such notice, enclosing a copy of the notice in question. If within five (5) Business Days after the Non-Demanding Party is given or deemed to have been given notice of Escrow Agent’s receipt of the notice in question, Escrow Agent has not received from the Non-Demanding Party its notice of objection to the notice, then Escrow Agent shall disburse the Earnest Money as requested by the notice in question, on the sixth (6th) Business Day following its giving of such notice to the Non-Demanding Party. If within said five (5) Business Day period Escrow Agent receives from the Non-Demanding Party notice of objection, then Escrow Agent shall notify the Demanding Party of the objection, and continue to hold the Earnest Money until Escrow Agent is in receipt of a joint order direction or a court order instructing Escrow Agent to disburse the Earnest Money. In such event of objection, Escrow Agent may interplead the Earnest Money into a court of competent jurisdiction in a New York state court or federal court located in the State, City and County of New York. All attorneys’ fees and costs and Escrow Agent’s costs and expenses incurred in connection with such interpleader shall be assessed against the party that is not awarded the Earnest Money, or if the Earnest Money is distributed in part to both parties, then in the inverse proportion of such distribution.

**ARTICLE 4**  
**DUE DILIGENCE**

4.1 **Due Diligence Materials To Be Delivered.** Seller has delivered to Purchaser complete (to Seller's knowledge) copies of, or made electronic copies available to Purchaser on Seller's iPortal internet site relating to the Real Property and Membership Interests ("iPortal"), the following (the "**Property Information**," or the "**Property Documents**"):

4.1.1 **Rent Roll.** A current rent roll in Seller's standard form ("**Rent Roll**") for the Real Property and Improvements;

4.1.2 **Financial Information.** Operating statements and summaries of capital expenditures pertaining to the Real Property and Improvements during the Seller's Ownership Period (collectively, "**Operating Statements**");

4.1.3 **Environmental Reports.** A copy of any environmental reports or environmental site assessments related to the Real Property and Improvements prepared for the benefit of Seller, AFE or the Subsidiaries (as applicable), it being acknowledged by Purchaser that Purchaser shall not be entitled to rely thereon absent an express reliance letter from the company issuing such environmental reports or environmental site assessments obtained by Purchaser at Purchaser's sole cost and expense;

4.1.4 **Tax and Financial Agreement Statements.** Ad valorem tax statements relating to the Real Property and Improvements, statements sent by or on behalf of AFE and the Subsidiaries pursuant to the Financial Agreement relating to the Real Property and Improvements during the Seller's Ownership Period and material correspondence received by AFE or the Subsidiaries during the Seller's Ownership Period and relating to the Financial Agreement;

4.1.5 **Surveys.** A copy of the most current survey, if any, of the Real Property and Improvements in Seller's possession (the "**Survey**");

4.1.6 **Service Contracts.** Copies of any Service Contracts for the Real Property and Improvements;

4.1.7 **Personal Property.** A list of Tangible Personal Property for the Real Property and Improvements;

4.1.8 **License Agreements.** Copies of any License Agreements for the Real Property and Improvements;

4.1.9 **Lease Files.** The lease file for the Leases affecting the Real Property and Improvements, including, without limitation, the Leases, any amendments thereto, the Guaranties (if applicable), any amendments thereto, any letter agreements, any assignments which are then in effect and any letters of credit which are then in effect (collectively, the "**Lease File**");

4.1.10 **Maintenance Records and Warranties.** Maintenance work orders for the Improvements for the 12 months preceding the Effective Date and warranties for the Improvements, if any, on roofs, air conditioning units, fixtures and equipment;

4.1.11 **Plans and Specifications.** Building plans and specifications relating to the Improvements, if any;

4.1.12 **Licenses, Permits and Certificates of Occupancy.** Licenses, permits and certificates of occupancy relating to the Improvements and umbrella policies related thereto;

4.1.13 **Insurance Certificates.** Copies of certificates evidencing the existing liability and casualty insurance coverage for the Real Property and Improvements maintained by AFE, the Subsidiaries (as applicable) and other affiliates of Seller;

4.1.14 **Tax Returns.** Copies of the federal, state and local tax returns of Seller, AFE and the Subsidiaries (in each case, to the extent applicable) for the past four (4) years (collectively, the "**Tax Returns**");

4.1.15 **Organizational Documents.** The AFE LLC Agreement, the Subsidiary LLC Agreements, all related articles, charters, certificates of formation, and registrations and minutes, and any amendments and modifications thereto;

4.1.16 **Books and Records.** The Books and Records;

4.1.17 **Financial Statements.** Audited financial statements filed by PXURA pursuant to the Financial Agreement during the Seller's Ownership Period and unaudited financial statements and reports of AFE and the Subsidiaries in such form as compiled by Seller, AFE or the Subsidiaries during the Seller's Ownership Period (collectively, the "**Financial Statements**").

Except for the Rent Roll contemplated in Section 4.1.1, Seller's obligation to deliver the items listed in this Section 4.1 shall be limited to the extent such items are in the possession of Seller, AFE, PXR, PXURA, PXLA or Mack-Cali.

4.2 **Physical Due Diligence.** Commencing on the Effective Date and continuing until the Closing, subject to the terms of the Leases, Purchaser shall have reasonable access to the Real Property and Improvements at all reasonable times during normal business hours, upon appropriate notice to tenants as permitted or required under the Leases, for the purpose of conducting reasonably necessary tests, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, provided that (a) Purchaser must give Seller the greater of (i) two (2) full Business Days' or (ii) the minimum notice period required by the applicable Leases for the Real Property or Improvements, written notice of any such inspection or test, and with respect to any intrusive inspection or test (i.e., core sampling) must obtain Seller's prior written consent (which consent shall not be unreasonably withheld or conditioned), (b) prior to performing any inspection or test, Purchaser must deliver a certificate of insurance to Seller evidencing that Purchaser and its contractors, agents and representatives have in place (and Purchaser and its contractors, agents and representatives shall maintain during the pendency of this Agreement) (1) commercial general liability insurance with limits of at least

One Million Dollar (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury or death and property damage insurance including coverage for contractual liability and personal and advertising injury with respect to Purchaser's obligations hereunder, and (2) workers' compensation and employers' liability insurance with limits of at least \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit, all covering any accident arising in connection with the presence of Purchaser, its contractors, agents and representatives on the Real Property or in the Improvements, which insurance, except for workers' compensation and employers' liability, shall (A) name as additional insureds thereunder Seller, AFE, the Subsidiaries and such other parties holding insurable interests as Seller may designate and (B) be written by a reputable insurance company having a rating of at least "A+:VII" by Best's Rating Guide (or a comparable rating by a successor rating service), and (C) otherwise be subject to Seller's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, and (c) all such tests shall be conducted by Purchaser in compliance with Purchaser's responsibilities set forth in Section 4.9 below. The requirement to carry the insurance specified in the preceding sentence may be satisfied through blanket or umbrella insurance policies carried by Purchaser or its affiliates. Purchaser shall bear the cost of all such inspections or tests and shall be responsible for and act as the generator with respect to any wastes generated by those tests, which obligation shall survive the termination of this Agreement. Subject to the provisions of Section 4.7 hereof, Purchaser or Purchaser's representatives may communicate with any Seller-designated tenant representative; provided, however, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any Seller-designated tenant representative and allow Seller the opportunity to participate in such communication if Seller desires. No assurance or guaranty is afforded by Seller that any Seller-designated tenant representative will communicate with Purchaser or Purchaser's representatives. Subject to the provisions of Section 4.7 and 4.10 hereof, Purchaser or Purchaser's representatives may, only with Seller's consent or participation, communicate with any governmental authority for the sole purpose of gathering information regarding current zoning compliance of the Real Property and current entitlements with respect to the Real Property in connection with the transaction contemplated by this Agreement. Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any governmental authority and to allow Seller the opportunity to participate in such communication if Seller desires. As used in this Section 4.2, "communicate" and "communication" shall mean the initiation of, response to, or sharing or exchange of information, knowledge or messages, whether by oral, written or electronic methods or media, or by any other means in person or otherwise, and includes requests for inspections or other access to the Real Property and Improvements.

#### 4.3 **Due Diligence/Financing Contingency Termination Rights.**

4.3.1 Notwithstanding anything to the contrary in this Agreement, this Agreement shall automatically terminate on the last day of the Inspection Period unless Purchaser gives written notice waiving such termination and containing such other information required by Section 4.3.2 hereof and Section 4.3.2 of the Portfolio Purchase and Sale Agreement to Seller, Portfolio Seller and Escrow Agent (the "**Due Diligence Waiver Notice**") on or before the last day of the Inspection Period. If Purchaser delivers a Due Diligence Waiver Notice, this Agreement, and the Portfolio Purchase and Sale Agreement pursuant to the terms thereof, shall

continue in full force and effect, subject to the provisions of this Agreement and the Portfolio Purchase and Sale Agreement, including Section 4.3.1 hereof and thereof, and Purchaser shall be deemed to have acknowledged that it has received or had access to all Property Documents (as defined herein and in the Portfolio Purchase and Sale Agreement) and conducted all inspections and tests of the Real Property, Improvements and Portfolio Property that it considers important.

4.3.2 Notwithstanding anything to the contrary in this Agreement, this Agreement, and the Portfolio Purchase and Sale Agreement pursuant to the terms thereof, shall automatically terminate on the last day of the Inspection Period (as defined herein and in the Portfolio Purchase and Sale Agreement) unless Purchaser shall notify Seller and Portfolio Seller in the Due Diligence Waiver Notice that Purchaser (i) was able to obtain a financing commitment for the transaction described herein and in the Portfolio Purchase and Sale Agreement from any lender which lender and the terms of such loan are satisfactory to Purchaser in its sole and absolute discretion (the "**Term Financing Commitment**") and Purchaser has provided Seller and Portfolio Seller with a fully executed copy of the Term Financing Commitment, in which case Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement, Purchaser shall proceed to closing the acquisition of the Portfolio Property pursuant to the Portfolio Purchase and Sale Agreement and iStar shall have no obligation to provide the Mezzanine Loan and iStar's providing the Mezzanine Loan and the closing of the loan contemplated by the Term Financing Commitment shall not be conditions to Purchaser's obligation to close hereunder or under the Portfolio Purchase and Sale Agreement, (ii) was able to obtain a financing commitment or commitments for the GE Bridge Loan from General Electric Capital Corporation ("**GECC**") pursuant to the terms of this Agreement and the Portfolio Purchase and Sale Agreement (such single or multiple commitments are referred to herein collectively, as the "**GE Bridge Financing Commitment**"), which GE Bridge Financing Commitment is satisfactory to Purchaser in its sole and absolute discretion and must specify all major business terms of the GE Bridge Loan, including, without limitation, all major amendments to the GE Loan, and Purchaser has provided Seller and Portfolio Seller with a fully executed copy of the GE Bridge Financing Commitment, in which case iStar shall, subject to the terms of this Section 4.3.2 and Section 4.3.2 of the Portfolio Purchase and Sale Agreement, provide the Mezzanine Loan simultaneously with the closing of the GE Bridge Loan, Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement, Purchaser shall proceed to closing the acquisition of the Portfolio Property pursuant to the Portfolio Purchase and Sale Agreement and, provided Purchaser has not subsequently elected to obtain alternative financing, (x) iStar's providing the Mezzanine Loan simultaneously with the closing of the GE Bridge Loan and (y) GECC's closing of the GE Bridge Loan under the terms of the GE Bridge Financing Commitment on the Closing Date (unless the GE Bridge Loan fails to close as a result of (A) Purchaser's uncured default under the GE Bridge Financing Commitment, (B) the failure of one or more conditions to close which are within Purchaser's reasonable control to satisfy, or (C) Purchaser's failure to accept documentation for the GE Bridge Loan that is commercially reasonable for debt assumption transactions) shall be conditions to Purchaser's obligation to close hereunder and under the Portfolio Purchase and Sale Agreement, (iii) was able to obtain a financing commitment for a Bridge Loan from GECC or any alternative senior lender the terms of which loan and identity of such lender are satisfactory to Purchaser in its sole and absolute discretion ("**Senior Lender**") pursuant to the terms of this Agreement and the Portfolio Purchase and Sale Agreement (the "**Bridge Financing Commitment**") and Purchaser has provided Seller and Portfolio Seller with a fully executed

copy of the Bridge Financing Commitment, in which case iStar shall, subject to the terms of this Section 4.3.1 and Section 4.3.2 of the Portfolio Purchase and Sale Agreement, provide the Mezzanine Loan simultaneously with the closing of the Bridge Loan, Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement and Purchaser shall proceed to closing the acquisition of the Portfolio Property pursuant to the Portfolio Purchase and Sale Agreement but the closing of the Bridge Loan and the Mezzanine Loan (so long as iStar is not in default of its obligation to provide the Mezzanine Loan as set forth herein and in the Portfolio Purchase and Sale Agreement) shall not be conditions to Purchaser's obligations to close hereunder or under the Portfolio Purchase and Sale Agreement, or (iv) has not obtained the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment on terms that are yet acceptable to Purchaser but that Purchaser (A) desires to proceed to Closing hereunder and under the Portfolio Purchase and Sale Agreement notwithstanding that Purchaser does not have the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment on terms that are yet acceptable to Purchaser in its sole and absolute discretion and (B) requests an additional ten (10) day period (the "**Financing Commitment Extension Period**") within which to obtain the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment on terms acceptable to Purchaser, in which case Purchaser shall be deemed to have acknowledged that it has received or had access to all Property Documents (as defined herein and in the Portfolio Purchase and Sale Agreement), conducted all inspections and tests of the Real Property, Improvements and the Portfolio Property that it considers important, and completed its due diligence of, the Membership Interests, the Real Property, the Improvements and the Portfolio Property (items (i), (ii) and (iii) above are each referred to herein individually as a "**Financing Commitment Status Statement**"). If the Due Diligence Waiver Notice contains the information set forth in item (iv) above, prior to the end of the Financing Commitment Extension Period, Purchaser shall deliver to Seller and Portfolio Seller a notice setting forth the Financing Commitment Status Statement applicable as of the last day of the Financing Commitment Extension Period and the terms and conditions set forth above and in Section 4.3.2 of the Portfolio Purchase and Sale Agreement related thereto shall apply. If Purchaser fails to deliver the applicable Financing Commitment Status Statement and a fully executed copy of either the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment prior to the end of the Financing Commitment Extension Period, this Agreement, and the Portfolio Purchase and Sale Agreement pursuant to the terms thereof, shall automatically terminate as of the last day of the Financing Commitment Extension Period, in which case the Earnest Money shall be immediately returned to Purchaser and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement. Any Financing Commitment Status Statement delivered by Purchaser pursuant to the terms hereof shall be the same as the Financing Commitment Status Statement delivered by Purchaser pursuant to the Portfolio Purchase and Sale Agreement. If Purchaser obtains either the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment pursuant to the terms of, and within the timeframes set forth in, this Section 4.3.1 and Section 4.3.2 of the Portfolio Purchase and Sale Agreement, then Purchaser or Seller may elect to extend the then current Closing Date from time to time to a date that is not more than ten (10) days following the then current Closing Date by delivering written notice to the other party at least two (2) days prior to the then current Closing Date, respectively, solely in order for (A) Purchaser to comply with the terms of the Term

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Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment (as applicable) or to obtain alternative financing and (B) Seller to satisfy the conditions to Purchaser's obligations to close set forth in Section 7.2.2 of this Agreement (the foregoing items (A) and (B) are each referred to herein individually as, a "**Closing Date Extension Condition**"); provided, however, neither Purchaser nor Seller shall have the right to extend the Closing Date beyond the earlier of June 24, 2010 and the required closing date of the lender providing the financing for Purchaser's acquisition of the Membership Interests and the Portfolio Property as described in the Financing Commitment Status Statement; provided, further, no election by Purchaser or Seller to extend the Closing Date shall be valid unless either Purchaser or Seller shall have simultaneously elected to extend the closing date of the Portfolio Purchase and Sale Agreement in accordance with the terms thereof. The terms "**GE Bridge Loan**", "**GE Loan**", "**Bridge Loan**" and "**Mezzanine Loan**" used in this Section 4.3.2 and elsewhere in this Agreement shall have the meanings ascribed to such terms in the Portfolio Purchase and Sale Agreement.

4.4 **Updated Property Information.** From the Effective Date through the Closing Date, if and to the extent that Seller, AFE or any Subsidiary receives from an unaffiliated third-party any additional Property Information not previously provided to Purchaser, or if and to the extent that Seller, AFE or any Subsidiary receives any document, notice or correspondence from an unaffiliated third-party or otherwise obtains actual knowledge from an unaffiliated third-party source of a condition arising after the Effective Date that would render any of the representations and warranties of Seller in Section 9.1 untrue if and to the extent remade after the Effective Date, Seller shall promptly so notify Purchaser and shall make electronic copies of all such documents, notices, correspondence or other information in Seller's, AFE's or the Subsidiaries' possession ("**Updated Property Information**") available to Purchaser on iPortal. Updated Property Information may include any information disclosed in the Tenant Estoppel Certificate, but such updated information shall remain subject to Purchaser's rights pursuant to Section 7.2.1(1) and 7.2.3. The representations and warranties of Seller in Section 9.1 shall be deemed amended to reflect such Updated Property Information, provided that if the amendment or deemed amendment of any representation or warranty reflects a fact or circumstance that would trigger a termination, extension or other right of Purchaser under this Agreement, the amendment or deemed amendment of any representation or warranty to reflect such fact or circumstance shall not vitiate such right of Purchaser. Additionally, Seller shall notify or indirectly cause PXLA to notify Mack-Cali of the pending sale and transfer of the Membership Interests to Purchaser pursuant to this Agreement and request that Mack-Cali immediately notify PXLA and Seller of any notice received affecting the Financial Agreement, the Schwab Lease, the Real Property or Improvements and any other item for which Mack-Cali is responsible under the Mack-Cali Management Agreement.

4.5 **Return of Documents and Reports.** As additional consideration for the transaction contemplated herein, if Purchaser terminates this Agreement, Purchaser shall provide to Seller, if requested by Seller, promptly following the receipt of notice from Seller after the termination of this Agreement, copies of all "Reports". "**Reports**" mean (a) written third-party reports, tests, investigations and studies that pertain to contamination of, or environmental concerns regarding, the Real Property or Improvements delivered to Purchaser or its affiliates, and (b) all other written third party reports, investigations and studies, other than economic analyses in each case under (a) and (b) prepared for Purchaser in connection with its due

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diligence review of the Real Property and Improvements, including, without limitation, any and all Reports involving structural or geological conditions, environmental, hazardous waste or hazardous substances contamination of the Real Property or Improvements, if any. The Reports shall not include any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property, Improvements and/or Purchaser, or which are subject to a confidentiality agreement. The Reports shall be delivered to Seller at no cost to Seller and without any representation or warranty as to the completeness or accuracy of the Reports or any other matter relating thereto. Purchaser's obligation to deliver the Reports to Seller shall survive the termination of this Agreement.

4.6 **Service Contracts.** On or prior to the Closing Date, Purchaser will advise Seller in writing which Service Contracts Purchaser requests that Seller, AFE or the Subsidiaries (in each case, to the extent applicable) terminate at or prior to Closing, provided Seller, AFE and the Subsidiaries (in each



case, to the extent applicable) shall have no obligation to terminate any Service Contracts which by their terms cannot be terminated without penalty or payment of a fee (unless Purchaser agrees in writing to pay such fee). Seller shall deliver at Closing notices of termination of all Service Contracts that Purchaser so directs. AFE and the Subsidiaries (in each case, to the extent applicable) shall from and after the Closing Date continue to be bound by those Service Contracts (a) that Purchaser has elected not to have Seller, AFE or the Subsidiaries (in each case, to the extent applicable) terminate, and (b) for which a termination notice is delivered as of or prior to Closing but for which termination is not effective until after Closing. Notwithstanding the foregoing, Seller, AFE and the Subsidiaries (in each case, to the extent applicable) shall not be obligated to terminate the Mack-Cali Management Agreement and, to the extent not terminated on or prior to the Closing Date, PXLA, the Real Property and Improvements shall continue to be bound by the obligations of the Mack-Cali Management Agreement from and after the Closing Date.

4.7 **Proprietary Information; Confidentiality.** Purchaser agrees that it is bound by the Confidentiality Agreement as if it were a party thereto, and the Confidentiality Agreement remains in full force and effect. Notwithstanding anything to the contrary set forth in the Confidentiality Agreement, (a) each party acknowledges that the other party shall be allowed to disclose the existence of this Agreement and the contents thereof in order to comply with certain disclosure requirements relating to public companies and their affiliates and (b) provided Purchaser has delivered the Due Diligence Waiver Notice pursuant to Section 4.3.1 hereof, Purchaser shall be allowed to disclose the existence of this Agreement, and deliver the Property Information and Updated Property Information, to third parties in connection with such third parties' potential acquisition from Purchaser of the Membership Interests, the Real Property, the Improvements or interests therein after the Closing Date so long as such third parties have agreed in writing to be bound by the terms of the Confidentiality Agreement prior to Purchaser's disclosure of the existence of this Agreement, and delivery of the Property Information and Updated Property Information, to such third parties. The parties shall coordinate, in advance, with respect to any such public filings and/or press releases. After the Closing there shall be no restriction as between Purchaser, on the one hand, and Seller, AFE, PXR, PXURA and PXLA, on the other hand, on Purchaser's disclosure of Property Information or Updated Property Information.

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4.8 **No Representation or Warranty by Seller.** Purchaser acknowledges that, except as expressly set forth in this Agreement, Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Property Documents, the Updated Property Information or the source(s) thereof. Purchaser further acknowledges that some if not all of the Property Documents and Updated Property Information were prepared by third parties other than Seller, AFE and the Subsidiaries. Except as expressly set forth in this Agreement or in any of the documents delivered at the Closing, (a) Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents or Updated Property Information, or in any other written or oral communications transmitted or made available to Purchaser, (b) Purchaser shall rely solely upon its own investigation with respect to the Membership Interests, the Real Property and the Improvements, including, without limitation, their physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto, and (c) Seller, AFE and the Subsidiaries have not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and Updated Property Information and are providing the Property Documents and Updated Property Information solely as an accommodation to Purchaser.

4.9 **Purchaser's Responsibilities.** In conducting any inspections, investigations or tests of the Real Property, Improvements, Property Documents and/or Updated Property Information, Purchaser and its agents and representatives shall: (a) not disturb the tenants or interfere with their use of the Real Property or Improvements pursuant to their respective Leases; (b) not interfere with the operation and maintenance of the Property; (c) not damage any part of the Real Property, Improvements or any personal property owned or held by any tenant or any third party; (d) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees or any tenants or their agents, guests, invitees, contractors and employees; (e) comply with all applicable laws; (f) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Real Property or Improvements; (g) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (h) subject to the provisions of Section 4.10, repair any damage to the Real Property or Improvements resulting directly or indirectly from any such inspection or tests; and (i) not reveal or disclose prior to Closing any information obtained during the Inspection Period concerning the Real Property, the Improvements, the Property Documents and the Updated Property Information to anyone other than the Permitted Recipients (as defined in the Confidentiality Agreement), in accordance with the confidentiality standards set forth in Section 4.7 above, or except as may be otherwise required by law. Purchaser's obligations under this Section 4.9 shall survive the termination of this Agreement.

4.10 **Purchaser's Agreement to Indemnify.** Purchaser hereby agrees to indemnify, defend and hold Seller, AFE, PXR, PXURA and PXLA harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Purchaser's inspections or tests permitted under this Agreement or any violation of the provisions of Sections 4.2, 4.7, and 4.9; provided, however, the indemnity shall not protect Seller, AFE, PXR, PXURA and PXLA from any liabilities for matters merely discovered by Purchaser (i.e., environmental contamination) so long as Purchaser's actions do not aggravate any pre-existing liability of Seller, AFE, PXR, PXURA and PXLA it being agreed

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by Purchaser and Seller that the mere discovery by Purchaser of such matters shall not constitute an aggravation of any pre-existing liability of Seller, AFE, PXR, PXURA and PXLA. Notwithstanding the foregoing, Seller and Purchaser acknowledge and agree that Purchaser may communicate with representatives of Jersey City, New Jersey and the Jersey City Redevelopment Authority, as applicable, concerning the Financial Agreement and compliance therewith by Seller, AFE or the Subsidiaries, and such communications shall not be deemed to aggravate any pre-existing liability of Seller, AFE or the Subsidiaries under this Section 4.10. Purchaser also hereby agrees to indemnify, defend and hold any tenant harmless from and against any and all claims, causes of action, damages, liabilities and expenses which such tenant may suffer or incur due to Purchaser's breach of its obligation under Sections 4.7 and 4.9 above to maintain the confidential nature of any Property Documents, Updated Property Information or other information relative to such tenant. Purchaser's obligations under this Section 4.10 shall survive the termination of this Agreement and shall survive the Closing.

## **ARTICLE 5**

### **TITLE AND SURVEY**

5.1 **Title Commitments.** Purchaser acknowledges that a copy of a current commitment for title insurance or a preliminary title report with respect to the Real Property, together with copies of all documents of record referred to therein (the "**Title Commitment**") issued by First American on an ALTA 2006 Owner's Form or state promulgated form has been delivered or made available to Purchaser.

5.2 **Updated Surveys.** Purchaser has arranged, at Seller's expense, for the preparation of a new survey or the revision, modification, or re-certification of the existing Survey as necessary in order for First American to delete the survey exception from the Title Policy.

5.3 **Title Review.** During the Title and Survey Review Period, Purchaser shall review title to the Real Property as disclosed by the Title Commitment and the Survey. Seller shall have no obligation to cure title objections except liens of an ascertainable amount created by, under or through Seller, AFE, PXR, PXURA or PXLA, or assumed by Seller, AFE, PXR, PXURA or PXLA, which liens Seller shall cause to be released at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose), and Seller, AFE, PXR, PXURA or PXLA shall deliver the Real Property and Improvements free and clear of any such liens; provided, however, that the foregoing requirement to discharge liens shall not apply to liens on any tenant's leasehold estate. Seller further agrees to remove any exceptions or encumbrances to title which are voluntarily created by, under or through Seller, AFE, PXR, PXURA or PXLA after the Effective Date without Purchaser's consent (if requested, such consent shall not be unreasonably withheld or delayed). The term "**Permitted Exceptions**" shall mean: (A) the exceptions (i) that are part of the promulgated title insurance form for each Title Commitment, (ii) that the Title Company is unable to remove under applicable insurance regulations, (iii) that the Title Company has not agreed to remove from the Title Commitments notwithstanding that Seller, AFE, PXR, PXURA and PXLA have delivered the Title Affidavits to the Title Company, (iv) that Purchaser consents to, or is deemed to have consented to, as of the end of the Title and Survey Review Period and (v) that Seller is not required to remove as provided above; (B) matters created by, through or under Purchaser; (C) items shown on the

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Survey which have not been removed as of the end of the Inspection Period (or if Purchaser does not obtain a new Survey, all matters that a current, accurate survey of the Real Property and Improvements would show); (D) real estate taxes and payments under the Financial Agreement, which are not yet due and payable; (E) rights of tenants under the Leases; and (F) any encumbrances relating to the Property created by, though or under any tenant of the Property that does not render title to the Property unmarketable, provided such tenant is not otherwise in default under its Lease.

5.4 **Delivery of Title Policy and Non-Imputation Endorsement at Closing.** The parties acknowledge that First American Title Insurance Company, National Commercial Services — Chicago ("**First American**") and Fidelity Title Insurance Company ("**Fidelity**") constitute the Title Company. First American shall act as the lead Title Company and underwriter and shall issue the Title Policy and the Non-Imputation Endorsement; provided, however, that Purchaser may obtain co-insurance from Fidelity in the amount of up to fifty percent (50%) of the Purchase Price of the Property in the form of a co-insurance endorsement ("**Co-Insurance**") so long as (i) the cost of such Co-Insurance does not increase the total cost of title insurance that Seller would otherwise pay to First American if First American were insuring the full Purchase Price unless Purchaser pays for such increased cost of title insurance and (ii) the issuance of such Co-Insurance does not delay the Closing. Purchaser, at Purchaser's sole cost and expense, may obtain re-insurance with respect to the Title Policy from such third parties as Purchaser may elect so long as obtaining such re-insurance does not delay the Closing. In the event that the Title Company does not issue at Closing, or unconditionally commit at Closing to issue, to Purchaser, (i) owner's title insurance policy and Co-Insurance in accordance with the Title Commitment with Extended Coverage, insuring AFE's title interest in the Real Property in the amount of the Purchase Price, subject only to the exclusions from coverage contained in the policy and the Permitted Exceptions (the "**Title Policy**") and (ii) a non-imputation endorsement in the form approved for issuance in the State of New Jersey (the "**Non-Imputation Endorsement**"), Purchaser shall have the right to terminate this Agreement, in which case Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement; provided, however, if either Title Company alone is willing to deliver the Title Policy in the amount of the Purchase Price and the Non-Imputation Endorsement, Purchaser agrees to accept such Title Policy and Non-Imputation Endorsement and Purchaser shall have no right to terminate this Agreement.

## ARTICLE 6 OPERATIONS AND RISK OF LOSS

6.1 **Ongoing Operations.** From the Effective Date through Closing:

6.1.1 **Leases, Service Contracts and License Agreements.** Seller will cause AFE, PXR, PXURA and PXLA to perform their material obligations under the Leases, Service Contracts and License Agreements unless AFE, PXR, PXURA or PXLA are excused from performing such obligations pursuant to such Leases, Services Contracts and License Agreements.

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6.1.2 **New Contracts.** Except as provided in Section 6.1.4, Seller will not cause AFE, PXR, PXURA and PXLA to enter into any contract that will be an obligation affecting the Real Property or Improvements subsequent to the Closing, except contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than 30 days' prior notice.

6.1.3 **Maintenance of Improvements; Removal of Personal Property.** Subject to Sections 6.2 and 6.3, Seller shall cause AFE, PXR, PXURA and PXLA to maintain or cause AFE, PXR, PXURA and PXLA to use reasonable efforts to cause the tenants under the Leases to maintain all Improvements substantially in their present condition (ordinary wear and tear and casualty excepted) and in a manner consistent with AFE's, PXR's, PXURA's and PXLA's maintenance of the Improvements during AFE's period of ownership. Seller will cause AFE, PXR, PXURA and PXLA not to remove any Tangible Personal Property except as may be required for necessary repair or replacement or with respect to items that, in Seller's judgment are obsolete, and replacement shall be of approximately equal quality and quantity as the removed item of Tangible Personal Property.

6.1.4 **Leasing; License Agreements.** As used in this Section 6.1.4, "**sublease**" means a sublease, sub-sublease and any other sublease at any level. Seller will cause AFE, PXR, PXURA and PXLA not to (i) amend or terminate any existing Lease or License Agreement, (ii) consent to the assignment of any Lease or License Agreement, (iii) enter into any new Lease or new License Agreement, (iv) grant their consent, to the extent AFE's, PXR's, PXURA's or PXLA's consent is required, to a sublease of the Real Property, a modification of a sublease, an assignment of a sublease or other item for which a consent is required under any Lease or License Agreement or (v) grant an acknowledgement with respect to a sublease of the Real Property, a modification of a sublease or an assignment of a sublease (the foregoing items (i), (ii), (iii), (iv) and (v) are each referred to herein as, a "**Lease Event**") after the Effective Date and prior to the Closing Date without first providing Purchaser (a) all relevant supporting documentation, as reasonably determined by Seller, including, without limitation, financial information for the assignee, tenant, subtenant and any guarantor to the extent in Seller's, AFE's, PXR's, PXURA's or PXLA's possession, and (b) as to any Lease Event which is to be executed or granted after the expiration of the Inspection Period, Seller's request for Purchaser's approval. If Purchaser's approval is requested by Seller as to any Lease Event, Purchaser shall be held to the same standard for

approval as Seller, AFE, PXR, PXURA, or PXLA, as applicable, is held to in the document giving rise to such approval, consent, or acknowledgement right, and Purchaser agrees to give Seller written notice of its approval or disapproval of a proposed Lease Event within three (3) Business Days after Purchaser's receipt of the items in Section 6.1.4(a) and Section 6.1.4(b). If Purchaser does not respond to Seller's request within such time period, then Purchaser will be deemed to have approved such Lease Event. Purchaser's approval rights and obligations will vary depending on whether such Lease Event is to be executed or granted before or after the expiration of the Inspection Period, as follows:

(1) Purchaser's approval shall not be required with regard to any Lease Event which is to be executed or granted on or prior to the end of the Inspection Period. If Seller gives Purchaser notice of the execution or grant of a Lease Event during the final three (3) Business Days of the Inspection Period, the Inspection

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Period will be extended to the third (3<sup>rd</sup>) Business Day following the date such notice is given to Purchaser.

(2) With respect to a request for approval delivered by Seller to Purchaser for the execution or grant of a Lease Event after the expiration of the Inspection Period, so long as Purchaser has complied with the standard for review described above, Purchaser may withhold its approval in its reasonable discretion, and Seller will cause AFE, PXURA and PXLA not to execute or grant such Lease Event without Purchaser's written approval.

Seller shall cause AFE, PXR, PXURA and PXL, as applicable, not to apply any tenant or licensee security deposits on account of any alleged default by any tenant or licensee after the earlier of three (3) Business Days before the end of the Inspection Period and the date when Purchaser has delivered the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof unless AFE, PXR, PXURA or PXLA (as applicable) has terminated the applicable Lease or License Agreement and obtained possession of the demised or licensed premises. All tenant and licensee security deposits collected and not applied by AFE, PXR, PXURA or PXLA as of the Effective Date are set forth on **Schedule 6.1.4**. Seller shall deliver to Purchaser three (3) Business Days before the end of the Inspection Period an update to **Schedule 6.1.4** to reflect the current amount of all security deposits collected and not applied by AFE, PXR, PXURA or PXLA as of such date.

6.1.5 **Insurance.** Seller will cause AFE, PXR, PXURA and PXLA not to terminate or allow any insurance maintained by AFE, PXR, PXURA or PXLA with respect to the Real Property or Improvements or any umbrella coverage insurance carried by any affiliate of Seller which insures the Real Property to lapse unless replaced by equivalent coverage. Promptly upon Purchaser's delivery of the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof, Seller shall cause AFE, PXR, PXURA and PXLA and Seller's affiliates to name Purchaser as an additional insured on all insurance maintained by AFE, PXR, PXURA and PXLA with respect to the Real Property or Improvements and on all umbrella insurance coverage carried by any affiliate of Seller which insures the Real Property.

6.1.6 **No Amendment.** After the Effective Date, Seller shall not, and Seller shall not permit AFE or any Subsidiary (as applicable), to amend the AFE LLC Agreement or the Subsidiaries LLC Agreements. After the Effective Date through the fourth (4th) Business Day prior to the expiration of the Inspection Period, Seller may, and Seller may cause AFE or the Subsidiaries (as applicable) to, amend the Mack-Cali Management Agreement or the Financial Agreement, in each case without Purchaser's prior consent so long as Seller has provided prior notice thereof to Purchaser. From and after the third (3rd) Business Day prior to the expiration of the Inspection Period through Closing, Seller shall not, and Seller shall not permit AFE or any Subsidiary to, amend the Mack-Cali Management Agreement or the Financial Agreement, in each case without Purchaser's consent (it being agreed that the settlement of the pending audit related to the Financial Agreement shall be governed by Section 8.1.3 below).

6.1.7 **No Merger.** Seller shall not permit AFE or any Subsidiary to merge or consolidate with or agree to merge or consolidate with, or purchase or agree to purchase all or

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substantially all of the assets of, or otherwise acquire, any corporation, partnership or other business organization.

6.1.8 **Interests.** Seller shall not permit AFE or any Subsidiary to authorize for issuance, issue, sell or delivery any additional membership interests in AFE or any Subsidiary or grant any option, warrant or other right to purchase any such membership interests. Seller shall not permit AFE or any Subsidiary to split, combine or reclassify any of the membership interests of AFE or any Subsidiary.

6.1.9 **Debt.** Seller shall not permit AFE or any Subsidiary to incur or become subject to, nor agree to incur, any debt for borrowed money, guaranty any indebtedness, or incur any liabilities other than and specifically excluding liabilities incurred in the ordinary course of business related to the ownership and management of the Real Property and Improvements.

6.1.10 **Conditions and Obligations.** To the extent performance of any obligation of Seller under this Agreement or the satisfaction of any condition of Purchaser's obligation to close requires the performance of AFE or any of the Subsidiaries, Seller shall cause AFE and the applicable Subsidiary, as the case may be, to perform or satisfy same.

6.2 **Casualty.** If after the Effective Date and prior to the Closing the Real Property or Improvements is damaged by fire or other casualty (a "**Casualty**"), Seller shall, promptly upon Seller, AFE, PXR, PXURA or PXLA receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Casualty, Schwab is entitled to and elects to terminate its Lease with respect to the Real Property or Improvements (a "**Casualty Tenant Termination Event**"), then Seller shall promptly upon Seller, AFE, PXR, PXURA or PXLA receiving notice of such Casualty Tenant Termination Event notify Purchaser of the same (a "**Casualty Tenant Termination Notice**"). Within five (5) days after receipt of the Casualty Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser's election to either (i) terminate this Agreement in which case, Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) to acquire the Membership Interests notwithstanding the Casualty Tenant Termination Event. If (i) Purchaser elects to acquire the Membership Interests notwithstanding the Casualty Tenant Termination Event or fails to terminate this Agreement with respect to the Membership Interests within such five (5) day period, or (ii) such Casualty does not give rise to a Casualty Tenant Termination Event, then Purchaser shall proceed to Closing, and

as of Closing, (1) Seller shall provide written confirmation that any resulting insurance proceeds (including any rent loss insurance and rent abatement insurance applicable to any period beginning with the Closing Date) due AFE, PXR, PXURA, PXLA or an affiliate of Seller as a result of such Casualty will be available after Closing to AFE, PXR, PXURA and PXLA to effectuate the needed repairs, (2) AFE, PXR, PXURA and PXLA shall maintain full responsibility for all needed repairs (subject to the terms of the Schwab Lease with respect to any rights of Schwab), and (3) Purchaser shall receive a credit at Closing for any deductible amount under such insurance policies to the extent not payable by Schwab. Notwithstanding anything contained herein to the contrary, if a Casualty shall occur to the Real Property or Improvements and, as a result of such Casualty, the lender providing the Term Financing Commitment will not

close the loan contemplated by the Term Financing Commitment with respect to the Membership Interests, GECC will not close the GE Bridge Loan with respect to the Membership Interests or Senior Lender will not close the Bridge Loan with respect to the Membership Interests (as applicable pursuant to Section 4.3.2), then, this Agreement shall automatically terminate in which case, Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

6.3 **Condemnation.** If after the Effective Date and prior to the Closing Seller, AFE, PXR, PXURA or PXLA receives notice of, or proceedings are instituted for, eminent domain with respect to the Real Property or Improvements or any portion thereof (a “**Condemnation**”), Seller shall, promptly upon Seller, AFE, PXR, PXURA or PXLA receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Condemnation, Schwab is entitled to and elects to terminate its Lease with respect to the Real Property or Improvements (a “**Condemnation Tenant Termination Event**”), then Seller shall promptly upon Seller, AFE, PXR, PXURA or PXLA receiving notice of such Condemnation Tenant Termination Event notify Purchaser of the same (a “**Condemnation Tenant Termination Notice**”). Within five (5) days after receipt of the Condemnation Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser’s election to either (i) terminate this Agreement in which case, Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) to acquire the Membership Interests notwithstanding the Condemnation Tenant Termination Event. If (i) Purchaser elects to acquire the Membership Interests notwithstanding the Condemnation Tenant Termination Event or fails to terminate this Agreement with respect to the Membership Interests within such five (5) day period, or (ii) such Condemnation does not give rise to a Condemnation Tenant Termination Event, then Purchaser shall proceed to Closing, and as of Closing, AFE, PXR, PXURA and PXLA shall maintain the right to negotiate and otherwise deal with the condemning authority in respect of such Condemnation (subject to the terms of the Schwab Lease with respect to any rights of Schwab). Notwithstanding anything contained herein to the contrary, if a Condemnation shall occur to the Real Property and, as a result of such Condemnation, the lender providing the Term Financing Commitment will not close the loan contemplated by the Term Financing Commitment with respect to the Membership Interests, GECC will not close the GE Bridge Loan with respect to the Membership Interests or Senior Lender will not close the Bridge Loan with respect to the Membership Interests (as applicable pursuant to Section 4.3.2), then this Agreement shall automatically terminate in which case, Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and thereafter the parties hereto shall have no further right or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

#### 6.4 **Tenant Estoppel Certificate/SNDA/Management Agreement Estoppel Certificate.**

6.4.1 Purchaser and Seller acknowledge and agree that as of the Effective Date PXLA has sent to Schwab (with a copy to Purchaser) an estoppel certificate in the form approved by Purchaser (the “**Tenant Estoppel Certificate**”). Purchaser acknowledges that it has approved the form of the Tenant Estoppel Certificate sent to Schwab as of the Effective Date. Seller, AFE, PXR, PXURA and PXLA shall not be obligated to expend any funds in connection with obtaining the Tenant Estoppel Certificate, declare any default under the Schwab Lease or commence any legal action for enforcement of the Schwab Lease in order to obtain the Tenant Estoppel Certificate. Seller shall copy Purchaser on the initial correspondence soliciting the Tenant Estoppel Certificate and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from Schwab in connection with the Schwab’s execution of the Tenant Estoppel Certificate. If the executed Tenant Estoppel Certificate is dated more than thirty (30) days prior to the Closing Date, Seller agrees, upon the request of Purchaser, to send Schwab a request for an updated Tenant Estoppel Certificate or a letter of no change to the executed Tenant Estoppel Certificate; provided, however, obtaining such updated Tenant Estoppel Certificate or letter of no change shall (i) not be a condition to Purchaser’s obligation to close pursuant to Section 7.2.2 and (ii) in no way delay the Closing, it being agreed by Purchaser that the Tenant Estoppel Certificate executed and delivered in the form approved by Purchaser regardless of the date executed by Schwab shall satisfy Purchaser’s condition to close pursuant to Section 7.2.2.

6.4.2 Upon receipt from Purchaser of drafts of estoppel certificates addressed to the parties listed on **Schedule 6.4.2** (individually, a “**Third Party Estoppel Certificate**” and collectively, the “**Third Party Estoppel Certificates**”), Seller, on behalf of AFE, PXR, PXURA or PXLA (as applicable), shall promptly send such Third Party Estoppel Certificates to the parties listed on **Schedule 6.4.2**. Seller, AFE, PXR, PXURA and PXLA shall not be obligated to expend any funds in connection with obtaining any such Third Party Estoppel Certificates, declare any default under any agreement or commence any legal action for enforcement of any agreement in order to obtain any such Third Party Estoppel Certificates. Seller shall copy Purchaser on the initial correspondence soliciting the Third Party Estoppel Certificates and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the third parties in connection with the third parties’ execution of the Third Party Estoppel Certificates.

6.4.3 Seller shall promptly after the date on which Purchaser obtains the Term Financing Commitment, the GE Bridge Financing Commitment or the Bridge Financing Commitment send to Schwab a subordination, non-disturbance and attornment agreement substantially in the form executed by Schwab in connection with the closing of the GE Loan (the “**SNDA**”). Seller, AFE, PXR, PXURA and PXLA shall not be obligated to expend any funds in connection with obtaining the SNDA, declare any default under the Schwab Lease or commence any legal action for enforcement of the Schwab Lease in order to obtain the SNDA. Seller shall copy Purchaser on the initial correspondence soliciting the SNDA and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without

limitation, letters, memorandums, e-mails, comments and conditions, received from Schwab in connection with Schwab's execution of the SNDA.

6.4.4 Purchaser and Seller acknowledge and agree that as of the Effective Date PXLA has sent to Mack-Cali (with a copy to Purchaser) an estoppel certificate in the form approved by Purchaser (the "**Management Agreement Estoppel Certificate**"). Purchaser acknowledges that it has approved the form of the Management Agreement Estoppel Certificate sent to Mack-Cali as of the Effective Date. Seller shall copy Purchaser on the initial correspondence soliciting the Management Agreement Estoppel Certificate and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from Mack-Cali in connection with the Mack-Cali's execution of the Management Agreement Estoppel Certificate.

## **ARTICLE 7**

### **CLOSING**

7.1 **Closing.** The consummation of the transaction contemplated herein ("**Closing**") shall occur on the Closing Date at the offices of Escrow Agent (or such other location as may be mutually agreed upon by Seller and Purchaser). Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record those closing documents which are to be recorded, and deliver originals or copies of the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

7.2 **Conditions to Parties' Obligation to Close.** In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are conditioned upon the following:

#### **7.2.1 Conditions to Seller's Obligations to Close.**

- (1) **Representations and Warranties.** Purchaser's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date;
- (2) **Deliveries.** As of the Closing Date, Purchaser shall have tendered all deliveries to be made by Purchaser at Closing;
- (3) **Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Purchaser that would materially and adversely affect Purchaser's ability to perform its obligations under this Agreement; and
- (4) **Portfolio Purchase and Sale Agreement.** It shall be a condition to Seller's obligation to close hereunder that the closing of the sale of the Portfolio Property to Purchaser pursuant to the Portfolio Purchase and Sale Agreement

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occur simultaneously with the Closing of the sale of the Membership Interests pursuant to this Agreement.

