

This version of Aareal Hive-Off and Transfer Agreement is a translation of the German original, provided for the convenience of English-speaking readers. The German text shall be authoritative and binding for all purposes.

Aareal Hive-Off and Transfer Agreement

Project Ariadne

Dated March 27, 2008

Hive-Off and Transfer Agreement

entered into by and between

1. **Aareal Bank AG**, Paulinenstraße 15, 65189 Wiesbaden

and

2. **Ariadne Portfolio GmbH & Co. KG**, Paulinenstraße 15, 65189 Wiesbaden

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PREAMBLE

- (A) Aareal AG is a German stock corporation with its registered office in Wiesbaden and recorded in the Commercial Register at the Local Court of Wiesbaden under number HRB 13184 (hereinafter also referred to as "**Transferor**").
- (B) Ariadne Portfolio GmbH & Co. KG is a German limited partnership with its registered office and principal place of business in Wiesbaden and recorded in the Commercial Register at the Local Court of Wiesbaden under number HRA 8962 (hereinafter also referred to as "**Transferee**"). The partnership capital of Transferee totals €500.00 (in words: five hundred euros). The sole limited partner of Transferee is Transferor. The limited partner share (*Kommanditeinlage*) of Transferor in Transferee, in the amount of €500.00 (in words: five hundred euros), corresponds to the registered capital contribution (*Haft einlage*). The limited partner share has been fully paid in and has not been repaid. The sole general partner of Transferee, which does not hold any share in the partnership capital of Transferee, is Ariadne Verwaltungs GmbH, a limited liability company under German law with its registered office and principal place of business in Wiesbaden and recorded in the Commercial Register at the Local Court of Wiesbaden under number HRB 23437 (hereinafter also referred to as "**General Partner**"). The sole shareholder of the General Partner is Transferor, holding the sole share with a par value of €25,000.00 (in words: twenty-five thousand euros).
- (C) Transferor owns a loan portfolio comprising loan agreements and related loan receivables and collateral as defined below (hereinafter the "**Aareal Loan Portfolio**").
- (D) By this hive-off and transfer agreement (hereinafter the "**Hive-Off Agreement**"), Transferor intends to transfer the Aareal Loan Portfolio as a whole to Transferee in consideration of the issuance to Transferor of shares in the form of an increase of Transferor's limited partner share in Transferee as recorded in capital account I (*Kapitalkonto*) (hive-off for acquisition in accordance with Section 123 (3) No. 1 of the German Reorganization Act (*UmwG*; hereinafter the "**Reorganization Act**").

NOW THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. Hive-Off

- 1.1 Transferor hereby transfers to Transferee, as a whole and with continuity of Transferor, by hive-off for acquisition (*Ausgliederung zur Aufnahme*) in accordance with Section 123 (3) No. 1 of the Reorganization Act, the Aareal Loan Portfolio comprising the assets and liabilities defined in Section 4 of the Hive-Off Agreement, in consideration of an increase of Transferor's limited partner share in the amount of €500.00 (in words: five hundred euros) by €1,500.00 (in words: one thousand five

hundred euros) to €2,000.00 (in words: two thousand euros) (hereinafter the "**Hive-Off**"). The capital contribution recorded in the Commercial Register (*Hafteinlage*) shall remain unaffected by the Hive-Off.

2. Hive-Off Effective Date, Closing Balance Sheet, Transfer Effective Date

- 2.1 As between Transferor and Transferee, the Hive-Off shall take effect on January 1, 2008, 00:00 hours (hereinafter the "**Hive-Off Effective Date**"). As of the Hive-Off Effective Date, all actions taken by Transferor related to the Aareal Loan Portfolio subject to transfer in accordance with the Hive-Off Agreement shall be for the account of Transferee. Accordingly, Transferee and Transferor shall, in accordance with the provisions of Section 6 the Hive-Off Agreement, place each other in the position in which they would have been, had the assets to be transferred to Transferee in accordance with this Hive-Off Agreement already been transferred to Transferee on the Hive-Off Effective Date.
- 2.2 For tax purposes the Hive-Off shall take effect on the Transfer Effective Date (as defined in Section 2.4) due to the lack of retroactive tax effect.
- 2.3 The Hive-Off shall be based upon the audited balance sheet of Transferor dated December 31, 2007, 24:00 hours, which shall have received an unqualified audit opinion from Pricewaterhouse Coopers Aktiengesellschaft (hereinafter the "**Closing Balance Sheet**").
- 2.4 The Aareal Loan Portfolio subject to transfer by Transferor to Transferee by partial general legal succession (*partielle Gesamtrechtsnachfolge*) in accordance with this Hive-Off Agreement comprises the agreements, rights and obligations defined in Section 4 of this Hive-Off Agreement as they exist on the date the Hive-Off takes effect as a result of recording of the Hive-Off in the Commercial Register for Transferor (hereinafter the "**Transfer Effective Date**").

3. Consideration

- 3.1 In consideration of the assets subject to transfer under the Hive-Off Agreement, the limited partner share of Transferor in Transferee as recorded in capital account I shall be increased from €500.00 (in words: five hundred euros) by €1,500.00 (in words: one thousand five hundred euros) to €2,000.00 (in words: two thousand euros).
- 3.2 Transferee has an obligation to Transferor to record the assets and liabilities subject to transfer under the Hive-Off Agreement in Transferee's commercial balance sheet at book value as instructed by Transferor. If and to the extent that the book values of the Aareal Loan Portfolio as reported in the commercial balance sheet of Transferee in accordance with the instructions of Transferor exceed the amount by which the limited partner share of Transferor in Transferee is increased, the amount of the difference shall be recorded in capital account II (*Kapitalkonto II*) of Transferor at Transferee.