#### **7.2.2 Conditions to Purchaser's Obligations to Close.**

- (1) **Representations and Warranties.** Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date, subject to the provisions of Sections 4.4 and 9.3. Notwithstanding Sections 4.4 and 9.3, Seller and Purchaser acknowledge and agree that Section 7.2.3 shall apply to any material change in the representations and warranties of Seller due to any Updated Property Information or changes that are not a result of a breach by Seller or any of its covenants;
- (2) **Deliveries.** As of the Closing Date, Seller shall have tendered and shall have caused AFE, PXR, PXURA and PXLA to have tendered all deliveries to be made by Seller, AFE, PXR, PXURA and PXLA at Closing;
- (3) **Actions, Suits, etc.** There shall exist (i) no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Seller, AFE, PXR, PXURA or PXLA that would materially and adversely affect Seller's ability to perform its obligations under this Agreement or (ii) no objection to the transaction hereunder by the City of Jersey City or the Jersey City Redevelopment Authority;
- (4) **Tenant Estoppel Certificate.** Seller shall have delivered to Purchaser the Tenant Estoppel Certificate;
- (5) **Occupancy/Non Bankruptcy.** It shall be a condition to Purchaser's obligations to close hereunder that (a) as of the Closing Date, Schwab shall have not terminated, or given notice of intent to terminate, its Lease, except with respect to a Casualty Tenant Termination Event or a Condemnation Tenant Termination Event and (b) from the end of the Inspection Period through the Closing Date, Schwab shall have not vacated, abandoned or ceased operations at the Real Property, or filed for voluntary or involuntary bankruptcy or similar protection;
- (6) **Closing of GE Bridge Loan/Mezzanine Loan.** If Purchaser has elected pursuant to Section 4.3.1 to proceed to Closing with (i) the GE Bridge Financing Commitment and has not elected thereafter to take an alternative financing, (A) the closing of the Mezzanine Loan simultaneously with the Closing and (B) the closing of the GE Bridge Loan on the Closing Date (unless the GE Bridge Loan fails to close as a result of (x) Purchaser's uncured default under the GE Bridge Financing Commitment, (y) the failure of one or more conditions to close which are within Purchaser's reasonable control to satisfy, or (z) Purchaser's failure to accept documentation for the GE Bridge Loan that is commercially reasonable for debt assumption transactions and implementation of

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such modifications to the GECC Loan as are specifically set forth in the GE Bridge Financing Commitment) be conditions to Purchaser's obligation to close hereunder or (ii) the Bridge Financing Commitment and has not elected thereafter to take an alternative financing, iStar being ready, willing and able to close the Mezzanine Loan on the Closing Date is a condition to Closing and, if the Bridge Loan closes, the closing of the Mezzanine Loan simultaneously therewith is a condition to Closing. In no event shall the closing of (w) the loan contemplated by the Term Financing Commitment, (x) the Bridge Loan or (y) any alternative financing be a condition of Purchaser's obligation to close hereunder;

(7) Intentionally Deleted;

(8) Title Policy and Non-Imputation Endorsement. It shall be a condition to Purchaser's obligations to close hereunder that the Title Company shall have issued the Title Policy, Co-Insurance and the Non-Imputation Endorsement subject to, and in accordance with Section 5.4;

(9) Portfolio Purchase and Sale Agreement. It shall be a condition to Purchaser's obligation to close hereunder that the sale of the Portfolio Property to Purchaser pursuant to the Portfolio Purchase and Sale Agreement occur simultaneously with the Closing of the sale of the Membership Interests pursuant to this Agreement;

(10) SNDA. It shall be a condition to Purchaser's obligation to close hereunder that Seller shall have delivered the SNDA;

(11) Management Agreement Estoppel Certificate. It shall be a condition to Purchaser's obligation to close hereunder that Seller shall have delivered the Management Agreement Estoppel Certificate.

7.2.3 **Failure to Satisfy Conditions**. So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date (or such earlier date as is provided herein), subject to any applicable notice and cure periods provided in Sections 10.1 and 10.2, such party may, in its sole discretion either (i) terminate this Agreement in its entirety by delivering written notice to the other party and Escrow Agent on or before the Closing Date (or such earlier date as is provided herein) and Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) elect to close notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close, notwithstanding the non-satisfaction of such condition, said party shall be deemed to have waived said condition, and there shall be no liability on the part of any other party hereto for breaches of representations and warranties of which the party electing to close had knowledge at the Closing.

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7.3 **Seller's Deliveries in Escrow**. As of or prior to the Closing Date, Seller shall deliver, or shall cause the delivery by AFE and each Subsidiary, as applicable, in escrow to Escrow Agent the following:

7.3.1 **Assignment and Assumption of Membership Interests**. An assignment and assumption of membership interests in substantially the form of Exhibit B hereto (the "**Assignment and Assumption**");

7.3.2 **Intentionally Deleted**.

7.3.3 **Conveyancing or Transfer Tax Forms or Returns**. Such conveyancing and transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local laws in connection with the transfer of the Membership Interests;

7.3.4 **FIRPTA**. A Foreign Investment in Real Property Tax Act affidavit in the form of Exhibit D hereto executed by Seller;

7.3.5 **Authority**. Evidence of the existence and authority of Seller, AFE, PXR, PXURA and PXLA and of the authority of the persons executing documents on behalf of Seller, AFE, PXR, PXURA and PXLA reasonably satisfactory to First American;

7.3.6 **Title Affidavits**. Title affidavits in form reasonably required by First American as to the rights of tenants in occupancy, the status of mechanics' liens and "gap" indemnities, and such other matters as the First American may reasonably require in order to issue the Title Policy and the Non-Imputation Endorsement (collectively, the "**Title Affidavits**");

7.3.7 **Additional Documents**. Any additional documents that First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller, AFE, PXR, PXURA or PXLA or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement);

7.3.8 **Tenant Estoppel Certificates/Seller Estoppels**. If received by Seller, the Tenant Estoppel Certificate, it being agreed that the failure of Seller to obtain the Tenant Estoppel Certificate shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.9 **Third Party Estoppel Certificates**. Such Third Party Estoppel Certificates as Seller shall have received, it being agreed that the failure of Seller to obtain any such Third Party Estoppel Certificates shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.10 **Company Matters**.

(1) The Books and Records.

(2) A Uniform Commercial Code Search, indicating that the Membership Interests and the limited liability company interests in AFE and the Subsidiaries are unencumbered by an lien, encumbrance or other security interest thereon, except for liens, encumbrances or security interests in favor of GE pursuant to the GE Loan, and federal and state law searches for Seller and each of the Subsidiaries indicating the absence of any bankruptcy proceeding, federal or state tax lien, litigation and unsatisfied judgments.

(3) A good standing certificate dated within thirty (30) days of the Closing Date from the Secretary of State of New Jersey as to the good standing of AFE and each of the Subsidiaries in the State of New Jersey.

(4) True, correct and complete copies of all insurance policies maintained by iStar on behalf of AFE and the Subsidiaries.

7.3.11 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Seller in Section 9.1 are true and accurate as of the Closing Date, subject to Section 4.4 and the first sentence of Section 9.3;

7.3.12 **Updated Rent Roll.** A Rent Roll updated to the Closing Date, or as close as possible; and

7.3.13 **SNDA.** If received by Seller, the SNDA, it being agreed that the failure of Seller to obtain the SNDA shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price.

7.4 **Purchaser's Deliveries in Escrow.** As of or prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

7.4.1 **Assignment and Assumption.** An executed counterpart to the Assignment and Assumption.

7.4.2 **Intentionally Deleted.**

7.4.3 **Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Purchaser by applicable state and local laws in connection with the transfer of the Membership Interests;

7.4.4 **Authority.** Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to First American;

7.4.5 **Additional Documents.** Any additional documents that Seller, Escrow Agent or First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement); and

7.4.6 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Purchaser in Section 9.2 are true and accurate as of the Closing Date.

7.5 **Closing Statements.** As of or prior to the Closing Date, Seller and Purchaser shall deposit with Escrow Agent an executed closing statement with respect to the adjustments herein in the form required by Escrow Agent. Seller shall provide a draft of the same at least one week prior to the scheduled Closing Date.

7.6 **Purchase Price.** At or before 3:00 p.m. (Eastern Time) on the Closing Date, Purchaser shall deliver to Escrow Agent the Purchase Price, less the Earnest Money, plus or minus applicable prorations and any adjustment to the Purchase Price made in accordance with the terms of this Agreement, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds must be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); in the event that Escrow Agent is unable to deliver good funds to Seller or its designee prior to 4:00 p.m. (Eastern Time) on the Closing Date, then the closing statements and related prorations will be revised as necessary. To the extent that Escrow Agent is unable to provide the amount of interest constituting part of the Earnest Money up to the Closing Date, Escrow Agent shall promptly remit any such interest not applied against the Purchase Price to Purchaser after the Closing.

7.7 **Possession.** As of Closing, there shall be no change in AFE's, PXURA's and PXLA's possession of the Real Property and Improvements.

7.8 **Delivery of Books and Records.** Within ten (10) Business Days after the Closing, Seller shall deliver to the offices of Purchaser: (i) original Lease File; (ii) original Service Contracts and License Agreements, (iii) to the extent in Seller's, AFE's, PXR's, PXURA's or PXLA's possession: (a) maintenance records and warranties; (b) plans and specifications; (c) licenses, permits and certificates of occupancy; (d) copies or originals of all books and records of account, contracts, and copies of correspondence with tenants and suppliers; (e) advertising materials; (f) booklets; and (g) keys; and (iv) the Books and Records.

7.9 **Notice to Schwab, Tenant's and Licensees.** Seller and Purchaser shall each execute and Purchaser shall deliver (i) to Schwab immediately after the Closing, a notice regarding the sale in substantially the form of Exhibit G hereto, or such other form as may be required by applicable state law and (ii) notice letters in the form of Exhibit G to the Portfolio Purchase and Sale Agreement to any tenants or licensees of AFE, PXURA or PXLA. This obligation on the part of Purchaser shall survive the Closing.

## ARTICLE 8 PRORATIONS, DEPOSITS, COMMISSIONS

8.1 **Prorations for Taxes.** To the extent tenants are required to pay real and personal ad valorem taxes and payments pursuant to the Financial Agreement ("Taxes") directly under their respective Leases, Taxes will not be prorated, and accordingly, Purchaser shall look solely to the tenants under their respective Leases for payment of all Taxes. To the extent tenants are

not required to pay Taxes directly under their respective Leases, then the following shall apply with respect to the proration of Taxes:

8.1.1 If Taxes for the year of Closing are not known or cannot be reasonably estimated, Taxes shall be prorated based on Taxes for the year prior to Closing; and

8.1.2 Any additional Taxes relating to the year of Closing arising out of a change in ownership shall be assumed by Purchaser effective as of Closing and paid by Purchaser when due and payable, and Purchaser shall indemnify Seller from and against any and all such Taxes, which indemnification obligation shall survive the Closing.

8.1.3 Purchaser and Seller shall reasonably cooperate to file all tax returns of AFE and the Subsidiaries in respect of the tax year in which the Closing shall occur. Seller shall not take any action to apply for the reduction or review of the assessed valuation of the Real Property and Improvements (a "**Tax Proceeding**") under the Financial Agreement, for the fiscal year in which Closing occurs, it being understood and agreed that the pending settlement discussions relating to the pending audit of the Financial Agreement are expressly excluded herefrom and after the Effective Date through the Closing, Seller, AFE and the Subsidiaries (to the extent applicable) shall not enter into a settlement agreement with respect to the pending audit of the Financial Agreement without Purchaser's prior consent (not to be unreasonably withheld, conditioned or delayed); provided, however, Seller, AFE and the Subsidiaries may enter a settlement agreement with respect to the pending audit of the Financial Agreement at any time without Purchaser's prior consent if (i) Schwab consents to the terms of such settlement agreement, (ii) Schwab agrees to be liable for any payments thereunder, (iii) Seller has provided prior notice thereof to Purchaser and (iv) the material terms of such settlement agreement are limited to: agreement to increase annual PILOT payments up to \$150,000.00 starting in Jersey City's current fiscal year with a one-time additional payment up to \$150,000.00 on account of past due amounts claimed by the City of Jersey City, New Jersey and such settlement agreement releases all parties to the Financial Agreement and the Contracting Agreement from the claims covered by such settlement agreement.

8.2 **Prorations for Tenant-Paid Operating Expenses.** To the extent tenants are required to pay operating costs and expenses of the Real Property or Improvements ("**Operating Expenses**") directly under their respective Leases, which Operating Expenses may include, without limitation, fees and assessments; prepaid expenses; obligations under Service Contracts; any assessments by private covenant; insurance; utilities; common area maintenance expenses; and other operating costs and expenses incurred in connection with the ownership, operation, maintenance and management of the Real Property, Operating Expenses will not be prorated, and accordingly, Purchaser shall look solely to the tenants under such Leases for payment of all Operating Expenses.

8.3 **Prorations for Non-Tenant Paid Items.** To the extent tenants are not required to pay Operating Expenses or Taxes directly under their respective Leases, but are required to escrow Operating Expenses or Taxes under their respective Leases and/or to reimburse their landlord for all or any portion of such Operating Expenses or Taxes, then the following items shall be prorated as of the Closing Date with all items of income and expense for the Property

being borne by AFE and the Subsidiaries for Purchaser's account from and after (and including) the Closing Date and Seller's account prior to the Closing Date:

8.3.1 **Utilities.** Purchaser shall take all steps necessary to post deposits with the utility companies on behalf of AFE and the Subsidiaries for the period after the Closing Date. Seller shall ensure that all utility meters are read as of the Closing Date. Seller shall be entitled to recover any and all deposits held by any utility company on behalf of AFE and the Subsidiaries as of the Closing Date.

8.3.2 **Tenant Receivables.** Rents due from tenants under Leases and from tenants or licensees under License Agreements and Operating Expenses and Taxes payable by tenants under Leases and licenses under License Agreements (collectively, "**Tenant Receivables**") and not collected by AFE, PXR, PXURA or PXLA as of Closing shall not be prorated between Seller and Purchaser at Closing but shall be apportioned on the basis of the period for which the same is payable and if, as and when collected, as follows:

(a) Tenant Receivables and other income received from tenants under Leases, and/or tenants or licensees under License Agreements after Closing shall be applied in the following order of priority: (1) first, to payment of the current Tenant Receivables then due for the month in which the Closing Date occurs, which amount shall be apportioned between Purchaser and Seller as of the Closing Date as set forth in Section 8.3 hereof (with Seller's portion thereof to be delivered to Seller); (2) second, to payment of Tenant Receivables first coming due after Closing but applicable to the period of time before Closing, (collectively, "**Unbilled Tenant Receivables**"), which amount shall be delivered to Seller; (3) third, to Tenant Receivables first coming due after Closing and applicable to the period of time after Closing, which amount shall be retained by AFE and the Subsidiaries; and (4) thereafter, to delinquent Tenant Receivables which were due and payable as of Closing but not collected by AFE and the Subsidiaries as of Closing (collectively, "**Uncollected Delinquent Tenant Receivables**"), which amount shall be delivered to Seller. Notwithstanding the foregoing, Seller shall have the right to pursue on behalf of AFE and the Subsidiaries the collection of Uncollected Delinquent Tenant Receivables for a period of six (6) months after Closing without prejudice to Seller's rights or Purchaser's obligations hereunder, provided, however, Seller shall have no right to cause AFE and the Subsidiaries to cause any such tenant or licensee to be evicted or to exercise any other "landlord" remedy (as set forth in such tenant's Lease or licensee's License Agreement) against such tenant other than to sue for collection. Any sums received by AFE and the Subsidiaries to which Seller is entitled shall be held in trust for Seller on account of such past due rents payable to AFE and the Subsidiaries, and Purchaser shall remit to Seller any such sums received by AFE or the Subsidiaries to which Seller is entitled within ten (10) Business Days after receipt thereof less reasonable, actual costs and expenses of collection, including reasonable attorneys' fees, court costs and disbursements, if any. Seller expressly agrees that if Seller receives any amounts after the Closing Date which are attributable, in whole or in part, to any period from and after the Closing Date, Seller shall hold the same in trust for AFE and the Subsidiaries and remit to Purchaser that portion of the monies so received by Seller to which AFE or the Subsidiaries is entitled within ten Business Days after receipt thereof. With respect to Unbilled Tenant Receivables, Purchaser covenants and agrees to cause



AFE and the Subsidiaries to (A) bill the same when billable and (B) cooperate with Seller to determine the correct amount of operating expenses and/or taxes due. Seller shall provide Purchaser with the necessary information to bill the same when billable and cooperate with Purchaser to maximize collection of the Unbilled Tenant Receivables. The provisions of this Section 8.3.2(a) shall survive the Closing.

(b) Purchaser acknowledges that AFE, PXURA and PXLA, as the landlords under the Leases (and/or as the licensors under the License Agreements) may be collecting from tenants under the Leases (and/or licensees under the License Agreements) additional rent relating to Operating Expenses or Taxes. To the extent that any such additional rent is paid by any tenants to the landlord under the Leases (and/or by any licensees to the licensor under the License Agreements) based on an estimated payment basis (whether monthly, quarterly, or otherwise) for which a future reconciliation of actual Operating Expenses or Taxes to estimated payments of Operating Expenses or Taxes is required to be performed at the end of a reconciliation period, Purchaser and Seller shall determine prior to the Closing whether such tenants and/or licensees have, in the aggregate, made an overpayment or underpayment of additional rent relating to Operating Expenses or Taxes (such determination to be based on a comparison of reasonable estimates of actual annual Operating Expenses and Taxes to the estimated payments being made by such tenants and/or licensees). If such determination indicates that such tenants and/or licensees have made an overpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall receive a credit toward the Purchase Price in the amount of such overpayment and AFE and the Subsidiaries shall retain all obligations and liabilities relating to such overpayment. If, however, such determination indicates that such tenants and/or licensees have made an underpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall cause AFE or the Subsidiaries to bill the tenants for the same promptly after the Closing and remit the same to Seller as and when collected. If such review indicates that it cannot be determined as of the Closing Date whether a tenant has overpaid or underpaid its additional rent relating to Operating Expenses or Taxes, Purchaser shall cause AFE or the Subsidiaries to bill the tenant for the same at the end of the reconciliation period, and any overpayment with respect to the period prior to the Closing Date shall be paid by Seller to Purchaser or any underpayment with respect to the period prior to the Closing Date, when received from the tenant, shall be paid by Purchaser to Seller. Notwithstanding anything contained herein to the contrary, to the extent Purchaser, Seller, AFE, PXR, PXURA or PXLA receives a check or wire transfer from any tenant in the exact amount of the item payable by such tenant or referencing the item to which the check or wire transfer relates, such check or wire transfer shall be (i) applied directly to the applicable item or (ii) if such item was previously paid by AFE or the Subsidiaries during Seller's Ownership Period, reimbursed to Seller, or if such item was paid by AFE or the Subsidiaries thereafter, reimbursed to Purchaser.

8.4 **Miscellaneous Prorations.** Without duplication of, and to the extent not addressed by Sections 8.1, 8.2 and 8.3, all other items that are customarily subject to proration and adjustment, including without limitation, "Base Rent", shall be prorated as of the Closing Date, it being agreed that for purposes of prorations and adjustments, Purchaser shall be deemed the owner of the Membership Interests on the Closing Date.

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8.5 **Leasing Costs.** Seller agrees to cause AFE and the Subsidiaries pay or discharge at or prior to Closing (and provide Purchaser with evidence of payment thereof), or provide Purchaser with a credit at Closing in the amount of, all leasing commissions, costs for tenant improvements, lease buyout costs, moving allowances, design allowances, legal fees and other costs, expenses and allowances incurred in order to induce a tenant to enter into a Lease or Lease renewal or extension or to induce a licensee to enter into a License Agreement (collectively, the "Leasing Costs") that are indicated on **Schedule 9.1.5** as being payable by Seller. Purchaser agrees to cause AFE and the Subsidiaries to pay all Leasing Costs indicated on **Schedule 9.1.5** as being payable by Purchaser as and when they become due. Seller shall have no obligation to pay, and as of Closing AFE and the Subsidiaries shall retain, the obligation to pay, all Leasing Costs payable with respect to any option to renew or option to expand that has not been exercised prior to the Effective Date, which obligation shall survive the Closing. Additionally, as of Closing, AFE and the Subsidiaries shall retain all obligations for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

8.6 **Closing Costs.** Closing costs shall be allocated between Seller and Purchaser in accordance with Section 1.2.

8.7 **Final Adjustment After Closing.** If final bills are not available or cannot be issued prior to Closing for any item being prorated under Sections 8.1, 8.3 and 8.5, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

8.8 **Tenant Deposits.** All tenant and licensee security deposits collected and not applied by AFE, PXR, PXURA or PXLA (and interest thereon if required by law or contract) as of the Closing Date shall be retained by AFE, PXR, PXURA or PXLA at Closing. As of the Closing, AFE, PXR, PXURA and PXLA shall retain their obligations related to tenant and licensee security deposits, but only to the extent the security deposits are retained by AFE, PXR, PXURA and PXLA at Closing. Notwithstanding the foregoing provisions of this Section 8.8, deposits in the form of letters of credit will not be transferred or credited at the Closing. All letters of credit will remain in the name of AFE, PXR, PXURA and PXLA at Closing. Purchaser and Seller shall each pay one-half (1/2) of the costs and expenses, if any, of delivering the letters of credit to Purchaser. In the event that prior to a transfer of any such letter of credit to Purchaser, Purchaser deems it advisable to cause AFE, PXR, PXURA or PXLA to draw on the same, Seller will cooperate in such presentation, and direct payment by virtue of any such presentation to AFE, PXR, PXURA or PXLA, and if Seller receives any such payment it will promptly deliver such payment in the form received and endorsed, without recourse, to Purchaser on behalf of AFE, PXR, PXURA or PXLA. Purchaser shall defend, indemnify and hold Seller harmless from all claims, causes of actions, actions, damages, costs, liabilities and expenses, including (without limitation) reasonable attorneys' fees, that may arise out of any such presentation or related payment, other than by reason of any actions of Seller other than at the written direction of Purchaser. If any security deposit is held in a form other than cash or a

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letter of credit, for example, debt or equity securities, at Closing, such debt or equity securities shall continue to be held by AFE or the applicable Subsidiary.

8.9 **Commissions.** Seller is responsible to Financial Advisor for a real estate fee at Closing in accordance with a separate agreement between Seller and Financial Advisor and at Closing Seller shall pay to Financial Advisor the entire real estate fee due under the separate agreement between Seller

and Financial Advisor. Financial Advisor may share its commission with any other financial advisor or licensed broker involved in this transaction. Subject to Seller's representations in this Section 8.9, under no circumstances shall Seller owe a commission or other compensation directly to any financial advisor, broker, agent or person other than Financial Advisor. No affiliate, subsidiary or party related in any way to Purchaser shall claim a commission or fee from Seller or Financial Advisor. Seller represents and warrants to Purchaser that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby other than Financial Advisor, and agrees to and does hereby indemnify and hold Purchaser harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Seller including Financial Advisor. Purchaser represents and warrants to Seller that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby, and agrees to and does hereby indemnify and hold Seller harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Purchaser excluding Financial Advisor. The foregoing indemnifications shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

8.10 **Accounts.** At or prior to Closing, Seller shall cause all then existing accounts in the name of AFE or any Subsidiary, to be closed and the proceeds therein distributed to Seller.

## **ARTICLE 9**

### **REPRESENTATIONS AND WARRANTIES**

9.1 **Seller's Representations and Warranties.** Each Seller represents and warrants to Purchaser that:

9.1.1 **Organization and Authority.** Seller, AFE, PXR, PXURA and PXLA are validly existing, and in good standing in the states in which they were formed. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause AFE and the Subsidiaries to consummate the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller, AFE, PXR, PXURA and PXLA at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, AFE and the Subsidiaries, enforceable in accordance with their terms.

9.1.2 **No Conflicts.** The execution, delivery and performance by Seller, AFE and the Subsidiaries, as applicable, of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a

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default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Seller, AFE, PXR, PXURA, PXLA, the Membership Interests or any portion of the Real Property or Improvements is bound.

9.1.3 **Consents; Binding Obligations.** No approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Seller, AFE or the Subsidiaries, as applicable, to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller or the Subsidiaries, as applicable, to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller or the Subsidiaries, as applicable, are and shall be valid, legally binding obligations of and enforceable against Seller and the Subsidiaries in accordance with their terms.

9.1.4 **Pending Actions.** Except as set forth on **Schedule 9.1.4**, there is no action or proceeding pending or to Seller's knowledge threatened, against Seller, AFE or the Subsidiaries (as applicable) including, but not limited to, those relating to the Membership Interests, the AFE LLC Agreement, the Subsidiary LLC Agreements, the Mack-Cali Management Agreement, the Real Property, the Improvements, the Leases and Guaranties, the Tangible Personal Property or the Intangible Personal Property.

9.1.5 **Leases, Guaranties, Tenants and Guarantors.** **Schedule 1.1.21** is a true, correct and complete list of all Leases, Guaranties, tenants and guarantors in effect as of the Effective Date. Seller has delivered, or has caused AFE and the Subsidiaries to deliver, or has made available to Purchaser true, correct and complete copies of the Leases and the Guaranties. To Seller's knowledge, no tenant or guarantor of any Lease has been released or discharged, voluntarily or involuntarily, or by operation of law, from any obligation related to such Lease. To Seller's knowledge, Seller, AFE, PXR, PXURA and PXLA have not received notice of any default under, and to Seller's knowledge, no other party is in default under, any of its obligations under any of the Leases or Guaranties, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller's knowledge, Seller, AFE, PXR, PXURA and PXLA have not received any notice from any tenant or guarantor under the Guaranties asserting any presently accrued defenses, offsets or disputes thereunder. The Rent Roll is true and correct in all material respects. Except as disclosed on **Schedule 9.1.5**, there are no Leasing Costs or other obligations to brokers due or which will become due under any of the Leases, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement. Except as disclosed on **Schedule 9.1.5**, all Leasing Costs have been fully paid and satisfied by Seller, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

9.1.6 **Service Contracts and License Agreements.** To Seller's knowledge, **Schedule 9.1.6** is a true, correct and complete list of all Service Contracts and License Agreements with respect to the Real Property and Improvements. To Seller's knowledge, Seller has delivered or caused AFE and the Subsidiaries to deliver true, correct and complete copies of

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the Service Contracts and License Agreements to Purchaser. To Seller's knowledge, Seller, AFE, PXR, PXURA and PXLA have not received notice of any default under, and to Seller's knowledge, no other party is in default under, any of its obligations under any of the Service Contracts or License Agreements, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller's knowledge, Seller, AFE, PXR, PXURA and PXLA have not received any notice from any party under the Service Contracts or License Agreements asserting any presently accrued defenses, offsets or disputes thereunder.

9.1.7 **Notices from Governmental Authorities.** To Seller's knowledge, except as set forth on **Schedule 9.1.7** or as may be reflected by the Property Documents or otherwise disclosed by Seller to Purchaser in writing, Seller, AFE, PXR, PXURA and PXLA have not received from any governmental authority during the Seller's Ownership Period written notice of any violation of any laws, that has not been corrected. To Seller's knowledge, except as set forth on **Schedule 9.1.7**, neither Seller nor any of the Subsidiaries has received from any governmental authority, including without limitation, Jersey City or the Jersey City Redevelopment Authority, notice of any violations of the Financial Agreement or any notice of alleged non-compliance or disputes regarding any provision of the Financial Agreement.

9.1.8 **Prohibited Persons and Transactions.** Neither Seller nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.1.9 **Operating Statements.** The Operating Statements delivered by Seller or made available to Purchaser are true and complete copies of the operating statements for the Real Property and Improvements which Seller, AFE, PXR, PXURA and PXLA rely upon for the purposes of operating the Real Property and Improvements.

9.1.10 **Insurance.** **Schedule 9.1.10** is a true, correct and complete list of the insurance maintained by Seller, AFE, PXR, PXURA and PXLA with respect to the Real Property and Improvements. Seller, AFE, PXR, PXURA and PXLA have not received any written notice or request from any insurance company requesting the performance of any work or alteration with respect to the Real Property or Improvements, which have not been fully and completely corrected. Seller, AFE, PXR, PXURA and PXLA have not received written notice from any insurance company concerning any defects or inadequacies in the Real Property or Improvements, which, if not corrected, would result in the termination of insurance coverage or increase its cost.

9.1.11 **Employees.** There are no employees of Seller, AFE, PXR, PXURA or PXLA employed in connection with the use, management, maintenance or operation of the Real Property and Improvements whose employment will continue after the Closing Date. There is

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no bargaining unit or union contract relating to any employees of Seller, AFE, PXR, PXURA or PXLA.

9.1.12 **Third Party Agreements.** Other than the Leases, the License Agreements, the Service Contracts, the Permitted Exceptions and the agreements set forth on **Schedule 9.1.12**, there are no agreements to which Seller, AFE or any Subsidiary is party to. To Seller's knowledge, except as set forth on **Schedule 9.1.12**, Seller is not in default of, and no other party is in default of, any of its obligations under any of the agreements set forth on **Schedule 9.1.12**, and there is no event which, with the giving of notice or passage of time, or both, would be a default thereunder.

9.1.13 **Seller's Representatives.** Seller's Representatives are the individuals involved in supervising Seller's, AFE's, PXR's, PXURA's and PXLA's ownership, operation, and maintenance of the Real Property and Improvements, have knowledge of the operation and maintenance of the Real Property and Improvements and have reviewed the representations of Seller set forth in, and the schedules and exhibits referenced in, this Section 9.1.13.

9.1.14 **Ownership.** (A) Seller is the sole member of, and owns one hundred percent (100%) of the interests in, AFE, (B) AFE is the sole member of, and owns one hundred percent (100%) of the interests in, PXR, (C) PXR is the sole member of, and owns one hundred percent (100%) of the interests in, PXURA, (D) PXR is the sole member of, and owns one hundred percent (100%) of the interests in, PXLA and (E) AFE, via its sole membership in, and one hundred percent (100%) ownership of, PXR, indirectly owns all of PXURA and PXLA. Except for (i) the liens, encumbrances, liabilities, claims, covenants and restrictions relating to that portion of the GE Loan secured by the Real Property and Improvements, which will either be repaid or assumed by Purchaser at Closing, and (ii) that certain Option Agreement by and between Second Street Holdings, L.L.C., a New Jersey limited liability company, and Seller, dated as of September 29, 2003 (the "**Second Street Option**"), (i) Seller owns its interests in AFE free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same and Seller has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interests or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interests, (ii) AFE owns its interests in PXR free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same and AFE has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interests or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interests and (iii) PXR owns its interests in PXURA and PXLA free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same, and PXR has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in,

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or otherwise disposed of any of such interest or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interest.

9.1.15 **PILOT Matters.** Seller has delivered to Purchaser a true, accurate and complete copy of the Financial Agreement. To Seller's knowledge, the Financial Agreement is in full force and effect. Except as set forth on **Schedule 9.1.15**, PXURA has made all payments required to be paid to date under the Financial Agreement and filed all annual audited financial statements in connection therewith required to be filed to date. Except as set forth on **Schedule 9.1.15**, neither Seller, AFE, PXR, PXURA or PXLA has received any written notice that it has failed to pay or perform any obligation on its part to be paid or performed under the Financial Agreement (which remains uncured) or that it is in default (which remains uncured) under the Financial Agreement. Except as set forth on **Schedule 9.1.15**, as of the date hereof, there is no litigation or proceedings pending or, to Seller's knowledge, threatened in writing with respect to the Financial Agreement.

9.1.16 **Subleases.** Schedule 9.1.16 is a true, correct and complete list of all subleases (at whatever level) covering the Real Property or Improvements acknowledged by, or consented to, AFE, PXR, PXURA or PXLA and such additional subleases as to which Seller, AFE, PXR, PXURA, or PXLA (as applicable) have knowledge of.

9.1.17 **LLC Agreements.** Seller has delivered to Purchaser a true, complete and accurate copies of the AFE LLC Agreement and the Subsidiary LLC Agreements, and all amendments thereto, all of which are each in full force and effect and have not been amended or modified, and there has been no material default by Seller, AFE or the Subsidiaries under the AFE LLC Agreement and the Subsidiary LLC Agreements (as applicable) during Seller's Ownership Period.

9.1.18 **Subsidiaries.** Other than AFE and the Subsidiaries, there are no corporations, partnerships, joint ventures, associations or other entities in which Seller owns, of record or beneficially, any direct or indirect equity or other interest or any right to acquire same.

9.1.19 **Books and Records.** The Books and Records contain accurate records of all meetings and accurately reflect all other actions taken by the members, boards of directors and all committees of AFE and the Subsidiaries. Complete and accurate copies of all Books and Records of AFE and the Subsidiaries have been provided by Seller to the Purchaser

9.1.20 **Bankruptcy.** No petition in bankruptcy (voluntary or, to Seller's knowledge, involuntary), assignment for the benefit of creditors or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or, to Seller's knowledge, threatened against AFE or any of the Subsidiaries.

9.1.21 **Permitted Liabilities.** AFE and the Subsidiaries have no liabilities other than (i) those reflected on the consolidated balance sheet of each respective entity, dated as of March 31, 2010 (collectively, the "**Balance Sheets**") and (ii) liabilities incurred in the ordinary course of AFE's and the Subsidiaries' business related to the Real Property or Improvements from April 1, 2010 through the Effective Date, which ordinary course liabilities (A) shall not

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materially exceed the corresponding line items for such ordinary course liabilities set forth in the Balance Sheets except for accrued tax liabilities in an amount not to exceed \$135,000.00 for the month of April, 2010 and (B) are subject to Purchaser's consent rights otherwise contained in this Agreement (items (i) and (ii) of this Section 9.1.21 are referred to herein collectively as, the "**Permitted Liabilities**"), which Permitted Liabilities shall be paid prior to or at Closing except for (x) Permitted Liabilities prorated in accordance with the terms of this Agreement and (y) if Purchaser acquires the Membership Interests with the GE Bridge Loan, those Permitted Liabilities relating to the GE Loan.

9.1.22 **Financial Statements.** Seller has delivered to Purchaser true, correct and complete copies of the Financial Statements. The Financial Statements present fairly in all material respects the financial position, results of operations and cash flows of AFE and the Subsidiaries as of the dates thereof and for the periods covered thereby, in accordance with GAAP applied on a consistent basis.

9.1.23 **Taxes and Tax Returns.**

(1) AFE and each of the Subsidiaries has filed all federal, state and local tax returns that are due for each year of its existence. AFE and each of the Subsidiaries has paid or caused to be paid all Taxes required to be paid by AFE and each of the Subsidiaries through the date hereof whether disputed or not.

(2) There are no pending or, to the best knowledge of the Seller after due inquiry, threatened actions for the assessment or collection of Taxes against AFE or any Subsidiary or (insofar as either relates to the activities or income of AFE or any Subsidiary or could result in liability of AFE or any Subsidiary on the basis of joint and/or several liability) any person that was included in the filing of a Tax Return with the Seller on a consolidated, combined or unitary basis and there are no Tax liens on any assets of AFE or any Subsidiary.

(3) **Schedule 9.1.23(3)** lists all income, franchise and similar tax returns (federal, state, local and foreign) and disclosures or certifications filed, including those required under the Financial Agreement, with respect to each of AFE and the Subsidiaries for taxable or reporting periods ended on or after Seller's Ownership Period, (B) indicates the most recent income, franchise or similar tax return for each relevant jurisdiction for which an audit has been completed or the statute of limitations has lapsed and (C) indicates all tax returns or certifications or disclosures filed, including those required under the Financial Agreement, that currently are the subject of audit; and

(4) Seller has delivered to Purchaser correct and complete copies of all federal, state and foreign income, franchise and similar tax returns, examination reports and statements of deficiencies assessed against or agreed to by AFE or any Subsidiary during Seller's Ownership Period and (iii) Seller has delivered to Purchaser a true and complete copy of any tax sharing or allocation agreement or arrangement involving AFE or any Subsidiary and a true and complete description of any such unwritten or informal agreement or arrangement.

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9.1.24 **Undisclosed Liabilities.** There is no basis for any present action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against AFE or any of the Subsidiaries (as applicable) giving rise to any liability, except for (i) liabilities set forth on the Financial Statements and (ii) the Permitted Liabilities.

9.1.25 **Collective Bargaining and Employee Plans.** Neither Seller, AFE nor any of the Subsidiaries is a party to any collective bargaining or similar agreement with respect to the Real Property or Improvements. As of the date hereof, there are no employee benefit plans or arrangements with respect to AFE or the Subsidiaries.

9.1.26 **Second Street Option.** The Second Street Option is still in full force and effect. Neither Seller, AFE nor any of the Subsidiaries has received any notice under the Second Street Option purporting to exercise any right thereunder. To Seller's knowledge, no dispute or claim exists between the parties to the Second Street Option.

9.2 **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

9.2.1 **Organization and Authority.** Purchaser is validly existing as a limited liability company in good standing in the State of Delaware. Subject to obtaining approval of Purchaser's Board of Directors prior to Purchaser's delivery of the Due Diligence Waiver Notice to Seller pursuant to Section 4.3.1 hereof, (a) Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby, and (b) this Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

9.2.2 **No Conflicts.** The execution, delivery and performance by Purchaser of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Purchaser is bound.

9.2.3 **Consents; Binding Obligations.** Except as set forth in Section 9.2.1, (a) no approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Purchaser to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Purchaser to consummate the transaction contemplated hereby, and (b) this Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

9.2.4 **Pending Actions.** There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

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9.2.5 **ERISA.** (a) Purchaser is neither (i) an "employee benefit plan" (as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended ("**ERISA**")) which is subject to Title I of ERISA (an "**ERISA Plan**"), nor (ii) a "plan" (as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "**Code**")) which is subject to Section 4975 of the Code (a "**Code Plan**"); (b) the assets of Purchaser do not constitute "plan assets" (as defined in Section 3(42) of ERISA) of one or more ERISA Plans or Code Plans ("**Plan Assets**") because, at the time of the Closing, the stock of Purchaser's parent constitutes "publicly offered securities" (as defined in 29 C.F.R. Section 2510.3-101(b)(2)), which parent owns one hundred percent (100%) of the issued and outstanding equity of Purchaser; (c) Purchaser is not using Plan Assets in the performance or discharge of its obligations under this Agreement; (d) Purchaser is not a "governmental plan" (within the meaning of Section 3(32) of ERISA) and assets of Purchaser do not constitute plan assets of one or more such plans; and (e) transactions by or with Purchaser are not in violation of state statutes applicable to Purchaser regulating investments of and fiduciary obligations with respect to governmental plans.

9.2.6 **Prohibited Persons and Transactions.** Neither Purchaser nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.2.7 **Availability of Funds.** Subject to obtaining the financing contemplated by either (x) the Term Financing Commitment, (y) the GE Bridge Loan and the Mezzanine Loan or (z) the Bridge Loan and the Mezzanine Loan as provided in Section 4.3.2, Purchaser currently has available and will at the Closing have available sufficient funds to pay the Purchase Price and to pay any and all other amounts payable by Purchaser pursuant to this Agreement and to effect the transactions contemplated hereby.

9.3 **Survival of Representations and Warranties.** The representations and warranties set forth in this ARTICLE 9 are made as of the Effective Date, are remade as of the Closing Date (subject to update for Updated Property Information pursuant to Section 4.4 and, changes that are not the result of a breach by Seller or Purchaser or any of their covenants in this Agreement), and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of nine (9) months (the "**Survival Period**"). Terms such as "to Seller's knowledge," "to the best of Seller's knowledge" or like phrases mean the actual knowledge of the following persons: Barclay Jones, Executive Vice President, Michael Dorsch, Executive Vice President, Samantha Garbus, Senior Vice President, Nancy Zoeckler, Senior Vice President, Mary-Beth Roselle, Senior Vice President, Scott Quigle, Vice President, Carrie Crain, Vice President and persons whose names are set forth on **Schedule 9.3** (the foregoing persons are referred to herein collectively as, the "**Seller's Representatives**"), without any duty of inquiry or investigation except in connection with such persons' review of the representations and warranties of Seller set forth in Section 9.1 hereof as provided in Section 9.1.13 hereof; provided that so qualifying Seller's knowledge shall in no event give rise to any

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personal liability on the part of Seller's Representatives, or any of them, or any other officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. No financial advisor, broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Subject to Section 9.4, each party shall have the right to bring an action against the other on the breach of a representation or warranty or covenant hereunder or in the documents delivered by Seller at the Closing, but only on the following conditions: (1) the party bringing the action for breach first learns of the breach after Closing and files such action within the Survival Period, (2) Seller shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Seller on account of such breach (individually or when combined with damages from other breaches including damages on account of breaches by Purchaser under the Portfolio Purchase and Sale Agreement) equals or exceeds \$5,000,000, in which event Purchaser shall be liable to Seller for one-half of all such damage up to \$5,000,000 and for all damage above \$5,000,000, and (3) Purchaser shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Purchaser on account of such breach (individually or in the aggregate) equals or exceeds (i) \$2,000,000 if such breach relates to the Real Property, the Improvements and the Membership Interests, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$2,000,000

and for all such damage above \$2,000,000 with respect to the Real Property, the Improvements and the Membership Interests or (ii) \$5,000,000 for the Real Property, the Improvements, the Membership Interests and the Portfolio Property, in which event Seller shall be liable (without duplication of any claims made pursuant to subclause (i) of this clause (3)) to Purchaser for one-half of all such damage up to \$5,000,000 and for all such damage above \$5,000,000 with respect to the Property, the Membership Interests and the Portfolio Property, subject to the further provisions of this Section 9.3. Neither party shall have any liability after Closing for the breach of a representation or warranty or covenant hereunder of which the other party hereto had actual knowledge as of Closing. Notwithstanding any other provision of this Agreement, any closing deliveries of Seller contemplated by this Agreement: (a) subject to Section 9.4 and other than Leasing Costs, or any rights which Purchaser might otherwise have at law, equity, or by statute, whether based on contract or some other claim, Purchaser agrees that any liability of Seller to Purchaser pursuant to this Section 9.3 and any liability of Portfolio Seller pursuant to Section 9.3 of the Portfolio Purchase and Sale Agreement will in the aggregate be limited to five percent (5%) of the aggregate Purchase Price of the Membership Interests and the Portfolio Property and (b) there shall be no threshold or limitation or limitation on survival on Seller's obligation to pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs), whether or not the obligations to pay any Leasing Costs first becomes known to Purchaser before, at or after the Closing; i.e., Seller shall pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs) regardless of the amount thereof and regardless of when the Leasing Cost becomes known to Purchaser. In no event shall either party be liable to the other party for incidental, consequential, or punitive damages as a result of the breach of any or all representations or warranties set forth in this Agreement. The provisions of this Section 9.3 shall survive the Closing. Any breach of a representation or warranty or covenant that occurs prior to Closing shall be governed by ARTICLE 10.

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9.4 **Company Representations.** Anything in this Agreement to the contrary notwithstanding, including Section 9.3, (i) there shall be no cap or floor on liability and Purchaser shall not share in such liability pursuant to Section 9.3, for any misrepresentation or other breach of any representation or warranty contained in the following subsections of this Agreement and such subsections shall survive the Closing without limitation: Sections 9.1.1, 9.1.2, 9.1.3, 9.1.4, 9.1.14, 9.1.17, 9.1.18, 9.1.20, 9.1.22 and 9.1.23, (ii) there shall be no cap or floor on liability and the Survival Period shall be two (2) years from Closing and Purchaser shall not share in such liability pursuant to Section 9.3, for any misrepresentation or other breach of any representation or warranty contained in the following subsections of this Agreement: Sections 9.1.15, 9.1.19, 9.1.21 and 9.1.24, and (iii) the Survival Period for Section 9.1.12 shall be two (2) years from Closing and remain subject to the caps, floors, and sharing of liability as set forth in Section 9.3 (items (i), (ii) and (iii) of this Section 9.4 are referred to herein collectively as, the "**Company Representations**"), subject to the applicable statutes of limitation. Seller and iStar ("**Indemnitor**") shall each indemnify Purchaser and hold Purchaser harmless from and against, any and all claims, liabilities, damages, losses, costs or expenses (including reasonable attorneys' fees) incurred by Purchaser arising from the Company Representations. This Section 9.4 shall survive the Closing.

#### **ARTICLE 10** **DEFAULT AND REMEDIES**

10.1 **Seller's Remedies.** If Purchaser defaults on its obligations hereunder or under the Portfolio Purchase and Sale Agreement at or prior to Closing for any reason, or if prior to Closing any one or more of Purchaser's representations or warranties or covenants hereunder, or under the Portfolio Purchase and Sale Agreement, are breached in any material respect that impairs Purchaser's ability to close under this Agreement or under the Portfolio Purchase and Sale Agreement and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Seller or the Closing Date (except no notice or cure period shall apply if Purchaser fails to consummate the purchase of the Membership Interests hereunder or the Portfolio Property pursuant to the Portfolio Purchase and Sale Agreement), Seller shall be entitled, as its sole remedy hereunder (except as provided in Sections 4.10, 8.8, 10.3 and 10.4 hereof), to terminate this Agreement and recover the Earnest Money as liquidated damages and not as penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. Notwithstanding anything in this Section 10.1 to the contrary, in the event of Purchaser's default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Membership Interests, the Real Property or the Improvements that would otherwise delay or prevent Seller from having clear, indefeasible and marketable title to the Membership Interests, the Real Property or the Improvements. In all other events Seller's remedies shall be limited to those described in this Section 10.1 and Sections 4.10, 8.8, 10.3 and 10.4 hereof. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Purchaser fails to perform any obligation of Purchaser under this Agreement. IN NO EVENT SHALL PURCHASER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR,

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EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MEMBERSHIP INTERESTS, THE REAL PROPERTY OR THE IMPROVEMENTS, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.2 **Purchaser's Remedies.** If Seller defaults on its obligations hereunder, or Portfolio Seller defaults in its obligations under the Portfolio Purchase and Sale Agreement at or prior to Closing for any reason, or if prior to Closing any one or more of Seller's, or, with respect to the Portfolio Purchase and Sale Agreement, Portfolio Sellers', representations or warranties or covenants are breached in any material respect (subject to the provisions of Section 4.4 hereof and of the Portfolio Purchase and Sale Agreement and the first Sentence of Section 9.3 hereof and of the Portfolio Purchase and Sale Agreement), and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Purchaser or the Closing Date (except no notice or cure period shall apply if Seller fails to consummate the sale of the Membership Interests hereunder or Portfolio Seller fails to consummate the sale of the Portfolio Property under the Portfolio Purchase and Sale Agreement), Purchaser shall elect, as its sole remedy hereunder, either to (a) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing and recover the Earnest Money, in which event Seller shall be liable to Purchaser for its out of pocket expenses incurred in connection with the transaction contemplated hereby, but not to exceed \$300,000.00, (b) enforce specific performance to consummate the sale of the Membership Interests hereunder, or (c) waive said failure or breach and proceed to Closing without any reduction in the Purchase Price. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement in its entirety if Purchaser fails to deliver to Seller written notice of its intent to proceed otherwise on or before ten (10) Business Days following the scheduled Closing Date or, having given notice that it intends to seek specific performance, fails to file a lawsuit asserting such claim or cause of action in New York County, New York within two months following the scheduled Closing Date. EXCEPT FOR iSTAR'S POTENTIAL LIABILITY PURSUANT TO THE MEZZANINE LOAN AND SECTION 9.4, IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF

THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MEMBERSHIP INTERESTS, THE REAL PROPERTY OR THE IMPROVEMENTS, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.3 **Attorneys' Fees.** In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such claims.

10.4 **Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to Escrow Agent for holding the

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Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Title Commitment.

## **ARTICLE 11**

### **DISCLAIMERS, RELEASE AND INDEMNITY**

11.1 **Disclaimers By Seller.** Except as expressly set forth in this Agreement and/or the Closing documents, it is understood and agreed that Seller, AFE, PXR, PXURA and PXLA and Seller's, AFE's, PXR's, PXURA's and PXLA's agents or employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Membership Interests, the Real Property and Improvements, including, but not limited to, warranties, representations or guaranties as to (a) matters of title, (b) environmental matters relating to the Real Property, the Improvements or any portion thereof, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Real Property or Improvements, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Real Property, the Improvements or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) zoning or building entitlements to which the Real Property, the Improvements or any portion thereof may be subject, (i) the availability of any utilities to the Real Property, the Improvements or any portion thereof, including, without limitation, water, sewage, gas and electric, (j) usages of adjoining property, (k) access to the Real Property, the Improvements or any portion thereof, (l) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Real Property, the Improvements or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Real Property, the Improvements or any part thereof, (m) the condition or use of the Real Property, the Improvements or compliance of the Real Property or the Improvements with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (n) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (o) any other matter affecting the stability and integrity of the Real Property or the Improvements, (p) the potential for further development of the Real Property or the Improvements, (q) the merchantability of the Real Property or the Improvements or fitness of the Real Property or the Improvements for any particular purpose, (r) the truth, accuracy or completeness of the Property Documents or Updated Property Information, (s) tax consequences, or (t) any other matter or thing with respect to the Real Property or the Improvements.

11.2 **Sale "As Is, Where Is".** Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Membership Interests and all beneficial interests arising therefrom "AS IS, WHERE IS, WITH ALL FAULTS," except to the extent expressly provided otherwise in this Agreement and any document executed

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by Seller and delivered to Purchaser at Closing. Except as expressly set forth in this Agreement or such Closing documents, Purchaser has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Membership Interests, the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, financial advisor, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Membership Interests and shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Membership Interests and the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions of the Property, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Inspection Period, Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Membership Interests and the Property as Purchaser deemed necessary to satisfy itself as to the Membership Interests and the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser's inspections and investigations. Purchaser hereby represents and warrants to Seller that: (a) Purchaser is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Purchaser is purchasing the Membership Interests for business, commercial, investment or other similar purpose. Purchaser waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

11.3 **Seller Released from Liability.** Purchaser acknowledges that it will have the opportunity to inspect the Real Property and Improvements during the Inspection Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Real Property, Improvements and adjacent areas as Purchaser deems necessary, and, except as set forth herein or in any Closing document, Purchaser hereby FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability, including without limitation,

liabilities and responsibilities for the landlord's obligations under the Leases relating to the physical, environmental or legal compliance status of the Real Property and Improvements, arising after the Effective Date, and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("CERCLA"), regarding the condition, valuation, salability or utility of the Real Property, the Improvements or their suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable

or subject to regulation and that may need to be specially treated, handled and/or removed from the Real Property or Improvements under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Real Property or Improvements). Except as set forth herein or in any closing documents, Purchaser further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Real Property or Improvements are or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Real Property or Improvements, including, without limitation, the landlord's obligations under the Leases relating to the physical, environmental or legal compliance status of the Real Property or Improvements, arising after the Effective Date. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Real Property and Improvements and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

11.4 **"Hazardous Materials" Defined.** For purposes hereof, "Hazardous Materials" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

11.5 **Intentionally Deleted.**

11.6 **Survival.** The terms and conditions of this ARTICLE 11 shall expressly survive the Closing, and shall not merge with the provisions of any closing documents.

Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Membership Interests to Purchaser for the Purchase Price without the disclaimers and other agreements set forth above.

## **ARTICLE 12** **MISCELLANEOUS**

12.1 **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may, at Purchaser's sole cost and expense and at no cost or expense to Seller, assign its rights under this Agreement upon the following conditions: (a) the assignee of Purchaser must be (i) an entity controlling, controlled by, or under common control with Purchaser or (ii) an entity advised by an affiliate of Purchaser's advisor, Dividend Capital Total Advisors LLC, (b) all of the Earnest Money must have been delivered in accordance herewith, (c) the Inspection Period shall have (or

be deemed to have) ended, (d) the assignee of Purchaser shall assume all obligations of Purchaser hereunder, but Purchaser shall remain primarily liable for the performance of Purchaser's obligations, (e) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at least five (5) Business Days prior to Closing, (f) the requirements in Section 12.17 are satisfied and (g) such assignment shall in no event delay the Closing.

12.2 **Headings.** The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

12.3 **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

12.4 **Governing Law.** This Agreement shall be governed in all respects, including validity, construction, interpretation and effect, by the laws of the State of New York, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction. Each of Purchaser and Seller hereby (i) irrevocably submits to the jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the State, City and County of New York for the purpose of any action or proceeding arising out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a New York state court or federal court located in the State, City and County of New York. Each of Purchaser and Seller hereby consents to and grants any such court jurisdiction over the person of such party and over the subject matter of any such dispute and agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.10, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof on such party.

12.5 **Survival.** The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing (other than any unfulfilled closing conditions which have been waived or deemed waived by the other party) shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.



12.6 **Entirety and Amendments.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Membership Interests, the Real Property or the Improvements, except that letter of intent dated April 2, 2010 between iStar, on behalf of Seller, and Purchaser shall survive the execution of this

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Agreement to the extent of the exclusivity obligations and covenants under such letter. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Schedules and Exhibits hereto are incorporated herein by this reference for all purposes. All information disclosed on any one Schedule and not disclosed on the other Schedules shall, to the extent applicable, be deemed to be disclosed on such other Schedules.

12.7 **Time.** Time is of the essence in the performance of this Agreement.

12.8 **Intentionally Omitted.**

12.9 **No Electronic Transactions.** The parties hereby acknowledge and agree this Agreement shall not be executed, entered into, altered, amended or modified by electronic means. Without limiting the generality of the foregoing, the parties hereby agree the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in the "Notices" section of this Agreement.

12.10 **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by Portable Document Format (PDF) so long as a copy thereof is also sent by one of the other delivery methods set forth in Sections 12.10(a), (b) or (c). Notice given in accordance herewith for all permitted forms of notice other than by electronic mail, shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee. In no event shall this Agreement be altered, amended or modified by electronic mail or electronic record. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

12.11 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.12 **Calculation of Time Periods; Business Day.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described herein shall be deemed to end at midnight local time in New York, New York. As used herein, the term "**Business Day**" means any day that is not a Saturday, Sunday or legal holiday for national banks in the City of New York, New York or Colorado.

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12.13 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

12.14 **Recordation.** Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum or affidavit by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon Seller shall have the remedies set forth in Section 10.1 hereof. In addition to any such remedies, Purchaser shall be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit, and Purchaser's obligations pursuant to this Section 12.14 shall survive any termination of this Agreement as a surviving obligation.

12.15 **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the transfer of the Membership Interests to Purchaser.

12.16 **Discharge of Obligations.** The acceptance of the Assignment and Assumption of Membership Interests by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

12.17 **ERISA.** Under no circumstances shall Purchaser have the right to assign this Agreement to any person or entity owned or controlled by an "employee benefit plan" (as defined in Section 3(3) of ERISA) if Seller's sale of the Membership Interests to such person or entity would, in the reasonable opinion of Seller's ERISA advisors or consultants, create or otherwise cause a "prohibited transaction" under ERISA or any other applicable law with an effect similar to that of Section 406 of ERISA including, but not limited to, Section 4975 of the Code (each such law, a "**Similar Law**"). In the event Purchaser assigns this Agreement or transfers any ownership interest in Purchaser, and such assignment or transfer would make the consummation of the transaction hereunder a "prohibited transaction" under ERISA or any Similar Law and would therefore either (a) necessitate the termination of this Agreement, or (b) cause Seller to incur liability under ERISA or such Similar Law if the transaction were consummated, then, in either case, notwithstanding any contrary provision which may be contained herein, Seller shall have the right to terminate this Agreement and Escrow Agent shall immediately direct any Earnest Money previously deposited by Purchaser with Escrow Agent in accordance with Section 3.4 hereof and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof. Anything in this Section 12.17 to the contrary notwithstanding, Seller shall have no right to terminate this Agreement under this Section 12.17 if Purchaser's assignee expressly reaffirms in a writing addressed to Seller the representation in Section 9.2.5.

12.18 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing, except that a tenant of the Real Property or Improvements may enforce Purchaser's indemnity obligation under Section 4.10 hereof.

12.19 **Reporting Person.** Purchaser and Seller hereby designate First American as the "reporting person" pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986, as amended.

12.20 **Post-Closing Access.** From and after the Closing, the Purchaser will, at Seller's sole cost and expense, permit Seller and Seller's agents and representatives access (and will permit copying of materials pertaining to the period prior to the Closing), during business hours from time to time, to the Lease Files and other Real Property-related information upon reasonable advance notice to the Purchaser. This Section 12.20 shall survive the Closing.

12.21 **Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN SELLER AND PURCHASER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN SELLER AND PURCHASER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12.22 **Information and Audit Cooperation.** Within 75 days after the Closing Date, Seller, at Purchaser's sole cost and expense and at no cost or expense to Seller, shall allow Purchaser's auditors access to the books and records of Seller relating to the operation of the Real Property and Improvements for the three (3) year period prior to the Closing Date to enable Purchaser to comply with any financial reporting requirements applicable to Purchaser, upon at least three (3) Business Days prior written notice to Seller. In addition, Seller shall provide Purchaser's designated independent auditors a representation letter regarding the books and records of the Real Property and Improvements in substantially the form attached hereto as Exhibit H.

12.23 **Bulk Sales Laws.**

12.23.1 Seller shall indemnify, defend and hold Purchaser harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature that arise out of the failure of Seller to comply with the requirements of NJSA 54:50-38 et. seq.

12.23.2 This Section 12.23 shall survive the Closing.

[SIGNATURE PAGES, SCHEDULES AND EXHIBITS TO FOLLOW]

SIGNATURE PAGE TO AGREEMENT OF  
PURCHASE AND SALE  
BY AND BETWEEN  
iSTAR HARBORSIDE LLC,  
AS SELLER  
AND  
TRT ACQUISITIONS LLC,  
AS PURCHASER

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**PURCHASER:**

TRT ACQUISITIONS LLC, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran  
Name: Greg Moran  
Title: SVP  
Date: May 3, 2010

**SELLER:**

**iSTAR HARBORSIDE LLC**, a Delaware limited liability company

By: iStar Harborside Member LLC, a Delaware limited liability company,  
its Managing Member

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: May 3, 2010

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**AGREED TO FOR PURPOSES OF SECTION 4.3.2 AND 9.4:**

**iSTAR FINANCIAL INC.**, a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: May 3, 2010

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FIRST AMENDMENT TO  
PURCHASE AND SALE AGREEMENT  
 (32 Properties)

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into this 11th day of May, 2010, by and between Seller and Purchaser.

R E C I T A L S:

A. Seller and Purchaser have heretofore entered into that certain Purchase and Sale Agreement dated May 3, 2010 (the "Agreement"), relating to the sale and purchase of the thirty-two (32) properties described therein. All defined terms in the Agreement are used herein with the same meanings those terms have in the Agreement.

B. Seller and Purchaser desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of these premises, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

A G R E E M E N T

1. Recitals. The recitals set forth above are hereby incorporated herein.

2. Harborside Purchase and Sale Agreement. Section 1.1.15 of the Agreement is hereby amended and restated in its entirety as follows:

"1.1.15 "Harborside Purchase and Sale Agreement": That certain Member Interest Purchase and Sale Agreement between Purchaser and Harborside Seller dated as of May 3, 2010, as amended by that certain First Amendment to Member Interest Purchase and Sale Agreement dated as of May 11, 2010."

3. Inspection Period. Section 1.1.10 of the Agreement is hereby amended and restated in its entirety as follows:

"1.1.10: "Inspection Period": The period beginning on the Effective Date and ending on May 21, 2010, subject to extension as provided in Section 6.1.4(1)."

4. Financing. Purchaser acknowledges that there shall be no Financing Commitment Extension Period, and all references thereto in Section 4.3.2 shall be deemed null and void and of no further effect.

5. Counterparts; Facsimile. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, any signature transmitted by facsimile or e-mail (in pdf format) shall be considered to have the same legal and binding effect as any original signature.

6. Ratification. The Agreement, as amended hereby, remains in full force and effect and is hereby ratified and confirmed.

[Signature page follows]

IN WITNESS WHEREOF, Purchaser and Seller have executed this Amendment as of the date set forth above.

PURCHASER:

TRT ACQUISITIONS LLC, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran

Name: Greg Moran

Title: SVP

SELLER:

iSTAR CTL SOUTH HAVANA — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL WATERVIEW — DALLAS LLC, a Delaware limited liability company

iSTAR CTL SHADELANDS — WALNUT CREEK LLC, a Delaware limited liability company

iSTAR CTL NORTH GLENVILLE — RICHARDSON LLC, a Delaware limited liability company

iSTAR CTL SHEILA — COMMERCE LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — RICHFIELD LLC, a Delaware limited liability company

iSTAR CTL COTTONWOOD — MILPITAS LLC, a Delaware limited liability company

iSTAR CTL NORTH FAIRWAY DRIVE — VERNON HILLS LLC, a Delaware limited liability company

iSTAR CTL DOOLITTLE — REDONDO BEACH LLC, a Delaware limited liability company

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iSTAR CTL CROWN COLONY — QUINCY LLC, a Delaware limited liability company

iSTAR CTL RUE FERRARI — SAN JOSE LLC, a Delaware limited liability company

iSTAR CTL CORPORATE CENTER DRIVE — NEWBURY PARK LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — CAMPBELLSVILLE LLC, a Delaware limited liability company

iSTAR CTL SUNSET HILLS — RESTON LLC, a Delaware limited liability company

iSTAR CTL EAGLE LLC, a Delaware limited liability company

iSTAR CTL SYLVAN WAY — PARSIPPANY LLC, a Delaware limited liability company

iSTAR CTL INVERNESS — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL CORPORATE DRIVE — DIXON LLC, a Delaware limited liability company

iSTAR CTL RIVEREDGE SUMMIT — ATLANTA LLC, a Delaware limited liability company

iSTAR CTL CONNECTION — IRVING LLC, a Delaware limited liability company

iSTAR CTL CHARLESTON — MOUNTAIN VIEW LLC, a Delaware limited liability company

iSTAR CTL DUBLIN LLC, a Delaware limited liability company

iSTAR GT, L.P., a Delaware limited partnership

iSTAR NG LP, a Delaware limited partnership

iSTAR CTL MAPLE — EL SEGUNDO LLC, a Delaware limited liability company

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iSTAR CTL SW 80 — PLANTATION LLC, a Delaware limited liability company

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

AGREED TO:

iSTAR FINANCIAL INC., a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

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SECOND AMENDMENT TO  
PURCHASE AND SALE AGREEMENT  
 (32 Properties)

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into this 21st day of May, 2010, by and between Seller and Purchaser.

R E C I T A L S:

A. Seller and Purchaser have heretofore entered into that certain Purchase and Sale Agreement, dated as of May 3, 2010, relating to the sale and purchase of the thirty-two (32) properties described therein, as amended by that certain First Amendment to Purchase and Sale Agreement, dated as of May 11, 2010 (as amended, the "Agreement"). All defined terms in the Agreement are used herein with the same meanings those terms have in the Agreement.

B. Seller and Purchaser desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of these premises, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

A G R E E M E N T

1. Recitals. The recitals set forth above are hereby incorporated herein.

2. Closing Date. Section 1.1.11 of the Agreement is hereby amended and restated in its entirety to read as follows:

"1.1.11 "Closing Date": June 24, 2010, or such earlier date as may be agreed to in writing by Purchaser and Seller."

3. Harborside Purchase and Sale Agreement. Section 1.1.15 of the Agreement is hereby amended and restated in its entirety as follows:

"1.1.15 "Harborside Purchase and Sale Agreement": That certain Member Interest Purchase and Sale Agreement between Purchaser and Harborside Seller, dated as of May 3, 2010, as amended by that certain First Amendment to Member Interest Purchase and Sale Agreement, dated as of May 11, 2010, as further amended by that certain Second Amendment to Member Interest Purchase and Sale Agreement, dated as of May 21, 2010."

4. Properties. The IBM Property shall no longer be part of the transaction contemplated by the Agreement. The Agreement, including all Schedules thereto, is hereby amended by deleting all references to IBM and the IBM Property.

5. Purchase Price. The Purchase Price, as defined in Section 1.1.3 of the Agreement, is hereby amended to \$ 1,137,500,000.00. Schedule 1.1.3 to the Agreement is hereby amended and restated in its entirety as set forth on Schedule 1.1.3 attached hereto. Before the date that is

ten (10) calendar days prior to the Closing Date, Purchaser shall have the right to reallocate the Purchase Price among the Properties, in which event Purchaser and Seller shall enter into a further amendment to the Agreement solely to reflect the further revised Schedule 1.1.3; provided, however, in no event shall any such reallocation of the Purchase Price reduce the Allocated Purchase Price of the Properties leased by Google, Inc. (collectively, the "Google Property") below \$90,000,000.00. The Google Property and, if the DirecTV, Inc. ROFO Offer (as hereinafter defined) is sent, the Property leased by DirecTV, Inc. (the "DirecTV Property"), are each referred to herein individually as, a "ROFO Property". Purchaser acknowledges that Seller has sent Google, Inc. an offer to purchase the Google Property pursuant to the right of first offer to purchase provisions (the "Google ROFO Provisions") set forth in the lease with Google, Inc. and that Seller may send DirecTV, Inc. an offer to purchase the DirecTV Property (the "DirecTV, Inc. ROFO Offer") pursuant to the right of first offer to purchase provisions (the "DirecTV ROFO Provisions"; the Google ROFO Provisions and, if the DirecTV, Inc. ROFO Offer is sent, the DirecTV ROFO Provisions, are each referred to herein individually as the "ROFO Provisions") set forth in the lease with DirecTV, Inc. Google, Inc. and, if the DirecTV, Inc. ROFO Offer is sent, DirecTV, Inc. are each referred to herein individually as a "ROFO Offer Tenant". Notwithstanding anything in the Agreement to the contrary, if (i) a ROFO Offer Tenant elects to purchase a ROFO Property pursuant to the applicable ROFO Provisions and (ii) prior to the Closing Date, Seller and such ROFO Offer Tenant have entered into a definitive contract for the purchase and sale of the ROFO Property (the "ROFO Purchase Agreement"), then Purchaser shall proceed with the acquisition of the ROFO Property pursuant to the terms of the Agreement and, at Closing, Seller shall assign to Purchaser all of Seller's right, title and interest in and to the ROFO Purchase Agreement and the ROFO Property will be conveyed to Purchaser subject to the ROFO Purchase Agreement; provided, however, (A) Purchaser and Seller shall cooperate in good faith in drafting the initial draft of the ROFO Purchase Agreement that is sent to such ROFO Offer Tenant and (B) Seller shall not enter into the proposed final ROFO Purchase Agreement without Purchaser's prior written approval, which Purchaser, provided it has complied with the negotiation standard contained in the applicable ROFO Provisions, may withhold in its reasonable discretion. Purchaser shall provide Seller with its written approval or disapproval of the ROFO Purchase Agreement within three (3) business days of Seller's written request therefor, which written request shall include a copy of the final ROFO Purchase Agreement. If Purchaser fails to provide Seller with Purchaser's approval or disapproval of the ROFO Purchase Agreement within such time period, Purchaser shall be deemed to have approved the ROFO Purchase Agreement. Notwithstanding the foregoing, or anything contained in the Agreement to the contrary, if (x) a ROFO Offer Tenant elects to purchase a ROFO Property pursuant to the ROFO Provisions and (y) prior to the Closing Date, Seller and such ROFO Offer Tenant have failed to enter into a definitive contract for the purchase and sale of the ROFO Property notwithstanding their good faith efforts to do so, then Purchaser shall proceed with the acquisition of the ROFO Property pursuant to the terms of the Agreement and shall take the ROFO Property subject to the ROFO Offer Tenant's rights under the applicable ROFO Provisions. Notwithstanding anything contained in the agreement to the contrary, Purchaser and Seller hereby agree that (a) ROFO Offer Tenants shall no longer constitute "ROFO Tenants" under the Agreement, (b) Seller shall no obligation to obtain and deliver ROFO Acknowledgments from a ROFO Offer Tenant and (c) the delivery of ROFO Acknowledgments from a ROFO Offer Tenant shall not be conditions to Purchaser's obligation to close the transactions contemplated by the Agreement.

6. Inspection Period. The parties agree that this Amendment constitutes the Due Diligence Waiver Notice contemplated by Section 4.3.1 of the Agreement.

7. Financing Commitments. Section 4.3.2 of the Agreement is hereby amended and restated in its entirety as follows:

“4.3.2 Purchaser has delivered to Seller copies of (a) a term sheet (the “Fixed Rate Loan Term Sheet”) between Wells Fargo Bank, National Association and Bank of America N.A. (collectively, the “Fixed Rate Lender”) and Purchaser, pursuant to which the Fixed Rate Lender will lend Purchaser \$292,000,000, secured by fifteen Properties (the “Fixed Rate Loan”), (b) a term sheet (the “Floating Rate Loan Term Sheet”) between Wells Fargo Bank, National Association (the “Floating Rate Lender”) and Purchaser, pursuant to which the Floating Rate Lender will lend Purchaser \$336,030,000, secured by sixteen Properties (the “Floating Rate Loan”), and (c) a letter (the “Harborside Term Sheet”) from New York Life Investment Management LLC (the “Harborside Lender”) to Purchaser’s consultant, pursuant to which the Harborside Lender would lend to the owner of Harborside \$125,000,000, secured by Harborside (the “Harborside Loan”). Purchaser and Seller shall proceed to Closing pursuant to the terms and provisions of this Agreement, and iStar shall, subject to the terms and provisions of this Section 4.3.2, provide the Mezzanine Loan simultaneously with the closing of the Floating Rate Loan and the Fixed Rate Loan; provided, however, that the closing of the Floating Rate Loan, the Fixed Rate Loan and the Harborside Loan on the Closing Date shall be conditions to Purchaser’s obligations to close hereunder and under the Harborside Purchase and Sale Agreement (unless the Floating Rate Loan, the Fixed Rate Loan and/or the Harborside Loan fail to close as a result of (A) Purchaser’s uncured default under the Floating Rate Term Sheet, the Fixed Rate Term Sheet and/or the Harborside Term Sheet, (B) the failure of one or more conditions to close which are within Purchaser’s reasonable control to satisfy, or (C) Purchaser’s failure to accept documentation for the Fixed Rate Loan or the Floating Rate Loan that is commercially reasonable for such transactions). As used in this Section 4.3.2, “Mezzanine Loan” shall mean, collectively, a loan from iStar in the amount of \$56,870,000 to the owners of the equity interests in the affiliates of Purchaser acquiring fee simple title to the Properties encumbered by the Fixed Rate Loan (the “Fixed Rate Properties Mezzanine Loan”) and a loan from iStar in the amount of \$48,725,000 to the owners of the equity interests in the affiliates of Purchaser acquiring fee simple title to the Properties encumbered by the Floating Rate Loan (the “Floating Rate Properties Mezzanine Loan”). iStar shall provide the Floating Rate Properties Mezzanine Loan so long as (a) the terms of the Floating Rate Loan comply with the interest rate, amortization, prepayment and principal amount (which principal amount may be reduced to the extent this Agreement is terminated with respect to any Properties pursuant to its terms) terms of the Floating Rate Term Sheet and otherwise generally comply with the terms of the Floating Rate Term Sheet, and (b)

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the Floating Rate Lender enters into an intercreditor agreement with iStar on commercially reasonable terms and provisions, and evidenced by commercially reasonable documents, which terms and provisions shall include, without limitation, the right but not the obligation of iStar to cure defaults under the Floating Rate Loan and following an event of default under the Floating Rate Properties Mezzanine Loan to foreclose on the collateral securing the Floating Rate Properties Mezzanine Loan. iStar shall provide the Fixed Rate Properties Mezzanine Loan so long as (a) the terms of the Fixed Rate Loan comply with the interest rate, amortization, prepayment and principal amount (which principal amount may be reduced to the extent this Agreement is terminated with respect to any Properties pursuant to its terms) terms of the Fixed Rate Term Sheet and otherwise generally comply with the terms of the Fixed Rate Term Sheet, and (b) the Fixed Rate Lender enters into an intercreditor agreement with iStar on commercially reasonable terms and provisions, and evidenced by commercially reasonable documents, which terms and provisions shall include, without limitation, the right but not the obligation of iStar to cure defaults under the Fixed Rate Loan and following an event of default under the Fixed Rate Properties Mezzanine Loan to foreclose on the collateral securing the Fixed Rate Properties Mezzanine Loan.”

8. Title Requirements. The Title Company has provided a letter to Purchaser dated May 21, 2010, pursuant to which the Title Company has agreed to issue the Title Policies in the form of the “Pro Forma Policies” (as defined therein), a copy of which is attached hereto as Exhibit J (the “FATCO Letter”). Notwithstanding anything to the contrary set forth in Section 5.3 of the Agreement, Seller hereby agrees to satisfy all of the “Seller Delivery Requirements” set forth in Section 1 of Exhibit B to the FATCO Letter and its portion of the “Joint Delivery Requirements” set forth in Section 3 of Exhibit B to the FATCO Letter on or before the Closing Date. The definition of “Permitted Exceptions” in the last sentence of Section 5.3 of the Agreement is hereby amended and restated as follows:

“The term “Permitted Exceptions” shall mean the exceptions to title set forth in the Pro Formas Policies as updated by the Title Company as a result of (i) any actions taken by Seller which are expressly permitted by the terms of this Agreement or (ii) any acts or failure to act taken by Purchaser.”

9. Casualty. Section 6.2 of the Agreement is hereby modified as follows:

- (a) clause (B) of the fourth sentence of Section 6.2 of the Agreement is hereby deleted in its entirety; and
- (b) the last sentence of Section 6.2 of the Agreement is hereby amended and restated in its entirety as follows:

“Notwithstanding anything contained herein to the contrary, if a Casualty shall occur to any Property and, as a result of such Casualty, the lender providing the Fixed Rate Loan or the Floating Rate Loan will not close the

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Fixed Rate Loan or the Floating Rate Loan, as applicable, with respect to such Property, then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate with respect to such Property and the Purchase Price shall be reduced by the Allocated Purchase Price of such Property.”

10. Condemnation. (a) Notwithstanding anything to the contrary in Section 6.3 of the Agreement, the parties acknowledge that a deposit in the amount of \$77,400 is being held in an interest-bearing account by the Registry of the Court with respect to the Aurora, Colorado, Property occupied by CEVA, pursuant to that certain Order Granting Immediate Possession entered on April 15, 2010 by the District Court, Adams County, Colorado in Case

No. 2010CV170, entitled *Public Services Company of Colorado v. iStar CTL Eagle, LLC, et a* (the “CEVA Condemnation Action”). If an award in the CEVA Condemnation Action is paid to Seller prior to Closing, then Seller shall pay such award, after deducting all of Seller’s out-of-pocket costs, including, without limitation, all attorneys’ fees, incurred in connection with CEVA Condemnation Action, but subject to the provisions of the Lease with CEVA (collectively, the “Condemnation Costs”), to Purchaser at Closing, subject to the terms of the Lease with CEVA with respect to any rights of CEVA to such award. If said award is not paid to Seller prior to Closing, then (i) at Closing, Seller shall assign to Purchaser, without representation or warranty by or recourse against Seller, all of Seller’s right, title and interest in and to such deposit and any award, subject to the terms of the Lease with CEVA with respect to any rights of CEVA to such award and (ii) promptly following Closing, Seller shall notify Purchaser of Seller’s Condemnation Costs. Within five (5) calendar days of Purchaser’s receipt of such award, Purchaser shall notify Seller of Purchaser’s receipt of such award and reimburse Seller for Seller’s Condemnation Costs; provided, however, if Seller has not previously notified Purchaser of Seller’s Condemnation Costs, then Purchaser shall have ten (10) calendar days from the date on which Purchaser receives notification from Seller of Seller’s Condemnation Costs to reimburse Seller for Seller’s Condemnation Costs. Purchaser shall have no obligation to reimburse Seller for either any amount greater than Seller would have been entitled to pursuant to the terms of the Lease with CEVA or any amount greater than the award received by Purchaser. The two immediately preceding sentences shall survive the Closing.

(b) the last sentence of Section 6.3 of the Agreement is hereby amended and restated in its entirety as follows:

“Notwithstanding anything contained herein to the contrary, if a Condemnation shall occur to any Property and, as a result of such Condemnation, the lender providing the Fixed Rate Loan or the Floating Rate Loan will not close the Fixed Rate Loan or the Floating Rate Loan, as applicable, with respect to such Property, then, subject to the limitations of Section 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate with respect to such Property and the Purchase Price shall be reduced by the Allocated Purchase Price of such Property.”

11. SNDAs. The first sentence of Section 6.4.3 of the Agreement is hereby amended and restated in its entirety as follows:

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“If requested by the Fixed Rate Lender and/or the Floating Rate Lender, or if required pursuant to the terms of the applicable Lease, Seller shall promptly after such request send to such tenants of the Improvements designated by such lenders a request for a subordination, non-disturbance and attornment agreement in a form approved by such lenders or required by such Lease (such subordination, non-disturbance and attornment agreements are referred to herein individually as, an “SNDA” and collectively as, the “SNDAs”).”

12. DirecTV/Traffic Signal. Pursuant to that certain (i) Traffic Signal Escrow Agreement dated April 14, 2000 and recorded on June 8, 2000 at Reception No. B0068913, and (ii) Escrow Contract and Security Agreement dated May 23, 2000 and recorded June 8, 2000 at Reception No. B0068915, each in Arapahoe County, Colorado, a predecessor-in-interest to Seller deposited a sum estimated to be \$150,000 (the “DirecTV Deposit”) with U.S. Bank National Association to cover such predecessor owner’s estimated share of the cost of installation of a traffic signal at the intersection of Inverness Drive West and Inverness Terrace West near the Englewood, Colorado, Property occupied by DirecTV. To Seller’s knowledge, the DirecTV Deposit is currently held by U.S. Bank National Association. At Closing, Seller shall quitclaim to Purchaser, without representation or warranty by or recourse against Seller, all of Seller’s right, title and interest, if any, in and to the DirecTV Deposit.

13. Conditions to Seller’s Obligations to Close. Section 7.2.1(4) of the Agreement is hereby amended and restated in its entirety as follows:

“(4) Property. It shall be a condition to Seller’s obligation to close hereunder that this Agreement and the Harborside Purchase and Sale Agreement (as applicable) shall not have been terminated with respect to more than two (2) Properties (including Harborside) (it being understood that a termination of this Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of this Agreement with respect to only one Property notwithstanding the Goodyear Lease and the CEVA Lease cover multiple Properties); provided, however, that a termination of this Agreement with respect to a Property by reason of the exercise of a right to purchase such Property by a ROFO Tenant shall be disregarded for purposes of the application of the provisions of this Section 7.2.1(4). For clarification, the parties agree that while both this Agreement and the Harborside Purchase and Sale Agreement must both proceed towards Closing at the same time, or both terminate at the end of the Inspection Period together, it is possible for a closing condition under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect Harborside but proceed to closing under this Agreement.”

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14. Conditions to Purchaser’s Obligations to Close.

(a) Section 7.2.2(6) of the Agreement is hereby amended and restated in its entirety as follows:

“(6) Closing of Fixed Rate Loan, Floating Rate Loan and Mezzanine Loan. (A) The closing of the Mezzanine Loan simultaneously with (1) the Closing and (2) the closing of the Fixed Rate Loan and the Floating Rate Loan and (B) the closing of the Fixed Rate Loan and the Floating Rate Loan on the Closing Date (unless the Fixed Rate Loan or the Floating Rate Loan fails to close as a result of (x) Purchaser’s uncured default under the Fixed Rate Term Sheet or the Floating Rate Term Sheet, as the case may be, (y) the failure of one or more conditions to close which are within Purchaser’s reasonable control to satisfy, or (z) Purchaser’s failure to accept documentation for the Fixed Rate Loan or the Floating Rate Loan that is commercially reasonable for such transactions), shall be conditions to Purchaser’s obligation to close hereunder;”

(b) Section 7.2.2(8) of the Agreement is hereby amended by adding the following after the word “Policies” in the second line:

“(in the forms of the Pro Forma Policies as updated by the Title Company as a result of (i) any actions taken by Seller which are expressly permitted by the terms of this Agreement or (ii) any acts or failure to act taken by Purchaser). Notwithstanding the foregoing, Purchaser and Seller agree that in no event shall the Title Company’s failure to deliver the Title Policies in the forms of the Pro Forma Policies be a failure of a condition to Purchaser’s obligation to Close if such failure to issue the Title Policies in the forms of the Pro Forma Policies results from the Title Company not receiving such documents and instruments, which are (i) required by the Title Company to issue the Title Policies in the forms of the Pro Forma Policies and (ii) not required to be obtained and delivered by Seller to Purchaser, the Title Company or otherwise pursuant to the terms of this Agreement.”



(c) Section 7.2.2(9) of the Agreement is hereby amended and restated in its entirety as follows:

“(9) Property. It shall be a condition to Purchaser’s obligation to close hereunder that this Agreement or the Harborside Purchase and Sale Agreement (as applicable) shall not have been terminated with respect to more than two (2) Properties (including Harborside) (it being understood that a termination of this Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of this Agreement with respect to only one Property notwithstanding the Goodyear Lease and the CEVA Lease cover multiple Properties); provided, however, that a termination of this Agreement with respect to a Property by reason of the exercise of a right to purchase such

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Property by a ROFO Tenant shall be disregarded for purposes of the application of the provisions of this Section 7.2.1(9). For clarification, the parties agree that while both this Agreement and the Harborside Purchase and Sale Agreement must both proceed towards Closing at the same time, or both terminate at the end of the Inspection Period together, it is possible for a closing condition under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect Harborside but proceed to Closing under this Agreement; and”

15. Tax Appeals. The following Section 8.10 is hereby added to the end of Article 8 of the Agreement:

“8.10 Tax Appeals. Subject to the rights of tenants under Leases, following the Closing, (i) Purchaser shall have the right to pursue all tax appeals in progress as of the Closing Date which relate to the year of Closing and all subsequent years and (ii) Seller shall have the right to pursue all tax appeals in progress as of the Closing Date which relate to all years prior to the year of Closing (the “Pre-Closing Tax Appeals”) and any proceeds of the Pre-Closing Tax Appeals shall be the property of Seller unless such proceeds are required to be paid to the tenant under the applicable Lease, in which case, Seller shall promptly upon receipt of such proceeds remit to Purchaser such proceeds less Seller’s out-of-pocket costs, including, without limitation, reasonable attorney’s fees, incurred in connection with such Pre-Closing Tax Appeal, but in no event less than the amounts owed to the tenant under the applicable Lease. Notwithstanding the foregoing, in no event shall Seller settle any Pre-Closing Tax Appeal without the prior consent of Purchaser, not to be unreasonably withheld, conditioned or delayed, unless Seller is required to settle such Pre-Closing Tax Appeal pursuant to the terms of the applicable Lease. If Seller elects not to pursue any Pre-Closing Tax Appeal, Seller shall so notify Purchaser within a reasonable period after the Closing, and Purchaser, at its option, may elect to pursue such Pre-Closing Tax Appeal, unless Purchaser is required to pursue such Pre-Closing Tax Appeal pursuant to the terms of the applicable Leases, in which case Purchaser shall pursue such Pre-Closing Tax Appeal. With respect to (i) any Pre-Closing Tax Appeal which Seller elects not to pursue and which Purchaser elects or is obligated to pursue, and (ii) any tax appeal in progress as of the Closing Date with respect to the year of Closing, Seller shall cooperate with Purchaser, including, without limitation, substituting counsel, making Seller’s experts available to Purchaser and providing Purchaser with copies of such appeals and any relevant documentation. The provisions of this Section 8.10 shall survive the Closing.”

16. Purchaser’s Representations.

(a) Purchaser hereby confirms to Seller that Purchaser has obtained the

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approval and authorization of its board of directors contemplated by Section 9.2.1 of the Agreement.

(b) Section 9.2.7 of the Agreement is hereby amended and restated in its entirety as follows:

“9.2.7 Availability of Funds. Subject to obtaining the financing contemplated by the Fixed Rate Term Sheet, the Floating Rate Term Sheet and the Mezzanine Loan as provided in Section 4.3.2, Purchaser currently has available and will at the Closing have available sufficient funds to pay the Purchase Price and to pay any and all other amounts payable by Purchaser pursuant to this Agreement and to effect the transactions contemplated hereby.”

17. Purchaser’s Remedies. Section 10.2 of the Agreement is hereby amended as follows: the clause “\$1,700,000.00” appearing in the fifteenth line thereof is hereby amended by adding the following at the end thereof: “plus such all-in rate lock costs (including, without limitation, swap and credit spreads) as Purchaser may have incurred in connection with the loan contemplated by the Fixed Rate Loan Term Sheet”.

18. Entirety and Amendments. Section 12.6 of the Agreement is hereby amended and restated in its entirety as follows:

“12.6 Entirety and Amendments. The exclusivity obligations and covenants set forth in that certain letter of intent dated April 2, 2010 between iStar Financial Inc., on behalf of Seller, and Purchaser are hereby incorporated herein and made a part of this Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Schedules and Exhibits hereto are incorporated herein by this reference for all purposes. All information disclosed on any one Schedule and not disclosed on the other Schedules shall, to the extent applicable, be deemed to be disclosed on such other Schedules.”

19. Schedules. Schedules 4.3.2 and 9.1.5 of the Agreement are hereby amended and restated in their entirety as set forth on Schedules 4.3.2 and 9.1.5 attached hereto, respectively.

20. Counterparts; Facsimile. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, any signature transmitted by facsimile or e-mail (in pdf format) shall be considered to have the same legal and binding effect as any original signature.

21. Ratification. The Agreement, as amended hereby, remains in full force and effect and is hereby ratified and confirmed.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Amendment as of the date set forth above.

PURCHASER:

TRT ACQUISITIONS LLC, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran

Name: Greg Moran

Title: SVP

SELLER:

iSTAR CTL SOUTH HAVANA — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL WATERVIEW — DALLAS LLC, a Delaware limited liability company

iSTAR CTL SHADELANDS — WALNUT CREEK LLC, a Delaware limited liability company

iSTAR CTL NORTH GLENVILLE — RICHARDSON LLC, a Delaware limited liability company

iSTAR CTL SHEILA — COMMERCE LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — RICHFIELD LLC, a Delaware limited liability company

iSTAR CTL COTTONWOOD — MILPITAS LLC, a Delaware limited liability company

iSTAR CTL NORTH FAIRWAY DRIVE — VERNON HILLS LLC, a Delaware limited liability company

iSTAR CTL DOOLITTLE — REDONDO BEACH LLC, a Delaware limited liability company

iSTAR CTL CROWN COLONY — QUINCY LLC, a Delaware limited liability company

iSTAR CTL RUE FERRARI — SAN JOSE LLC, a Delaware limited liability company

iSTAR CTL CORPORATE CENTER DRIVE — NEWBURY PARK LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — CAMPBELLSVILLE LLC, a Delaware limited liability company

iSTAR CTL SUNSET HILLS — RESTON LLC, a Delaware limited liability company

iSTAR CTL EAGLE LLC, a Delaware limited liability company

iSTAR CTL SYLVAN WAY — PARSIPPANY LLC, a Delaware limited liability company

iSTAR CTL INVERNESS — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL CORPORATE DRIVE — DIXON LLC, a Delaware limited liability company

iSTAR CTL RIVEREDGE SUMMIT — ATLANTA LLC, a Delaware limited liability company

iSTAR CTL CONNECTION — IRVING LLC, a Delaware limited liability company

iSTAR CTL CHARLESTON — MOUNTAIN VIEW LLC, a Delaware limited liability company

iSTAR CTL DUBLIN LLC, a Delaware limited liability company

iSTAR GT, L.P., a Delaware limited partnership

iSTAR NG LP, a Delaware limited partnership

iSTAR CTL MAPLE — EL SEGUNDO LLC, a Delaware limited liability company

iSTAR CTL SW 80 — PLANTATION LLC, a Delaware limited liability company

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

AGREED TO:

iSTAR FINANCIAL INC., a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

AGREED TO WITH RESPECT TO iSTAR'S PUT RIGHTS WITH RESPECT TO THE FIXED RATE PROPERTIES MEZZANINE LOAN AND THE FLOATING RATE PROPERTIES MEZZANINE LOAN AS SET FORTH IN SCHEDULE 4.3.2:

DIVIDEND CAPITAL TOTAL REALTY TRUST

By: /s/ Greg Moran  
Name: Greg Moran  
Title: SVP

THIRD AMENDMENT TO  
PURCHASE AND SALE AGREEMENT  
 (32 Properties)

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into this 24th day of June, 2010, by and between Seller and Purchaser.

R E C I T A L S:

A. Seller and Purchaser have heretofore entered into that certain Purchase and Sale Agreement, dated as of May 3, 2010, as amended by that certain First Amendment to Purchase and Sale Agreement, dated as of May 11, 2010 and that certain Second Amendment to Purchase and Sale Agreement, dated as of May 21, 2010 (as amended, the "Agreement") relating to the sale and purchase of the thirty-one (32) properties described therein. All defined terms in the Agreement (as amended by this Amendment) are used herein with the same meanings those terms have in the Agreement (as amended by this Amendment).

B. Seller and Purchaser desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of these premises, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

A G R E E M E N T

1. Recitals. The recitals set forth above are hereby incorporated herein.
  2. Closing Date. Section 1.1.11 of the Agreement is hereby amended and restated in its entirety as follows:
 

"1.1.11        "**Closing Date**": June 29, 2010, or such earlier date as may be agreed to in writing by Purchaser and Seller."
  3. Harborside Purchase and Sale Agreement. Section 1.1.15 of the Agreement is hereby amended and restated in its entirety as follows:
 

"1.1.15        "**Harborside Purchase and Sale Agreement**": That certain Member Interest Purchase and Sale Agreement between Purchaser and Harborside Seller, dated as of May 3, 2010, as amended by that certain First Amendment to Member Interest Purchase and Sale Agreement, dated as of May 11, 2010, as further amended by that certain Second Amendment to Member Interest Purchase and Sale Agreement, dated as of May 21, 2010 as further amended by that certain Third Amendment to Member Interest Purchase and Sale Agreement, dated as of June 24, 2010."
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4. Counterparts; Facsimile. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, any signature transmitted by facsimile or e-mail (in pdf format) shall be considered to have the same legal and binding effect as any original signature.
  5. Ratification. The Agreement, as amended hereby, remains in full force and effect and is hereby ratified and confirmed.

**[Remainder of Page Intentionally Left Blank;  
 Signature Page Follows]**

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IN WITNESS WHEREOF, Purchaser and Seller have executed this Amendment as of the date set forth above.

**PURCHASER:**

**TRT ACQUISITIONS LLC**, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran

Name: Greg M. Moran

Title: Vice President

Date: \_\_\_\_\_

**SELLER:**

**iSTAR CTL SOUTH HAVANA — ENGLEWOOD LLC**, a Delaware limited liability company

iSTAR CTL WATERVIEW — DALLAS LLC, a Delaware limited liability company

iSTAR CTL SHADELANDS — WALNUT CREEK LLC, a Delaware limited liability company

iSTAR CTL NORTH GLENVILLE — RICHARDSON LLC, a Delaware limited liability company

iSTAR CTL SHEILA — COMMERCE LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — RICHFIELD LLC, a Delaware limited liability company

iSTAR CTL COTTONWOOD — MILPITAS LLC, a Delaware limited liability company

iSTAR CTL NORTH FAIRWAY DRIVE — VERNON HILLS LLC, a Delaware limited liability company

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iSTAR CTL DOOLITTLE — REDONDO BEACH LLC, a Delaware limited liability company

iSTAR CTL CROWN COLONY — QUINCY LLC, a Delaware limited liability company

iSTAR CTL RUE FERRARI — SAN JOSE LLC, a Delaware limited liability company

iSTAR CTL CORPORATE CENTER DRIVE — NEWBURY PARK LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — CAMPBELLSVILLE LLC, a Delaware limited liability company

iSTAR CTL SUNSET HILLS — RESTON LLC, a Delaware limited liability company

iSTAR CTL EAGLE LLC, a Delaware limited liability company

iSTAR CTL SYLVAN WAY — PARSIPPANY LLC, a Delaware limited liability company

iSTAR CTL INVERNESS — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL CORPORATE DRIVE — DIXON LLC, a Delaware limited liability company

iSTAR CTL CONNECTION — IRVING LLC, a Delaware limited liability company

iSTAR CTL CHARLESTON — MOUNTAIN VIEW LLC, a Delaware limited liability company

iSTAR CTL DUBLIN LLC, a Delaware limited liability company

iSTAR GT, L.P., a Delaware limited partnership

iSTAR NG LP, a Delaware limited partnership

iSTAR CTL MAPLE — EL SEGUNDO LLC, a Delaware limited liability company

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iSTAR CTL SW 80 — PLANTATION LLC, a Delaware limited liability company

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: 6/24/10

AGREED TO FOR PURPOSES OF SECTION 4.3.2:

iSTAR FINANCIAL INC., a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

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## PARTNERSHIP INTERESTS PURCHASE AND SALE AGREEMENT

BETWEEN

iSTAR NG INC.

AND

iSTAR NG GENPAR INC.,  
COLLECTIVELY, AS SELLER

AND

TRT ACQUISITIONS LLC,  
AS PURCHASER

DATED: JUNE 25, 2010

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## **PARTNERSHIP INTERESTS PURCHASE AND SALE AGREEMENT**

This Partnership Interests Purchase and Sale Agreement (this “**Agreement**”) is made and entered into by and between Purchaser and Seller.

### **RECITALS**

A. Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein, whether or not such terms are used before or after the definitions are set forth.

B. Purchaser desires to purchase the Partnership Interests and Seller desires to sell the Partnership Interests, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

### **ARTICLE 1 BASIC INFORMATION**

1.1 **Certain Basic Terms.** The following defined terms shall have the meanings set forth below:

1.1.1 “**Seller**”: collectively, GP Seller and LP Seller, provided that references herein to “Seller” mean GP Seller with respect to the GP Partnership Interests, LP Seller with respect to the LP Partnership Interests and, for all other references to “Seller”, GP Seller and LP Seller, collectively, in each case, as the context requires.

1.1.2 “**Purchaser**”: TRT Acquisitions LLC, a Delaware limited liability company.

1.1.3 **“Purchase Price”**: \$177,000,000.00; subject to adjustment as provided herein. It is acknowledged and agreed by Purchaser and Seller that the Purchase Price of the Partnership Interests is only for purposes of tax reporting and calculation, accounting and allocation. In no event shall the Purchase Price of the Partnership Interests be deemed or construed to reflect the sales price of the Partnership Interests or the Property in a stand alone transaction.

1.1.4 **“Other Purchase and Sale Agreements”**: collectively, the Portfolio Purchase and Sale Agreement, the CTL Reston Member Interest Purchase and Sale Agreement and the Harborside Purchase and Sale Agreement.

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1.1.5 **“Title Company”**:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Chicago, Illinois 60602

Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

And

Fidelity Title Insurance Company  
8450 E. Crescent Parkway, Suite 410  
Greenwood Village, CO 80111  
Attn: Ms. Valena Bloomquist  
Telephone number: (303) 244-9198  
Facsimile number: (720) 489-7593  
E-mail: valena.bloomquist@fnf.com

1.1.6 **“Escrow Agent”**:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

1.1.7 **“Financial Advisor”**: HFF Securities L.P., an affiliate of Holliday Fenoglio Fowler, LP.

1.1.8 **“Effective Date”**: The date on which this Agreement is executed by the latter to sign of Purchaser or Seller, as indicated on the signature page of this Agreement. If the execution date is left blank by either Purchaser or Seller, the Effective Date shall be the execution date inserted by the other party.

1.1.9 **Intentionally Deleted.**

1.1.10 **“Partnership Interests”**: collectively, the GP Partnership Interests and the LP Partnership Interests, in each case, as the context requires, it being agreed that references herein to the “Partnership Interests” mean the GP Partnership Interests with respect to the GP Seller and the LP Partnership Interests with respect to the LP Seller.

1.1.11 **“Closing Date”**: **June 29, 2010**, or such earlier date as may be agreed to in writing by Purchaser and Seller.

1.1.12 **“Confidentiality Agreement”**: The letter agreement dated March 31, 2010 between iStar Financial Inc., an affiliate of Seller (“iStar”), and Purchaser.

1.1.13 **“LP Seller”**: iStar NG Inc., a Delaware corporation.

1.1.14 **“GP Seller”**: iStar NG GenPar Inc., a Delaware corporation.

1.1.15 **“LP Partnership Interests”**: the ninety-nine percent (99%) limited partnership interests in the Subsidiary owned by LP Seller.

1.1.16 **“GP Partnership Interests”**: the one percent (1%) general partnership interest in the Subsidiary owned by GP Seller.

1.1.17 **“Subsidiary”**: iStar NG LP, a Delaware limited partnership, in each case, as applicable.

1.1.18 **“Portfolio Purchase and Sale Agreement”**: That certain Purchase and Sale Agreement between Purchaser and certain sellers a party thereto (individually or collectively as the context requires, **“Portfolio Seller”**), dated as of May 3, 2010, as amended by that certain First Amendment to

1.1.19 “**Portfolio Property**”: Those certain properties described in the Portfolio Purchase and Sale Agreement.

1.1.20 “**Subsidiary Agreement**”: that certain Limited Partnership Agreement of the Subsidiary dated April 10, 2003, and any amendments thereto, if any.

1.1.21 “**Property**”: collectively, the following property:

(1) **Real Property**. The land described in Exhibit A hereto (the “**Land**”), together with (a) all improvements located thereon, including, without limitation, those certain office buildings, but expressly excluding improvements and structures owned by any tenant or other third party pursuant to the Leases (the “**Improvements**”), (b) all right, title and interest of the Subsidiary, if any, in and to the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, including without limitation, any and all minerals and mineral rights, oil, gas, and oil and gas rights, development rights, air rights, water and water rights, wells, well rights and well permits, water and sewer taps, and sanitary or storm sewer capacity, and (c) all right, title, and interest of the Subsidiary, if any, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining

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the Land (the Land, together with items (a), (b) and (c) of this Section 1.1.21(1), collectively, the “**Real Property**”).

(2) **Leases and Guaranties**. All of the Subsidiary’s right, title and interest, without warranty except as set forth herein, in those existing leases and subleases, including any amendments to such leases and subleases made by the Subsidiary, described on **Schedule 1.1.21(2)** and all leases or sublease which may be made by the Subsidiary after the Effective Date and prior to Closing as permitted by this Agreement (individually a “**Lease**” and collectively the “**Leases**”), all guaranties of such Leases, including any amendments to such guaranties, described on **Schedule 1.1.21(2)** (individually a “**Guaranty**” and collectively the “**Guaranties**”), and all other collateral securing the Leases or Guaranties, including without limitation all security deposits and letters of credit.

(3) **Tangible Personal Property**. All of the Subsidiary’s right, title and interest, without warranty, except as set forth herein, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by the Subsidiary and now or hereafter located in and used in connection with the operation, ownership or management of the Real Property, but specifically excluding any items of personal property owned or leased by any tenants at or on the Real Property and further excluding any items of personal property owned by third parties and leased to the Subsidiary (collectively, the “**Tangible Personal Property**”), which excluded items of personal property are listed on **Schedule 1.1.21(3)**.

(4) **Intangible Personal Property**. All of the Subsidiary’s right, title and interest, if any, without warranty, except as set forth herein, in all intangible personal property related to the Real Property and the Improvements, including, without limitation: all trade names and trade marks associated with the Real Property and the Improvements, including the Subsidiary’s rights and interests, if any, in the name of the Real Property; the plans and specifications and other architectural and engineering drawings for the Improvements, if any; contract rights related to the operation, ownership or management of the Real Property, including maintenance, service, construction, supply and equipment rental contracts, if any, but not including Leases or License Agreements (collectively, the “**Service Contracts**”); warranties; governmental permits, approvals and licenses, if any; and telephone exchange numbers (all of the items described in this Section 1.1.21(4) collectively referred to as the “**Intangible Personal Property**”). Tangible Personal Property and Intangible Personal Property shall not include (a) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including, without limitation, budgets prepared by or on behalf of Seller and the Subsidiary or any affiliate of Seller or the Subsidiary, (b) any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property, Seller and/or the Subsidiary, or which are subject to a confidentiality agreement, (c) such documents, materials or information received by Seller or the Subsidiary from

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tenants and covered by confidentiality agreements between such tenants and Seller or the Subsidiary, except that such documents, materials or information shall be included in Tangible Personal Property if Purchaser shall have agreed in writing to be bound by the terms of such confidentiality agreements prior to Seller’s delivery of such documents, materials and information to Purchaser, and (d) any trade name, mark or other identifying material that includes the name “iStar” or any derivative thereof.

(5) **License Agreements**. All of the Subsidiary’s right, title and interest, without warranty, except as set forth herein, in and to all agreements (other than the Leases and the Guaranties), if any, for the leasing or licensing of rooftop space or equipment, cable access and other space, telecommunications equipment, equipment and facilities that are located on or within the Real Property and generate income to the Subsidiary as the owner of the Real Property, including agreements which may be made by the Subsidiary after the Effective Date and prior to Closing as permitted by this Agreement (the “**License Agreements**”).

1.1.22 “**Books and Records**”: collectively, all books and records maintained by Seller and the Subsidiary in connection with the ownership or operation of the Property or with respect to corporate matters of the Subsidiary.

1.1.23 “**Extended Coverage**”: means the deletion of exceptions 2, 3, 4 and 5 from Schedule B — Section 2 of the Title Commitment.

1.1.24 “**Seller’s Ownership Period**”: The period beginning on May 15, 2002 and continuing through the Closing Date.

1.1.25 “**Harborside Purchase and Sale Agreement**”: That certain Member Interest Purchase and Sale Agreement between Purchaser and iStar Harborside LLC, a Delaware limited liability company (“**Harborside Seller**”), dated as of May 3, 2010, as amended by that certain First

Amendment to Member Interest Purchase and Sale Agreement, dated as of May 11, 2010, as further amended by that certain Second Amendment to Member Interest Purchase and Sale Agreement, dated as of May 21, 2010 and as further amended by that certain Third Amendment to Member Purchase and Sale Agreement, dated as of the date hereof.

1.1.26 “**Harborside**”: The property commonly known as Harborside Financial Center Plaza X, Jersey City, New Jersey.

1.1.27 “**Harborside Membership Interests**”: The one hundred percent (100%) membership interests in American Financial Exchange L.L.C. owned by Harborside Seller.

1.1.28 “**Northrop**”: Northrop Grumman Systems Corporation, a Delaware corporation.

1.1.29 “**CTL Reston Member Interest Purchase and Sale Agreement**”: That certain Member Interest Purchase and Sale Agreement between Purchaser and CTL Reston

Seller, dated as of the date hereof relating to the purchase and sale of the CTL Reston Membership Interests.

1.1.30 “**CTL Reston Membership Interests**”: One hundred percent (100%) of the membership interests in CTL Reston.

1.1.31 “**CTL Reston**”: iStar CTL Sunset Hills — Reston LLC, a Delaware limited liability company.

1.1.32 “**Other Sellers**”: collectively, CTL Reston Seller, Portfolio Seller and Harborside Seller.

1.1.33 “**Other Real Properties**”: collectively, (A) Harborside and (B) the property commonly known as 11493 Sunset Hills Road, Reston, Virginia.

1.1.34 “**Acquired Interests**”: collectively, the CTL Reston Membership Interests and the Harborside Membership Interests.

1.1.35 “**Other Purchase and Sale Agreements**”: collectively, the Harborside Purchase and Sale Agreement, the Portfolio Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement.

1.1.36 “**Acquired Properties**”: collectively, the Partnership Interests, the Acquired Interests and the Portfolio Property.

1.1.37 “**CTL Reston Seller**”: iStar CTL Holdco LLC, a Delaware limited liability company.

1.2 **Closing Costs.** Closing costs shall be allocated and paid as follows:

<b>Cost</b>	<b>Responsible Party</b>
Title Commitment required to be delivered pursuant to Section 5.1	Seller
Premium for standard form Title Policy with Extended Coverage, Co-Insurance and one-half (1/2) of the Non-Imputation Endorsement (subject to this Section 1.2 and Section 5.4) required to be delivered pursuant to Section 5.4	Seller
Premium for any upgrade of the Title Policy for additional coverage, including, without limitation, the premium for any re-insurance, and any endorsements to the Title Policy desired by Purchaser (except that Purchaser shall pay only one-half (1/2) of the premium for the Non-Imputation Endorsement), any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges other than those required in connection with satisfying any liens which are not Permitted Exceptions	Purchaser

Any increase in the premium for the Title Policy attributable to obtaining Co-Insurance as provided in Section 5.4	Purchaser
Any costs required to cause the Title Company to issue the Title Policy with Extended Coverage	Seller
Costs of a new survey and/or any revisions, modifications or recertifications to the existing Survey.	Seller
Costs for UCC Searches	Purchaser
Recording Fees	Paid in accordance with local custom
Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments	Paid in accordance with <b>Schedule 1.2</b>
Any escrow fee charged by Escrow Agent for conducting the Closing	Purchaser ½ Seller ½
Real Estate Fee to Financial Advisor	Seller
All other closing costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring the same.	

1.3 **Notice Addresses.** All notices required or permitted to be sent hereunder shall be sent as follows:

Purchaser:	TRT Acquisitions LLC	Copies to:	TRT Acquisitions LLC
	518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202		518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202

Attention: Mr. John Blumberg  
Mr. Greg Moran  
Telephone: 303-228-2200  
Facsimile: 303-577-9797  
E-mail: g Moran@dividendcapital.com

Attention: Joshua J. Widoff, Esq.  
Telephone: 303-228-2200  
Facsimile: 303-869-4602  
E-mail: jwidoff@dividendcapital.com

and

Greenberg Traurig, LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Robert J. Ivanhoe, Esq.  
Telephone: 212-801-9333  
Facsimile: 212-801-6400  
E-mail: ivanhoer@gtlaw.com

Seller: c/o iStar Financial Inc.  
1114 Avenue of the Americas  
New York, NY 10036

Copies to: iStar Financial Inc.  
1114 Avenue of the Americas  
New York, NY 10036

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Attention: Samantha Garbus  
Telephone: 212-930-9407  
Facsimile: 212-930-9494  
E-mail: sgarbus@istarfinancial.com

Attn: Mary-Beth Roselle, Esq.  
Telephone: 212-930-9481  
Facsimile: 212-930-9494  
E-mail: mroselle@istarfinancial.com

iStar Asset Services Inc.  
180 Glastonbury Boulevard  
Glastonbury, CT 06033  
Attn: President  
Telephone: 860-815-5910  
Facsimile: 860-815-5901  
E-mail: brubin@istarfinancial.com

Katten Muchin Rosenman LLP  
525 West Monroe St.  
Chicago, IL 60661-3693  
Attn: Gregory P.L. Pierce, Esq.  
Phone: 312-902-5541  
Fax: 312-577-8893  
Email: greg.pierce@kattenlaw.com

## **ARTICLE 2** **PARTNERSHIP INTERESTS**

2.1 **Partnership Interests.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Partnership Interests.

## **ARTICLE 3** **EARNEST MONEY**

Purchaser and Seller acknowledge and agree (i) that Purchaser has deposited with Escrow Agent Earnest Money (as defined in the Portfolio Purchase and Sale Agreement) in the amount of \$46,200,000.00, (ii) that a portion of the Earnest Money equal to the Partnership Interests Earnest Money is allocated to the purchase and sale of the Partnership Interests pursuant to this Agreement, and (iii) the Earnest Money, including the Partnership Interests Earnest Money, shall be held and disbursed by Escrow Agent pursuant to, and in accordance with, the terms and provisions of the Portfolio Purchase and Sale Agreement. "Partnership Interests Earnest Money" means the product of (1) the Earnest Money and (2) the ratio of (A) the Purchase Price hereunder to (B) the sum of the (x) Purchase Price hereunder, (y) the Purchase Price under the Portfolio Purchase and Sale Agreement and (z) the Purchase Price under the CTL Reston Member Interest Purchase and Sale Agreement

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## **ARTICLE 4** **DUE DILIGENCE**

4.1 **Due Diligence Materials To Be Delivered.** Seller has delivered to Purchaser complete (to Seller's knowledge) copies of, or made electronic copies available to Purchaser on Seller's iPortal internet site relating to the Property and Partnership Interests ("iPortal"), the following (the "Property Information," or the "Property Documents"):

4.1.1 **Rent Roll.** A current rent roll in Seller's standard form ("Rent Roll") for the Property;

4.1.2 **Financial Information.** Operating statements and summaries of capital expenditures pertaining to the Property during the Seller's Ownership Period (collectively, "Operating Statements");

4.1.3 **Environmental Reports.** A copy of any environmental reports or environmental site assessments related to the Property prepared for the benefit of Seller or the Subsidiary, it being acknowledged by Purchaser that Purchaser shall not be entitled to rely thereon absent an express reliance letter from the company issuing such environmental reports or environmental site assessments obtained by Purchaser at Purchaser's sole cost and expense;

4.1.4 **Tax Statements.** Ad valorem tax statements relating to the Property for Seller's Ownership Period;

4.1.5 **Survey.** A copy of the most current survey, if any, of the Property in Seller's possession (the "Survey");

4.1.6 **Service Contracts.** Copies of any Service Contracts for the Property;

4.1.7 **Personal Property.** A list of Tangible Personal Property for the Property;

4.1.8 **License Agreements.** Copies of any License Agreements for the Property;

4.1.9 **Lease Files.** The lease file for the Leases affecting the Property, including, without limitation, the Leases, any amendments thereto, the Guaranties (if applicable), any amendments thereto, any letter agreements, any assignments which are then in effect and any letters of credit which are then in effect (collectively, the "Lease Files");

4.1.10 **Maintenance Records and Warranties.** Maintenance work orders for the Property for the 12 months preceding the Effective Date and warranties for the Property, if any, on roofs, air conditioning units, fixtures and equipment;

4.1.11 **Plans and Specifications.** Building plans and specifications relating to the Property, if any;

4.1.12 **Licenses, Permits and Certificates of Occupancy.** Licenses, permits and certificates of occupancy relating to the Property and umbrella policies related thereto;

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4.1.13 **Insurance Certificates.** Copies of certificates evidencing the existing liability and casualty insurance coverage for the Property maintained by the Subsidiary and other affiliates of Seller;

4.1.14 **Intentionally Deleted;**

4.1.15 **Organizational Documents.** The Subsidiary Agreement, all related articles, charters, certificates of formation, and registrations and minutes, and any amendments and modifications thereto;

4.1.16 **Books and Records.** The Books and Records; and

4.1.17 **Financial Statements.** Unaudited financial statements and reports of the Subsidiary in such form as compiled by Seller or the Subsidiary during Seller's Ownership Period (collectively, the "Financial Statements").

Except for the Rent Roll contemplated in Section 4.1.1, Seller's obligation to deliver the items listed in this Section 4.1 shall be limited to the extent such items are in the possession of Seller or the Subsidiary.

4.2 **Physical Due Diligence.** As of the Effective Date, Purchaser acknowledges and agrees that Purchaser has conducted such inspections and tests of the Property, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, as Purchaser has deemed necessary to satisfy itself as to the condition of the Property. Commencing on the Effective Date and continuing until the Closing, subject to the terms of the Leases, Purchaser shall have reasonable access to the Property at all reasonable times during normal business hours, upon appropriate notice to tenants as permitted or required under the Leases, for the purpose of conducting such additional reasonably necessary tests, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, provided that (a) Purchaser must give Seller the greater of (i) two (2) full Business Days' or (ii) the minimum notice period required by the applicable Leases for the Property, written notice of any such inspection or test, and with respect to any intrusive inspection or test (i.e., core sampling) must obtain Seller's prior written consent (which consent shall not be unreasonably withheld or conditioned), (b) prior to performing any inspection or test, Purchaser must deliver a certificate of insurance to Seller evidencing that Purchaser and its contractors, agents and representatives have in place (and Purchaser and its contractors, agents and representatives shall maintain during the pendency of this Agreement) (1) commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury or death and property damage insurance including coverage for contractual liability and personal and advertising injury with respect to Purchaser's obligations hereunder, and (2) workers' compensation and employers' liability insurance with limits of at least \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit, all covering any accident arising in connection with the presence of Purchaser, its contractors, agents and representatives on the Property, which insurance, except for workers' compensation and employers' liability, shall (A) name as additional insureds thereunder Seller, the Subsidiary and such other parties holding insurable interests as Seller may designate and (B) be written by a reputable insurance company having a rating of at least "A+:VII" by Best's Rating Guide (or a

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comparable rating by a successor rating service), and (C) otherwise be subject to Seller's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, and (c) all such tests shall be conducted by Purchaser in compliance with Purchaser's responsibilities set forth in Section 4.9 below. The requirement to carry the insurance specified in the preceding sentence may be satisfied through blanket or umbrella insurance policies carried by Purchaser or its affiliates. Purchaser shall bear the cost of all such inspections or tests and shall be responsible for and act as the generator with respect to any wastes generated by those tests, which obligation shall survive the termination of this Agreement. Subject to the provisions of Section 4.7 hereof, Purchaser or Purchaser's representatives may communicate with any Seller-designated tenant representative; provided, however, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any Seller-designated tenant representative

and allow Seller the opportunity to participate in such communication if Seller desires. No assurance or guaranty is afforded by Seller that any Seller-designated tenant representative will communicate with Purchaser or Purchaser's representatives. Subject to the provisions of Section 4.7 and 4.10 hereof, Purchaser or Purchaser's representatives may, without Seller's consent or participation, communicate with any governmental authority for the sole purpose of gathering information regarding current zoning compliance of the Real Property and current entitlements with respect to the Real Property in connection with the transaction contemplated by this Agreement. Other than as set forth in the previous sentence, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any governmental authority and to allow Seller the opportunity to participate in such communication if Seller desires. As used in this Section 4.2, "communicate" and "communication" shall mean the initiation of, response to, or sharing or exchange of information, knowledge or messages, whether by oral, written or electronic methods or media, or by any other means in person or otherwise, and includes requests for inspections or other access to the Property.

#### 4.3 **Due Diligence/Financing Contingency Termination Rights.**

4.3.1 Purchaser acknowledges and agrees that as of the Effective Date Purchaser has received or had access to all Property Documents (as defined herein and in the Other Purchase and Sale Agreements) and has conducted all inspections and tests of the Property, the Acquired Properties and the Other Real Property that it considers important.

4.3.2 Purchaser intends to obtain financing for the transactions contemplated by this Agreement and the Other Purchase and Sale Agreements from (i) Fixed Rate Lender, Floating Rate Lender and Harborside Lender pursuant to the terms of the Fixed Rate Loan Term Sheet, the Floating Rate Loan Term Sheet and the Harborside Term Sheet, respectively, copies of which have been delivered to iStar and Seller, and (ii) iStar in the form of the Mezzanine Loan. iStar has agreed to provide the Mezzanine Loan on and subject to the terms and conditions of Section 4.3.2 of the Portfolio Purchase and Sale Agreement and Schedule 4.3.2 attached thereto. Capitalized terms used in this Section 4.3.2 and not defined in this Agreement shall have the meanings ascribed to such terms in the Portfolio Purchase and Sale Agreement.

4.4 **Updated Property Information.** From the Effective Date through the Closing Date, if and to the extent that Seller or the Subsidiary receives from an unaffiliated third-party any additional Property Information not previously provided to Purchaser, or if and to the extent

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that Seller or the Subsidiary receive any document, notice or correspondence from an unaffiliated third-party or otherwise obtains actual knowledge from an unaffiliated third-party source of a condition arising after the Effective Date that would render any of the representations and warranties of Seller in Section 9.1 untrue if and to the extent remade after the Effective Date, Seller shall promptly so notify Purchaser and shall make electronic copies of all such documents, notices, correspondence or other information in Seller's or the Subsidiary's possession ("**Updated Property Information**") available to Purchaser on iPortal. Updated Property Information may include any information disclosed in the Tenant Estoppel Certificate, but such updated information shall remain subject to Purchaser's rights pursuant to Section 7.2.1(1) and 7.2.3. The representations and warranties of Seller in Section 9.1 shall be deemed amended to reflect such Updated Property Information, provided that if the amendment or deemed amendment of any representation or warranty reflects a fact or circumstance that would trigger a termination, extension or other right of Purchaser under this Agreement, the amendment or deemed amendment of any representation or warranty to reflect such fact or circumstance shall not vitiate such right of Purchaser.

4.5 **Return of Documents and Reports.** As additional consideration for the transaction contemplated herein, if Purchaser terminates this Agreement, Purchaser shall provide to Seller, if requested by Seller, promptly following the receipt of notice from Seller after the termination of this Agreement, copies of all "Reports". "**Reports**" mean (a) written third-party reports, tests, investigations and studies that pertain to contamination of, or environmental concerns regarding, the Property delivered to Purchaser or its affiliates, and (b) all other written third party reports, investigations and studies, other than economic analyses in each case under (a) and (b) prepared for Purchaser in connection with its due diligence review of the Property, including, without limitation, any and all Reports involving structural or geological conditions, environmental, hazardous waste or hazardous substances contamination of the Property, if any. The Reports shall not include any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property and/or Purchaser, or which are subject to a confidentiality agreement. The Reports shall be delivered to Seller at no cost to Seller and without any representation or warranty as to the completeness or accuracy of the Reports or any other matter relating thereto. Purchaser's obligation to deliver the Reports to Seller shall survive the termination of this Agreement.

4.6 **Service Contracts.** On or prior to the Closing Date, Purchaser will advise Seller in writing which Service Contracts Purchaser requests that Seller or the Subsidiary terminate at or prior to Closing, provided Seller and the Subsidiary shall have no obligation to terminate any Service Contracts which by their terms cannot be terminated without penalty or payment of a fee (unless Purchaser agrees in writing to pay such fee). Seller shall deliver at Closing notices of termination of all Service Contracts that Purchaser so directs. The Subsidiary shall from and after the Closing Date continue to be bound by those Service Contracts (a) that Purchaser has elected not to have Seller or the Subsidiary terminate, and (b) for which a termination notice is delivered as of or prior to Closing but for which termination is not effective until after Closing.

4.7 **Proprietary Information; Confidentiality.** Purchaser agrees that it is bound by the Confidentiality Agreement as if it were a party thereto, and the Confidentiality Agreement remains in full force and effect. Notwithstanding anything to the contrary set forth in the

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Confidentiality Agreement, (a) each party acknowledges that the other party shall be allowed to disclose the existence of this Agreement and the contents thereof in order to comply with certain disclosure requirements relating to public companies and their affiliates and (b) Purchaser shall be allowed to disclose the existence of this Agreement, and deliver the Property Information and Updated Property Information, to third parties in connection with such third parties' potential acquisition from Purchaser of the Partnership Interests, the Property or interests therein after the Closing Date so long as such third parties have agreed in writing to be bound by the terms of the Confidentiality Agreement prior to Purchaser's disclosure of the existence of this Agreement, and delivery of the Property Information and Updated Property Information, to such third parties. The parties shall coordinate, in advance, with respect to any such public filings and/or press releases. After the Closing there shall be no restriction as between Purchaser, on the one hand, and Seller and the Subsidiary, on the other hand, on Purchaser's disclosure of Property Information or Updated Property Information.

4.8 **No Representation or Warranty by Seller.** Purchaser acknowledges that, except as expressly set forth in this Agreement, Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Property Documents, the Updated Property

Information or the source(s) thereof. Purchaser further acknowledges that some if not all of the Property Documents and Updated Property Information were prepared by third parties other than Seller and the Subsidiary. Except as expressly set forth in this Agreement or in any of the documents delivered at the Closing, (a) Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents or Updated Property Information, or in any other written or oral communications transmitted or made available to Purchaser, (b) Purchaser shall rely solely upon its own investigation with respect to the Partnership Interests and the Property, including, without limitation, their physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto, and (c) Seller and the Subsidiary have not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and Updated Property Information and are providing the Property Documents and Updated Property Information solely as an accommodation to Purchaser.

4.9 **Purchaser's Responsibilities.** In conducting any inspections, investigations or tests of the Property, Property Documents and/or Updated Property Information, Purchaser and its agents and representatives shall: (a) not disturb the tenants or interfere with their use of the Property pursuant to their respective Leases; (b) not interfere with the operation and maintenance of the Property; (c) not damage any part of the Property or any personal property owned or held by any tenant or any third party; (d) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees or any tenants or their agents, guests, invitees, contractors and employees; (e) comply with all applicable laws; (f) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (g) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (h) subject to the provisions of Section 4.10, repair any damage to the Real Property resulting directly or indirectly from any such inspection or tests; and (i) not reveal or disclose prior to Closing any information obtained during the Inspection Period (as defined in the Portfolio Purchase and Sale Agreement) concerning the Property, the Property Documents and

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the Updated Property Information to anyone other than the Permitted Recipients (as defined in the Confidentiality Agreement), in accordance with the confidentiality standards set forth in Section 4.7 above, or except as may be otherwise required by law. Purchaser's obligations under this Section 4.9 shall survive the termination of this Agreement.

4.10 **Purchaser's Agreement to Indemnify.** Purchaser hereby agrees to indemnify, defend and hold Seller and the Subsidiary harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Purchaser's inspections or tests permitted under this Agreement or any violation of the provisions of Sections 4.2, 4.7, and 4.9; provided, however, the indemnity shall not protect Seller and the Subsidiary from any liabilities for matters merely discovered by Purchaser (i.e., environmental contamination) so long as Purchaser's actions do not aggravate any pre-existing liability of Seller and the Subsidiary it being agreed by Purchaser and Seller that the mere discovery by Purchaser of such matters shall not constitute an aggravation of any pre-existing liability of Seller and the Subsidiary. Purchaser also hereby agrees to indemnify, defend and hold any tenant harmless from and against any and all claims, causes of action, damages, liabilities and expenses which such tenant may suffer or incur due to Purchaser's breach of its obligation under Sections 4.7 and 4.9 above to maintain the confidential nature of any Property Documents, Updated Property Information or other information relative to such tenant. Purchaser's obligations under this Section 4.10 shall survive the termination of this Agreement and shall survive the Closing.

## **ARTICLE 5**

### **TITLE AND SURVEY**

5.1 **Title Commitment.** Purchaser acknowledges that a copy of a current commitment for title insurance or a preliminary title report with respect to the Property, together with copies of all documents of record referred to therein (the "**Title Commitment**") issued by First American on an ALTA 2006 Owner's Form or state promulgated form has been delivered or made available to Purchaser.

5.2 **Updated Survey.** Purchaser has arranged, at Seller's expense, for the preparation of a new survey or the revision, modification, or re-certification of the existing Survey as necessary in order for First American to delete the survey exception from the Title Policy.

5.3 **Title Review.** Seller shall have no obligation to cure title objections except liens of an ascertainable amount created by, under or through Seller or the Subsidiary, or assumed by Seller or the Subsidiary, which liens Seller shall cause to be released at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose), and Seller or the Subsidiary shall deliver the Property free and clear of any such liens; provided, however, that the foregoing requirement to discharge liens shall not apply to liens on any tenant's leasehold estate. Seller further agrees to remove any exceptions or encumbrances to title which are voluntarily created by, under or through Seller or the Subsidiary after the Effective Date without Purchaser's consent (if requested, such consent shall not be unreasonably withheld or delayed). The term "**Permitted Exceptions**" shall mean the exceptions to title set forth in the Pro Forma Policy (as defined in the Portfolio Purchase and Sale Agreement) as updated by

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the Title Company as a result of (i) any actions taken by Seller which are expressly permitted by the terms of this Agreement or (ii) any acts or failure to act taken by Purchaser.

5.4 **Delivery of Title Policy and Non-Imputation Endorsement at Closing.** The parties acknowledge that First American Title Insurance Company, National Commercial Services — Chicago ("**First American**") and Fidelity Title Insurance Company ("**Fidelity**") constitute the Title Company. First American shall act as the lead Title Company and underwriter and shall issue the Title Policy and the Non-Imputation Endorsement; provided, however, that Purchaser may obtain co-insurance from Fidelity in the amount of up to fifty percent (50%) of the Purchase Price of the Property in the form of a co-insurance endorsement ("**Co-Insurance**") so long as (i) the cost of such Co-Insurance does not increase the total cost of title insurance that Seller would otherwise pay to First American if First American were insuring the full Purchase Price unless Purchaser pays for such increased cost of title insurance and (ii) the issuance of such Co-Insurance does not delay the Closing. Purchaser, at Purchaser's sole cost and expense, may obtain re-insurance with respect to the Title Policy from such third parties as Purchaser may elect so long as obtaining such re-insurance does not delay the Closing. In the event that the Title Company does not issue at Closing, or unconditionally commit at Closing to issue, to Purchaser, (i) an owner's title insurance policy and Co-Insurance in accordance with the Title Commitment with Extended Coverage, insuring the Subsidiary's title interest in the Real Property in the amount of the Purchase Price, subject only to the exclusions from coverage contained in the policy and the Permitted Exceptions (the "**Title Policy**") and (ii) a non-imputation endorsement with respect to the conveyance of the Partnership Interests in the form approved for issuance in the State of Virginia (the "**Non-Imputation**")



**Endorsement**”), Purchaser shall have the right, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), to terminate this Agreement, in which case the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement; provided, however, if either Title Company alone is willing to deliver the Title Policy in the amount of the Purchase Price and the Non-Imputation Endorsement, Purchaser agrees to accept such Title Policy and Non-Imputation Endorsement and Purchaser shall have no right to terminate this Agreement.

## **ARTICLE 6**

### **OPERATIONS AND RISK OF LOSS**

6.1 **Ongoing Operations.** From the Effective Date through Closing:

6.1.1 **Leases, Service Contracts and License Agreements.** Seller will cause the Subsidiary to perform their material obligations under the Leases, Service Contracts and License Agreements unless the Subsidiary are excused from performing such obligations pursuant to such Leases, Services Contracts and License Agreements.

6.1.2 **New Contracts.** Except as provided in Section 6.1.4, Seller will not cause the Subsidiary to enter into any contract that will be an obligation affecting the Property subsequent to the Closing, except contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than 30 days’ prior notice.

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6.1.3 **Maintenance of Improvements; Removal of Personal Property.** Subject to Sections 6.2 and 6.3, Seller shall cause the Subsidiary to maintain or cause the Subsidiary to use reasonable efforts to cause the tenants under the Leases to maintain all Improvements substantially in their present condition (ordinary wear and tear and casualty excepted) and in a manner consistent with the Subsidiary’s maintenance of the Improvements during the Subsidiary’s period of ownership. Seller will cause the Subsidiary not to remove any Tangible Personal Property except as may be required for necessary repair or replacement or with respect to items that, in Seller’s judgment are obsolete, and replacement shall be of approximately equal quality and quantity as the removed item of Tangible Personal Property.

6.1.4 **Leasing; License Agreements.** Seller will cause the Subsidiary not to (i) amend or terminate any existing Lease or License Agreement, (ii) consent to the assignment of any Lease or License Agreement, (iii) enter into any new Lease or new License Agreement, (iv) grant their consent, to the extent the Subsidiary’s consent is required, to a sublease of the Property, a modification of a sublease, an assignment of a sublease or other item for which a consent is required under any Lease or License Agreement or (v) grant an acknowledgement with respect to a sublease of the Property, a modification of a sublease or an assignment of a sublease (the foregoing items (i), (ii), (iii), (iv) and (v) are each referred to herein as, a “**Lease Event**”) after the Effective Date and prior to the Closing Date without first (a) providing Purchaser all relevant supporting documentation, as reasonably determined by Seller, including, without limitation, financial information for the assignee, tenant, subtenant and any guarantor to the extent in Seller’s or the Subsidiary’s possession, and (b) obtaining Purchaser’s approval of such Lease Event. Purchaser shall be held to the same standard for approval as Seller or the Subsidiary, as applicable, are held to in the document giving rise to such approval, consent, or acknowledgement right, and Purchaser agrees to give Seller written notice of its approval or disapproval of a proposed Lease Event within three (3) Business Days after Purchaser’s receipt of the items in Section 6.1.4(a) and Section 6.1.4(b). If Purchaser does not respond to Seller’s request within such time period, then Purchaser will be deemed to have approved such Lease Event. So long as Purchaser has complied with the standard for review described above, Purchaser may withhold its approval in its reasonable discretion, and Seller will cause the Subsidiary not to execute or grant such Lease Event without Purchaser’s written approval.

Seller shall cause the Subsidiary not to apply any tenant or licensee security deposits on account of any alleged default by any tenant or licensee unless the Subsidiary has terminated the applicable Lease or License Agreement and obtained possession of the demised or licensed premises. All tenant and licensee security deposits collected and not applied by the Subsidiary as of the Effective Date are set forth on **Schedule 6.1.4**.

6.1.5 **Insurance.** Seller will cause the Subsidiary not to terminate or allow any insurance maintained by the Subsidiary with respect to the Property or any umbrella coverage insurance carried by any affiliate of Seller which insures the Property to lapse unless replaced by equivalent coverage. Upon the Effective Date, Seller shall cause the Subsidiary and Seller’s affiliates to name Purchaser as an additional insured on all insurance maintained by the Subsidiary with respect to the Property and on all umbrella insurance coverage carried by any affiliate of Seller which insures the Property.

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6.1.6 **No Amendment.** After the Effective Date, Seller shall not, and Seller shall not permit the Subsidiary, to amend the Subsidiary Agreement.

6.1.7 **No Merger.** Seller shall not permit the Subsidiary to merge or consolidate with or agree to merge or consolidate with, or purchase or agree to purchase all or substantially all of the assets of, or otherwise acquire, any corporation, partnership or other business organization.

6.1.8 **Partnership Interests.** Seller shall not permit the Subsidiary to authorize for issuance, issue, sell or delivery any additional partnership interests in the Subsidiary or grant any option, warrant or other right to purchase any such partnership interests. Seller shall not permit the Subsidiary to split, combine or reclassify any of the partnership interests in the Subsidiary.

6.1.9 **Debt.** Seller shall not permit the Subsidiary to incur or become subject to, nor agree to incur, any debt for borrowed money, guaranty any indebtedness, or incur any liabilities other than and specifically excluding liabilities incurred in the ordinary course of business related to the ownership and management of the Property.

6.1.10 **Conditions and Obligations.** To the extent performance of any obligation of Seller under this Agreement or the satisfaction of any condition of Purchaser’s obligation to close requires the performance of the Subsidiary, Seller shall cause the applicable Subsidiary, as the case may be, to perform or satisfy same.

6.2 **Casualty.** If after the Effective Date and prior to the Closing the Property is damaged by fire or other casualty (a “**Casualty**”), Seller shall, promptly upon Seller or the Subsidiary receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Casualty, Northrop is entitled to and elects to terminate its Lease with respect to the Property (a “**Casualty Tenant Termination Event**”), then Seller shall promptly upon Seller or the

Subsidiary receiving notice of such Casualty Tenant Termination Event notify Purchaser of the same (a “**Casualty Tenant Termination Notice**”). Within five (5) days after receipt of the Casualty Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser’s election to either (i) subject to the limitations of Section 7.2.1(4) and 7.2.2(9), terminate this Agreement, in which case the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) to acquire the Partnership Interests notwithstanding the Casualty Tenant Termination Event. If (i) Purchaser elects to acquire the Partnership Interests notwithstanding the Casualty Tenant Termination Event or fails to terminate this Agreement with respect to the Partnership Interests within such five (5) day period, or (ii) such Casualty does not give rise to a Casualty Tenant Termination Event, then Purchaser shall proceed to Closing, and as of Closing, (1) Seller shall provide written confirmation that any resulting insurance proceeds (including any rent loss insurance and rent abatement insurance applicable to any period beginning with the Closing Date) due the Subsidiary or an affiliate of Seller as a result of such Casualty will be available after Closing to the Subsidiary to effectuate the needed repairs, (2) the Subsidiary shall maintain full responsibility for all needed repairs (subject to the terms of the Lease with respect to any rights of Northrop), and (3) Purchaser shall receive a credit at Closing for any deductible amount under such insurance policies to the extent not payable by Northrop.

Notwithstanding anything contained herein to the contrary, if a Casualty shall occur to the Property and, as a result of such Casualty, the lender providing the Fixed Rate Loan or the Floating Rate Loan will not close the Fixed Rate Loan or the Floating Rate Loan, as applicable, with respect to such Property, then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate, in which case the parties hereto shall have no further right or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

6.3 **Condemnation.** If after the Effective Date and prior to the Closing Seller or the Subsidiary receives notice of, or proceedings are instituted for, eminent domain with respect to the Property or any portion thereof (a “**Condemnation**”), Seller shall, promptly upon Seller or the Subsidiary receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Condemnation, Northrop is entitled to and elects to terminate its Lease with respect to such Condemnation (a “**Condemnation Tenant Termination Event**”), then Seller shall promptly upon Seller or any Affiliate receiving notice of such Condemnation Tenant Termination Event notify Purchaser of the same (a “**Condemnation Tenant Termination Notice**”). Within five (5) days after receipt of the Condemnation Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser’s election to either (i) subject to the limitations of Section 7.2.1(4) and 7.2.2(9), terminate this Agreement, in which case the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) to acquire the Partnership Interests notwithstanding the Condemnation Tenant Termination Event. If (i) Purchaser elects to acquire the Partnership Interests notwithstanding the Condemnation Tenant Termination Event or fails to terminate this Agreement with respect to the Partnership Interests within such five (5) day period, or (ii) such Condemnation does not give rise to a Condemnation Tenant Termination Event, then Purchaser shall proceed to Closing, and as of Closing, the Subsidiary shall maintain the right to negotiate and otherwise deal with the condemning authority in respect of such Condemnation (subject to the terms of the Lease with respect to any rights of Northrop). Notwithstanding anything contained herein to the contrary, if a Condemnation shall occur to any Property and, as a result of such Condemnation, the lender providing the Fixed Rate Loan or the Floating Rate Loan will not close the Fixed Rate Loan or the Floating Rate Loan, as applicable, with respect to such Property, then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate, in which case the parties hereto shall have no further right or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

6.4 **Tenant Estoppel Certificate/SNDA.**

6.4.1 Purchaser and Seller acknowledge and agree that as of the Effective Date, Seller, on behalf of the Subsidiary, has sent Northrop (with a copy to Purchaser) a request for an estoppel certificate in the form approved by Purchaser (such estoppel certificate is referred to herein as the “**Tenant Estoppel Certificate**”). Purchaser acknowledges that it has approved the form of the Tenant Estoppel Certificate sent to Northrop as of the Effective Date. Seller and the Subsidiary shall not be obligated to expend any funds in connection with obtaining the Tenant Estoppel Certificate, declare any default under the Northrop Lease or commence any legal action for enforcement of the Northrop Lease in order to obtain such Tenant Estoppel Certificate. Seller and the Subsidiary shall copy Purchaser on the initial correspondence soliciting the Tenant

Estoppel Certificate and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from Northrop in connection with Northrop’s execution of the Tenant Estoppel Certificate.

6.4.2 Purchaser and Seller acknowledge and agree that as of the Effective Date, Seller, on behalf of the Subsidiary, has sent an estoppel certificate addressed to the party listed on **Schedule 6.4.2** (the “**Third Party Estoppel Certificate**”). Seller and the Subsidiary shall not be obligated to expend any funds in connection with obtaining any such Third Party Estoppel Certificate, declare any default under any agreement or commence any legal action for enforcement of any agreement in order to obtain any such Third Party Estoppel Certificate. Seller shall copy Purchaser on the initial correspondence soliciting the Third Party Estoppel Certificate and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the third parties in connection with the third parties’ execution of the Third Party Estoppel Certificate.

6.4.3 Purchaser and Seller acknowledge and agree that as of the Effective Date, Seller, on behalf of the Subsidiary, has sent Northrop (with a copy to Purchaser) a request for a subordination, non-disturbance and attornment agreement in a form approved by Fixed Rate Lender and/or the Floating Rate Lender (such subordination, non-disturbance and attornment agreement is referred to herein as, an “**SNDA**”). Seller and the Subsidiary shall not be obligated to expend any funds in connection with obtaining the SNDA, declare any default under the Northrop Lease or commence any legal action for enforcement of the Northrop Lease in order to obtain the SNDA. Seller and the Subsidiary shall copy Purchaser on the initial correspondence soliciting the SNDA and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from any Northrop in connection with Northrop’s execution of the SNDA.

**ARTICLE 7**  
**CLOSING**

7.1 **Closing.** The consummation of the transaction contemplated herein (“**Closing**”) shall occur on the Closing Date at the offices of Escrow Agent (or such other location as may be mutually agreed upon by Seller and Purchaser). Funds shall be deposited into and held by Escrow Agent in a closing

escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record those closing documents which are to be recorded, and deliver originals or copies of the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

7.2 **Conditions to Parties' Obligation to Close.** In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are conditioned upon the following:

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7.2.1 **Conditions to Seller's Obligations to Close.**

(1) **Representations and Warranties.** Purchaser's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date;

(2) **Deliveries.** As of the Closing Date, Purchaser shall have tendered all deliveries to be made by Purchaser at Closing;

(3) **Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Purchaser that would materially and adversely affect Purchaser's ability to perform its obligations under this Agreement;

(4) **Property.** It shall be a condition to Seller's obligation to close hereunder that neither (x) this Agreement shall have been terminated with respect to the Partnership Interests nor (y) the Other Purchase and Sale Agreements shall have been terminated with respect to more than two (2) of the Acquired Properties (exclusive of the Partnership Interests; it being agreed by Purchaser and Seller that a termination of this Agreement with respect to the Partnership Interests is addressed in the foregoing clause (x) and that the two (2) Acquired Properties referenced in the foregoing clause (y) shall not include the Partnership Interests for purposes of the application of the foregoing clause (y)) (it being understood that a termination of the Portfolio Purchase and Sale Agreement with respect to one or more of the separate sites constituting the Portfolio Properties leased by The Goodyear Tire & Rubber Company (collectively, the "**Goodyear Properties**") or one or more separate sites constituting the Portfolio Properties leased by CEVA Freight, LLC (collectively, the "**CEVA Properties**") shall be deemed in both cases to be a termination of the Portfolio Purchase and Sale Agreement with respect to only one Portfolio Property notwithstanding the Lease with The Goodyear Tire & Rubber Company and the Lease with CEVA Freight, LLC cover multiple Portfolio Properties). For clarification, the parties agree that it is possible for a closing condition (A) under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect to the Harborside Membership Interests but proceed to closing under this Agreement, the Portfolio Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement or (B) under this Agreement not to be satisfied (for example, the bankruptcy of Northrop) which would allow Purchaser not to close and to terminate this Agreement with respect to the Partnership Interests and, as a result of such termination, there would be a failure of a condition to close under the Other Purchase and Sale Agreements which would allow Other Sellers to terminate the Other Purchase and Sale Agreements; and

(5) **Simultaneous Closing.** It shall be a condition to Seller's obligation to close hereunder that the Closing of the transaction contemplated by this

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Agreement occur simultaneously with the closing of the transactions contemplated by the Other Purchase and Sale Agreements.

7.2.2 **Conditions to Purchaser's Obligations to Close.**

(1) **Representations and Warranties.** Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date, subject to the provisions of Sections 4.4 and 9.3. Notwithstanding Sections 4.4 and 9.3, Seller and Purchaser acknowledge and agree that Section 7.2.3 shall apply to any material change in the representations and warranties of Seller due to any Updated Property Information or changes that are not a result of a breach by Seller or any of its covenants;

(2) **Deliveries.** As of the Closing Date, Seller shall have tendered and shall have caused the Subsidiary to have tendered all deliveries to be made by Seller and the Subsidiary at Closing;

(3) **Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Seller or the Subsidiary that would materially and adversely affect Seller's ability to perform its obligations under this Agreement;

(4) **Intentionally Deleted.**

(5) **Occupancy/Non Bankruptcy.** It shall be a condition to Purchaser's obligations to close hereunder that (a) as of the Closing Date, Northrop shall not have terminated, or given notice of its intent to terminate, its Lease, except with respect to a Casualty Tenant Termination Event or a Condemnation Tenant Termination Event and (b) Northrop shall have not vacated, abandoned or ceased operations at the Real Property, or filed for voluntary or involuntary bankruptcy or similar protection;

(6) **Closing of Fixed Rate Loan, Floating Rate Loan and Mezzanine Loan.** (A) The closing of the Mezzanine Loan simultaneously with (1) the Closing and (2) the closing of the Fixed Rate Loan and the Floating Rate Loan and (B) the closing of the Fixed Rate Loan and the Floating Rate Loan on the Closing Date (unless the Fixed Rate Loan or the Floating Rate Loan fails to close as a result of (x) Purchaser's uncured default under the Fixed Rate Term Sheet or the Floating Rate Term Sheet, as the case may be, (y) the failure of one or more conditions to close which are within Purchaser's reasonable control to satisfy, or (z) Purchaser's failure to accept documentation for

the Fixed Rate Loan or the Floating Rate Loan that is commercially reasonable for such transactions), shall be conditions to Purchaser's obligation to close hereunder. Capitalized terms used in this Section 7.2.2(6) and not defined in this Agreement shall have the meanings ascribed to such terms in the Portfolio Purchase and Sale Agreement;

(7) Intentionally Deleted;

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(8) Title Policy and Non-Imputation Endorsement. It shall be a condition to Purchaser's obligations to close hereunder that the Title Company shall have issued the Title Policy (in the forms of the Pro Forma Policy as updated by the Title Company as a result of (i) any actions taken by Seller which are expressly permitted by the terms of this Agreement or (ii) any acts or failure to act taken by Purchaser; provided, however, Purchaser and Seller agree that in no event shall the Title Company's failure to deliver the Title Policy in the form of the Pro Forma Policy be a failure of a condition to Purchaser's obligation to Close if such failure to issue the Title Policy in the form of the Pro Forma Policy results from the Title Company not receiving such documents and instruments, which are (i) required by the Title Company to issue the Title Policy in the forms of the Pro Forma Policy and (ii) not required to be obtained and delivered by Seller to Purchaser, the Title Company or otherwise pursuant to the terms of this Agreement), Co-Insurance and the Non-Imputation Endorsement subject to, and in accordance with, Section 5.4;

(9) Property. It shall be a condition to obligation to close hereunder that neither (x) this Agreement shall have been terminated with respect to the Partnership Interests nor (y) the Other Purchase and Sale Agreements shall have been terminated with respect to more than two (2) of the Acquired Properties (exclusive of the Partnership Interests; it being agreed by Purchaser and Seller that a termination of this Agreement with respect to the Partnership Interests is addressed in the foregoing clause (x) and that the two (2) Acquired Properties referenced in the foregoing clause (y) shall not include the Partnership Interests for purposes of the application of the foregoing clause (y)) (it being understood that a termination of the Portfolio Purchase and Sale Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of the Portfolio Purchase and Sale Agreement with respect to only one Portfolio Property notwithstanding the Lease with The Goodyear Tire & Rubber Company and the Lease with CEVA Freight, LLC cover multiple Portfolio Properties). For clarification, the parties agree that it is possible for a closing condition (A) under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect to the Harborside Membership Interests but proceed to closing under this Agreement, the Portfolio Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement or (B) under this Agreement not to be satisfied (for example, the bankruptcy of Northrop) which would allow Purchaser not to close and to terminate this Agreement with respect to the Partnership Interests and, as a result of such termination, there would be a failure of a condition to close under the Other Purchase and Sale Agreements which would allow Other Sellers to terminate the Other Purchase and Sale Agreements;

(10) Terminations. Terminations of the officers, directors and managers of the Subsidiary (the "**Terminations**"), effective immediately as of the Closing; and

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(11) Simultaneous Closing. It shall be a condition to Purchaser's obligation to close hereunder that the Closing of the transaction contemplated by this Agreement occur simultaneously with the closing of the transactions contemplated by the Other Purchase and Sale Agreements.

7.2.3 Failure to Satisfy Conditions. So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date (or such earlier date as is provided herein), subject to any applicable notice and cure periods provided in Sections 10.1 and 10.2, such party may, in its sole discretion either (i) subject to the limitations of Sections 7.2.1(4) and 7.2.2(9)), terminate this Agreement in its entirety by delivering written notice to the other party and Escrow Agent on or before the Closing Date (or such earlier date as is provided herein) and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) elect to close notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close, notwithstanding the non-satisfaction of such condition, said party shall be deemed to have waived said condition, and there shall be no liability on the part of any other party hereto for breaches of representations and warranties of which the party electing to close had knowledge at the Closing.

7.3 Seller's Deliveries in Escrow. As of or prior to the Closing Date, Seller shall deliver, or shall cause the delivery by the Subsidiary, as applicable, in escrow to Escrow Agent the following:

7.3.1 Assignment. An Assignment and Assumption of Partnership Interests in substantially the form of Exhibit B hereto (the "**Assignment and Assumption**");

7.3.2 Intentionally Deleted;

7.3.3 Conveyancing or Transfer Tax Forms or Returns. Such conveyancing and transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local laws in connection with the transfer of the Partnership Interests;

7.3.4 FIRPTAs. Foreign Investment in Real Property Tax Act affidavits in the forms of Exhibit D hereto executed by iStar;

7.3.5 Authority. Evidence of the existence and authority of Seller and the Subsidiary of the authority of the persons executing documents on behalf of Seller and the Subsidiary reasonably satisfactory to First American;

7.3.6 Title Affidavits. A title affidavit in form reasonably required by First American as to the rights of tenants in occupancy, the status of mechanics' liens and "gap" indemnities, and such other matters as the First American may reasonably require in order to issue the Title Policy and the

7.3.7 **Additional Documents.** Any additional documents that First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation,

covenant, representation or warranty of Seller or the Subsidiary or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement);

7.3.8 **Tenant Estoppel Certificate.** If received by Seller, the Tenant Estoppel Certificate, it being agreed that the failure of Seller to obtain the Tenant Estoppel Certificate shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.9 **Third Party Estoppel Certificate.** If received, the Third Party Estoppel Certificate, it being agreed that the failure of Seller to obtain the Third Party Estoppel Certificate shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.10 **Searches.** A Uniform Commercial Code Search, indicating that the partnership interests in the Subsidiary are unencumbered by an lien, encumbrance or other security interest thereon, except for liens, encumbrances or security interests in favor of GE pursuant to the GE Loan, and federal and state law searches for Seller and the Subsidiary indicating the absence of any bankruptcy proceeding, federal or state tax lien, litigation and unsatisfied judgments;

7.3.11 **Good Standing Certificates.** A good standing certificate dated within thirty (30) days of the Closing Date from the Secretary of State of Delaware as to the good standing of the Subsidiary in the State of Delaware;

7.3.12 **Insurance Policies.** Copies of all insurance policies maintained by iStar or Seller on behalf of the Subsidiary;

7.3.13 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Seller in Section 9.1 are true and accurate as of the Closing Date, subject to Section 4.4 and the first sentence of Section 9.3;

7.3.14 **Updated Rent Roll.** A Rent Roll updated to the Closing Date, or as close as possible;

7.3.15 **SNDA.** If received by Seller, the SNDA, it being agreed that the failure of Seller to obtain the SNDA shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.16 **Terminations.** The executed Terminations; and

7.3.17 **A Past Conduct Certificate.** A Past Conduct Certificate in the form agreed to by Purchaser and Seller and executed by the Subsidiary; and

7.3.18 **Partnership Certificates.** The original Certificate of Limited Partnership Interest of the Subsidiary issued to LP Seller and designated certificate no. 1 together with an executed original transfer power in blank and the original Certificate of General Partnership

Interest of the Subsidiary issued to GP Seller and designated certificate no. 1 together with an executed original transfer power in blank.

7.4 **Purchaser’s Deliveries in Escrow.** As of or prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

7.4.1 **Assignment and Assumption.** An executed counterpart to the Assignment and Assumption;

7.4.2 **Intentionally Deleted;**

7.4.3 **Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Purchaser by applicable state and local laws in connection with the transfer of the Partnership Interests;

7.4.4 **Authority.** Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to First American;

7.4.5 **Additional Documents.** Any additional documents that Seller, Escrow Agent or First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement); and

7.4.6 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Purchaser in Section 9.2 are true and accurate as of the Closing Date.

7.5 **Closing Statements.** As of or prior to the Closing Date, Seller and Purchaser shall deposit with Escrow Agent an executed closing statement with respect to the adjustments herein in the form required by Escrow Agent. Seller shall provide a draft of the same at least one week prior to the scheduled Closing Date.

7.6 **Purchase Price.** At or before 3:00 p.m. (Eastern Time) on the Closing Date, Purchaser shall deliver to Escrow Agent the Purchase Price plus or minus applicable prorations and any adjustment to the Purchase Price made in accordance with the terms of this Agreement, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds must be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); in the event that Escrow Agent is unable to deliver good funds to Seller or its designee prior to 4:00 p.m. (Eastern Time) on the Closing Date, then the closing statements and related prorations will be revised as necessary.

7.7 **Possession.** As of Closing, there shall be no change in the Subsidiary's possession of the Property.

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7.8 **Delivery of Books and Records.** Within ten (10) Business Days after the Closing, Seller shall deliver to the offices of Purchaser: (i) original Lease File; (ii) original Service Contracts and License Agreements, (iii) to the extent in Seller's or the Subsidiary's possession: (a) maintenance records and warranties; (b) plans and specifications; (c) licenses, permits and certificates of occupancy; (d) copies or originals of all books and records of account, contracts, and copies of correspondence with tenants and suppliers; (e) advertising materials; (f) booklets; and (g) keys; and (iv) the Books and Records.

7.9 **Notice to Northrop.** Seller and Purchaser shall each execute and Purchaser shall deliver to Northrop immediately after the Closing, a notice regarding the sale in substantially the form of Exhibit G hereto, or such other form as may be required by applicable state law. This obligation on the part of Purchaser shall survive the Closing.

## ARTICLE 8 PRORATIONS, DEPOSITS, COMMISSIONS

8.1 **Prorations for Taxes.** To the extent tenants are required to pay real and personal ad valorem taxes ("**Taxes**") directly under their respective Leases, Taxes will not be prorated, and accordingly, Purchaser shall look solely to the tenants under their respective Leases for payment of all Taxes. To the extent tenants are not required to pay Taxes directly under their respective Leases, then the following shall apply with respect to the proration of Taxes:

8.1.1 If Taxes for the year of Closing are not known or cannot be reasonably estimated, Taxes shall be prorated based on Taxes for the year prior to Closing;

8.1.2 Any additional Taxes relating to the year of Closing arising out of a change in ownership shall be assumed by Purchaser effective as of Closing and paid by Purchaser when due and payable, and Purchaser shall indemnify Seller from and against any and all such Taxes, which indemnification obligation shall survive the Closing; and

8.1.3 Purchaser and Seller shall reasonably cooperate to file all tax returns of the Subsidiary in respect of the tax year in which the Closing shall occur.

8.2 **Prorations for Tenant-Paid Operating Expenses.** To the extent tenants are required to pay operating costs and expenses of the Real Property ("**Operating Expenses**") directly under their respective Leases, which Operating Expenses may include, without limitation, fees and assessments; prepaid expenses; obligations under Service Contracts; any assessments by private covenant; insurance; utilities; common area maintenance expenses; and other operating costs and expenses incurred in connection with the ownership, operation, maintenance and management of the Real Property, Operating Expenses will not be prorated, and accordingly, Purchaser shall look solely to the tenants under such Leases for payment of all Operating Expenses.

8.3 **Prorations for Non-Tenant Paid Items.** To the extent tenants are not required to pay Operating Expenses or Taxes directly under their respective Leases, but are required to escrow Operating Expenses or Taxes under their respective Leases and/or to reimburse their landlord for all or any portion of such Operating Expenses or Taxes, then the following items shall be prorated as of the Closing Date with all items of income and expense for the Property

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being borne by the Subsidiary for Purchaser's account from and after (and including) the Closing Date and Seller's account prior to the Closing Date:

8.3.1 **Utilities.** Purchaser shall take all steps necessary to post deposits with the utility companies on behalf of the Subsidiary for the period after the Closing Date. Seller shall ensure that all utility meters are read as of the Closing Date. Seller shall be entitled to recover any and all deposits held by any utility company on behalf of the Subsidiary as of the Closing Date.

8.3.2 **Tenant Receivables.** Rents due from tenants under Leases and from tenants or licensees under License Agreements and Operating Expenses and Taxes payable by tenants under Leases and licenses under License Agreements (collectively, "**Tenant Receivables**") and not collected by the Subsidiary as of Closing shall not be prorated between Seller and Purchaser at Closing but shall be apportioned on the basis of the period for which the same is payable and if, as and when collected, as follows:

(a) Tenant Receivables and other income received from tenants under Leases, and/or tenants or licensees under License Agreements after Closing shall be applied in the following order of priority: (1) first, to payment of the current Tenant Receivables then due for the month in which the Closing Date occurs, which amount shall be apportioned between Purchaser and Seller as of the Closing Date as set forth in Section 8.3 hereof (with Seller's portion thereof to be delivered to Seller); (2) second, to payment of Tenant Receivables first coming due after Closing but applicable to the period of time before Closing, (collectively, "**Unbilled Tenant Receivables**"), which amount shall be delivered to Seller; (3) third, to Tenant Receivables first coming due after Closing and applicable to the period of time after Closing, which amount shall be retained by the Subsidiary; and (4) thereafter, to delinquent Tenant Receivables which were due and payable as of Closing but not collected by the Subsidiary as of Closing (collectively, "**Uncollected Delinquent Tenant Receivables**"), which amount shall be delivered to Seller. Notwithstanding the foregoing, Seller shall have the right to pursue on behalf of the Subsidiary the collection of Uncollected Delinquent Tenant Receivables for a period of six (6) months after Closing without prejudice to Seller's rights or Purchaser's obligations hereunder, provided, however, Seller shall have no right to cause the Subsidiary to cause any such tenant or licensee to be evicted or to exercise any other "landlord" remedy (as set forth in such tenant's Lease

or licensee's License Agreement) against such tenant other than to sue for collection. Any sums received by the Subsidiary to which Seller is entitled shall be held in trust for Seller on account of such past due rents payable to the Subsidiary, and Purchaser shall remit to Seller any such sums received by the Subsidiary to which Seller is entitled within ten (10) Business Days after receipt thereof less reasonable, actual costs and expenses of collection, including reasonable attorneys' fees, court costs and disbursements, if any. Seller expressly agrees that if Seller receives any amounts after the Closing Date which are attributable, in whole or in part, to any period from and after the Closing Date, Seller shall hold the same in trust for the Subsidiary and remit to Purchaser that portion of the monies so received by Seller to which the Subsidiary are entitled within ten Business Days after receipt thereof. With respect to Unbilled Tenant Receivables, Purchaser covenants and agrees to cause the Subsidiary to (A) bill the same when billable and (B) cooperate with Seller to determine the correct amount of operating expenses and/or taxes due. Seller shall

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provide Purchaser with the necessary information to bill the same when billable and cooperate with Purchaser to maximize collection of the Unbilled Tenant Receivables. The provisions of this Section 8.3.2(a) shall survive the Closing.

(b) Purchaser acknowledges that the Subsidiary as the landlord under the Leases (and/or as the licensors under the License Agreements) may be collecting from tenants under the Leases (and/or licensees under the License Agreements) additional rent relating to Operating Expenses or Taxes. To the extent that any such additional rent is paid by any tenants to the landlord under the Leases (and/or by any licensees to the licensor under the License Agreements) based on an estimated payment basis (whether monthly, quarterly, or otherwise) for which a future reconciliation of actual Operating Expenses or Taxes to estimated payments of Operating Expenses or Taxes is required to be performed at the end of a reconciliation period, Purchaser and Seller shall determine prior to the Closing whether such tenants and/or licensees have, in the aggregate, made an overpayment or underpayment of additional rent relating to Operating Expenses or Taxes (such determination to be based on a comparison of reasonable estimates of actual annual Operating Expenses and Taxes to the estimated payments being made by such tenants and/or licensees). If such determination indicates that such tenants and/or licensees have made an overpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall receive a credit toward the Purchase Price in the amount of such overpayment and the Subsidiary shall retain all obligations and liabilities relating to such overpayment. If, however, such determination indicates that such tenants and/or licensees have made an underpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall cause the Subsidiary to bill the tenants for the same promptly after the Closing and remit the same to Seller as and when collected. If such review indicates that it cannot be determined as of the Closing Date whether a tenant has overpaid or underpaid its additional rent relating to Operating Expenses or Taxes, Purchaser shall cause the Subsidiary to bill the tenant for the same at the end of the reconciliation period, and any overpayment with respect to the period prior to the Closing Date shall be paid by Seller to Purchaser or any underpayment with respect to the period prior to the Closing Date, when received from the tenant, shall be paid by Purchaser to Seller. Notwithstanding anything contained herein to the contrary, to the extent Purchaser, Seller or the Subsidiary receives a check or wire transfer from any tenant in the exact amount of the item payable by such tenant or referencing the item to which the check or wire transfer relates, such check or wire transfer shall be (i) applied directly to the applicable item or (ii) if such item was previously paid by the Subsidiary during Seller's Ownership Period, reimbursed to Seller, or if such item was paid by the Subsidiary thereafter, reimbursed to Purchaser.

8.4 **Miscellaneous Prorations.** Without duplication of, and to the extent not addressed by Sections 8.1, 8.2 and 8.3, all other items that are customarily subject to proration and adjustment, including without limitation, "Base Rent", shall be prorated as of the Closing Date, it being agreed that for purposes of prorations and adjustments, Purchaser shall be deemed the owner of the Partnership Interests on the Closing Date.

8.5 **Leasing Costs.** Seller agrees to cause the Subsidiary pay or discharge at or prior to Closing (and provide Purchaser with evidence of payment thereof), or provide Purchaser with

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a credit at Closing in the amount of, all leasing commissions, costs for tenant improvements, lease buyout costs, moving allowances, design allowances, legal fees and other costs, expenses and allowances incurred in order to induce a tenant to enter into a Lease or Lease renewal or extension or to induce a licensee to enter into a License Agreement (collectively, the "**Leasing Costs**") that are indicated on **Schedule 9.1.5** as being payable by Seller. Purchaser agrees to cause the Subsidiary to pay all Leasing Costs indicated on **Schedule 9.1.5** as being payable by Purchaser as and when they become due. Seller shall have no obligation to pay, and as of Closing the Subsidiary shall retain, the obligation to pay, all Leasing Costs payable with respect to any option to renew or option to expand that has not been exercised prior to the Effective Date, which obligation shall survive the Closing. Additionally, as of Closing, the Subsidiary shall retain all obligations for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

8.6 **Closing Costs.** Closing costs shall be allocated between Seller and Purchaser in accordance with Section 1.2.

8.7 **Final Adjustment After Closing.** If final bills are not available or cannot be issued prior to Closing for any item being prorated under Sections 8.1, 8.3 and 8.5, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

8.8 **Tenant Deposits.** All tenant and licensee security deposits collected and not applied by the Subsidiary (and interest thereon if required by law or contract) as of the Closing Date shall be retained by the Subsidiary at Closing. As of the Closing, the Subsidiary shall retain their obligations related to tenant and licensee security deposits, but only to the extent the security deposits are retained by the Subsidiary at Closing. Notwithstanding the foregoing provisions of this Section 8.8, deposits in the form of letters of credit will not be transferred or credited at the Closing. All letters of credit will remain in the name of the Subsidiary at Closing. Purchaser and Seller shall each pay one-half (1/2) of the costs and expenses, if any, of delivering the letters of credit to Purchaser. In the event that prior to a transfer of any such letter of credit to Purchaser, Purchaser deems it advisable to cause the Subsidiary to draw on the same, Seller will cooperate in such presentation, and direct payment by virtue of any such presentation to the Subsidiary, and if Seller receives any such payment it will promptly deliver such payment in the form received and endorsed, without recourse, to Purchaser on behalf of the Subsidiary. Purchaser shall defend, indemnify and hold Seller harmless from all claims, causes of actions, actions, damages, costs, liabilities and expenses, including (without limitation) reasonable attorneys' fees, that may arise out of any such presentation or related payment, other than by reason of any actions of Seller other than at the written direction of Purchaser. If any security deposit is held in a form other than cash or a letter of credit, for example, debt or equity securities, at Closing, such debt or equity securities shall continue to be held by the Subsidiary.

8.9 **Commissions.** Seller is responsible to Financial Advisor for a real estate fee at Closing in accordance with a separate agreement between Seller and Financial Advisor and at Closing Seller shall pay to Financial Advisor the entire real estate fee due under the separate

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agreement between Seller and Financial Advisor. Financial Advisor may share its commission with any other financial advisor or licensed broker involved in this transaction. Subject to Seller's representations in this Section 8.9, under no circumstances shall Seller owe a commission or other compensation directly to any financial advisor, broker, agent or person other than Financial Advisor. No affiliate, subsidiary or party related in any way to Purchaser shall claim a commission or fee from Seller or Financial Advisor. Seller represents and warrants to Purchaser that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby other than Financial Advisor, and agrees to and does hereby indemnify and hold Purchaser harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Seller including Financial Advisor. Purchaser represents and warrants to Seller that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby, and agrees to and does hereby indemnify and hold Seller harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Purchaser excluding Financial Advisor. The foregoing indemnifications shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

8.10 **Accounts.** At or prior to Closing, Seller shall cause all then existing accounts in the name of the Subsidiary to be closed and the proceeds therein distributed to Seller.

8.11 **Tax Appeals.** Subject to the rights of tenants under Leases, following the Closing, (i) Purchaser shall have the right to pursue on behalf of the Subsidiary all tax appeals in progress as of the Closing Date which relate to the year of Closing and all subsequent years and (ii) Seller shall have the right to pursue on behalf of the Subsidiary all tax appeals in progress as of the Closing Date which relate to all years prior to the year of Closing (the "**Pre-Closing Tax Appeals**") and any proceeds of the Pre-Closing Tax Appeals shall be the property of Seller unless such proceeds are required to be paid to the tenant under the applicable Lease, in which case, Seller shall promptly upon receipt of such proceeds remit to Purchaser such proceeds less Seller's out-of-pocket costs, including, without limitation, reasonable attorney's fees, incurred in connection with such Pre-Closing Tax Appeal, but in no event less than the amounts owed to the tenant under the applicable Lease. Notwithstanding the foregoing, in no event shall Seller on behalf of the Subsidiary settle any Pre-Closing Tax Appeal without the prior consent of Purchaser, not to be unreasonably withheld, conditioned or delayed, unless Seller is required to settle such Pre-Closing Tax Appeal on behalf of the Subsidiary pursuant to the terms of the applicable Lease. If Seller elects not to pursue on behalf of the Subsidiary any Pre-Closing Tax Appeal, Seller shall so notify Purchaser within a reasonable period after the Closing, and Purchaser, at its option, may elect to pursue on behalf of the Subsidiary such Pre-Closing Tax Appeal, unless Purchaser is required to pursue on behalf of the Subsidiary such Pre-Closing Tax Appeal pursuant to the terms of the applicable Leases, in which case Purchaser shall pursue on behalf of the Subsidiary such Pre-Closing Tax Appeal. With respect to (i) any Pre-Closing Tax Appeal which Seller elects on behalf of the Subsidiary not to pursue and which Purchaser elects or is obligated on behalf of the Subsidiary to pursue, and (ii) any tax appeal in progress as of the Closing Date with respect to the year of Closing, Seller shall cooperate with Purchaser and the Subsidiary, including, without limitation, substituting counsel, making Seller's experts available

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to Purchaser and the Subsidiary and providing Purchaser with copies of such appeals and any relevant documentation. The provisions of this Section 8.10 shall survive the Closing.

## **ARTICLE 9**

### **REPRESENTATIONS AND WARRANTIES**

9.1 **Seller's Representations and Warranties.** Seller represents and warrants to Purchaser that:

9.1.1 **Organization and Authority.** Seller and the Subsidiary are validly existing, and in good standing in the states in which they were formed. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause the Subsidiary to consummate the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller and the Subsidiary at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller the Subsidiary, enforceable in accordance with their terms.

9.1.2 **No Conflicts.** The execution, delivery and performance by Seller and the Subsidiary, as applicable, of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Seller, the Subsidiary, the Partnership Interests or any portion of the Property is bound.

9.1.3 **Consents; Binding Obligations.** No approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Seller or the Subsidiary, as applicable, to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller or the Subsidiary, as applicable, to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller or the Subsidiary, as applicable, are and shall be valid, legally binding obligations of and enforceable against Seller and the Subsidiary in accordance with their terms.

9.1.4 **Pending Actions.** Except as set forth on **Schedule 9.1.4**, there is no action or proceeding pending or threatened against Seller or the Subsidiary including, but not limited to, those relating to the Partnership Interests, the Subsidiary Agreement, the Real Property, the Improvements, the Leases, the Guaranties, the Tangible Personal Property or the Intangible Personal Property.

9.1.5 **Leases, Guaranties, Tenants and Guarantors.** **Schedule 1.1.21(2)** is a true, correct and complete list of all Leases, Guaranties, tenants and guarantors in effect as of the Effective Date. Seller has delivered, or has caused the Subsidiary to deliver, or has made available to Purchaser true, correct and complete copies of the Leases and the Guaranties. To Seller's knowledge, no tenant or guarantor of any Lease has been released or discharged,



voluntarily or involuntarily, or by operation of law, from any obligation related to such Lease. To Seller's knowledge, Seller and the Subsidiary have not received notice of any default under, and to Seller's knowledge, no other party is in default under, any of its obligations under any of the Leases or Guaranties, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder (other than with respect to the curtain wall on the Property as referenced in that certain Curtain Wall Snap Cover Failure Investigation prepared by Wiss, Janney, Elstner Associates, Inc. dated April 23, 2010, which Purchaser has knowledge of). Without limiting the foregoing, to Seller's knowledge, Seller and the Subsidiary have not received any notice from any tenant or guarantor under the Guaranties asserting any presently accrued defenses, offsets or disputes thereunder. The Rent Roll is true and correct in all material respects. Except as disclosed on **Schedule 9.1.5**, there are no Leasing Costs or other obligations to brokers due or which will become due under any of the Leases, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement. Except as disclosed on **Schedule 9.1.5**, all Leasing Costs have been fully paid and satisfied by Seller, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

9.1.6 **Service Contracts and License Agreements.** To Seller's knowledge, **Schedule 9.1.6** is a true, correct and complete list of all Service Contracts and License Agreements with respect to the Property. To Seller's knowledge, Seller has delivered or caused the Subsidiary to deliver true, correct and complete copies of the Service Contracts and License Agreements to Purchaser. To Seller's knowledge, Seller and the Subsidiary have not received notice of any default under, and to Seller's knowledge, no other party is in default under, any of its obligations under any of the Service Contracts or License Agreements, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller's knowledge, Seller and the Subsidiary have not received any notice from any party under the Service Contracts or License Agreements asserting any presently accrued defenses, offsets or disputes thereunder.

9.1.7 **Notices from Governmental Authorities.** To Seller's knowledge, except as set forth on **Schedule 9.1.7** or as may be reflected by the Property Documents or otherwise disclosed by Seller to Purchaser in writing, Seller and the Subsidiary have not received from any governmental authority during the Seller's Ownership Period written notice of any violation of any laws, that has not been corrected.

9.1.8 **Prohibited Persons and Transactions.** Neither Seller nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.1.9 **Operating Statements.** The Operating Statements delivered by Seller or made available to Purchaser are true and complete copies of the operating statements for the Property which Seller and the Subsidiary rely upon for the purposes of operating the Property.

9.1.10 **Insurance.** **Schedule 9.1.10** is a true, correct and complete list of the insurance maintained by Seller and the Subsidiary with respect to the Property. Seller, and the Subsidiary have not received any written notice or request from any insurance company requesting the performance of any work or alteration with respect to the Property, which have not been fully and completely corrected. Seller and the Subsidiary have not received written notice from any insurance company concerning any defects or inadequacies in the Property, which, if not corrected, would result in the termination of insurance coverage or increase its cost.

9.1.11 **Employees.** There are no employees of Seller or the Subsidiary employed in connection with the use, management, maintenance or operation of the Property whose employment will continue after the Closing Date. There is no bargaining unit or union contract relating to any employees of Seller or the Subsidiary.

9.1.12 **Third Party Agreements.** Other than the Leases, the License Agreements, the Service Contracts, the Permitted Exceptions and the agreements set forth on **Schedule 9.1.12**, there are no agreements to which Seller or the Subsidiary is party to. To Seller's knowledge, except as set forth on **Schedule 9.1.12**, Seller is not in default of, and no other party is in default of, any of its obligations under any of the agreements set forth on **Schedule 9.1.12**, and there is no event which, with the giving of notice or passage of time, or both, would be a default thereunder.

9.1.13 **Seller's Representatives.** Seller's Representatives are the individuals involved in supervising Seller's and the Subsidiary's ownership, operation, and maintenance of the Property, have knowledge of the operation and maintenance of the Property and have reviewed the representations of Seller set forth in, and the schedules and exhibits referenced in, this Section 9.1.13.

9.1.14 **Ownership.** (A) LP Seller is the sole limited partner of, and owns ninety-nine percent (99%) of the partnership interests in, the Subsidiary, and (B) GP Seller is the sole general partner of, and owns one percent (1%) of the partnership interests in, the Subsidiary. Except for the liens, encumbrances, liabilities, claims, covenants and restrictions relating to that portion of the GE Loan secured by the Partnership Interests and the Property, which will be repaid, (i) LP Seller owns its interests in the Subsidiary free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same and LP Seller has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interests or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interests, and (ii) GP Seller owns its interests in the Subsidiary free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same and GP Seller has not transferred,

assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interests or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such.

9.1.15 **Intentionally Deleted.**

9.1.16 **Subleases.** Schedule 9.1.16 is a true, correct and complete list of all subleases covering the Property acknowledged, or consented to, by Seller and such additional subleases as to which Seller has knowledge of.

9.1.17 **Subsidiary Agreement.** Seller has delivered to Purchaser a true, complete and accurate copies of the Subsidiary Agreement, and all amendments thereto, all of which are each in full force and effect and have not been amended or modified, and there has been no material default by Seller or the Subsidiary under the Subsidiary Agreement.

9.1.18 **Subsidiary.** Other than the Subsidiary, there are no corporations, partnerships, joint ventures, associations or other entities in which Seller owns, of record or beneficially, any direct or indirect equity or other interest or any right to acquire same.

9.1.19 **Books and Records.** The Books and Records contain accurate records of all meetings and accurately reflect all other actions taken by the members, boards of directors and all committees of the Subsidiary. Complete and accurate copies of all Books and Records of the Subsidiary have been provided by Seller to the Purchaser.

9.1.20 **Bankruptcy.** No petition in bankruptcy (voluntary or, to Seller's knowledge, involuntary), assignment for the benefit of creditors or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or, to Seller's knowledge, threatened against the Subsidiary.

9.1.21 **Permitted Liabilities.** The Subsidiary have no liabilities other than (i) those reflected on the consolidated balance sheet of each respective entity, dated as of March 31, 2010 (collectively, the "**Balance Sheets**") and (ii) liabilities incurred in the ordinary course of the Subsidiary's business related to the Property from April 1, 2010 through the Effective Date, which ordinary course liabilities (A) shall not materially exceed the corresponding line items for such ordinary course liabilities set forth in the Balance Sheets and (B) are subject to Purchaser's consent rights otherwise contained in this Agreement (items (i) and (ii) of this Section 9.1.19 are referred to herein collectively as, the "**Permitted Liabilities**"), which Permitted Liabilities shall be paid prior to or at Closing except for Permitted Liabilities prorated in accordance with the terms of this Agreement.

9.1.22 **Financial Statements.** Seller has delivered to Purchaser true, correct and complete copies of the Financial Statements. The Financial Statements present fairly in all material respects the financial position, results of operations and cash flows of the Subsidiary as of the dates thereof and for the periods covered thereby, in accordance with GAAP applied on a consistent basis.

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9.1.23 **Taxes and Tax Returns.** The Subsidiary do not file federal, state or local tax returns. The taxable financial results of the Subsidiary are included in the consolidated federal, state and local tax returns filed by iStar.

9.1.24 **Undisclosed Liabilities.** There is no basis for any present action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against the Subsidiary giving rise to any liability, except for (i) liabilities set forth on the Financial Statements and (ii) the Permitted Liabilities.

9.1.25 **Collective Bargaining and Employee Plans.** Neither Seller nor the Subsidiary is a party to any collective bargaining or similar agreement with respect to the Property. As of the date hereof, there are no employee benefit plans or arrangements with respect to the Subsidiary.

9.2 **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

9.2.1 **Organization and Authority.** Purchaser is validly existing as a limited liability company in good standing in the State of Delaware. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby, and this Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

9.2.2 **No Conflicts.** The execution, delivery and performance by Purchaser of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Purchaser is bound.

9.2.3 **Consents; Binding Obligations.** Except as set forth in Section 9.2.1, (a) no approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Purchaser to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Purchaser to consummate the transaction contemplated hereby, and (b) this Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

9.2.4 **Pending Actions.** There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

9.2.5 **ERISA.** (a) Purchaser is neither (i) an "employee benefit plan" (as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended ("**ERISA**")) which is subject to Title I of ERISA (an "**ERISA Plan**"), nor (ii) a "plan" (as

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defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”) which is subject to Section 4975 of the Code (a “**Code Plan**”); (b) the assets of Purchaser do not constitute “plan assets” (as defined in Section 3(42) of ERISA) of one or more ERISA Plans or Code Plans (“**Plan Assets**”) because, at the time of the Closing, the stock of Purchaser’s parent constitutes “publicly offered securities” (as defined in 29 C.F.R. Section 2510.3-101(b)(2)), which parent owns one hundred percent (100%) of the issued and outstanding equity of Purchaser; (c) Purchaser is not using Plan Assets in the performance or discharge of its obligations under this Agreement; (d) Purchaser is not a “governmental plan” (within the meaning of Section 3(32) of ERISA) and assets of Purchaser do not constitute plan assets of one or more such plans; and (e) transactions by or with Purchaser are not in violation of state statutes applicable to Purchaser regulating investments of and fiduciary obligations with respect to governmental plans.

9.2.6 **Prohibited Persons and Transactions.** Neither Purchaser nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.2.7 **Availability of Funds.** Subject to obtaining the financing contemplated by the Fixed Rate Term Sheet, the Floating Rate Term Sheet and the Mezzanine Loan as provided in Section 4.3.2, Purchaser currently has available and will at the Closing have available sufficient funds to pay the Purchase Price and to pay any and all other amounts payable by Purchaser pursuant to this Agreement and to effect the transactions contemplated hereby.

9.3 **Survival of Representations and Warranties.** The representations and warranties set forth in this Article 9 are made as of the Effective Date, are remade as of the Closing Date (subject to update for Updated Property Information pursuant to Section 4.4 and, changes that are not the result of a breach by Seller or Purchaser or any of their covenants in this Agreement), and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of nine (9) months (the “**Survival Period**”). Terms such as “to Seller’s knowledge,” “to the best of Seller’s knowledge” or like phrases mean the actual knowledge of the following persons: Barclay Jones, Executive Vice President, Michael Dorsch, Executive Vice President, Samantha Garbus, Senior Vice President, Nancy Zoeckler, Senior Vice President, Mary-Beth Roselle, Senior Vice President, Scott Quigle, Vice President, Carrie Crain, Vice President and the persons whose names are set forth on **Schedule 9.3** (the foregoing persons are referred to herein collectively as, the “**Seller’s Representatives**”), without any duty of inquiry or investigation except in connection with such persons’ review of the representations and warranties of Seller set forth in Section 9.1 hereof as provided in Section 9.1.13 hereof; provided that so qualifying Seller’s knowledge shall in no event give rise to any personal liability on the part of Seller’s Representatives, or any of them, or any other officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge or knowledge Seller or such persons do not have but could have obtained through further investigation or

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inquiry. No financial advisor, broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Subject to Section 9.4 hereof and Sections 9.4 of the Harborside Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement, each party shall have the right to bring an action against the other on the breach of a representation or warranty or covenant hereunder or in the documents delivered by Seller at the Closing, but only on the following conditions: (1) the party bringing the action for breach first learns of the breach after Closing and files such action within the Survival Period, (2) Seller shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Seller on account of such breach (individually or when combined with damages from other breaches including damages on account of breaches by Purchaser under the Other Purchase and Sale Agreements) equals or exceeds \$5,000,000, in which event Purchaser shall be liable to Seller for one-half of all such damage up to \$5,000,000 and for all damage above \$5,000,000, and (3) Purchaser shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Purchaser on account of such breach (individually or in the aggregate) equals or exceeds (i) \$2,000,000 if such breach relates to the Property and the Partnership Interests, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$2,000,000 and for all such damage above \$2,000,000 with respect to the Property and the Partnership Interests or (ii) \$5,000,000 for the Property, the Acquired Properties and the Other Real Property, in which event Seller shall be liable (without duplication of any claims made pursuant to subclause (i) of this clause (3)) to Purchaser for one-half of all such damage up to \$5,000,000 and for all such damage above \$5,000,000 with respect to the Property, the Acquired Properties and the Other Real Property, subject to the further provisions of this Section 9.3. Neither party shall have any liability after Closing for the breach of a representation or warranty or covenant hereunder of which the other party hereto had actual knowledge as of Closing. Notwithstanding any other provision of this Agreement or of any closing deliveries of Seller contemplated by this Agreement: (a) subject to Section 9.4 hereof and Sections 9.4 of the Harborside Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement and other than Leasing Costs, or any rights which Purchaser might otherwise have at law, equity, or by statute, whether based on contract or some other claim, Purchaser agrees that any liability of Seller to Purchaser pursuant to this Section 9.3 and any liability of Other Sellers pursuant to Sections 9.3 of the Other Purchase and Sale Agreements will in the aggregate be limited to five percent (5%) of the aggregate Purchase Price of the Acquired Properties and (b) there shall be no threshold or limitation or limitation on survival on Seller’s obligation to pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs), whether or not the obligations to pay any Leasing Costs first becomes known to Purchaser before, at or after the Closing; i.e., Seller shall pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs) regardless of the amount thereof and regardless of when the Leasing Cost becomes known to Purchaser. In no event shall either party be liable to the other party for incidental, consequential, or punitive damages as a result of the breach of any or all representations or warranties set forth in this Agreement. The provisions of this Section 9.3 shall survive the Closing. Any breach of a representation or warranty or covenant that occurs prior to Closing shall be governed by ARTICLE 10.

9.4 **Company Representations.** Anything in this Agreement to the contrary notwithstanding, including Section 9.3, (i) there shall be no cap or floor on liability and

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Purchaser shall not share in such liability pursuant to Section 9.3, for any misrepresentation or other breach of any representation or warranty contained in the following subsections of this Agreement and such subsections shall survive the Closing without limitation: Sections 9.1.1, 9.1.2, 9.1.3, 9.1.4, 9.1.14, 9.1.17, 9.1.18, 9.1.20, 9.1.22 and 9.1.23, (ii) there shall be no cap or floor on liability and the Survival Period shall be two (2) years from Closing and Purchaser shall

not share in such liability pursuant to Section 9.3, for any misrepresentation or other breach of any representation or warranty contained in the following subsections of this Agreement: Sections 9.1.19, 9.1.21 and 9.1.24, and (iii) the Survival Period for Section 9.1.12 shall be two (2) years from Closing and remain subject to the caps, floors, and sharing of liability as set forth in Section 9.3 (items (i), (ii) and (iii) of this Section 9.4 are referred to herein collectively as, the “**Company Representations**”), subject to the applicable statutes of limitation. Seller and iStar (“**Indemnitior**”) shall each indemnify Purchaser and hold Purchaser harmless from and against, any and all claims, liabilities, damages, losses, costs or expenses (including reasonable attorneys’ fees) incurred by Purchaser arising from the Company Representations. This Section 9.4 shall survive the Closing.

## **ARTICLE 10** **DEFAULT AND REMEDIES**

10.1 **Seller’s Remedies.** If Purchaser defaults on its obligations hereunder or under the Other Purchase and Sale Agreements at or prior to Closing for any reason, or if prior to Closing any one or more of Purchaser’s representations or warranties or covenants hereunder, or under the Other Purchase and Sale Agreements, are breached in any material respect that impairs Purchaser’s ability to close under this Agreement or under the Other Purchase and Sale Agreements and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Seller or the Closing Date (except no notice or cure period shall apply if Purchaser fails to consummate the purchase of the Partnership Interests hereunder or the other Acquired Properties pursuant to the Other Purchase and Sale Agreements), Seller shall be entitled, as its sole remedy hereunder (except as provided in Sections 4.10, 8.8, 10.3 and 10.4 hereof), to terminate this Agreement. Notwithstanding anything in this Section 10.1 to the contrary, in the event of Purchaser’s default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Partnership Interests or the Property that would otherwise delay or prevent Seller from having clear, indefeasible and marketable title to the Partnership Interests or the Property. In all other events Seller’s remedies shall be limited to those described in this Section 10.1 and Sections 4.10, 8.8, 10.3 and 10.4 hereof. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Purchaser fails to perform any obligation of Purchaser under this Agreement. IN NO EVENT SHALL PURCHASER’S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTNERSHIP INTERESTS OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

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10.2 **Purchaser’s Remedies.** If Seller defaults on its obligations hereunder, or Other Sellers default in their obligations under the Other Purchase and Sale Agreements at or prior to Closing for any reason, or if prior to Closing any one or more of Seller’s, or, with respect to the Other Purchase and Sale Agreements, Other Sellers’, representations or warranties or covenants are breached in any material respect (subject to the provisions of Section 4.4 hereof and of the Other Purchase and Sale Agreements and the first Sentence of Section 9.3 hereof and of the Other Purchase and Sale Agreements), and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Purchaser or the Closing Date (except no notice or cure period shall apply if Seller fails to consummate the sale of the Partnership Interests hereunder or Other Sellers fail to consummate the sale of the other Acquired Properties under the Other Purchase and Sale Agreements), Purchaser shall elect, as its sole remedy hereunder, either to (a) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing, (b) enforce specific performance to consummate the sale of the Partnership Interests hereunder, or (c) waive said failure or breach and proceed to Closing without any reduction in the Purchase Price. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement in its entirety if Purchaser fails to deliver to Seller written notice of its intent to proceed otherwise on or before ten (10) Business Days following the scheduled Closing Date or, having given notice that it intends to seek specific performance, fails to file a lawsuit asserting such claim or cause of action in New York County, New York within two months following the scheduled Closing Date. EXCEPT FOR iSTAR’S POTENTIAL LIABILITY PURSUANT TO THE MEZZANINE LOAN AND SECTION 9.4, IN NO EVENT SHALL SELLER’S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTNERSHIP INTERESTS OR PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.3 **Attorneys’ Fees.** In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys’ fees, incurred in connection with such claims.

10.4 **Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to the Title Company for preparation and/or cancellation of the Title Commitment.

## **ARTICLE 11** **DISCLAIMERS, RELEASE AND INDEMNITY**

11.1 **Disclaimers By Seller.** Except as expressly set forth in this Agreement and/or the Closing documents, it is understood and agreed that Seller and the Subsidiary and Seller’s and the Subsidiary’s agents or employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Partnership Interests, the Property, including, but not

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limited to, warranties, representations or guaranties as to (a) matters of title, (b) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Property, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) zoning or building entitlements to which the Property or any

portion thereof may be subject, (i) the availability of any utilities to the Property or any portion thereof, including, without limitation, water, sewage, gas and electric, (j) usages of adjoining property, (k) access to the Property or any portion thereof, (l) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (m) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (n) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (o) any other matter affecting the stability and integrity of the Property, (p) the potential for further development of the Property, (q) the merchantability of the Property or fitness of the Property for any particular purpose, (r) the truth, accuracy or completeness of the Property Documents or Updated Property Information, (s) tax consequences, or (t) any other matter or thing with respect to the Property.

11.2 **Sale “As Is, Where Is”.** Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Partnership Interests and all beneficial interests arising therefrom **“AS IS, WHERE IS, WITH ALL FAULTS,”** except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Purchaser at Closing. Except as expressly set forth in this Agreement or such Closing documents, Purchaser has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Partnership Interests, the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, financial advisor, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Purchaser’s consultants in purchasing the Partnership Interests and shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Partnership Interests

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and the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions of the Property, and shall rely upon same. Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Partnership Interests and the Property as Purchaser deemed necessary to satisfy itself as to the Partnership Interests and the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser’s inspections and investigations. Purchaser hereby represents and warrants to Seller that: (a) Purchaser is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Purchaser is purchasing the Partnership Interests for business, commercial, investment or other similar purpose. Purchaser waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

11.3 **Seller Released from Liability.** Purchaser acknowledges that it has had the opportunity to inspect the Property and observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Purchaser deems necessary, and, except as set forth herein or in any Closing document, Purchaser hereby FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability, including without limitation, liabilities and responsibilities for the landlord’s obligations under the Leases relating to the physical, environmental or legal compliance status of the Property, arising after the Effective Date, and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended (**“CERCLA”**), regarding the condition, valuation, salability or utility of the Property or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Except as set forth herein or in any closing documents, Purchaser further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property are or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, including, without limitation, the landlord’s obligations under the Leases relating to the physical, environmental or legal compliance status of the Property, arising after the Effective Date. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

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11.4 **“Hazardous Materials” Defined.** For purposes hereof, **“Hazardous Materials”** means **“Hazardous Material,” “Hazardous Substance,” “Pollutant or Contaminant,”** and **“Petroleum”** and **“Natural Gas Liquids,”** as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

11.5 **Intentionally Deleted.**

11.6 **Survival.** The terms and conditions of this ARTICLE 11 shall expressly survive the Closing, and shall not merge with the provisions of any closing documents.

Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Partnership Interests to Purchaser for the Purchase Price without the disclaimers and other agreements set forth above.

12.1 **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may, at Purchaser's sole cost and expense and at no cost or expense to Seller, assign its rights under this Agreement upon the following conditions: (a) the assignee of Purchaser must be (i) an entity controlling, controlled by, or under common control with Purchaser or (ii) an entity advised by an affiliate of Purchaser's advisor, Dividend Capital Total Advisors LLC, (b) Intentionally Deleted, (c) Intentionally Deleted, (d) the assignee of Purchaser shall assume all obligations of Purchaser hereunder, but Purchaser shall remain primarily liable for the performance of Purchaser's obligations, (e) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at least five (5) Business Days prior to Closing, (f) the requirements in Section 12.17 are satisfied and (g) such assignment shall in no event delay the Closing.

12.2 **Headings.** The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

12.3 **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

12.4 **Governing Law.** This Agreement shall be governed in all respects, including validity, construction, interpretation and effect, by the laws of the State of New York, without

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giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction. Each of Purchaser and Seller hereby (i) irrevocably submits to the jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the State, City and County of New York for the purpose of any action or proceeding arising out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a New York state court or federal court located in the State, City and County of New York. Each of Purchaser and Seller hereby consents to and grants any such court jurisdiction over the person of such party and over the subject matter of any such dispute and agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.10, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof on such party.

12.5 **Survival.** The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing (other than any unfulfilled closing conditions which have been waived or deemed waived by the other party) shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

12.6 **Entirety and Amendments.** The exclusivity obligations and covenants set forth in that certain letter of intent dated April 2, 2010 between iStar Financial Inc., on behalf of Seller, and Purchaser are hereby incorporated herein and made a part of this Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Schedules and Exhibits hereto are incorporated herein by this reference for all purposes. All information disclosed on any one Schedule and not disclosed on the other Schedules shall, to the extent applicable, be deemed to be disclosed on such other Schedules.

12.7 **Time.** Time is of the essence in the performance of this Agreement.

12.8 **Intentionally Omitted.**

12.9 **No Electronic Transactions.** The parties hereby acknowledge and agree this Agreement shall not be executed, entered into, altered, amended or modified by electronic means. Without limiting the generality of the foregoing, the parties hereby agree the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in the "Notices" section of this Agreement.

12.10 **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by

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personal delivery, or (d) by Portable Document Format (PDF) so long as a copy thereof is also sent by one of the other delivery methods set forth in Sections 12.10(a), (b) or (c). Notice given in accordance herewith for all permitted forms of notice other than by electronic mail, shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee. In no event shall this Agreement be altered, amended or modified by electronic mail or electronic record. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

12.11 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.12 **Calculation of Time Periods; Business Day.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described herein shall be deemed to end at midnight local time in New York, New York. As used herein, the term “**Business Day**” means any day that is not a Saturday, Sunday or legal holiday for national banks in the City of New York, New York or Colorado.

12.13 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

12.14 **Recordation.** Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum or affidavit by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon Seller shall have the remedies set forth in Section 10.1 hereof. In addition to any such remedies, Purchaser shall be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit, and Purchaser’s obligations pursuant to this Section 12.14 shall survive any termination of this Agreement as a surviving obligation.

12.15 **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the transfer of the Partnership Interests to Purchaser.

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12.16 **Discharge of Obligations.** The acceptance of the Partnership Interests Power by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

12.17 **ERISA.** Under no circumstances shall Purchaser have the right to assign this Agreement to any person or entity owned or controlled by an “employee benefit plan” (as defined in Section 3(3) of ERISA) if Seller’s sale of the Partnership Interests to such person or entity would, in the reasonable opinion of Seller’s ERISA advisors or consultants, create or otherwise cause a “prohibited transaction” under ERISA or any other applicable law with an effect similar to that of Section 406 of ERISA including, but not limited to, Section 4975 of the Code (each such law, a “**Similar Law**”). In the event Purchaser assigns this Agreement or transfers any ownership interest in Purchaser, and such assignment or transfer would make the consummation of the transaction hereunder a “prohibited transaction” under ERISA or any Similar Law and would therefore either (a) necessitate the termination of this Agreement, or (b) cause Seller to incur liability under ERISA or such Similar Law if the transaction were consummated, then, in either case, notwithstanding any contrary provision which may be contained herein, Seller shall have the right to terminate this Agreement and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof. Anything in this Section 12.17 to the contrary notwithstanding, Seller shall have no right to terminate this Agreement under this Section 12.17 if Purchaser’s assignee expressly reaffirms in a writing addressed to Seller the representation in Section 9.2.5.

12.18 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing, except that a tenant of the Property may enforce Purchaser’s indemnity obligation under Section 4.10 hereof.

12.19 **Reporting Person.** Purchaser and Seller hereby designate First American as the “reporting person” pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986, as amended.

12.20 **Post-Closing Access.** From and after the Closing, the Purchaser will, at Seller’s sole cost and expense, permit Seller and Seller’s agents and representatives access (and will permit copying of materials pertaining to the period prior to the Closing), during business hours from time to time, to the Lease Files and other Property-related information upon reasonable advance notice to the Purchaser. This Section 12.20 shall survive the Closing.

12.21 **Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN SELLER AND PURCHASER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS

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CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN SELLER AND PURCHASER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12.22 **Information and Audit Cooperation.** Within 75 days after the Closing Date, Seller, at Purchaser’s sole cost and expense and at no cost or expense to Seller, shall allow Purchaser’s auditors access to the books and records of Seller relating to the operation of the Property for the two (2) year period prior to the Closing Date to enable Purchaser to comply with any financial reporting requirements applicable to Purchaser, upon at least three (3) Business Days prior written notice to Seller. In addition, Seller shall provide Purchaser’s designated independent auditors a representation letter regarding the books and records of the Property in substantially the form attached hereto as Exhibit H.

12.23 **Bulk Sales Laws.** Seller shall (i) comply with the bulk transfer requirements of the state in which the Property is located, (ii) keep Purchaser apprised of Seller's compliance with such requirements and (iii) indemnify, defend and hold Purchaser harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature which arise out of the failure of Seller to so comply with such requirements.

[SIGNATURE PAGES, SCHEDULES AND EXHIBITS TO FOLLOW]

SIGNATURE PAGE TO AGREEMENT OF  
PURCHASE AND SALE  
BY AND BETWEEN  
iSTAR CTL HOLDCO LLC,  
AS SELLER  
AND  
TRT ACQUISITIONS LLC,  
AS PURCHASER

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**PURCHASER:**

**TRT ACQUISITIONS LLC**, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran  
Name: Greg M. Moran  
Title: Vice President  
Date: June 25, 2010

**SELLER:**

**iSTAR NG INC.**, a Delaware corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: June 25, 2010

**iSTAR NG GENPAR INC.**, a Delaware corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: June 25, 2010

**AGREED TO FOR PURPOSES OF SECTION 4.3.2 AND 9.4:**

**iSTAR FINANCIAL INC.**, a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President  
Date: June 25, 2010



## MEMBER INTEREST PURCHASE AND SALE AGREEMENT

BETWEEN

iSTAR CTL HOLDCO LLC,  
AS SELLER

AND

TRT ACQUISITIONS LLC,  
AS PURCHASER

DATED: JUNE 25, 2010

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## MEMBER INTEREST PURCHASE AND SALE AGREEMENT

This Member Interest Purchase and Sale Agreement (this “**Agreement**”) is made and entered into by and between Purchaser and Seller.

### RECITALS

A. Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein, whether or not such terms are used before or after the definitions are set forth.

B. Purchaser desires to purchase the Membership Interests and Seller desires to sell the Membership Interests, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

### ARTICLE 1 BASIC INFORMATION

1.1 **Certain Basic Terms.** The following defined terms shall have the meanings set forth below:

1.1.1 “**Seller**”: iStar CTL Holdco LLC, a Delaware limited liability company.

1.1.2 “**Purchaser**”: TRT Acquisitions LLC, a Delaware limited liability company.

1.1.3 “**Purchase Price**”: \$31,400,000.00; subject to adjustment as provided herein. It is acknowledged and agreed by Purchaser and Seller that the Purchase Price of the Membership Interests is only for purposes of tax reporting and calculation, accounting and allocation. In no event shall the Purchase Price of the Membership Interests be deemed or construed to reflect the sales price of the Membership Interests or the Property in a stand alone transaction.

1.1.4 “**Other Purchase and Sale Agreements**”: collectively, the Portfolio Purchase and Sale Agreement, the NG Partnership Interests Purchase and Sale Agreement and the Harborside Purchase and Sale Agreement.

1.1.5 “**Title Company**”:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Chicago, Illinois 60602

Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

And

Fidelity Title Insurance Company  
8450 E. Crescent Parkway, Suite 410  
Greenwood Village, CO 80111  
Attn: Ms. Valena Bloomquist  
Telephone number: (303) 244-9198  
Facsimile number: (720) 489-7593  
E-mail: valena.bloomquist@fnf.com

1.1.6 “**Escrow Agent**”:

First American Title Insurance Company  
National Commercial Services — Chicago  
30 North LaSalle Street, Suite 2700  
Attn: John E. Beckstedt, Jr.  
Telephone number: (312) 917-7223  
Facsimile number: (888) 279-8547  
E-mail: jbeckstedt@firstam.com

1.1.7 “**Financial Advisor**”: HFF Securities L.P., an affiliate of Holliday Fenoglio Fowler, LP.

1.1.8 “**Effective Date**”: The date on which this Agreement is executed by the latter to sign of Purchaser or Seller, as indicated on the signature page of this Agreement. If the execution date is left blank by either Purchaser or Seller, the Effective Date shall be the execution date inserted by the other party.

1.1.9 **Intentionally Deleted.**

1.1.10 **Intentionally Deleted.**

1.1.11 “**Closing Date**”: June 29, 2010, or such earlier date as may be agreed to in writing by Purchaser and Seller.

1.1.12 “**Confidentiality Agreement**”: The letter agreement dated March 31, 2010 between iStar Financial Inc., an affiliate of Seller (“iStar”), and Purchaser.

1.1.13 “**NG LP**”: iStar NG LP, a Delaware limited partnership.

1.1.14 **Intentionally Deleted.**

1.1.15 **Intentionally Deleted.**

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1.1.16 “**Subsidiary**”: iStar CTL Sunset Hills — Reston LLC, a Delaware limited liability company, in each case, to the extent applicable.

1.1.17 “**NG Partnership Interests**” one hundred percent (100%) of the partnership interests in NG LP.

1.1.18 “**Portfolio Purchase and Sale Agreement**”: That certain Purchase and Sale Agreement between Purchaser and certain sellers a party thereto (individually or collectively as the context requires, “**Portfolio Seller**”), dated as of May 3, 2010, as amended by that certain First Amendment to Purchase and Sale Agreement, dated as of May 11, 2010, as further amended by that certain Second Amendment to Purchase and Sale Agreement, dated as of May 21, 2010, as further amended by that certain Third Amendment to Purchase and Sale Agreement, dated as of June 24, 2010 and as further amended by that certain Fourth Amendment to Purchase and Sale Agreement dated as of the date hereof.

1.1.19 “**Portfolio Property**”: Those certain properties described in the Portfolio Purchase and Sale Agreement.

1.1.20 “**Subsidiary Agreement**”: that certain Limited Liability Company Agreement of the Subsidiary dated April 28, 2008, and any amendments thereto.

1.1.21 “**Property**”: collectively, the following property:

(1) **Real Property**. The land described in Exhibit A hereto (the “**Land**”), together with (a) all improvements located thereon, including, without limitation, that certain office building, but expressly excluding improvements and structures owned by any tenant or other third party pursuant to the Leases (the “**Improvements**”), (b) all right, title and interest of the Subsidiary, if any, in and to the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, including without limitation, any and all minerals and mineral rights, oil, gas, and oil and gas rights, development rights, air rights, water and water rights, wells, well rights and well permits, water and sewer taps, and sanitary or storm sewer capacity, and (c) all right, title, and interest of the Subsidiary, if any, in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining the Land (the Land, together with items (a), (b) and (c) of this Section 1.1.21(1), collectively, the “**Real Property**”).

(2) **Leases and Guaranties**. All of the Subsidiary’s right, title and interest, without warranty except as set forth herein, in those existing leases and subleases, including any amendments to such leases and subleases made by the Subsidiary, described on **Schedule 1.1.21(2)** and all leases or subleases which may be made by the Subsidiary after the Effective Date and prior to Closing as permitted by this Agreement (individually a “**Lease**” and collectively the “**Leases**”), all guaranties of such Leases, including any amendments to such guaranties, described on **Schedule 1.1.21(2)** (individually a “**Guaranty**” and

collectively the “**Guaranties**”), and all other collateral securing the Leases or Guaranties, including without limitation all security deposits and letters of credit.

(3) **Tangible Personal Property.** All of the Subsidiary’s right, title and interest, without warranty, except as set forth herein, in the equipment, machinery, furniture, furnishings, supplies and other tangible personal property, if any, owned by the Subsidiary and now or hereafter located in and used in connection with the operation, ownership or management of the Real Property, but specifically excluding any items of personal property owned or leased by any tenants at or on the Real Property and further excluding any items of personal property owned by third parties and leased to the Subsidiary (collectively, the “**Tangible Personal Property**”), which excluded items of personal property are listed on **Schedule 1.1.21(3)**.

(4) **Intangible Personal Property.** All of the Subsidiary’s right, title and interest, if any, without warranty, except as set forth herein, in all intangible personal property related to the Real Property and the Improvements, including, without limitation: all trade names and trade marks associated with the Real Property and the Improvements, including the Subsidiary’s rights and interests, if any, in the name of the Real Property; the plans and specifications and other architectural and engineering drawings for the Improvements, if any; contract rights related to the operation, ownership or management of the Real Property, including maintenance, service, construction, supply and equipment rental contracts, if any, but not including Leases or License Agreements (collectively, the “**Service Contracts**”); warranties; governmental permits, approvals and licenses, if any; and telephone exchange numbers (all of the items described in this Section 1.1.21(4) collectively referred to as the “**Intangible Personal Property**”). Tangible Personal Property and Intangible Personal Property shall not include (a) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including, without limitation, budgets prepared by or on behalf of Seller and the Subsidiary or any affiliate of Seller or the Subsidiary, (b) any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property, Seller and/or the Subsidiary, or which are subject to a confidentiality agreement, (c) such documents, materials or information received by Seller or the Subsidiary from tenants and covered by confidentiality agreements between such tenants and Seller or the Subsidiary, except that such documents, materials or information shall be included in Tangible Personal Property if Purchaser shall have agreed in writing to be bound by the terms of such confidentiality agreements prior to Seller’s delivery of such documents, materials and information to Purchaser, and (d) any trade name, mark or other identifying material that includes the name “iStar” or any derivative thereof.

(5) **License Agreements.** All of the Subsidiary’s right, title and interest, without warranty, except as set forth herein, in and to all agreements (other than the Leases and the Guaranties), if any, for the leasing or licensing of

rooftop space or equipment, cable access and other space, telecommunications equipment, equipment and facilities that are located on or within the Real Property and generate income to the Subsidiary as the owner of the Real Property, including agreements which may be made by the Subsidiary after the Effective Date and prior to Closing as permitted by this Agreement (the “**License Agreements**”).

1.1.22 **“Books and Records”:** collectively, all books and records maintained by Seller and the Subsidiary in connection with the ownership or operation of the Property or with respect to corporate matters of the Subsidiary.

1.1.23 **“Extended Coverage”:** means the deletion of exceptions 2, 3, 4 and 5 from Schedule B — Section 2 of the Title Commitment.

1.1.24 **“Seller’s Ownership Period”:** The period beginning on December 4, 2003 and continuing through the Closing Date.

1.1.25 **“Harborside Purchase and Sale Agreement”:** That certain Member Interest Purchase and Sale Agreement between Purchaser and iStar Harborside LLC, a Delaware limited liability company (“**Harborside Seller**”), dated as of May 3, 2010, as amended by that certain First Amendment to Member Interest Purchase and Sale Agreement, dated as of May 11, 2010, as further amended by that certain Second Amendment to Member Interest Purchase and Sale Agreement, dated as of May 21, 2010, as further amended by that certain Third Amendment to Member Interest Purchase and Sale Agreement, dated as of June 24, 2010 and as further amended by that certain Fourth Amendment to Member Interest Purchase and Sale Agreement dated as of the date hereof.

1.1.26 **“Harborside”:** The property commonly known as Harborside Financial Center Plaza X, Jersey City, New Jersey.

1.1.27 **“Harborside Membership Interests”:** The one hundred percent (100%) membership interests in American Financial Exchange L.L.C. owned by Harborside Seller.

1.1.28 **“Unisys”:** Unisys Corporation.

1.1.29 **“NG Partnership Interests Purchase and Sale Agreement”:** That certain Partnership Interests Purchase and Sale Agreement between Purchaser and NG Partnership Interests Seller, dated as of the date hereof relating to the purchase and sale of the NG Partnership Interests.

1.1.30 **“Membership Interests”:** One hundred percent (100%) of the membership interests in the Subsidiary.

1.1.31 **“Other Sellers”:** collectively, NG Partnership Interests Seller, Portfolio Seller and Harborside Seller.

1.1.32 **“Other Real Property”:** collectively, (a) Harborside and (b) the property commonly known as 7555 Colshire Drive, McLean, Virginia and Harborside.

1.1.33 “**Acquired Interests**”: collectively, the NG Partnership Interests and the Harborside Membership Interests.

1.1.34 “**Other Purchase and Sale Agreements**”: collectively, the Harborside Purchase and Sale Agreement, the Portfolio Purchase and Sale Agreement and the NG Partnership Interests Purchase and Sale Agreement.

1.1.35 “**Acquired Properties**”: collectively, the Membership Interests, the Acquired Interests and the Portfolio Property.

1.1.36 “**NG Partnership Interests Seller**”: collectively, iStar NG Inc., a Delaware corporation, and iStar NG GenPar Inc., a Delaware corporation.

1.1.37 “**Northrop**”: Northrop Grumman Systems Corporation, a Delaware corporation.

1.2 **Closing Costs.** Closing costs shall be allocated and paid as follows:

<b>Cost</b>	<b>Responsible Party</b>
Title Commitment required to be delivered pursuant to Section 5.1	Seller
Premium for standard form Title Policy with Extended Coverage, Co-Insurance and one-half (1/2) of the Non-Imputation Endorsement (subject to this Section 1.2 and Section 5.4) required to be delivered pursuant to Section 5.4	Seller
Premium for any upgrade of the Title Policy for additional coverage, including, without limitation, the premium for any re-insurance, and any endorsements to the Title Policy desired by Purchaser (except that Purchaser shall pay only one-half (1/2) of the premium for the Non-Imputation Endorsement), any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, and any other Title Company charges other than those required in connection with satisfying any liens which are not Permitted Exceptions	Purchaser
Any increase in the premium for the Title Policy attributable to obtaining Co-Insurance as provided in Section 5.4	Purchaser
Any costs required to cause the Title Company to issue the Title Policy with Extended Coverage	Seller
Costs of a new survey and/or any revisions, modifications or recertifications to the existing Survey.	Seller
Costs for UCC Searches	Purchaser
Recording Fees	Paid in accordance with local custom
Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments	Paid in accordance with <b>Schedule 1.2</b>

Any escrow fee charged by Escrow Agent for conducting the Closing	Purchaser ½ Seller ½
Real Estate Fee to Financial Advisor	Seller
All other closing costs and expenses incident to this transaction and the closing thereof shall be paid by the party incurring the same.	

1.3 **Notice Addresses.** All notices required or permitted to be sent hereunder shall be sent as follows:

Purchaser:	TRT Acquisitions LLC	Copies to:	TRT Acquisitions LLC
	518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202		518 17 <sup>th</sup> Street, Suite 1700 Denver, CO 80202
Attention:	Mr. John Blumberg Mr. Greg Moran	Attention:	Joshua J. Widoff, Esq.
Telephone:	303-228-2200	Telephone:	303-228-2200
Facsimile:	303-577-9797	Facsimile:	303-869-4602
E-mail:	gmoran@dividendcapital.com	E-mail:	jwidoff@dividendcapital.com

and

Greenberg Traurig, LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Robert J. Ivanhoe, Esq.  
Telephone: 212-801-9333  
Facsimile: 212-801-6400  
E-mail: ivanhoer@gtlaw.com

Seller:	c/o iStar Financial Inc. 1114 Avenue of the Americas New York, NY 10036 Attention: Samantha Garbus Telephone: 212-930-9407 Facsimile: 212-930-9494	Copies to:	iStar Financial Inc. 1114 Avenue of the Americas New York, NY 10036 Attn: Mary-Beth Roselle, Esq. Telephone: 212-930-9481 Facsimile: 212-930-9494
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iStar Asset Services Inc.  
 180 Glastonbury Boulevard  
 Glastonbury, CT 06033  
 Attn: President  
 Telephone: 860-815-5910  
 Facsimile: 860-815-5901  
 E-mail: brubin@istarfinancial.com

Katten Muchin Rosenman LLP  
 525 West Monroe St.  
 Chicago, IL 60661-3693  
 Attn: Gregory P.L. Pierce, Esq.  
 Phone: 312-902-5541  
 Fax: 312-577-8893  
 Email: greg.pierce@kattenlaw.com

**ARTICLE 2**  
**MEMBERSHIP INTERESTS**

2.1 **Membership Interests.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the Membership Interests.

**ARTICLE 3**  
**EARNEST MONEY**

Purchaser and Seller acknowledge and agree (i) that Purchaser has deposited with Escrow Agent Earnest Money (as defined in the Portfolio Purchase and Sale Agreement) in the amount of \$46,200,000.00, (ii) that a portion of the Earnest Money equal to the Membership Interest Earnest Money is allocated to the purchase and sale of the Membership Interests pursuant to this Agreement, and (iii) the Earnest Money, including the Membership Interest Earnest Money, shall be held and disbursed by Escrow Agent pursuant to, and in accordance with, the terms and provisions of the Portfolio Purchase and Sale Agreement. "Membership Interest Earnest Money" means the product of (1) the Earnest Money and (2) the ratio of (A) the Purchase Price hereunder to (B) the sum of the (x) Purchase Price hereunder, (y) the Purchase Price under the Portfolio Purchase and Sale Agreement and (z) the Purchase Price under the NG Partnership Interests Purchase and Sale Agreement

**ARTICLE 4**  
**DUE DILIGENCE**

4.1 **Due Diligence Materials To Be Delivered.** Seller has delivered to Purchaser complete (to Seller's knowledge) copies of, or made electronic copies available to Purchaser on Seller's iPortal internet site relating to the Property and Membership Interests ("**iPortal**"), the following (the "**Property Information**," or the "**Property Documents**"):

4.1.1 **Rent Roll.** A current rent roll in Seller's standard form ("**Rent Roll**") for the Property;

4.1.2 **Financial Information.** Operating statements and summaries of capital expenditures pertaining to the Property during the Seller's Ownership Period (collectively, "**Operating Statements**");

4.1.3 **Environmental Reports.** A copy of any environmental reports or environmental site assessments related to the Property prepared for the benefit of Seller or the Subsidiary (as applicable), it being acknowledged by Purchaser that Purchaser shall not be entitled to rely thereon absent an express reliance letter from the company issuing such environmental reports or environmental site assessments obtained by Purchaser at Purchaser's sole cost and expense;

4.1.4 **Tax Statements.** Ad valorem tax statements relating to the Property for Seller's Ownership Period;

4.1.5 **Survey.** A copy of the most current survey, if any, of the Property in Seller's possession (the "**Survey**");

4.1.6 **Service Contracts.** Copies of any Service Contracts for the Property;

4.1.7 **Personal Property.** A list of Tangible Personal Property for the Property;

4.1.8 **License Agreements.** Copies of any License Agreements for the Property;

4.1.9 **Lease Files.** The lease file for the Leases affecting the Property, including, without limitation, the Leases, any amendments thereto, the Guaranties (if applicable), any amendments thereto, any letter agreements, any assignments which are then in effect and any letters of credit which are then in effect (collectively, the "**Lease Files**");

4.1.10 **Maintenance Records and Warranties.** Maintenance work orders for the Property for the 12 months preceding the Effective Date and warranties for the Property, if any, on roofs, air conditioning units, fixtures and equipment;



4.1.11 **Plans and Specifications.** Building plans and specifications relating to the Property, if any;

4.1.12 **Licenses, Permits and Certificates of Occupancy.** Licenses, permits and certificates of occupancy relating to the Property and umbrella policies related thereto;

4.1.13 **Insurance Certificates.** Copies of certificates evidencing the existing liability and casualty insurance coverage for the Property maintained by the Subsidiary (as applicable) and other affiliates of Seller;

4.1.14 **Intentionally Deleted;**

4.1.15 **Organizational Documents.** The Subsidiary Agreement, all related articles, charters, certificates of formation, and registrations and minutes, and any amendments and modifications thereto;

4.1.16 **Books and Records.** The Books and Records; and

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4.1.17 **Financial Statements.** Unaudited financial statements and reports of the Subsidiary in such form as compiled by Seller or the Subsidiary during Seller's Ownership Period (collectively, the "**Financial Statements**").

Except for the Rent Roll contemplated in Section 4.1.1, Seller's obligation to deliver the items listed in this Section 4.1 shall be limited to the extent such items are in the possession of Seller or the Subsidiary.

4.2 **Physical Due Diligence.** As of the Effective Date, Purchaser acknowledges and agrees that Purchaser has conducted such inspections and tests of the Property, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, as Purchaser has deemed necessary to satisfy itself as to the condition of the Property. Commencing on the Effective Date and continuing until the Closing, subject to the terms of the Leases, Purchaser shall have reasonable access to the Property at all reasonable times during normal business hours, upon appropriate notice to tenants as permitted or required under the Leases, for the purpose of conducting such additional reasonably necessary tests, including surveys and architectural, engineering, geotechnical and environmental inspections and tests, provided that (a) Purchaser must give Seller the greater of (i) two (2) full Business Days' or (ii) the minimum notice period required by the applicable Leases for the Property, written notice of any such inspection or test, and with respect to any intrusive inspection or test (i.e., core sampling) must obtain Seller's prior written consent (which consent shall not be unreasonably withheld or conditioned), (b) prior to performing any inspection or test, Purchaser must deliver a certificate of insurance to Seller evidencing that Purchaser and its contractors, agents and representatives have in place (and Purchaser and its contractors, agents and representatives shall maintain during the pendency of this Agreement) (1) commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury or death and property damage insurance including coverage for contractual liability and personal and advertising injury with respect to Purchaser's obligations hereunder, and (2) workers' compensation and employers' liability insurance with limits of at least \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit, all covering any accident arising in connection with the presence of Purchaser, its contractors, agents and representatives on the Property, which insurance, except for workers' compensation and employers' liability, shall (A) name as additional insureds thereunder Seller, the Subsidiary and such other parties holding insurable interests as Seller may designate and (B) be written by a reputable insurance company having a rating of at least "A+VII" by Best's Rating Guide (or a comparable rating by a successor rating service), and (C) otherwise be subject to Seller's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, and (c) all such tests shall be conducted by Purchaser in compliance with Purchaser's responsibilities set forth in Section 4.9 below. The requirement to carry the insurance specified in the preceding sentence may be satisfied through blanket or umbrella insurance policies carried by Purchaser or its affiliates. Purchaser shall bear the cost of all such inspections or tests and shall be responsible for and act as the generator with respect to any wastes generated by those tests, which obligation shall survive the termination of this Agreement. Subject to the provisions of Section 4.7 hereof, Purchaser or Purchaser's representatives may communicate with any Seller-designated tenant representative; provided, however, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any Seller-designated tenant representative and allow Seller the opportunity to participate in such

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communication if Seller desires. No assurance or guaranty is afforded by Seller that any Seller-designated tenant representative will communicate with Purchaser or Purchaser's representatives. Subject to the provisions of Section 4.7 and 4.10 hereof, Purchaser or Purchaser's representatives may, without Seller's consent or participation, communicate with any governmental authority for the sole purpose of gathering information regarding current zoning compliance of the Real Property and current entitlements with respect to the Real Property in connection with the transaction contemplated by this Agreement. Other than as set forth in the previous sentence, Purchaser must contact Seller at least three (3) full Business Days in advance by telephone to inform Seller of Purchaser's intended communication with any governmental authority and to allow Seller the opportunity to participate in such communication if Seller desires. As used in this Section 4.2, "communicate" and "communication" shall mean the initiation of, response to, or sharing or exchange of information, knowledge or messages, whether by oral, written or electronic methods or media, or by any other means in person or otherwise, and includes requests for inspections or other access to the Property.

4.3 **Due Diligence/Financing Contingency Termination Rights.**

4.3.1 Purchaser acknowledges and agrees that as of the Effective Date Purchaser has received or had access to all Property Documents (as defined herein and in the Other Purchase and Sale Agreements) and has conducted all inspections and tests of the Property, the Acquired Properties and the Other Real Property that it considers important.

4.3.2 Purchaser intends to obtain financing for the transactions contemplated by this Agreement and the Other Purchase and Sale Agreements from (i) Fixed Rate Lender, Floating Rate Lender and Harborside Lender pursuant to the terms of the Fixed Rate Loan Term Sheet, the Floating Rate Loan Term Sheet and the Harborside Term Sheet, respectively, copies of which have been delivered to iStar and Seller, and (ii) iStar in the form of the Mezzanine Loan. iStar has agreed to provide the Mezzanine Loan on and subject to the terms and conditions of Section 4.3.2 of the Portfolio Purchase and Sale Agreement and Schedule 4.3.2 attached thereto. Capitalized terms used in this Section 4.3.2 and not defined in this Agreement shall have the meanings ascribed to such terms in the Portfolio Purchase and Sale Agreement.

4.4 **Updated Property Information.** From the Effective Date through the Closing Date, if and to the extent that Seller or the Subsidiary receive from an unaffiliated third-party any additional Property Information not previously provided to Purchaser, or if and to the extent that Seller or the Subsidiary receive any document, notice or correspondence from an unaffiliated third-party or otherwise obtains actual knowledge from an unaffiliated third-party source of a condition arising after the Effective Date that would render any of the representations and warranties of Seller in Section 9.1 untrue if and to the extent remade after the Effective Date, Seller shall promptly so notify Purchaser and shall make electronic copies of all such documents, notices, correspondence or other information in Seller's or the Subsidiary's possession ("**Updated Property Information**") available to Purchaser on iPortal. Updated Property Information may include any information disclosed in the Tenant Estoppel Certificate, but such updated information shall remain subject to Purchaser's rights pursuant to Section 7.2.1(1) and 7.2.3. The representations and warranties of Seller in Section 9.1 shall be deemed amended to reflect such Updated Property Information, provided that if the amendment or deemed amendment of any representation or warranty reflects a fact or circumstance that would trigger a

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termination, extension or other right of Purchaser under this Agreement, the amendment or deemed amendment of any representation or warranty to reflect such fact or circumstance shall not vitiate such right of Purchaser.

4.5 **Return of Documents and Reports.** As additional consideration for the transaction contemplated herein, if Purchaser terminates this Agreement, Purchaser shall provide to Seller, if requested by Seller, promptly following the receipt of notice from Seller after the termination of this Agreement, copies of all "Reports". "**Reports**" mean (a) written third-party reports, tests, investigations and studies that pertain to contamination of, or environmental concerns regarding, the Property delivered to Purchaser or its affiliates, and (b) all other written third party reports, investigations and studies, other than economic analyses in each case under (a) and (b) prepared for Purchaser in connection with its due diligence review of the Property, including, without limitation, any and all Reports involving structural or geological conditions, environmental, hazardous waste or hazardous substances contamination of the Property, if any. The Reports shall not include any documents, materials or information which are subject to attorney/client, work product or similar privilege, which constitute attorney communications with respect to the Property and/or Purchaser, or which are subject to a confidentiality agreement. The Reports shall be delivered to Seller at no cost to Seller and without any representation or warranty as to the completeness or accuracy of the Reports or any other matter relating thereto. Purchaser's obligation to deliver the Reports to Seller shall survive the termination of this Agreement.

4.6 **Service Contracts.** On or prior to the Closing Date, Purchaser will advise Seller in writing which Service Contracts Purchaser requests that Seller or the Subsidiary terminate at or prior to Closing, provided Seller and the Subsidiary shall have no obligation to terminate any Service Contracts which by their terms cannot be terminated without penalty or payment of a fee (unless Purchaser agrees in writing to pay such fee). Seller shall deliver at Closing notices of termination of all Service Contracts that Purchaser so directs. The Subsidiary shall from and after the Closing Date continue to be bound by those Service Contracts (a) that Purchaser has elected not to have Seller or the Subsidiary terminate, and (b) for which a termination notice is delivered as of or prior to Closing but for which termination is not effective until after Closing.

4.7 **Proprietary Information; Confidentiality.** Purchaser agrees that it is bound by the Confidentiality Agreement as if it were a party thereto, and the Confidentiality Agreement remains in full force and effect. Notwithstanding anything to the contrary set forth in the Confidentiality Agreement, (a) each party acknowledges that the other party shall be allowed to disclose the existence of this Agreement and the contents thereof in order to comply with certain disclosure requirements relating to public companies and their affiliates and (b) Purchaser shall be allowed to disclose the existence of this Agreement, and deliver the Property Information and Updated Property Information, to third parties in connection with such third parties' potential acquisition from Purchaser of the Membership Interests, the Property or interests therein after the Closing Date so long as such third parties have agreed in writing to be bound by the terms of the Confidentiality Agreement prior to Purchaser's disclosure of the existence of this Agreement, and delivery of the Property Information and Updated Property Information, to such third parties. The parties shall coordinate, in advance, with respect to any such public filings and/or press releases. After the Closing there shall be no restriction as between Purchaser, on the one hand,

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and Seller and the Subsidiary, on the other hand, on Purchaser's disclosure of Property Information or Updated Property Information.

4.8 **No Representation or Warranty by Seller.** Purchaser acknowledges that, except as expressly set forth in this Agreement, Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Property Documents, the Updated Property Information or the source(s) thereof. Purchaser further acknowledges that some if not all of the Property Documents and Updated Property Information were prepared by third parties other than Seller and the Subsidiary. Except as expressly set forth in this Agreement or in any of the documents delivered at the Closing, (a) Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Property Documents or Updated Property Information, or in any other written or oral communications transmitted or made available to Purchaser, (b) Purchaser shall rely solely upon its own investigation with respect to the Membership Interests and the Property, including, without limitation, their physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto, and (c) Seller and the Subsidiary have not undertaken any independent investigation as to the truth, accuracy or completeness of the Property Documents and Updated Property Information and are providing the Property Documents and Updated Property Information solely as an accommodation to Purchaser.

4.9 **Purchaser's Responsibilities.** In conducting any inspections, investigations or tests of the Property, Property Documents and/or Updated Property Information, Purchaser and its agents and representatives shall: (a) not disturb the tenants or interfere with their use of the Property pursuant to their respective Leases; (b) not interfere with the operation and maintenance of the Property; (c) not damage any part of the Property or any personal property owned or held by any tenant or any third party; (d) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees or any tenants or their agents, guests, invitees, contractors and employees; (e) comply with all applicable laws; (f) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (g) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (h) subject to the provisions of Section 4.10, repair any damage to the Real Property resulting directly or indirectly from any such inspection or tests; and (i) not reveal or disclose prior to Closing any information obtained during the Inspection Period (as defined in the Portfolio Purchase and Sale Agreement) concerning the Property, the Property Documents and the Updated Property Information to anyone other than the Permitted Recipients (as defined in the Confidentiality Agreement), in accordance with the confidentiality standards set forth in Section 4.7 above, or except as may be otherwise required by law. Purchaser's obligations under this Section 4.9 shall survive the termination of this Agreement.

4.10 **Purchaser's Agreement to Indemnify.** Purchaser hereby agrees to indemnify, defend and hold Seller and the Subsidiary harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Purchaser's inspections or tests permitted under this Agreement or any violation of the provisions of Sections 4.2, 4.7, and 4.9; provided, however, the indemnity shall not protect Seller and the Subsidiary from any liabilities for matters merely discovered by Purchaser (i.e.,

environmental contamination) so long as Purchaser's actions do not aggravate any pre-existing liability of Seller and the Subsidiary it being agreed by Purchaser and Seller that the mere discovery by Purchaser of such matters shall not constitute an aggravation of any pre-existing liability of Seller and the Subsidiary. Purchaser also hereby agrees to indemnify, defend and hold any tenant harmless from and against any and all claims, causes of action, damages, liabilities and expenses which such tenant may suffer or incur due to Purchaser's breach of its obligation under Sections 4.7 and 4.9 above to maintain the confidential nature of any Property Documents, Updated Property Information or other information relative to such tenant. Purchaser's obligations under this Section 4.10 shall survive the termination of this Agreement and shall survive the Closing.

## **ARTICLE 5**

### **TITLE AND SURVEY**

5.1 **Title Commitment.** Purchaser acknowledges that a copy of a current commitment for title insurance or a preliminary title report with respect to the Property, together with copies of all documents of record referred to therein (the "**Title Commitment**") issued by First American on an ALTA 2006 Owner's Form or state promulgated form has been delivered or made available to Purchaser.

5.2 **Updated Survey.** Purchaser has arranged, at Seller's expense, for the preparation of a new survey or the revision, modification, or recertification of the existing Survey as necessary in order for First American to delete the survey exception from the Title Policy.

5.3 **Title Review.** Seller shall have no obligation to cure title objections except liens of an ascertainable amount created by, under or through Seller or the Subsidiary, or assumed by Seller or the Subsidiary, which liens Seller shall cause to be released at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose), and Seller or the Subsidiary shall deliver the Property free and clear of any such liens; provided, however, that the foregoing requirement to discharge liens shall not apply to liens on any tenant's leasehold estate. Seller further agrees to remove any exceptions or encumbrances to title which are voluntarily created by, under or through Seller or the Subsidiary after the Effective Date without Purchaser's consent (if requested, such consent shall not be unreasonably withheld or delayed). The term "**Permitted Exceptions**" shall mean the exceptions to title set forth in the Pro Forma Policy (as defined in the Portfolio Purchase and Sale Agreement) as updated by the Title Company as a result of (i) any actions taken by Seller which are expressly permitted by the terms of this Agreement or (ii) any acts or failure to act taken by Purchaser.

5.4 **Delivery of Title Policy and Non-Imputation Endorsement at Closing.** The parties acknowledge that First American Title Insurance Company, National Commercial Services — Chicago ("**First American**") and Fidelity Title Insurance Company ("**Fidelity**") constitute the Title Company. First American shall act as the lead Title Company and underwriter and shall issue the Title Policy and the Non-Imputation Endorsement; provided, however, that Purchaser may obtain co-insurance from Fidelity in the amount of up to fifty percent (50%) of the Purchase Price of the Property in the form of a co-insurance endorsement ("**Co-Insurance**") so long as (i) the cost of such Co-Insurance does not increase the total cost of title insurance that Seller would otherwise pay to First American if First American were insuring

the full Purchase Price unless Purchaser pays for such increased cost of title insurance and (ii) the issuance of such Co-Insurance does not delay the Closing. Purchaser, at Purchaser's sole cost and expense, may obtain re-insurance with respect to the Title Policy from such third parties as Purchaser may elect so long as obtaining such re-insurance does not delay the Closing. In the event that the Title Company does not issue at Closing, or unconditionally commit at Closing to issue, to Purchaser, (i) an owner's title insurance policy and Co-Insurance in accordance with the Title Commitment with Extended Coverage, insuring the Subsidiary's title interest in the Real Property in the amount of the Purchase Price, subject only to the exclusions from coverage contained in the policy and the Permitted Exceptions (the "**Title Policy**") and (ii) a non-imputation endorsement with respect to the conveyance of the Membership Interests in the form approved for issuance in the State of Virginia (the "**Non-Imputation Endorsement**"), Purchaser shall have the right, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), to terminate this Agreement, in which case the parties hereto shall have no further rights or obligations, other than those that by their terms survive the termination of this Agreement; provided, however, if either Title Company alone is willing to deliver the Title Policy in the amount of the Purchase Price and the Non-Imputation Endorsement, Purchaser agrees to accept such Title Policy and Non-Imputation Endorsement and Purchaser shall have no right to terminate this Agreement.

## **ARTICLE 6**

### **OPERATIONS AND RISK OF LOSS**

6.1 **Ongoing Operations.** From the Effective Date through Closing:

6.1.1 **Leases, Service Contracts and License Agreements.** Seller will cause the Subsidiary to perform their material obligations under the Leases, Service Contracts and License Agreements unless the Subsidiary are excused from performing such obligations pursuant to such Leases, Services Contracts and License Agreements.

6.1.2 **New Contracts.** Except as provided in Section 6.1.4, Seller will not cause the Subsidiary to enter into any contract that will be an obligation affecting the Property subsequent to the Closing, except contracts entered into in the ordinary course of business that are terminable without cause and without the payment of any termination penalty on not more than 30 days' prior notice.

6.1.3 **Maintenance of Improvements; Removal of Personal Property.** Subject to Sections 6.2 and 6.3, Seller shall cause the Subsidiary to maintain or cause the Subsidiary to use reasonable efforts to cause the tenants under the Leases to maintain all Improvements substantially in their present condition (ordinary wear and tear and casualty excepted) and in a manner consistent with the Subsidiary's maintenance of the Improvements during the Subsidiary's period of ownership. Seller will cause the Subsidiary not to remove any Tangible Personal Property except as may be required for

necessary repair or replacement or with respect to items that, in Seller's judgment are obsolete, and replacement shall be of approximately equal quality and quantity as the removed item of Tangible Personal Property.

6.1.4 **Leasing; License Agreements.** Seller will cause the Subsidiary not to (i) amend or terminate any existing Lease or License Agreement, (ii) consent to the assignment of any Lease or License Agreement, (iii) enter into any new Lease or new License Agreement, (iv)

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grant their consent, to the extent Subsidiary's consent is required, to a sublease of the Property, a modification of a sublease, an assignment of a sublease or other item for which a consent is required under any Lease or License Agreement or (v) grant an acknowledgement with respect to a sublease of the Property, a modification of a sublease or an assignment of a sublease (the foregoing items (i), (ii), (iii), (iv) and (v) are each referred to herein as, a "**Lease Event**") after the Effective Date and prior to the Closing Date without first (a) providing Purchaser all relevant supporting documentation, as reasonably determined by Seller, including, without limitation, financial information for the assignee, tenant, subtenant and any guarantor to the extent in Seller's or the Subsidiary's possession, and (b) obtaining Purchaser's approval of such Lease Event. Purchaser shall be held to the same standard for approval as Seller or the Subsidiary, as applicable, is held to in the document giving rise to such approval, consent, or acknowledgement right, and Purchaser agrees to give Seller written notice of its approval or disapproval of a proposed Lease Event within three (3) Business Days after Purchaser's receipt of the items in Section 6.1.4(a) and Section 6.1.4(b). If Purchaser does not respond to Seller's request within such time period, then Purchaser will be deemed to have approved such Lease Event. So long as Purchaser has complied with the standard for review described above, Purchaser may withhold its approval in its reasonable discretion, and Seller will cause the Subsidiary not to execute or grant such Lease Event without Purchaser's written approval.

Seller shall cause the Subsidiary not to apply any tenant or licensee security deposits on account of any alleged default by any tenant or licensee unless the Subsidiary has terminated the applicable Lease or License Agreement and obtained possession of the demised or licensed premises. All tenant and licensee security deposits collected and not applied by the Subsidiary as of the Effective Date are set forth on **Schedule 6.1.4**.

6.1.5 **Insurance.** Seller will cause the Subsidiary not to terminate or allow any insurance maintained by the Subsidiary with respect to the Property or any umbrella coverage insurance carried by any affiliate of Seller which insures the Property to lapse unless replaced by equivalent coverage. Upon the Effective Date, Seller shall cause the Subsidiary and Seller's affiliates to name Purchaser as an additional insured on all insurance maintained by the Subsidiary with respect to the Property and on all umbrella insurance coverage carried by any affiliate of Seller which insures the Property.

6.1.6 **No Amendment.** After the Effective Date, Seller shall not, and Seller shall not permit the Subsidiary, to amend the Subsidiary Agreement.

6.1.7 **No Merger.** Seller shall not permit the Subsidiary to merge or consolidate with or agree to merge or consolidate with, or purchase or agree to purchase all or substantially all of the assets of, or otherwise acquire, any corporation, partnership or other business organization.

6.1.8 **Interests.** Seller shall not permit the Subsidiary to authorize for issuance, issue, sell or delivery any additional membership interests in the Subsidiary or grant any option, warrant or other right to purchase any such membership interests. Seller shall not permit the Subsidiary to split, combine or reclassify any of the membership interests of the Subsidiary.

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6.1.9 **Debt.** Seller shall not permit the Subsidiary to incur or become subject to, nor agree to incur, any debt for borrowed money, guaranty any indebtedness, or incur any liabilities other than and specifically excluding liabilities incurred in the ordinary course of business related to the ownership and management of the Property.

6.1.10 **Conditions and Obligations.** To the extent performance of any obligation of Seller under this Agreement or the satisfaction of any condition of Purchaser's obligation to close requires the performance of the Subsidiary, Seller shall cause the Subsidiary to perform or satisfy same.

6.2 **Casualty.** If after the Effective Date and prior to the Closing, the Property is damaged by fire or other casualty (a "**Casualty**"), Seller shall, promptly upon Seller or any of the Subsidiary receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Casualty, Unisys is entitled to and elects to terminate its Lease with respect to the Property (a "**Casualty Tenant Termination Event**"), then Seller shall promptly upon Seller or the Subsidiary receiving notice of such Casualty Tenant Termination Event notify Purchaser of the same (a "**Casualty Tenant Termination Notice**"). Within five (5) days after receipt of the Casualty Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser's election to either (i) subject to the limitations of Section 7.2.1(4) and 7.2.2(9), terminate this Agreement, in which case the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) to acquire the Membership Interests notwithstanding the Casualty Tenant Termination Event. If (i) Purchaser elects to acquire the Membership Interests notwithstanding the Casualty Tenant Termination Event or fails to terminate this Agreement with respect to the Membership Interests within such five (5) day period, or (ii) such Casualty does not give rise to a Casualty Tenant Termination Event, then Purchaser shall proceed to Closing, and as of Closing, (1) Seller shall provide written confirmation that any resulting insurance proceeds (including any rent loss insurance and rent abatement insurance applicable to any period beginning with the Closing Date) due the Subsidiary or an affiliate of Seller as a result of such Casualty will be available after Closing to the Subsidiary to effectuate the needed repairs, (2) the Subsidiary shall maintain full responsibility for all needed repairs (subject to the terms of the Lease with respect to any rights of Unisys), and (3) Purchaser shall receive a credit at Closing for any deductible amount under such insurance policies to the extent not payable by Unisys. Notwithstanding anything contained herein to the contrary, if a Casualty shall occur to the Property and, as a result of such Casualty, the lender providing the Fixed Rate Loan or the Floating Rate Loan will not close the Fixed Rate Loan or the Floating Rate Loan, as applicable, with respect to such Property, then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate, in which case the parties hereto shall have no further right or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

6.3 **Condemnation.** If after the Effective Date and prior to the Closing, Seller or the Subsidiary receive notice of, or proceedings are instituted for, eminent domain with respect to the Property or any portion thereof (a "**Condemnation**"), Seller shall, promptly upon Seller or the Subsidiary receiving actual knowledge thereof, notify Purchaser of the same. If, as a result of such Condemnation, Unisys is entitled to and elects to terminate its Lease with respect to such Condemnation (a "**Condemnation Tenant Termination Event**"), then Seller shall promptly

upon Seller or any Affiliate receiving notice of such Condemnation Tenant Termination Event notify Purchaser of the same (a “**Condemnation Tenant Termination Notice**”). Within five (5) days after receipt of the Condemnation Tenant Termination Notice (but in no event later than the Closing Date), Purchaser shall notify Seller in writing of Purchaser’s election to either (i) subject to the limitations of Section 7.2.1(4) and 7.2.2(9), terminate this Agreement, in which case the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) to acquire the Membership Interests notwithstanding the Condemnation Tenant Termination Event. If (i) Purchaser elects to acquire the Membership Interests notwithstanding the Condemnation Tenant Termination Event or fails to terminate this Agreement with respect to the Membership Interests within such five (5) day period, or (ii) such Condemnation does not give rise to a Condemnation Tenant Termination Event, then Purchaser shall proceed to Closing, and as of Closing, the Subsidiary shall maintain the right to negotiate and otherwise deal with the condemning authority in respect of such Condemnation (subject to the terms of the Lease with respect to any rights of Unisys). Notwithstanding anything contained herein to the contrary, if a Condemnation shall occur to any Property and, as a result of such Condemnation, the lender providing the Fixed Rate Loan or the Floating Rate Loan will not close the Fixed Rate Loan or the Floating Rate Loan, as applicable, with respect to such Property, then, subject to the limitations of Sections 7.2.1(4) and 7.2.2(9), this Agreement shall automatically terminate, in which case the parties hereto shall have no further right or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

#### 6.4 **Tenant Estoppel Certificate/SNDA.**

6.4.1 Purchaser acknowledges that Unisys has executed and delivered to Seller a tenant estoppel certificate (such tenant estoppel certificate is referred to herein as, the “**Tenant Estoppel Certificate**”) in the form approved by Purchaser, Fixed Rate Lender and/or Floating Rate Lender (as such terms are defined in the Portfolio Purchase and Sale Agreement).

6.4.2 Purchaser and Seller acknowledge and agree that as of the Effective Date, Seller, on behalf of the Subsidiary, has sent an estoppel certificate addressed to the party listed on **Schedule 6.4.2** (the “**Third Party Estoppel Certificate**”). Seller and the Subsidiary shall not be obligated to expend any funds in connection with obtaining any such Third Party Estoppel Certificate, declare any default under any agreement or commence any legal action for enforcement of any agreement in order to obtain any such Third Party Estoppel Certificate. Seller shall copy Purchaser on the initial correspondence soliciting the Third Party Estoppel Certificate and shall use commercially reasonable efforts to forward to Purchaser any written communications, including, without limitation, letters, memorandums, e-mails, comments and conditions, received from the third parties in connection with the third parties’ execution of the Third Party Estoppel Certificate.

6.4.3 Purchaser acknowledges that Unisys has executed and delivered to Seller a subordination, non-disturbance and attornment agreement (such subordination, non-disturbance and attornment agreement is referred to herein as, the “**SNDA**”) in the form approved by Purchaser, Fixed Rate Lender and/or Floating Rate Lender.

## **ARTICLE 7 CLOSING**

7.1 **Closing.** The consummation of the transaction contemplated herein (“**Closing**”) shall occur on the Closing Date at the offices of Escrow Agent (or such other location as may be mutually agreed upon by Seller and Purchaser). Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank satisfactory to Purchaser and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record those closing documents which are to be recorded, and deliver originals or copies of the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Purchaser.

7.2 **Conditions to Parties’ Obligation to Close.** In addition to all other conditions set forth herein, the obligation of Seller, on the one hand, and Purchaser, on the other hand, to consummate the transactions contemplated hereunder are conditioned upon the following:

#### 7.2.1 **Conditions to Seller’s Obligations to Close.**

(1) **Representations and Warranties.** Purchaser’s representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date;

(2) **Deliveries.** As of the Closing Date, Purchaser shall have tendered all deliveries to be made by Purchaser at Closing;

(3) **Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Purchaser that would materially and adversely affect Purchaser’s ability to perform its obligations under this Agreement;

(4) **Property.** It shall be a condition to Seller’s obligation to close hereunder that neither (x) the NG Partnership Interests Purchase and Sale Agreement shall have been terminated with respect to the NG Partnership Interests nor (y) this Agreement, the Harborside Purchase and Sale Agreement and the Portfolio Purchase and Sale shall not have been terminated with respect to more than two (2) of the Acquired Properties (exclusive of the NG Partnership Interests; it being agreed by Purchaser and Seller that a termination of the NG Partnership Interests Purchase and Sale Agreement with respect to the NG Partnership Interests is addressed in the foregoing clause (x) and that the two (2) Acquired Properties referenced in the foregoing clause (y) shall not include the NG Partnership Interests for purposes of the application of the foregoing clause (y)) (it being understood that a termination of the Portfolio Purchase and Sale Agreement with respect to one or more of the separate sites constituting the Portfolio Properties leased by The Goodyear Tire & Rubber Company (collectively, the “**Goodyear Properties**”) or one or more separate sites constituting the Portfolio Properties leased by CEVA Freight, LLC (collectively,

the “**CEVA Properties**”) shall be deemed in both cases to be a termination of the Portfolio Purchase and Sale Agreement with respect to only one Portfolio Property notwithstanding the Lease with The Goodyear Tire & Rubber Company and the Lease with CEVA Freight, LLC cover multiple Portfolio Properties). For clarification, the parties agree that it is possible for a closing condition (A) under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect to the Harborside Membership Interests but proceed to closing under this Agreement, the Portfolio Purchase and Sale Agreement and the NG Partnership Interests Purchase and Sale Agreement or (B) under the NG Partnership Interests Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Northrop) which would allow Purchaser not to close and to terminate with respect to the NG Partnership Interests and, as a result of such termination, there would be a failure of a condition to close under this Agreement, the Harborside Purchase and Sale Agreement and the Portfolio Purchase and Sale Agreement which would allow Seller to terminate this Agreement, Harborside Seller to terminate the Harborside Purchase and Sale Agreement and Portfolio Seller to terminate the Portfolio Purchase and Sale Agreement; and

(5) Simultaneous Closing. It shall be a condition to Seller’s obligation to close hereunder that the Closing of the transaction contemplated by this Agreement occur simultaneously with the closing of the transactions contemplated by the Other Purchase and Sale Agreements.

#### 7.2.2 **Conditions to Purchaser’s Obligations to Close.**

(1) Representations and Warranties. Seller’s representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and the Closing Date, subject to the provisions of Sections 4.4 and 9.3. Notwithstanding Sections 4.4 and 9.3, Seller and Purchaser acknowledge and agree that Section 7.2.3 shall apply to any material change in the representations and warranties of Seller due to any Updated Property Information or changes that are not a result of a breach by Seller or any of its covenants;

(2) Deliveries. As of the Closing Date, Seller shall have tendered and shall have caused the Subsidiary to have tendered all deliveries to be made by Seller and the Subsidiary at Closing;

(3) Actions, Suits, etc. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Seller or the Subsidiary that would materially and adversely affect Seller’s ability to perform its obligations under this Agreement;

(4) Intentionally Deleted.

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(5) Occupancy/Non Bankruptcy. It shall be a condition to Purchaser’s obligations to close hereunder that (a) as of the Closing Date, Unisys shall not have terminated, or given notice of its intent to terminate, its Lease, except with respect to a Casualty Tenant Termination Event or a Condemnation Tenant Termination Event and (b) Unisys shall have not vacated, abandoned or ceased operations at the Real Property, or filed for voluntary or involuntary bankruptcy or similar protection;

(6) Closing of Fixed Rate Loan, Floating Rate Loan and Mezzanine Loan. (A) The closing of the Mezzanine Loan simultaneously with (1) the Closing and (2) the closing of the Fixed Rate Loan and the Floating Rate Loan and (B) the closing of the Fixed Rate Loan and the Floating Rate Loan on the Closing Date (unless the Fixed Rate Loan or the Floating Rate Loan fails to close as a result of (x) Purchaser’s uncured default under the Fixed Rate Term Sheet or the Floating Rate Term Sheet, as the case may be, (y) the failure of one or more conditions to close which are within Purchaser’s reasonable control to satisfy, or (z) Purchaser’s failure to accept documentation for the Fixed Rate Loan or the Floating Rate Loan that is commercially reasonable for such transactions), shall be conditions to Purchaser’s obligation to close hereunder. Capitalized terms used in this Section 7.2.2(6) and not defined in this Agreement shall have the meanings ascribed to such terms in the Portfolio Purchase and Sale Agreement;

(7) Intentionally Deleted;

(8) Title Policy and Non-Imputation Endorsement. It shall be a condition to Purchaser’s obligations to close hereunder that the Title Company shall have issued the Title Policy (in the form of the Pro Forma Policy as updated by the Title Company as a result of (i) any actions taken by Seller which are expressly permitted by the terms of this Agreement or (ii) any acts or failure to act taken by Purchaser; provided, however, Purchaser and Seller agree that in no event shall the Title Company’s failure to deliver the Title Policy in the form of the Pro Forma Policy be a failure of a condition to Purchaser’s obligation to Close if such failure to issue the Title Policy in the form of the Pro Forma Policy results from the Title Company not receiving such documents and instruments, which are (i) required by the Title Company to issue the Title Policy in the form of the Pro Forma Policy and (ii) not required to be obtained and delivered by Seller to Purchaser, the Title Company or otherwise pursuant to the terms of this Agreement), Co-Insurance and the Non-Imputation Endorsement subject to, and in accordance with, Section 5.4;

(9) Property. It shall be a condition to Purchaser’s obligation to close hereunder that neither (x) the NG Partnership Interests Purchase and Sale Agreement shall have been terminated with respect to the NG Partnership Interests nor (y) this Agreement, the Harborside Purchase and Sale Agreement and the Portfolio Purchase and Sale shall not have been terminated with respect to more than two (2) of the Acquired Properties (exclusive of the NG Partnership Interests; it being agreed by Purchaser and Seller that a termination of the NG

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Partnership Interests Purchase and Sale Agreement with respect to the NG Partnership Interests is addressed in the foregoing clause (x) and that the two (2) Acquired Properties referenced in the foregoing clause (y) shall not include the NG Partnership Interests for purposes of the application of the foregoing clause (y)) (it being understood that a termination of the Portfolio Purchase and Sale Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of the Portfolio Purchase and Sale Agreement with respect to only one Portfolio Property notwithstanding the Lease with The Goodyear Tire & Rubber Company and the Lease with CEVA Freight, LLC cover multiple Portfolio Properties). For clarification, the parties agree that it is possible for a closing condition (A) under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect to the Harborside Membership Interests but proceed to closing under this Agreement, the Portfolio Purchase and Sale Agreement and the NG Partnership Interests Purchase and Sale Agreement or (B) under the NG Partnership Interests Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Northrop) which would allow Purchaser not to close and to terminate with respect to the NG Partnership Interests and, as a result of such termination, there would be a failure of a condition to close under this Agreement, the Harborside Purchase and Sale Agreement and the Portfolio Purchase and Sale Agreement which would allow Seller to terminate this Agreement, Harborside Seller to terminate the Harborside Purchase and Sale Agreement and Portfolio Seller to terminate the Portfolio Purchase and Sale Agreement;

(10) **Termination.** A termination of the officers, directors and managers of the Subsidiary executed by Seller (the “**Termination**”), effective immediately as of the Closing; and

(11) **Simultaneous Closing.** It shall be a condition to Purchaser’s obligation to close hereunder that the Closing of the transaction contemplated by this Agreement occur simultaneously with the closing of the transactions contemplated by the Other Purchase and Sale Agreements.

7.2.3 **Failure to Satisfy Conditions.** So long as a party is not in default hereunder, if any condition to such party’s obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date (or such earlier date as is provided herein), subject to any applicable notice and cure periods provided in Sections 10.1 and 10.2, such party may, in its sole discretion either (i) subject to the limitations of Sections 7.2.1(4) and 7.2.2(9)), terminate this Agreement in its entirety by delivering written notice to the other party and Escrow Agent on or before the Closing Date (or such earlier date as is provided herein) and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof, or (ii) elect to close notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close, notwithstanding the non-satisfaction of such condition,

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said party shall be deemed to have waived said condition, and there shall be no liability on the part of any other party hereto for breaches of representations and warranties of which the party electing to close had knowledge at the Closing.

7.3 **Seller’s Deliveries in Escrow.** As of or prior to the Closing Date, Seller shall deliver, or shall cause the delivery by each Subsidiary, as applicable, in escrow to Escrow Agent the following:

7.3.1 **Assignment and Assumption of Membership Interests.** An assignment and assumption of membership interests in substantially the form of Exhibit B hereto (the “**Assignment and Assumption**”);

7.3.2 **Intentionally Deleted;**

7.3.3 **Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing and transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local laws in connection with the transfer of the Membership Interests;

7.3.4 **FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit in the form of Exhibit D hereto executed by iStar;

7.3.5 **Authority.** Evidence of the existence and authority of Seller and the Subsidiary of the authority of the persons executing documents on behalf of Seller and the Subsidiary reasonably satisfactory to First American;

7.3.6 **Title Affidavits.** A title affidavit in form reasonably required by First American as to the rights of tenants in occupancy, the status of mechanics’ liens and “gap” indemnities, and such other matters as the First American may reasonably require in order to issue the Title Policy and the Non-Imputation Endorsement (collectively, the “**Title Affidavits**”);

7.3.7 **Additional Documents.** Any additional documents that First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Seller or the Subsidiary or result in any new or additional obligation, covenant, representation or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement);

7.3.8 **Tenant Estoppel Certificate.** If received by Seller, the Tenant Estoppel Certificate, it being agreed that the failure of Seller to obtain the Tenant Estoppel Certificate shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.9 **Third Party Estoppel Certificate.** If received, the Third Party Estoppel Certificate, it being agreed that the failure of Seller to obtain the Third Party Estoppel Certificate shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

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7.3.10 **Searches.** A Uniform Commercial Code Search, indicating that the membership interests in the Subsidiary are unencumbered by an lien, encumbrance or other security interest thereon, except for liens, encumbrances or security interests in favor of GE pursuant to the GE Loan, and federal and state law searches for Seller and the Subsidiary indicating the absence of any bankruptcy proceeding, federal or state tax lien, litigation and unsatisfied judgments;

7.3.11 **Good Standing Certificates.** A good standing certificate dated within thirty (30) days of the Closing Date from the Secretary of State of Delaware as to the good standing of the Subsidiary in the State of Delaware;

7.3.12 **Insurance Policies.** Copies of all insurance policies maintained by iStar or Seller on behalf of the Subsidiary;

7.3.13 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Seller in Section 9.1 are true and accurate as of the Closing Date, subject to Section 4.4 and the first sentence of Section 9.3;

7.3.14 **Updated Rent Roll.** A Rent Roll updated to the Closing Date, or as close as possible;

7.3.15 **SNDA.** If received by Seller, the SNDA, it being agreed that the failure of Seller to obtain the SNDA shall not (i) be a breach or default by Seller hereunder, (ii) constitute grounds for Purchaser to delay the Closing or (iii) give rise to a reduction of the Purchase Price;

7.3.16 **Termination.** The executed Termination;

7.3.17 **A Past Conduct Certificate.** A Past Conduct Certificate in the form agreed to by Purchaser and Seller and executed by the Subsidiary; and

7.3.18 **Membership Certificate.** The original Certificate of Membership Interest of the Subsidiary issued to Seller and designated certificate no. 1 together with an executed original Irrevocable Stock Power in blank.

7.4 **Purchaser's Deliveries in Escrow.** As of or prior to the Closing Date, Purchaser shall deliver in escrow to Escrow Agent the following:

7.4.1 **Assignment and Assumption.** An executed counterpart to the Assignment and Assumption;

7.4.2 **Intentionally Deleted;**

7.4.3 **Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Purchaser by applicable state and local laws in connection with the transfer of the Membership Interests;

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7.4.4 **Authority.** Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to First American;

7.4.5 **Additional Documents.** Any additional documents that Seller, Escrow Agent or First American may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation or warranty of Purchaser or result in any new or additional obligation, covenant, representation or warranty of Purchaser under this Agreement beyond those expressly set forth in this Agreement); and

7.4.6 **Bringdown Certificate.** A certificate confirming that all of the representations and warranties of Purchaser in Section 9.2 are true and accurate as of the Closing Date.

7.5 **Closing Statements.** As of or prior to the Closing Date, Seller and Purchaser shall deposit with Escrow Agent an executed closing statement with respect to the adjustments herein in the form required by Escrow Agent. Seller shall provide a draft of the same at least one week prior to the scheduled Closing Date.

7.6 **Purchase Price.** At or before 3:00 p.m. (Eastern Time) on the Closing Date, Purchaser shall deliver to Escrow Agent the Purchase Price plus or minus applicable prorations and any adjustment to the Purchase Price made in accordance with the terms of this Agreement, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds must be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); in the event that Escrow Agent is unable to deliver good funds to Seller or its designee prior to 4:00 p.m. (Eastern Time) on the Closing Date, then the closing statements and related prorations will be revised as necessary.

7.7 **Possession.** As of Closing, there shall be no change in the Subsidiary's possession of the Property.

7.8 **Delivery of Books and Records.** Within ten (10) Business Days after the Closing, Seller shall deliver to the offices of Purchaser: (i) original Lease File; (ii) original Service Contracts and License Agreements, (iii) to the extent in Seller's or the Subsidiary's possession: (a) maintenance records and warranties; (b) plans and specifications; (c) licenses, permits and certificates of occupancy; (d) copies or originals of all books and records of account, contracts, and copies of correspondence with tenants and suppliers; (e) advertising materials; (f) booklets; and (g) keys; and (iv) the Books and Records.

7.9 **Notice to Unisys.** Seller and Purchaser shall each execute and Purchaser shall deliver to Unisys immediately after the Closing, a notice regarding the sale in substantially the form of Exhibit G hereto, or such other form as may be required by applicable state law. This obligation on the part of Purchaser shall survive the Closing.

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**ARTICLE 8**  
**PRORATIONS, DEPOSITS, COMMISSIONS**

8.1 **Prorations for Taxes.** To the extent tenants are required to pay real and personal ad valorem taxes (“**Taxes**”) directly under their respective Leases, Taxes will not be prorated, and accordingly, Purchaser shall look solely to the tenants under their respective Leases for payment of all Taxes. To the extent tenants are not required to pay Taxes directly under their respective Leases, then the following shall apply with respect to the proration of Taxes:

8.1.1 If Taxes for the year of Closing are not known or cannot be reasonably estimated, Taxes shall be prorated based on Taxes for the year prior to Closing;

8.1.2 Any additional Taxes relating to the year of Closing arising out of a change in ownership shall be assumed by Purchaser effective as of Closing and paid by Purchaser when due and payable, and Purchaser shall indemnify Seller from and against any and all such Taxes, which indemnification obligation shall survive the Closing; and

8.1.3 Purchaser and Seller shall reasonably cooperate to file all tax returns of the Subsidiary in respect of the tax year in which the Closing shall occur.

8.2 **Prorations for Tenant-Paid Operating Expenses.** To the extent tenants are required to pay operating costs and expenses of the Real Property (“**Operating Expenses**”) directly under their respective Leases, which Operating Expenses may include, without limitation, fees and assessments; prepaid expenses; obligations under Service Contracts; any assessments by private covenant; insurance; utilities; common area maintenance expenses; and other operating costs and expenses incurred in connection with the ownership, operation, maintenance and management of the Real Property, Operating Expenses will not be prorated, and accordingly, Purchaser shall look solely to the tenants under such Leases for payment of all Operating Expenses.

8.3 **Prorations for Non-Tenant Paid Items.** To the extent tenants are not required to pay Operating Expenses or Taxes directly under their respective Leases, but are required to escrow Operating Expenses or Taxes under their respective Leases and/or to reimburse their landlord for all or any portion of such Operating Expenses or Taxes, then the following items shall be prorated as of the Closing Date with all items of income and expense for the Property being borne by the Subsidiary for Purchaser’s account from and after (and including) the Closing Date and Seller’s account prior to the Closing Date:

8.3.1 **Utilities.** Purchaser shall take all steps necessary to post deposits with the utility companies on behalf of the Subsidiary for the period after the Closing Date. Seller shall ensure that all utility meters are read as of the Closing Date. Seller shall be entitled to recover any and all deposits held by any utility company on behalf of the Subsidiary as of the Closing Date.

8.3.2 **Tenant Receivables.** Rents due from tenants under Leases and from tenants or licensees under License Agreements and Operating Expenses and Taxes payable by tenants under Leases and licenses under License Agreements (collectively, “**Tenant Receivables**”) and not collected by the Subsidiary as of Closing shall not be prorated between

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Seller and Purchaser at Closing but shall be apportioned on the basis of the period for which the same is payable and if, as and when collected, as follows:

(a) Tenant Receivables and other income received from tenants under Leases, and/or tenants or licensees under License Agreements after Closing shall be applied in the following order of priority: (1) first, to payment of the current Tenant Receivables then due for the month in which the Closing Date occurs, which amount shall be apportioned between Purchaser and Seller as of the Closing Date as set forth in Section 8.3 hereof (with Seller’s portion thereof to be delivered to Seller); (2) second, to payment of Tenant Receivables first coming due after Closing but applicable to the period of time before Closing, (collectively, “**Unbilled Tenant Receivables**”), which amount shall be delivered to Seller; (3) third, to Tenant Receivables first coming due after Closing and applicable to the period of time after Closing, which amount shall be retained by the Subsidiary; and (4) thereafter, to delinquent Tenant Receivables which were due and payable as of Closing but not collected by the Subsidiary as of Closing (collectively, “**Uncollected Delinquent Tenant Receivables**”), which amount shall be delivered to Seller. Notwithstanding the foregoing, Seller shall have the right to pursue on behalf of the Subsidiary the collection of Uncollected Delinquent Tenant Receivables for a period of six (6) months after Closing without prejudice to Seller’s rights or Purchaser’s obligations hereunder, provided, however, Seller shall have no right to cause the Subsidiary to cause any such tenant or licensee to be evicted or to exercise any other “landlord” remedy (as set forth in such tenant’s Lease or licensee’s License Agreement) against such tenant other than to sue for collection. Any sums received by the Subsidiary to which Seller is entitled shall be held in trust for Seller on account of such past due rents payable to the Subsidiary, and Purchaser shall remit to Seller any such sums received by the Subsidiary to which Seller is entitled within ten (10) Business Days after receipt thereof less reasonable, actual costs and expenses of collection, including reasonable attorneys’ fees, court costs and disbursements, if any. Seller expressly agrees that if Seller receives any amounts after the Closing Date which are attributable, in whole or in part, to any period from and after the Closing Date, Seller shall hold the same in trust for the Subsidiary and remit to Purchaser that portion of the monies so received by Seller to which the Subsidiary are entitled within ten Business Days after receipt thereof. With respect to Unbilled Tenant Receivables, Purchaser covenants and agrees to cause the Subsidiary to (A) bill the same when billable and (B) cooperate with Seller to determine the correct amount of operating expenses and/or taxes due. Seller shall provide Purchaser with the necessary information to bill the same when billable and cooperate with Purchaser to maximize collection of the Unbilled Tenant Receivables. The provisions of this Section 8.3.2(a) shall survive the Closing.

(b) Purchaser acknowledges that the Subsidiary as the landlord under the Leases (and/or as the licensors under the License Agreements) may be collecting from tenants under the Leases (and/or licensees under the License Agreements) additional rent relating to Operating Expenses or Taxes. To the extent that any such additional rent is paid by any tenants to the landlord under the Leases (and/or by any licensees to the licensor under the License Agreements) based on an estimated payment basis (whether monthly, quarterly, or otherwise) for which a future reconciliation of actual Operating Expenses or Taxes to estimated payments of Operating Expenses or Taxes is required to

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be performed at the end of a reconciliation period, Purchaser and Seller shall determine prior to the Closing whether such tenants and/or licensees have, in the aggregate, made an overpayment or underpayment of additional rent relating to Operating Expenses or Taxes (such determination to be based on a comparison of reasonable estimates of actual annual Operating Expenses and Taxes to the estimated payments being made by such tenants and/or licensees). If such determination indicates that such tenants and/or licensees have made an overpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall receive a credit toward the Purchase Price in the amount of such overpayment and the Subsidiary shall retain all obligations and liabilities relating to such overpayment. If, however, such determination indicates that such tenants and/or licensees have made an underpayment of additional rent relating to Operating Expenses or Taxes, Purchaser shall cause the Subsidiary to bill the tenants for the same promptly after the Closing and remit the same to Seller as and when collected. If such review indicates that it cannot be determined as of the Closing Date whether a tenant has overpaid or underpaid its additional rent relating to Operating Expenses or Taxes, Purchaser shall cause the Subsidiary to bill the tenant for the same at the end of the reconciliation period, and any overpayment with respect to the period prior to the Closing Date shall be paid by Seller to Purchaser or any underpayment with respect to the period prior to the Closing Date, when received from the tenant, shall be paid by Purchaser to Seller. Notwithstanding anything contained herein to the contrary, to the extent Purchaser, Seller or the Subsidiary receive a check or wire transfer from any tenant in the exact amount of the item payable by such tenant or referencing the item to which the check or wire transfer relates, such check or wire transfer shall be (i) applied directly to the applicable item or (ii) if such item was previously paid by the Subsidiary during Seller's Ownership Period, reimbursed to Seller, or if such item was paid by the Subsidiary thereafter, reimbursed to Purchaser.

8.4 **Miscellaneous Prorations.** Without duplication of, and to the extent not addressed by Sections 8.1, 8.2 and 8.3, all other items that are customarily subject to proration and adjustment, including without limitation, "Base Rent", shall be prorated as of the Closing Date, it being agreed that for purposes of prorations and adjustments, Purchaser shall be deemed the owner of the Membership Interests on the Closing Date.

8.5 **Leasing Costs.** Seller agrees to cause the Subsidiary pay or discharge at or prior to Closing (and provide Purchaser with evidence of payment thereof), or provide Purchaser with a credit at Closing in the amount of, all leasing commissions, costs for tenant improvements, lease buyout costs, moving allowances, design allowances, legal fees and other costs, expenses and allowances incurred in order to induce a tenant to enter into a Lease or Lease renewal or extension or to induce a licensee to enter into a License Agreement (collectively, the "Leasing Costs") that are indicated on **Schedule 9.1.5** as being payable by Seller. Purchaser agrees to cause the Subsidiary to pay all Leasing Costs indicated on **Schedule 9.1.5** as being payable by Purchaser as and when they become due. Seller shall have no obligation to pay, and as of Closing the Subsidiary shall retain, the obligation to pay, all Leasing Costs payable with respect to any option to renew or option to expand that has not been exercised prior to the Effective Date, which obligation shall survive the Closing. Additionally, as of Closing, the Subsidiary shall retain all obligations for Leasing Costs incurred with respect to Leases and Lease renewals

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and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

8.6 **Closing Costs.** Closing costs shall be allocated between Seller and Purchaser in accordance with Section 1.2.

8.7 **Final Adjustment After Closing.** If final bills are not available or cannot be issued prior to Closing for any item being prorated under Sections 8.1, 8.3 and 8.5, then Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

8.8 **Tenant Deposits.** All tenant and licensee security deposits collected and not applied by the Subsidiary (and interest thereon if required by law or contract) as of the Closing Date shall be retained by the Subsidiary at Closing. As of the Closing, the Subsidiary shall retain their obligations related to tenant and licensee security deposits, but only to the extent the security deposits are retained by the Subsidiary at Closing. Notwithstanding the foregoing provisions of this Section 8.8, deposits in the form of letters of credit will not be transferred or credited at the Closing. All letters of credit will remain in the name of the Subsidiary at Closing. Purchaser and Seller shall each pay one-half (1/2) of the costs and expenses, if any, of delivering the letters of credit to Purchaser. In the event that prior to a transfer of any such letter of credit to Purchaser, Purchaser deems it advisable to cause the Subsidiary to draw on the same, Seller will cooperate in such presentation, and direct payment by virtue of any such presentation to the Subsidiary, and if Seller receives any such payment it will promptly deliver such payment in the form received and endorsed, without recourse, to Purchaser on behalf of the Subsidiary. Purchaser shall defend, indemnify and hold Seller harmless from all claims, causes of actions, actions, damages, costs, liabilities and expenses, including (without limitation) reasonable attorneys' fees, that may arise out of any such presentation or related payment, other than by reason of any actions of Seller other than at the written direction of Purchaser. If any security deposit is held in a form other than cash or a letter of credit, for example, debt or equity securities, at Closing, such debt or equity securities shall continue to be held by the Subsidiary.

8.9 **Commissions.** Seller is responsible to Financial Advisor for a real estate fee at Closing in accordance with a separate agreement between Seller and Financial Advisor and at Closing Seller shall pay to Financial Advisor the entire real estate fee due under the separate agreement between Seller and Financial Advisor. Financial Advisor may share its commission with any other financial advisor or licensed broker involved in this transaction. Subject to Seller's representations in this Section 8.9, under no circumstances shall Seller owe a commission or other compensation directly to any financial advisor, broker, agent or person other than Financial Advisor. No affiliate, subsidiary or party related in any way to Purchaser shall claim a commission or fee from Seller or Financial Advisor. Seller represents and warrants to Purchaser that no real estate brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby other than Financial Advisor, and agrees to and does hereby indemnify and hold Purchaser harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Seller including Financial Advisor. Purchaser represents and warrants to Seller that no real estate

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brokerage commission or real estate fee is payable to any person or entity in connection with the transaction contemplated hereby, and agrees to and does hereby indemnify and hold Seller harmless against the payment of any commission or real estate fee to any other person or entity claiming by, through or under Purchaser excluding Financial Advisor. The foregoing indemnifications shall extend to any and all claims, liabilities, costs and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims and shall survive the Closing.

8.10 **Accounts.** At or prior to Closing, Seller shall cause all then existing accounts in the name of the Subsidiary to be closed and the proceeds therein distributed to Seller.

8.11 **Tax Appeals.** Subject to the rights of tenants under Leases, following the Closing, (i) Purchaser shall have the right to pursue on behalf of the Subsidiary all tax appeals in progress as of the Closing Date which relate to the year of Closing and all subsequent years and (ii) Seller shall have the right to pursue on behalf of the Subsidiary all tax appeals in progress as of the Closing Date which relate to all years prior to the year of Closing (the “**Pre-Closing Tax Appeals**”) and any proceeds of the Pre-Closing Tax Appeals shall be the property of Seller unless such proceeds are required to be paid to the tenant under the applicable Lease, in which case, Seller shall promptly upon receipt of such proceeds remit to Purchaser such proceeds less Seller’s out-of-pocket costs, including, without limitation, reasonable attorney’s fees, incurred in connection with such Pre-Closing Tax Appeal, but in no event less than the amounts owed to the tenant under the applicable Lease. Notwithstanding the foregoing, in no event shall Seller on behalf of the Subsidiary settle any Pre-Closing Tax Appeal without the prior consent of Purchaser, not to be unreasonably withheld, conditioned or delayed, unless Seller is required to settle such Pre-Closing Tax Appeal on behalf of the Subsidiary pursuant to the terms of the applicable Lease. If Seller elects not to pursue on behalf of the Subsidiary any Pre-Closing Tax Appeal, Seller shall so notify Purchaser within a reasonable period after the Closing, and Purchaser, at its option, may elect to pursue on behalf of the Subsidiary such Pre-Closing Tax Appeal, unless Purchaser is required to pursue on behalf of the Subsidiary such Pre-Closing Tax Appeal pursuant to the terms of the applicable Leases, in which case Purchaser shall pursue on behalf the Subsidiary such Pre-Closing Tax Appeal. With respect to (i) any Pre-Closing Tax Appeal which Seller elects on behalf of the Subsidiary not to pursue and which Purchaser elects or is obligated on behalf of the Subsidiary to pursue, and (ii) any tax appeal in progress as of the Closing Date with respect to the year of Closing, Seller shall cooperate with Purchaser and the Subsidiary, including, without limitation, substituting counsel, making Seller’s experts available to Purchaser and the Subsidiary and providing Purchaser with copies of such appeals and any relevant documentation. The provisions of this Section 8.10 shall survive the Closing.

## **ARTICLE 9**

### **REPRESENTATIONS AND WARRANTIES**

9.1 **Seller’s Representations and Warranties.** Seller represents and warrants to Purchaser that:

9.1.1 **Organization and Authority.** Seller and the Subsidiary are validly existing, and in good standing in the states in which they were was formed. Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement

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and to consummate or cause the Subsidiary to consummate the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller and the Subsidiary at the Closing will be, authorized and executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller and the Subsidiary, enforceable in accordance with their terms.

9.1.2 **No Conflicts.** The execution, delivery and performance by Seller and the Subsidiary, as applicable, of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Seller, the Subsidiary, the Membership Interests or any portion of the Property is bound.

9.1.3 **Consents; Binding Obligations.** No approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Seller or the Subsidiary, as applicable, to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Seller or the Subsidiary, as applicable, to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller or the Subsidiary, as applicable, are and shall be valid, legally binding obligations of and enforceable against Seller and the Subsidiary in accordance with their terms.

9.1.4 **Pending Actions.** Except as set forth on **Schedule 9.1.4**, there is no action or proceeding pending or threatened against Seller or the Subsidiary including, but not limited to, those relating to the Membership Interests, the Subsidiary Agreement, the Real Property, the Improvements, the Leases, the Guaranties, the Tangible Personal Property or the Intangible Personal Property.

9.1.5 **Leases, Guaranties, Tenants and Guarantors.** **Schedule 1.1.21(2)** is a true, correct and complete list of all Leases, Guaranties, tenants and guarantors in effect as of the Effective Date. Seller has delivered, or has caused the Subsidiary to deliver, or has made available to Purchaser true, correct and complete copies of the Leases and the Guaranties. To Seller’s knowledge, no tenant or guarantor of any Lease has been released or discharged, voluntarily or involuntarily, or by operation of law, from any obligation related to such Lease. To Seller’s knowledge, Seller and the Subsidiary have not received notice of any default under, and to Seller’s knowledge, no other party is in default under, any of its obligations under any of the Leases or Guaranties, and to Seller’s knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller’s knowledge, Seller and the Subsidiary have not received any notice from any tenant or guarantor under the Guaranties asserting any presently accrued defenses, offsets or disputes thereunder. The Rent Roll is true and correct in all material respects. Except as disclosed on **Schedule 9.1.5**, there are no Leasing Costs or other obligations to brokers due or which will become due under any of the Leases, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this

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Agreement. Except as disclosed on **Schedule 9.1.5**, all Leasing Costs have been fully paid and satisfied by Seller, except for Leasing Costs incurred with respect to Leases and Lease renewals and extensions and License Agreements and License Agreement renewals and extensions executed subsequent to the Effective Date pursuant to the terms of this Agreement.

9.1.6 **Service Contracts and License Agreements.** To Seller’s knowledge, **Schedule 9.1.6** is a true, correct and complete list of all Service Contracts and License Agreements with respect to the Property. To Seller’s knowledge, Seller has delivered or caused the Subsidiary to deliver true, correct and complete copies of the Service Contracts and License Agreements to Purchaser. To Seller’s knowledge, Seller and the Subsidiary have not received notice of any default under, and to Seller’s knowledge, no other party is in default under, any of its obligations under any of the Service Contracts or

License Agreements, and to Seller's knowledge, there is no event which with the giving of notice or passage of time, or both, would be a default thereunder. Without limiting the foregoing, to Seller's knowledge, Seller and the Subsidiary have not received any notice from any party under the Service Contracts or License Agreements asserting any presently accrued defenses, offsets or disputes thereunder.

9.1.7 **Notices from Governmental Authorities.** To Seller's knowledge, except as set forth on **Schedule 9.1.7** or as may be reflected by the Property Documents or otherwise disclosed by Seller to Purchaser in writing, Seller and the Subsidiary have not received from any governmental authority during the Seller's Ownership Period written notice of any violation of any laws, that has not been corrected.

9.1.8 **Prohibited Persons and Transactions.** Neither Seller nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

9.1.9 **Operating Statements.** The Operating Statements delivered by Seller or made available to Purchaser are true and complete copies of the operating statements for the Property which Seller and the Subsidiary rely upon for the purposes of operating the Property.

9.1.10 **Insurance.** **Schedule 9.1.10** is a true, correct and complete list of the insurance maintained by Seller and the Subsidiary with respect to the Property. Seller, and the Subsidiary have not received any written notice or request from any insurance company requesting the performance of any work or alteration with respect to the Property, which have not been fully and completely corrected. Seller and the Subsidiary have not received written notice from any insurance company concerning any defects or inadequacies in the Property, which, if not corrected, would result in the termination of insurance coverage or increase its cost.

9.1.11 **Employees.** There are no employees of Seller or the Subsidiary employed in connection with the use, management, maintenance or operation of the Property whose

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employment will continue after the Closing Date. There is no bargaining unit or union contract relating to any employees of Seller or the Subsidiary.

9.1.12 **Third Party Agreements.** Other than the Leases, the License Agreements, the Service Contracts, the Permitted Exceptions and the agreements set forth on **Schedule 9.1.12**, there are no agreements to which Seller or the Subsidiary is party to. To Seller's knowledge, except as set forth on **Schedule 9.1.12**, Seller is not in default of, and no other party is in default of, any of its obligations under any of the agreements set forth on **Schedule 9.1.12**, and there is no event which, with the giving of notice or passage of time, or both, would be a default thereunder.

9.1.13 **Seller's Representatives.** Seller's Representatives are the individuals involved in supervising Seller's and the Subsidiary's ownership, operation, and maintenance of the Property, have knowledge of the operation and maintenance of the Property and have reviewed the representations of Seller set forth in, and the schedules and exhibits referenced in, this Section 9.1.13.

9.1.14 **Ownership.** Seller is the sole member of, and owns one hundred percent (100%) of the membership interests in, the Subsidiary. Except for the liens, encumbrances, liabilities, claims, covenants and restrictions relating to that portion of the GE Loan secured by the Membership Interests and the Property, which will be repaid, (i) Seller owns its interests in the Subsidiary free and clear of all liens, encumbrances, liabilities, claims, covenants and restrictions of any kind or character, including but not limited to, any security interests or, any restriction on sale or assignment or granting of any option, right or agreement for the purchase or acquisition of the same or any interest in the same and Seller has not transferred, assigned, sold, conveyed, pledged, mortgaged, granted a security interest in, or otherwise disposed of any of such interests or any portion thereof or interest therein or granted any option to any person or entity to acquire any of such interests.

9.1.15 **Intentionally Deleted.**

9.1.16 **Subleases.** **Schedule 9.1.16** is a true, correct and complete list of all subleases covering the Property acknowledged, or consented to, by Seller and such additional subleases as to which Seller has knowledge of.

9.1.17 **Subsidiary Agreement.** Seller has delivered to Purchaser a true, complete and accurate copies of the Subsidiary Agreement, and all amendments thereto, all of which are each in full force and effect and have not been amended or modified, and there has been no material default by Seller or the Subsidiary under the Subsidiary Agreement (as applicable).

9.1.18 **Subsidiary.** Other than the Subsidiary, there are no corporations, partnerships, joint ventures, associations or other entities in which Seller owns, of record or beneficially, any direct or indirect equity or other interest or any right to acquire same.

9.1.19 **Books and Records.** The Books and Records contain accurate records of all meetings and accurately reflect all other actions taken by the members, boards of directors

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and all committees of the Subsidiary. Complete and accurate copies of all Books and Records of the Subsidiary have been provided by Seller to the Purchaser.

9.1.20 **Bankruptcy.** No petition in bankruptcy (voluntary or, to Seller's knowledge, involuntary), assignment for the benefit of creditors or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or, to Seller's knowledge, threatened against the Subsidiary.

9.1.21 **Permitted Liabilities.** The Subsidiary has no liabilities other than (i) those reflected on the consolidated balance sheet of each respective entity, dated as of March 31, 2010 (collectively, the “**Balance Sheets**”) and (ii) liabilities incurred in the ordinary course of the Subsidiary’s business related to the Property from April 1, 2010 through the Effective Date, which ordinary course liabilities (A) shall not materially exceed the corresponding line items for such ordinary course liabilities set forth in the Balance Sheets and (B) are subject to Purchaser’s consent rights otherwise contained in this Agreement (items (i) and (ii) of this Section 9.1.19 are referred to herein collectively as, the “**Permitted Liabilities**”), which Permitted Liabilities shall be paid prior to or at Closing except for Permitted Liabilities prorated in accordance with the terms of this Agreement.

9.1.22 **Financial Statements.** Seller has delivered to Purchaser true, correct and complete copies of the Financial Statements. The Financial Statements present fairly in all material respects the financial position, results of operations and cash flows of the Subsidiary as of the dates thereof and for the periods covered thereby, in accordance with GAAP applied on a consistent basis.

9.1.23 **Taxes and Tax Returns.** The Subsidiary does not file federal, state or local tax returns. The taxable financial results of the Subsidiary are included in the consolidated federal, state and local tax returns filed by iStar.

9.1.24 **Undisclosed Liabilities.** There is no basis for any present action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against the Subsidiary giving rise to any liability, except for (i) liabilities set forth on the Financial Statements and (ii) the Permitted Liabilities.

9.1.25 **Collective Bargaining and Employee Plans.** Neither Seller nor the Subsidiary is a party to any collective bargaining or similar agreement with respect to the Property. As of the date hereof, there are no employee benefit plans or arrangements with respect to the Subsidiary.

9.2 **Purchaser’s Representations and Warranties.** Purchaser represents and warrants to Seller that:

9.2.1 **Organization and Authority.** Purchaser is validly existing as a limited liability company in good standing in the State of Delaware. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby, and this Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will

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be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

9.2.2 **No Conflicts.** The execution, delivery and performance by Purchaser of this Agreement and the instruments referenced herein and the transaction contemplated hereby will not conflict with, or with or without notice or the passage of time or both, result in a breach of, violate any term or provision of, or constitute a default under any articles of formation, bylaws, partnership agreement (oral or written), operating agreement, indenture, deed of trust, mortgage, contract, agreement, judicial or administrative order, or any law to which Purchaser is bound.

9.2.3 **Consents; Binding Obligations.** Except as set forth in Section 9.2.1, (a) no approval or consent is required from any person (including any partner, shareholder, member, creditor, investor or governmental body) for Purchaser to execute, deliver or perform this Agreement or the other instruments contemplated hereby or for Purchaser to consummate the transaction contemplated hereby, and (b) this Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

9.2.4 **Pending Actions.** There is no action or proceeding pending or, to Purchaser’s knowledge, threatened against Purchaser which challenges or impairs Purchaser’s ability to execute or perform its obligations under this Agreement.

9.2.5 **ERISA.** (a) Purchaser is neither (i) an “employee benefit plan” (as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974, as amended (“**ERISA**”)) which is subject to Title I of ERISA (an “**ERISA Plan**”), nor (ii) a “plan” (as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”)) which is subject to Section 4975 of the Code (a “**Code Plan**”); (b) the assets of Purchaser do not constitute “plan assets” (as defined in Section 3(42) of ERISA) of one or more ERISA Plans or Code Plans (“**Plan Assets**”) because, at the time of the Closing, the stock of Purchaser’s parent constitutes “publicly offered securities” (as defined in 29 C.F.R. Section 2510.3-101(b)(2)), which parent owns one hundred percent (100%) of the issued and outstanding equity of Purchaser; (c) Purchaser is not using Plan Assets in the performance or discharge of its obligations under this Agreement; (d) Purchaser is not a “governmental plan” (within the meaning of Section 3(32) of ERISA) and assets of Purchaser do not constitute plan assets of one or more such plans; and (e) transactions by or with Purchaser are not in violation of state statutes applicable to Purchaser regulating investments of and fiduciary obligations with respect to governmental plans.

9.2.6 **Prohibited Persons and Transactions.** Neither Purchaser nor any of its affiliates is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

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9.2.7 **Availability of Funds.** Subject to obtaining the financing contemplated by the Fixed Rate Term Sheet, the Floating Rate Term Sheet and the Mezzanine Loan as provided in Section 4.3.2, Purchaser currently has available and will at the Closing have available sufficient funds to pay the Purchase Price and to pay any and all other amounts payable by Purchaser pursuant to this Agreement and to effect the transactions contemplated hereby.

9.3 **Survival of Representations and Warranties.** The representations and warranties set forth in this Article 9 are made as of the Effective Date, are remade as of the Closing Date (subject to update for Updated Property Information pursuant to Section 4.4 and, changes that are not the result of a breach by Seller or Purchaser or any of their covenants in this Agreement), and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of nine (9) months (the “**Survival Period**”). Terms such as “to Seller’s knowledge,” “to the best of Seller’s

knowledge” or like phrases mean the actual knowledge of the following persons: Barclay Jones, Executive Vice President, Michael Dorsch, Executive Vice President, Samantha Garbus, Senior Vice President, Nancy Zoeckler, Senior Vice President, Mary-Beth Roselle, Senior Vice President, Scott Quigle, Vice President, Carrie Crain, Vice President and the persons whose names are set forth on **Schedule 9.3** (the foregoing persons are referred to herein collectively as, the “**Seller’s Representatives**”), without any duty of inquiry or investigation except in connection with such persons’ review of the representations and warranties of Seller set forth in Section 9.1 hereof as provided in Section 9.1.13 hereof; provided that so qualifying Seller’s knowledge shall in no event give rise to any personal liability on the part of Seller’s Representatives, or any of them, or any other officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. No financial advisor, broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Subject to Section 9.4 hereof and Sections 9.4 of the Harborside Purchase and Sale Agreement and the NG Partnership Interests Purchase and Sale Agreement, each party shall have the right to bring an action against the other on the breach of a representation or warranty or covenant hereunder or in the documents delivered by Seller at the Closing, but only on the following conditions: (1) the party bringing the action for breach first learns of the breach after Closing and files such action within the Survival Period, (2) Seller shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Seller on account of such breach (individually or when combined with damages from other breaches including damages on account of breaches by Purchaser under the Other Purchase and Sale Agreements) equals or exceeds \$5,000,000, in which event Purchaser shall be liable to Seller for one-half of all such damage up to \$5,000,000 and for all damage above \$5,000,000, and (3) Purchaser shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Purchaser on account of such breach (individually or in the aggregate) equals or exceeds (i) \$1,000,000 if such breach relates to the Property and the Membership Interests, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$1,000,000 and for all such damage above \$1,000,000 with respect to the Property and the Membership Interests or (ii) \$5,000,000 for the Property, the Acquired Properties and the Other Real Property, in which event Seller shall be liable (without duplication of any claims made pursuant to subclause (i) of this clause (3)) to Purchaser for one-half of all such damage up to \$5,000,000 and for all such damage above \$5,000,000 with respect to the Property, the Acquired Properties and the Other Real Property,

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subject to the further provisions of this Section 9.3. Neither party shall have any liability after Closing for the breach of a representation or warranty or covenant hereunder of which the other party hereto had actual knowledge as of Closing. Notwithstanding any other provision of this Agreement or of any closing deliveries of Seller contemplated by this Agreement: (a) subject to Section 9.4 hereof and Sections 9.4 of the Harborside Purchase and Sale Agreement and the NG Partnership Interests Purchase and Sale Agreement and other than Leasing Costs, or any rights which Purchaser might otherwise have at law, equity, or by statute, whether based on contract or some other claim, Purchaser agrees that any liability of Seller to Purchaser pursuant to this Section 9.3 and any liability of Other Sellers pursuant to Sections 9.3 of the Other Purchase and Sale Agreements will in the aggregate be limited to five percent (5%) of the aggregate Purchase Price of the Acquired Properties and (b) there shall be no threshold or limitation or limitation on survival on Seller’s obligation to pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs), whether or not the obligations to pay any Leasing Costs first becomes known to Purchaser before, at or after the Closing; i.e., Seller shall pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs) regardless of the amount thereof and regardless of when the Leasing Cost becomes known to Purchaser. In no event shall either party be liable to the other party for incidental, consequential, or punitive damages as a result of the breach of any or all representations or warranties set forth in this Agreement. The provisions of this Section 9.3 shall survive the Closing. Any breach of a representation or warranty or covenant that occurs prior to Closing shall be governed by ARTICLE 10.

9.4 **Company Representations.** Anything in this Agreement to the contrary notwithstanding, including Section 9.3, (i) there shall be no cap or floor on liability and Purchaser shall not share in such liability pursuant to Section 9.3, for any misrepresentation or other breach of any representation or warranty contained in the following subsections of this Agreement and such subsections shall survive the Closing without limitation: Sections 9.1.1, 9.1.2, 9.1.3, 9.1.4, 9.1.14, 9.1.17, 9.1.18, 9.1.20, 9.1.22 and 9.1.23, (ii) there shall be no cap or floor on liability and the Survival Period shall be two (2) years from Closing and Purchaser shall not share in such liability pursuant to Section 9.3, for any misrepresentation or other breach of any representation or warranty contained in the following subsections of this Agreement: Sections 9.1.19, 9.1.21 and 9.1.24, and (iii) the Survival Period for Section 9.1.12 shall be two (2) years from Closing and remain subject to the caps, floors, and sharing of liability as set forth in Section 9.3 (items (i), (ii) and (iii) of this Section 9.4 are referred to herein collectively as, the “**Company Representations**”), subject to the applicable statutes of limitation. Seller and iStar (“**Indemnitor**”) shall each indemnify Purchaser and hold Purchaser harmless from and against, any and all claims, liabilities, damages, losses, costs or expenses (including reasonable attorneys’ fees) incurred by Purchaser arising from the Company Representations. This Section 9.4 shall survive the Closing.

## **ARTICLE 10**

### **DEFAULT AND REMEDIES**

10.1 **Seller’s Remedies.** If Purchaser defaults on its obligations hereunder or under the Other Purchase and Sale Agreements at or prior to Closing for any reason, or if prior to Closing any one or more of Purchaser’s representations or warranties or covenants hereunder, or

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under the Other Purchase and Sale Agreements, are breached in any material respect that impairs Purchaser’s ability to close under this Agreement or under the Other Purchase and Sale Agreements and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Seller or the Closing Date (except no notice or cure period shall apply if Purchaser fails to consummate the purchase of the Membership Interests hereunder or the other Acquired Properties pursuant to the Other Purchase and Sale Agreements), Seller shall be entitled, as its sole remedy hereunder (except as provided in Sections 4.10, 8.8, 10.3 and 10.4 hereof), to terminate this Agreement. Notwithstanding anything in this Section 10.1 to the contrary, in the event of Purchaser’s default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Membership Interests or the Property that would otherwise delay or prevent Seller from having clear, indefeasible and marketable title to the Membership Interests or the Property. In all other events Seller’s remedies shall be limited to those described in this Section 10.1 and Sections 4.10, 8.8, 10.3 and 10.4 hereof. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Purchaser fails to perform any obligation of Purchaser under this Agreement. IN NO EVENT SHALL PURCHASER’S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MEMBERSHIP INTERESTS OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.2 **Purchaser's Remedies.** If Seller defaults on its obligations hereunder, or Other Sellers default in their obligations under the Other Purchase and Sale Agreements at or prior to Closing for any reason, or if prior to Closing any one or more of Seller's, or, with respect to the Other Purchase and Sale Agreements, Other Sellers', representations or warranties or covenants are breached in any material respect (subject to the provisions of Section 4.4 hereof and of the Other Purchase and Sale Agreements and the first Sentence of Section 9.3 hereof and of the Other Purchase and Sale Agreements), and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Purchaser or the Closing Date (except no notice or cure period shall apply if Seller fails to consummate the sale of the Membership Interests hereunder or Other Sellers fail to consummate the sale of the other Acquired Properties under the Other Purchase and Sale Agreements), Purchaser shall elect, as its sole remedy hereunder, either to (a) terminate this Agreement by giving Seller timely written notice of such election prior to or at Closing, (b) enforce specific performance to consummate the sale of the Membership Interests hereunder, or (c) waive said failure or breach and proceed to Closing without any reduction in the Purchase Price. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement in its entirety if Purchaser fails to deliver to Seller written notice of its intent to proceed otherwise on or before ten (10) Business Days following the scheduled Closing Date or, having given notice that it intends to seek specific performance, fails to file a lawsuit asserting such claim or cause of action in New York County, New York within two months following the scheduled Closing Date. EXCEPT FOR iSTAR'S POTENTIAL LIABILITY PURSUANT TO THE MEZZANINE LOAN AND SECTION 9.4, IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT

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PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MEMBERSHIP INTERESTS OR PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.3 **Attorneys' Fees.** In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such claims.

10.4 **Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to the Title Company for preparation and/or cancellation of the Title Commitment.

#### **ARTICLE 11 DISCLAIMERS, RELEASE AND INDEMNITY**

11.1 **Disclaimers By Seller.** Except as expressly set forth in this Agreement and/or the Closing documents, it is understood and agreed that Seller and the Subsidiary and Seller's and the Subsidiary's agents or employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Membership Interests, the Property, including, but not limited to, warranties, representations or guaranties as to (a) matters of title, (b) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials in, on, under or in the vicinity of the Property, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) zoning or building entitlements to which the Property or any portion thereof may be subject, (i) the availability of any utilities to the Property or any portion thereof, including, without limitation, water, sewage, gas and electric, (j) usages of adjoining property, (k) access to the Property or any portion thereof, (l) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (m) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (n) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (o) any other matter affecting the

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stability and integrity of the Property, (p) the potential for further development of the Property, (q) the merchantability of the Property or fitness of the Property for any particular purpose, (r) the truth, accuracy or completeness of the Property Documents or Updated Property Information, (s) tax consequences, or (t) any other matter or thing with respect to the Property.

11.2 **Sale "As Is, Where Is".** Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the Membership Interests and all beneficial interests arising therefrom "AS IS, WHERE IS, WITH ALL FAULTS," except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Purchaser at Closing. Except as expressly set forth in this Agreement or such Closing documents, Purchaser has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Membership Interests, the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, financial advisor, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Purchaser represents that it is a knowledgeable, experienced and sophisticated purchaser of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Membership Interests and shall make an independent verification of the accuracy of any documents and information provided by Seller. Purchaser will conduct such inspections and investigations of the Membership Interests and the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions of the Property, and shall rely upon same. Purchaser acknowledges that Seller has afforded Purchaser a full opportunity to conduct such investigations of the Membership Interests and the Property as Purchaser deemed necessary to satisfy itself as to the Membership Interests and the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than

such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Purchaser shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Purchaser's inspections and investigations. Purchaser hereby represents and warrants to Seller that: (a) Purchaser is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Purchaser is purchasing the Membership Interests for business, commercial, investment or other similar purpose. Purchaser waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

11.3 **Seller Released from Liability.** Purchaser acknowledges that it has had the opportunity to inspect the Property and observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Purchaser deems necessary, and, except as set forth herein or in any Closing document, Purchaser hereby FOREVER RELEASES AND DISCHARGES Seller from all responsibility and liability, including without limitation, liabilities and responsibilities for the landlord's obligations under the Leases relating to the physical, environmental or legal

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compliance status of the Property, arising after the Effective Date, and liabilities under the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("**CERCLA**"), regarding the condition, valuation, salability or utility of the Property or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Except as set forth herein or in any closing documents, Purchaser further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property are or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property, including, without limitation, the landlord's obligations under the Leases relating to the physical, environmental or legal compliance status of the Property, arising after the Effective Date. Purchaser further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

11.4 **"Hazardous Materials" Defined.** For purposes hereof, "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," and "Petroleum" and "Natural Gas Liquids," as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

11.5 **Intentionally Deleted.**

11.6 **Survival.** The terms and conditions of this ARTICLE 11 shall expressly survive the Closing, and shall not merge with the provisions of any closing documents.

Purchaser acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Membership Interests to Purchaser for the Purchase Price without the disclaimers and other agreements set forth above.

## **ARTICLE 12** **MISCELLANEOUS**

12.1 **Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto. Purchaser may, at

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Purchaser's sole cost and expense and at no cost or expense to Seller, assign its rights under this Agreement upon the following conditions: (a) the assignee of Purchaser must be (i) an entity controlling, controlled by, or under common control with Purchaser or (ii) an entity advised by an affiliate of Purchaser's advisor, Dividend Capital Total Advisors LLC, (b) Intentionally Deleted, (c) Intentionally Deleted, (d) the assignee of Purchaser shall assume all obligations of Purchaser hereunder, but Purchaser shall remain primarily liable for the performance of Purchaser's obligations, (e) a copy of the fully executed written assignment and assumption agreement shall be delivered to Seller at least five (5) Business Days prior to Closing, (f) the requirements in Section 12.17 are satisfied and (g) such assignment shall in no event delay the Closing.

12.2 **Headings.** The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

12.3 **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

12.4 **Governing Law.** This Agreement shall be governed in all respects, including validity, construction, interpretation and effect, by the laws of the State of New York, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction. Each of Purchaser and Seller hereby (i) irrevocably submits to the jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the State, City and County of New York for the purpose of any action or proceeding arising out of this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any action relating to this Agreement or



any of the transactions contemplated by this Agreement in any court other than a New York state court or federal court located in the State, City and County of New York. Each of Purchaser and Seller hereby consents to and grants any such court jurisdiction over the person of such party and over the subject matter of any such dispute and agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.10, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof on such party.

12.5 **Survival.** The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing (other than any unfulfilled closing conditions which have been waived or deemed waived by the other party) shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

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12.6 **Entirety and Amendments.** The exclusivity obligations and covenants set forth in that certain letter of intent dated April 2, 2010 between iStar Financial Inc., on behalf of Seller, and Purchaser are hereby incorporated herein and made a part of this Agreement. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Schedules and Exhibits hereto are incorporated herein by this reference for all purposes. All information disclosed on any one Schedule and not disclosed on the other Schedules shall, to the extent applicable, be deemed to be disclosed on such other Schedules.

12.7 **Time.** Time is of the essence in the performance of this Agreement.

12.8 **Intentionally Omitted.**

12.9 **No Electronic Transactions.** The parties hereby acknowledge and agree this Agreement shall not be executed, entered into, altered, amended or modified by electronic means. Without limiting the generality of the foregoing, the parties hereby agree the transactions contemplated by this Agreement shall not be conducted by electronic means, except as specifically set forth in the "Notices" section of this Agreement.

12.10 **Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by Portable Document Format (PDF) so long as a copy thereof is also sent by one of the other delivery methods set forth in Sections 12.10(a), (b) or (c). Notice given in accordance herewith for all permitted forms of notice other than by electronic mail, shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee. In no event shall this Agreement be altered, amended or modified by electronic mail or electronic record. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Purchaser shall be deemed given by Purchaser and notices given by counsel to the Seller shall be deemed given by Seller.

12.11 **Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

12.12 **Calculation of Time Periods; Business Day.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of

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time described herein shall be deemed to end at midnight local time in New York, New York. As used herein, the term "**Business Day**" means any day that is not a Saturday, Sunday or legal holiday for national banks in the City of New York, New York or Colorado.

12.13 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement.

12.14 **Recordation.** Without the prior written consent of Seller, there shall be no recordation of either this Agreement or any memorandum hereof, or any affidavit pertaining hereto, and any such recordation of this Agreement or memorandum or affidavit by Purchaser without the prior written consent of Seller shall constitute a default hereunder by Purchaser, whereupon Seller shall have the remedies set forth in Section 10.1 hereof. In addition to any such remedies, Purchaser shall be obligated to execute an instrument in recordable form releasing this Agreement or memorandum or affidavit, and Purchaser's obligations pursuant to this Section 12.14 shall survive any termination of this Agreement as a surviving obligation.

12.15 **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the transfer of the Membership Interests to Purchaser.

12.16 **Discharge of Obligations.** The acceptance of the Membership Interests Power by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every agreement and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

12.17 **ERISA.** Under no circumstances shall Purchaser have the right to assign this Agreement to any person or entity owned or controlled by an "employee benefit plan" (as defined in Section 3(3) of ERISA) if Seller's sale of the Membership Interests to such person or entity would, in the reasonable opinion of Seller's ERISA advisors or consultants, create or otherwise cause a "prohibited transaction" under ERISA or any other applicable law with an effect similar to that of Section 406 of ERISA including, but not limited to, Section 4975 of the Code (each such law, a "**Similar Law**"). In the event

Purchaser assigns this Agreement or transfers any ownership interest in Purchaser, and such assignment or transfer would make the consummation of the transaction hereunder a “prohibited transaction” under ERISA or any Similar Law and would therefore either (a) necessitate the termination of this Agreement, or (b) cause Seller to incur liability under ERISA or such Similar Law if the transaction were consummated, then, in either case, notwithstanding any contrary provision which may be contained herein, Seller shall have the right to terminate this Agreement and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof. Anything in this Section 12.17 to the contrary notwithstanding, Seller shall have no right to terminate this Agreement under this

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Section 12.17 if Purchaser’s assignee expressly reaffirms in a writing addressed to Seller the representation in Section 9.2.5.

12.18 **No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing, except that a tenant of the Property may enforce Purchaser’s indemnity obligation under Section 4.10 hereof.

12.19 **Reporting Person.** Purchaser and Seller hereby designate First American as the “reporting person” pursuant to the provisions of Section 6045(e) of the Internal Revenue Code of 1986, as amended.

12.20 **Post-Closing Access.** From and after the Closing, the Purchaser will, at Seller’s sole cost and expense, permit Seller and Seller’s agents and representatives access (and will permit copying of materials pertaining to the period prior to the Closing), during business hours from time to time, to the Lease Files and other Property-related information upon reasonable advance notice to the Purchaser. This Section 12.20 shall survive the Closing.

12.21 **Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN SELLER AND PURCHASER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN SELLER AND PURCHASER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12.22 **Information and Audit Cooperation.** Within 75 days after the Closing Date, Seller, at Purchaser’s sole cost and expense and at no cost or expense to Seller, shall allow Purchaser’s auditors access to the books and records of Seller relating to the operation of the Property for the two (2) year period prior to the Closing Date to enable Purchaser to comply with any financial reporting requirements applicable to Purchaser, upon at least three (3) Business Days prior written notice to Seller. In addition, Seller shall provide Purchaser’s designated

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independent auditors a representation letter regarding the books and records of the Property in substantially the form attached hereto as Exhibit H.

12.23 **Bulk Sales Laws** 12.23.1. Seller shall (i) comply with the bulk transfer requirements of the state in which the Property is located, (ii) keep Purchaser apprised of Seller’s compliance with such requirements and (iii) indemnify, defend and hold Purchaser harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature which arise out of the failure of Seller to so comply with such requirements.

[SIGNATURE PAGES, SCHEDULES AND EXHIBITS TO FOLLOW]

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SIGNATURE PAGE TO AGREEMENT OF  
PURCHASE AND SALE  
BY AND BETWEEN  
iSTAR CTL HOLDCO LLC,  
AS SELLER  
AND  
TRT ACQUISITIONS LLC,  
AS PURCHASER

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**PURCHASER:**

TRT ACQUISITIONS LLC, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its  
Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General  
Partner

By: /s/ Greg Moran

Name: Greg M. Moran

Title: Vice President

Date: June 25, 2010

**SELLER:**

**iSTAR CTL HOLDCO LLC**, a Delaware limited liability company

By: /s/ Samantha K. Garbus

Name: Samantha K. Garbus

Title: Senior Vice President

Date: June 25, 2010

**AGREED TO FOR PURPOSES OF SECTION 4.3.2 AND 9.4:**

**iSTAR FINANCIAL INC.**, a Maryland corporation

By: /s/ Samantha K. Garbus

Name: Samantha K. Garbus

Title: Senior Vice President

Date: June 25, 2010

FOURTH AMENDMENT TO  
PURCHASE AND SALE AGREEMENT  
 (30 Properties)

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Amendment") is made and entered into this 25th day of June, 2010, by and between Seller and Purchaser.

R E C I T A L S:

A. Seller and Purchaser have heretofore entered into that certain Purchase and Sale Agreement, dated as of May 3, 2010, as amended by that certain First Amendment to Purchase and Sale Agreement, dated as of May 11, 2010, that certain Second Amendment to Purchase and Sale Agreement, dated as of May 21, 2010 and that certain Third Amendment to Purchase and Sale Agreement, dated as of June 24, 2010 (as amended, the "Agreement") relating to the sale and purchase of the thirty (30) properties described therein. All defined terms in the Agreement (as amended by this Amendment) are used herein with the same meanings those terms have in the Agreement (as amended by this Amendment).

B. Certain failures of conditions to Purchaser's obligation to close the purchase and sale of the McLean, Virginia Property leased by Northrop Grumman Systems Corporation have occurred (the "Failed Closing Conditions").

C. As a result of the Failed Closing Conditions and notwithstanding anything contained in the Agreement to the contrary, Seller and Purchaser desire to amend the Agreement to, among other things, terminate the Agreement with respect to the McLean, Virginia Property leased by Northrop Grumman Systems Corporation, on and subject to the terms and conditions of this Amendment.

D. Seller and Purchaser desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of these premises, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

A G R E E M E N T

1. Recitals. The recitals set forth above are hereby incorporated herein.
2. Harborside Purchase and Sale Agreement. Section 1.1.15 of the Agreement is hereby amended and restated in its entirety as follows:

"1.1.15 **"Harborside Purchase and Sale Agreement"**: That certain Member Interest Purchase and Sale Agreement between Purchaser and Harborside Seller, dated as of May 3, 2010, as amended by that certain First Amendment to Member Interest Purchase and Sale Agreement, dated as of May 11, 2010, as further amended by that certain Second Amendment to Member Interest Purchase and Sale Agreement,

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dated as of May 21, 2010, as further amended by that certain Third Amendment to Member Interest Purchase and Sale Agreement, dated as of June 24, 2010, as further amended by that certain Fourth Amendment to Member Interest Purchase and Sale Agreement, dated as of June 25, 2010."

3. Properties. The Agreement is hereby terminated with respect to the Property leased by Unisys Corporation and the Property leased by Northrop Grumman Systems Corporation. The Agreement, including all Schedules thereto, is hereby amended by deleting all references to Unisys Corporation, Northrop Grumman Systems Corporation, the Property leased by Unisys Corporation and the Property leased by Northrop Grumman Systems Corporation that are currently set forth in the Agreement, including all Schedules thereto, but prior to giving effect to the terms of this Amendment. For the avoidance of doubt, this Section 4 shall not apply to the references to, and terms and provisions regarding, Northrop Grumman Systems Corporation and the Property leased by Northrop Grumman Systems Corporation that are added to the Agreement by this Amendment.

4. Purchase Price. The Purchase Price, as defined in Section 1.1.3 of the Agreement, is hereby amended to \$929,100,000.00. Schedule 1.1.3 of the Agreement is hereby amended and restated in its entirety as set forth on Schedule 1.1.3 attached hereto.

5. Definitions. Section 1.1 of the Agreement is hereby amended by adding the following at the end thereof:

"1.1.17 **"NG Partnership Interests Purchase and Sale Agreement"**: That certain Partnership Interests Purchase and Sale Agreement between Purchaser and NG Partnership Interests Seller, dated as of June 25, 2010 relating to the purchase and sale of the NG Partnership Interests.

1.1.18 **"NG Partnership Interests"**: One hundred percent (100%) of the partnership interests in NG LP.

1.1.19 **"NG Partnership Interests Seller"**: collectively, iStar NG Inc., a Delaware corporation, and iStar NG GenPar Inc., a Delaware corporation.

1.1.20 **"CTL Reston Member Interest Purchase and Sale Agreement"**: That certain Member Interest Purchase and Sale Agreement between Purchaser and iStar CTL Holdco LLC, a Delaware limited liability company ("**CTL Reston Seller**"), dated as of June 25, 2010 relating to the purchase and sale of the CTL Reston Membership Interests.

1.1.21 **"CTL Reston Membership Interests"**: One hundred percent (100%) of the membership interests in CTL Reston.

1.1.22 **"CTL Reston"**: iStar CTL Sunset Hills — Reston LLC, a Delaware limited liability company.

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1.1.23 “**Other Sellers**”: collectively, NG Partnership Interests Seller, CTL Reston Seller and Harborside Seller.

1.1.24 “**Other Real Properties**”: collectively, the properties commonly known as 11493 Sunset Hills Road, Reston, Virginia, the NG Property and Harborside.

1.1.25 “**Acquired Interests**” collectively, the NG Partnership Interests, the CTL Reston Membership Interests and the Harborside Membership Interests.

1.1.26 “**Other Purchase and Sale Agreements**”: collectively, the Harborside Purchase and Sale Agreement, the NG Partnership Interests Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement.

1.1.27. “**Acquired Properties**”: collectively, the Acquired Interests and the Property.

1.1.28 “**Northrop**”: Northrop Grumman Systems Corporation, a Delaware corporation.

1.1.29 “**NG Property**”: That certain property commonly known as 7555 Colshire Drive, McLean, Virginia

1.1.30 “**NG Lease**”: Deed of Lease dated July 27, 1999, as amended, modified and supplemented from time to time, by and between NG LP, successor-in-interest to West Group Properties LLC, a Virginia limited liability company, as landlord, and Northrop Grumman Systems Corporation, a Delaware corporation, successor-in-interest to PRC Inc., a Delaware corporation, as tenant.

1.1.31 “**NG LP**”: iStar NG LP, a Delaware limited partnership.”

6. Due Diligence. The second sentence of Section 4.3.1 of the Agreement is hereby amended and restated as follows:

“If Purchaser delivers a Due Diligence Waiver Notice, this Agreement and the Other Purchase and Sale Agreements shall continue in full force and effect, subject to the provisions of this Agreement and the Other Purchase and Sale Agreements, including Section 4.3.1 hereof and thereof, and Purchaser shall be deemed to have acknowledged that it has received or had access to all Property Documents (as defined herein and in the Other Purchase and Sale Agreements) and conducted all inspections and tests of the Acquired Properties and the Other Real Properties that it considers important.”

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7. Financing. Purchaser and Seller acknowledge and agree that (i) there have been certain modifications to the Fixed Rate Loan Term Sheet, the Floating Rate Loan Term Sheet and Schedule 4.3.2 to the Agreement and that such modifications will be embodied in the documents evidencing and securing the Fixed Rate Loan, the Floating Rate Loan and the Mezzanine Loan, respectively, which documents and instruments are being executed simultaneously with the execution of this Amendment and (ii) the properties securing the Fixed Rate Loan and the Floating Rate Loan include (as applicable) the Properties and the Other Real Properties (exclusive of Harborside).

8. Management Agreements. The last sentence of Section 4.6 is hereby amended and restated in its entirety as follows:

“Notwithstanding the foregoing, Seller shall, at its expense, terminate all Service Contracts which are management agreements, other than with respect to Harborside and the following described management agreements, all of which Purchaser shall assume at closing: (1) Property Management Agreement for 5853 Rue Ferrari San Jose, CA and 5863 Rue Ferrari San Jose, CA between iStar CTL Rue Ferrari - San Jose LLC, a Delaware limited liability company, and River Rock Real Estate Group, a California corporation, dated November 1, 2008, (2) Property Management Agreement for 161 Inverness Drive West, Englewood, Colorado between iStar CTL Inverness - Englewood LLC, a Delaware limited liability company (successor to Trinet Realty Investor V, Inc., a Maryland corporation), and CB Richard Ellis, Inc., a Delaware corporation, dated as of August 1, 2005, as amended by Amendment to Property Management Agreement dated January 25, 2007, and (3) Property Management Agreement for 2625 Shadelands Drive, Walnut Creek, California between iStar CTL Shadelands - Walnut Creek LLC, a Delaware limited liability company (as successor to SFI I, LLC, a Delaware limited liability company), and Kennedy-Wilson Properties Ltd., an Illinois corporation, dated as of December 1, 2005.”

9. Conditions to Seller’s Obligation to Close.

(a) Section 7.2.1(4) of the Agreement is hereby amended and restated in its entirety as follows:

“(4) Property. It shall be a condition to Seller’s obligation to close hereunder that neither (x) the NG Partnership Interests Purchase and Sale Agreement shall have been terminated with respect to the NG Partnership Interests nor (y) this Agreement, the Harborside Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement shall have been terminated with respect to more than two (2) of the Acquired Properties (exclusive of the NG Partnership Interests; it being agreed by Purchaser and Seller that a termination of the NG Partnership Interests Purchase and Sale Agreement with respect to the NG Partnership Interests is addressed in the foregoing clause (x) and that the

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two (2) Acquired Properties referenced in the foregoing clause (y) shall not include the NG Partnership Interests for purposes of the application of the foregoing clause (y) (it being understood that a termination of this Agreement with respect to one or more of the separate sites constituting the Properties leased by The Goodyear Tire & Rubber Company (collectively, the “**Goodyear Properties**”) or one or more separate sites constituting the Properties leased by CEVA Freight, LLC (collectively, the “**CEVA Properties**”) shall be deemed in

both cases to be a termination of this Agreement with respect to only one Property notwithstanding the Lease with The Goodyear Tire & Rubber Company and the Lease with CEVA Freight, LLC cover multiple Properties). For clarification, the parties agree that it is possible for a closing condition (A) under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect to the Harborside Membership Interests but proceed to closing under this Agreement, the NG Partnership Interests Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement or (B) under the NG Partnership Interests Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Northrop) which would allow Purchaser not to close and to terminate with respect to the NG Partnership Interests and, as a result of such termination, there would be a failure of a condition to close under this Agreement, the Harborside Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement which would allow Seller to terminate this Agreement, Harborside Seller to terminate the Harborside Purchase and Sale Agreement and CTL Reston Seller to terminate the CTL Reston Member Interest Purchase and Sale Agreement.”

(b) Section 7.2.1 of the Agreement is hereby amended by adding the following Section 7.2.1(5) at the end thereof:

“(5) Simultaneous Closing. It shall be a condition to Seller’s obligation to close hereunder that the Closing of the transaction contemplated by this Agreement occur simultaneously with the closing of the transactions contemplated by the Other Purchase and Sale Agreements.”

10. Conditions to Purchaser’s Obligation to Close.

(a) Section 7.2.2(9) of the Agreement is hereby amended and restated in its entirety as follows:

“(9) Property. It shall be a condition to Purchaser’s obligation to close hereunder that neither (x) the NG Partnership Interests Purchase and Sale Agreement shall have been terminated with respect to the NG Partnership Interests nor (y) this Agreement, the Harborside Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale

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Agreement shall have been terminated with respect to more than two (2) of the Acquired Properties (exclusive of the NG Partnership Interests; it being agreed by Purchaser and Seller that a termination of the NG Partnership Interests Purchase and Sale Agreement with respect to the NG Partnership Interests is addressed in the foregoing clause (x) and that the two (2) Acquired Properties referenced in the foregoing clause (y) shall not include the NG Partnership Interests for purposes of the application of the foregoing clause (y)) (it being understood that a termination of this Agreement with respect to one or more of the separate sites constituting the Goodyear Properties or one or more separate sites constituting the CEVA Properties shall be deemed in both cases to be a termination of this Agreement with respect to only one Property notwithstanding the Lease with The Goodyear Tire & Rubber Company and the Lease with CEVA Freight, LLC cover multiple Properties). For clarification, the parties agree that it is possible for a closing condition (A) under the Harborside Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Schwab) which would allow Purchaser not to close and to terminate with respect to the Harborside Membership Interests but proceed to closing under this Agreement, the NG Partnership Interests Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement or (B) under the NG Partnership Interests Purchase and Sale Agreement not to be satisfied (for example, the bankruptcy of Northrop) which would allow Purchaser not to close and to terminate with respect to the NG Partnership Interests and, as a result of such termination, there would be a failure of a condition to close under this Agreement, the Harborside Purchase and Sale Agreement and the CTL Reston Member Interest Purchase and Sale Agreement which would allow Seller to terminate this Agreement, Harborside Seller to terminate the Harborside Purchase and Sale Agreement and CTL Reston Seller to terminate the CTL Reston Member Interest Purchase and Sale Agreement; and”

(b) Section 7.2.2 of the Agreement is hereby amended by adding the following Section 7.2.2(11) at the end thereof:

“(11) Simultaneous Closing. It shall be a condition to Purchaser’s obligation to close hereunder that the Closing of the transaction contemplated by this Agreement occur simultaneously with the closing of the transactions contemplated by the Other Purchase and Sale Agreements.”

11. Failure to Satisfy Conditions. Section 7.2.3(b) of the Agreement is hereby amended and restated as follows:

“(b) if the condition(s) to close have not been satisfied under Sections 7.2.1(4) and 7.2.2(9) of this Agreement, or where this Agreement provides for a termination of this Agreement in its entirety, to terminate this Agreement in its entirety, in each case by delivering written notice to the other party and Escrow Agent on or before the Closing Date (or such

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earlier date as is provided herein), or elect to close notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition.”

12. Survival of Representations and Warranties. Section 9.3 of the Agreement is hereby amended and restated as follows:

“9.3 Survival of Representations and Warranties. The representations and warranties set forth in this Article 9 are made as of the Effective Date, are remade as of the Closing Date (subject to update for Updated Property Information pursuant to Section 4.4 and, changes that are not the result of a breach by Seller or Purchaser or any of their covenants in this Agreement), and shall not be deemed to be merged into or waived by the instruments of Closing, but shall survive the Closing for a period of nine (9) months (the “**Survival Period**”). Terms such as “to Seller’s knowledge,” “to the best of Seller’s knowledge” or like phrases mean, (A) with respect to all Properties, the actual knowledge of the following persons with respect to all Properties: Barclay Jones, Executive Vice President, Michael Dorsch, Executive Vice President, Samantha Garbus, Senior Vice President, Nancy Zoeckler, Senior Vice President, Mary-Beth Roselle, Senior Vice President, Scott Quigle, Vice President, and Carrie Crain, Vice President, and (B) with respect to each Property, the actual knowledge of the applicable persons whose names are set forth opposite each Property on **Schedule 9.3** (the persons identified in the foregoing items (A) and (B) are referred to herein collectively as, the “**Seller’s Representatives**”), without any duty of inquiry or investigation except in connection

with such persons' review of the representations and warranties of Seller set forth in Section 9.1 hereof as provided in Section 9.1.13 hereof; provided that so qualifying Seller's knowledge shall in no event give rise to any personal liability on the part of Seller's Representatives, or any of them, or any other officer or employee of Seller, on account of any breach of any representation or warranty made by Seller herein. Said terms do not include constructive knowledge, imputed knowledge or knowledge Seller or such persons do not have but could have obtained through further investigation or inquiry. No financial advisor, broker, agent, or party other than Seller is authorized to make any representation or warranty for or on behalf of Seller. Subject to Section 9.4 of the Other Purchase and Sale Agreements, each party shall have the right to bring an action against the other on the breach of a representation or warranty or covenant hereunder or in the documents delivered by Seller at the Closing, but only on the following conditions: (1) the party bringing the action for breach first learns of the breach after Closing and files such action within the Survival Period, (2) Seller shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Seller on account of such breach (individually or when combined with damages from other breaches including damages on account of breaches by Purchaser under the Other

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Purchase and Sale Agreements) equals or exceeds \$5,000,000, in which event Purchaser shall be liable to Seller for one-half of all such damage up to \$5,000,000 and for all damage above \$5,000,000, and (3) Purchaser shall not have the right to bring a cause of action for a breach of a representation or warranty or covenant unless the damage to Purchaser on account of such breach (individually or in the aggregate), (i) equals or exceeds (A) \$1,000,000 if such breach relates to a Property with an Allocated Purchase Price of less than \$50,000,000, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$1,000,000 and for all such damage above \$1,000,000 with respect to such Property, or (B) \$2,000,000 if such breach relates to a Property with an Allocated Purchase Price equal to or greater than \$50,000,000, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$2,000,000 and for all such damage above \$2,000,000 with respect to such Property, or (ii) without duplication of any claims made pursuant to subclause (i) of this clause (3), equals or exceeds \$5,000,000 with respect to the Acquired Properties and the Other Real Property, in which event Seller shall be liable to Purchaser for one-half of all such damage up to \$5,000,000 and for all such damage above \$5,000,000 with respect to the Acquired Properties and the Other Real Property, subject to the further provisions of this Section 9.3. Neither party shall have any liability after Closing for the breach of a representation or warranty or covenant hereunder of which the other party hereto had actual knowledge as of Closing. Notwithstanding any other provision of this Agreement or of any closing deliveries of Seller contemplated by this Agreement: (a) subject to Section 9.4 of the Other Purchase and Sale Agreements and other than the Seller Estoppels and Leasing Costs, or any rights which Purchaser might otherwise have at law, equity, or by statute, whether based on contract or some other claim, Purchaser agrees that any liability of Seller to Purchaser pursuant to this Section 9.3 and any liability of the Other Sellers to Purchaser pursuant to Sections 9.3 of the Other Purchase and Sale Agreements will in the aggregate be limited to five percent (5%) of the aggregate Purchase Price of the Acquired Properties and (b) there shall be no threshold or limitation or limitation on survival on Seller's obligation to pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs), whether or not the obligations to pay any Leasing Costs first becomes known to Purchaser before, at or after the Closing; i.e., Seller shall pay or credit Purchaser for Leasing Costs payable by Seller under Section 8.5 (and the corresponding representation in Section 9.1.5 regarding Leasing Costs) regardless of the amount thereof and regardless of when the Leasing Cost becomes known to Purchaser. In no event shall either party be liable to the other party for incidental, consequential, or punitive damages as a result of the breach of any or all representations or warranties set forth in this Agreement. The provisions of this Section 9.3 shall survive the Closing. Any breach of a

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representation or warranty or covenant that occurs prior to Closing shall be governed by Article 10.”

13. Seller's Remedies. Section 10.1 of the Agreement is hereby amended and restated in its entirety as follows:

“10.1 **Seller's Remedies**. If Purchaser defaults on its obligations hereunder, or under the Other Purchase and Sale Agreements, at or prior to Closing for any reason, or if prior to Closing any one or more of Purchaser's representations or warranties or covenants hereunder, or under the Other Purchase and Sale Agreements, are breached in any material respect that impairs Purchaser's ability to close under this Agreement or under the Other Purchase and Sale Agreements, and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Seller or the Other Sellers (as applicable) or the Closing Date (except no notice or cure period shall apply if Purchaser fails to consummate the purchase of the Property hereunder or the other Acquired Properties pursuant to the Other Purchase and Sale Agreements), Seller shall be entitled, as its sole remedy hereunder (except as provided in Sections 4.10, 8.8, 10.3 and 10.4 hereof), to terminate this Agreement and recover the Earnest Money as liquidated damages and not as a penalty, in full satisfaction of claims against Purchaser hereunder. Seller and Purchaser agree that Seller's damages resulting from Purchaser's default are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. Notwithstanding anything in this Section 10.1 to the contrary, in the event of Purchaser's default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Purchaser or any party related to or affiliated with Purchaser is asserting any claims or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible and marketable title to the Property. In all other events Seller's remedies shall be limited to those described in this Section 10.1 and Sections 4.10, 8.8, 10.3 and 10.4 hereof. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Purchaser fails to perform any obligation of Purchaser under this Agreement. IN NO EVENT SHALL PURCHASER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.”

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14. Purchaser Remedies. Section 10.2 of the Agreement is hereby amended and restated as follows:

“10.2 **Purchaser's Remedies**. If Seller defaults on its obligations hereunder, or Other Sellers default in their obligations under the Other Purchase and Sale Agreement, at or prior to Closing for any reason, or if prior to Closing any one or more of Seller's, or with

respect to the Other Purchase and Sale Agreements, Other Sellers', representations or warranties or covenants are breached in any material respect (subject to the provisions of Section 4.4 hereof and of the Other Purchase and Sale Agreements and the first sentence of Section 9.3 hereof and of the Other Purchase and Sale Agreements) and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Purchaser or the Closing Date (except no notice or cure period shall apply if Seller fails to consummate the sale of the Property hereunder or the Other Sellers fail to consummate the sale of the other Acquired Properties pursuant to the Other Purchase and Sale Agreements), Purchaser shall elect, as its sole remedy hereunder, either to (a) terminate this Agreement in its entirety by giving Seller timely written notice of such election prior to or at Closing and recover the Earnest Money, in which event Seller shall be liable to Purchaser for its out of pocket expenses incurred in connection with the transaction contemplated hereby, but not to exceed \$1,700,000.00 plus such all-in rate lock costs (including, without limitation, swap and credit spreads) as Purchaser may have incurred in connection with the loan contemplated by the Fixed Rate Loan Term Sheet, (b) terminate this Agreement in part with respect to the Properties with respect to which Seller's representations or warranties or covenants are breached (subject to Sections 7.2.1(4) and 7.2.2(9)), in which event the Purchase Price shall be reduced by the Allocated Purchase Price for such Properties, (c) enforce specific performance to consummate the sale of the Property hereunder, or (d) waive said failure or breach and proceed to Closing without any reduction in the Purchase Price. Notwithstanding anything herein to the contrary, Purchaser shall be deemed to have elected to terminate this Agreement in its entirety if Purchaser fails to deliver to Seller written notice of its intent to proceed otherwise on or before ten (10) Business Days following the scheduled Closing Date or, having given notice that it intends to seek specific performance, fails to file a lawsuit asserting such claim or cause of action in New York County, New York within two months following the scheduled Closing Date. EXCEPT FOR ISTAR'S POTENTIAL LIABILITY PURSUANT TO THE SELLER ESTOPPELS AND/OR THE MEZZANINE LOAN, IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS OR AFFILIATES, ANY OFFICER, MANAGER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING

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OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE."

15. Resolution. The Agreement is hereby amended by adding the following Article 13 at the end thereof:

**"ARTICLE 13  
RESOLUTION FEE, RESOLUTION PAYMENT  
AND RESOLUTION ESCROW**

13.1 **Resolution Fee**. If the Resolution is not obtained prior to Closing, at Closing iStar shall pay, on behalf of Seller and the Other Sellers, or cause Seller and the Other Sellers to pay, Purchaser's designee an amount equal to \$4,300,000.00 from the proceeds of the sale of the Acquired Properties pursuant to this Agreement and the Other Purchase and Sale Agreements.

13.2 **Resolution Payment**. If the Resolution is not obtained prior to Closing, but is obtained within fifty (50) days following the Closing Date (the "**Resolution Expiration Date**"), Purchaser shall pay to iStar, on behalf of Seller and the Other Sellers, an amount equal to Two Million and 00/100 Dollars (\$2,000,000.00) (the "**Resolution Payment**") by wire transfer of immediately available funds to an account designated by iStar within five (5) Business Days of the date on which the Resolution is obtained (the "**Resolution Date**"). Subject to Section 13.5 below, if the Resolution is not obtained on or before the Resolution Expiration Date, Purchaser shall have no obligation to pay iStar the Resolution Payment.

13.3 **Resolution Escrow**. If the Resolution is not obtained prior to Closing, at Closing Escrow Agent (1) shall withhold Five Million and 00/100 Dollars (\$5,000,000.00) (the "**Resolution Escrow Amount**") from the aggregate purchase price for the Acquired Properties payable under this Agreement and the Other Purchase and Sale Agreements, and (2) shall (x) immediately deposit the Resolution Escrow Amount in government insured interest-bearing accounts satisfactory to iStar, on behalf of Seller and the Other Sellers, and Purchaser (the "**Resolution Escrow Account**"), (y) not commingle the Resolution Escrow Amount with any funds of Escrow Agent or others, and (z) promptly provide Purchaser and iStar, on behalf of Seller and the Other Sellers, with confirmation of the investments made. If the Resolution is obtained on or before the Resolution Expiration Date, Escrow Agent shall disburse the Resolution Escrow Amount to iStar, on behalf of Seller and the Other Sellers, within two (2) Business Days of the date on which Escrow Agent receives a joint order executed by iStar, on behalf of Seller and the Other Sellers, and Purchaser setting forth the Resolution Date and directing the disbursement of the Resolution Escrow Amount to iStar, on behalf of Seller and the Other Sellers. Subject to Section 13.5 below, if the Resolution is not obtained on or before the Resolution Expiration Date, Escrow Agent shall disburse the Resolution Escrow Amount to Purchaser within two (2)

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Business Days of the date on which Escrow Agent receives a joint order executed by iStar, on behalf of Seller and the Other Sellers, and Purchaser stating that the Resolution was not obtained on or before the Resolution Expiration Date and directing the disbursement of the Resolution Escrow Amount to Purchaser.

- 13.4. Resolution. "**Resolution**" means the first to occur of the following:

(a) Northrop's execution and delivery of either (a) an acknowledgment with respect to the Right of First Offer to Negotiate set forth in Rider 2 to the NG Lease (the "**NG ROFO Provision**") stating any of the following with respect to (i) the transactions contemplated by this Agreement as in effect on May 3, 2010 and the Partnership Interests Purchase and Sale Agreement and (ii) a one-time transfer of the NG Property from NG LP to an affiliate of NG LP to accommodate lender requirements in connection with financing the NG Property: the NG ROFO Provision has not been triggered, it is not operable, it has been waived by Northrop or NG LP has no further obligation thereunder (the "**ROFO Acknowledgement**"); or (b) a Tenant Estoppel Certificate (as defined in the NG Partnership Interests Purchase and Sale Agreement) containing a ROFO Acknowledgement; or

(b) Northrop's or any affiliate of Northrop's execution of any lease modification, letter agreement, purchase contract or other agreement that provides (1) (A) that the ROFO Provision does not apply for any reason to a one-time transfer of the NG Property from NG LP to an



affiliate of NG LP to accommodate lender requirements in connection with financing the NG Property, and (B) among other things, (i) that the NG ROFO Provision does not apply for any reason to the transaction contemplated by the NG Partnership Interests Purchase and Sale Agreement or the transaction contemplated by this Agreement as in effect on May 3, 2010, or (ii) that Northrop waives the application of the NG ROFO Provision to the transaction contemplated by the NG Partnership Interests Purchase and Sale Agreement or the transaction contemplated by this Agreement as in effect on May 3, 2010, or (iii) that Northrop will not take any action against NG Partnership Interests Seller, NG LP and/or Purchaser based on the application of the NG ROFO Provision to the transaction contemplated by the NG Partnership Interests Purchase and Sale Agreement or the transaction contemplated by this Agreement as in effect on May 3, 2010, or (2) for a full release of iStar, Seller, NG Partnership Interests Seller, NG LP, Purchaser, TRT NOIP Colshire — McLean LLC and TRT NOIP Colshire — McLean GP LLC and such other terms and conditions which have been approved by iStar, on behalf of Seller and the Other Sellers, and Purchaser.

13.5 **Fixed Rate Transfer.** If (A) the Resolution is not obtained on or prior to the Resolution Expiration Date, but the Resolution is obtained within forty (40) days following the Resolution Expiration Date (the “**Extended Resolution Expiration Date**”), and (B) the NG Property is transferred by Fixed Rate Lender and Floating Rate Lender to the pool of Properties securing the Fixed

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Rate Loan (the “**Fixed Rate Transfer**”) on or before the Extended Resolution Expiration Date, then Purchaser shall pay to iStar, on behalf of Seller and the Other Sellers, the Resolution Payment and the Resolution Escrow Amount by wire transfer of immediately available funds to an account designated by iStar within five (5) Business Days of the later to occur of (x) the Resolution Date and (y) the date on which the Fixed Rate Transfer occurs. Purchaser agrees to use, and Purchaser agrees to cause its affiliates to use, good faith efforts to cause the Fixed Rate Transfer to occur on or before the Extended Resolution Date.

13.6 **Indemnity Agreement.** If the Resolution is not obtained prior to Closing, at Closing Purchaser and iStar shall each execute and deliver an indemnity agreement that sets forth, among other things, the rights and obligations of iStar on the one hand, and Purchaser, Dividend Capital Total Realty Trust Inc., Dividend Capital Total Realty Operating Partnership LP and NG LP, on the other hand, with respect to obtaining the Resolution.

13.7 **Survival.** This Article 13 shall survive the Closing.”

16. **Counterparts; Facsimile.** This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. For purposes of this Amendment, any signature transmitted by facsimile or e-mail (in pdf format) shall be considered to have the same legal and binding effect as any original signature.

17. **Ratification.** The Agreement, as amended hereby, remains in full force and effect and is hereby ratified and confirmed.

**[Remainder of Page Intentionally Left Blank;  
Signature Page Follows]**

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IN WITNESS WHEREOF, Purchaser and Seller have executed this Amendment as of the date set forth above.

**PURCHASER:**

TRT ACQUISITIONS LLC, a Delaware limited liability company

By: DCTRT Real Estate Holdco LLC, Its Sole Member

By: Dividend Capital Total Realty Operating Partnership LP, Its Sole Member

By: Dividend Capital Total Realty Trust Inc., Its General Partner

By: /s/ Greg Moran  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**

iSTAR CTL SOUTH HAVANA — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL WATERVIEW — DALLAS LLC, a Delaware limited liability company

iSTAR CTL SHADELANDS — WALNUT CREEK LLC, a Delaware limited liability company

iSTAR CTL NORTH GLENVILLE — RICHARDSON LLC, a Delaware limited liability company

iSTAR CTL SHEILA — COMMERCE LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — RICHFIELD LLC, a Delaware limited liability company

iSTAR CTL COTTONWOOD — MILPITAS LLC, a Delaware limited liability company

iSTAR CTL NORTH FAIRWAY DRIVE — VERNON HILLS LLC, a Delaware limited liability company

iSTAR CTL DOOLITTLE — REDONDO BEACH LLC, a Delaware limited liability company

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iSTAR CTL CROWN COLONY — QUINCY LLC, a Delaware limited liability company

iSTAR CTL RUE FERRARI — SAN JOSE LLC, a Delaware limited liability company

iSTAR CTL CORPORATE CENTER DRIVE — NEWBURY PARK LLC, a Delaware limited liability company

iSTAR CTL COLUMBIA — CAMPBELLSVILLE LLC, a Delaware limited liability company

iSTAR CTL SUNSET HILLS — RESTON LLC, a Delaware limited liability company

iSTAR CTL EAGLE LLC, a Delaware limited liability company

iSTAR CTL SYLVAN WAY — PARSIPPANY LLC, a Delaware limited liability company

iSTAR CTL INVERNESS — ENGLEWOOD LLC, a Delaware limited liability company

iSTAR CTL CORPORATE DRIVE — DIXON LLC, a Delaware limited liability company

iSTAR CTL CONNECTION — IRVING LLC, a Delaware limited liability company

iSTAR CTL CHARLESTON — MOUNTAIN VIEW LLC, a Delaware limited liability company

iSTAR CTL DUBLIN LLC, a Delaware limited liability company

iSTAR GT, L.P., a Delaware limited partnership

iSTAR NG LP, a Delaware limited partnership

iSTAR CTL MAPLE — EL SEGUNDO LLC, a Delaware limited liability company

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iSTAR CTL SW 80 — PLANTATION LLC, a Delaware limited liability company

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

AGREED TO FOR PURPOSES OF SECTION 4.3.2 AND ARTICLE 13:

iSTAR FINANCIAL INC., a Maryland corporation

By: /s/ Samantha K. Garbus  
Name: Samantha K. Garbus  
Title: Senior Vice President

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CERTIFICATIONS

I, Jay Sugarman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of iStar Financial Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2010

By: /s/ JAY SUGARMAN

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Name: Jay Sugarman

Title: *Chief Executive Officer*

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## CERTIFICATIONS

I, David DiStaso, certify that:

1. I have reviewed this quarterly report on Form 10-Q of iStar Financial Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2010

By: /s/ DAVID DISTASO

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Name: David DiStaso  
Title: *Chief Accounting Officer*  
*(principal financial officer)*

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## QuickLinks

[Exhibit 31.0](#)

**Certification of Chief Executive Officer  
Pursuant to Section 906 of The Sarbanes-Oxley Act of 2002**

The undersigned, the Chief Executive Officer of iStar Financial Inc. (the "Company"), hereby certifies on the date hereof, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of The Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 (the "Form 10-Q"), filed concurrently herewith by the Company, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 6, 2010

By: /s/ JAY SUGARMAN

Name: Jay Sugarman

Title: *Chief Executive Officer*

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**Certification of principal financial officer**  
**Pursuant to Section 906 of The Sarbanes-Oxley Act of 2002**

The undersigned, the principal financial officer of iStar Financial Inc. (the "Company"), hereby certifies on the date hereof, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of The Sarbanes-Oxley Act of 2002, that the Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 (the "Form 10-Q"), filed concurrently herewith by the Company, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 6, 2010

By: /s/ DAVID DISTASO

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Name: David DiStaso

Title: *Chief Accounting Officer*  
*(principal financial officer)*

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QuickLinks

[EXHIBIT 32.0](#)