3.3 Transferor is entitled to full dividend rights with respect to the increased limited partner share for the fiscal year of Transferee beginning on January 1, 2008.

4. Transfer of Aareal Loan Portfolio

4.1 Transferor hereby transfers to Transferee the following assets, in each case as they exist on the Transfer Effective Date:

4.1.1 all present and future rights and obligations of Transferor (including termination rights and other rights to modify, amend or otherwise affect agreements) arising from or in connection with the loan agreements defined in Schedule 4.1.1 under the column "Loan ID" (hereinafter the "**Portfolio Loan Agreements**"; the borrowers under the loan agreements shall hereinafter be referred to as "**Customers**"), including, without limitation, the following:

4.1.1.1 all present or future, conditional or unconditional claims for payment against Customers held by Transferor under or in connection with the Portfolio Loan Agreements (hereinafter collectively referred to as the "**Portfolio Receivables**"), and

4.1.1.2 all future interests and other rights of Transferor related to (re)transfer of the Portfolio Receivables (hereinafter "**Future Interests**"), including, without limitation, Future Interests as against Kreditanstalt für Wiederaufbau, Frankfurt am Main, Ärzteversorgung Westfalen-Lippe, Münster, or DEPFA Deutsche Pfandbriefbank AG, Frankfurt am Main;

4.1.2 all real property liens securing the Portfolio Receivables which are itemized in Schedule 4.1.2 or which, pursuant to a property exchange agreed with a Customer and/or third-party collateral provider, have taken the place of Portfolio Receivables or Portfolio Collateral (as defined in Section 4.1.8) on or before the Transfer Effective Date and serve as collateral for such Portfolio Receivables or Portfolio Collateral (hereinafter the "**Portfolio Liens**");

4.1.3 the following additional loan collateral:

4.1.3.1 all bank guarantees securing the Portfolio Receivables;

4.1.3.2 all claims under life insurance policies securing the Portfolio Receivables;

4.1.3.3 all claims under savings and loan agreements (including, without limitation, claims for payment of the savings and loan account balance) securing the Portfolio Receivables;

4.1.3.4 all claims under lease agreements (including, without limitation, claims for payment of rent) securing the Portfolio Receivables;

- 4.1.3.5 all claims under pledges and assignments of bank account balances, including, without limitation, assignments of savings account balances, demand deposits and securities, securing the Portfolio Receivables; and
- 4.1.3.6 all security assignments and other loan collateral (with the exception of real property liens, which are subject exclusively to Section 4.1.2) securing the Portfolio Receivables;
- 4.1.4 all claims and obligations under assignments of claims for discharge of real property liens and under declarations of non-revolving collateral (*Einmalvaluierungserklärungen*) made in connection with Portfolio Receivables or Portfolio Collateral (as defined in Section 4.1.8);
- 4.1.5 all *in personam* and *in rem* agreements and dispositions related to the transfer, delivery, granting or creation of loan collateral with respect to Portfolio Receivables or Portfolio Collateral (as defined in Section 4.1.8) not yet held by Transferor on the Transfer Effective Date, as against Customers or other third parties, in each case including all present and future rights and obligations of Transferor;
- 4.1.6 all additional loan collateral, rights and obligations of the kind defined in Sections 4.1.3 through 4.1.1.5 securing Portfolio Receivables or Portfolio Collateral (as defined in Section 4.1.8) and arising from (and including) the date of notarial recording of this Hive-Off Agreement up to (including) the Transfer Effective Date;
- 4.1.7 all security agreements, including security purpose agreements, providing the basis for the Portfolio Liens and other loan collateral itemized in Sections 4.1.3 through 4.1.6, including all rights and obligations associated therewith, and all rights and obligations arising from independent guarantees (*abstrakte Schuldversprechen*), acknowledgments of liability (*Schuldanerkenntnisse*) or agreements to submit assets to immediate execution (*sofortige Zwangsvollstreckung*), in particular if they were made separately in the mortgage deed providing the basis for recording of the Portfolio Liens or in connection with the assignment of Portfolio Liens (hereinafter collectively with the other rights and obligations defined in Sections 4.1.3 through 4.1.6 referred to as "**Other Portfolio Collateral**");
- 4.1.8 all other present and future rights and obligations of Transferor under undertakings or other contracts with third parties (including contracts with Customers, additional collateral providers, or other creditors of Customers, i.e., contracts with junior creditors), made or entered into by Transferor with respect to the Portfolio Receivables or Portfolio Liens or Other Portfolio Collateral as defined in Sections 4.1.3 through 4.1.7 (hereinafter the Portfolio Liens and Other Portfolio Collateral shall collectively be referred to as "**Portfolio Collateral**") (hereinafter the "**Other Portfolio Agreements**");

- 4.1.9 the following documentation kept by Transferor or Kreditwerk Hypotheken-Management GmbH (hereinafter "**Servicer**") in connection with the Portfolio Receivables and Portfolio Collateral:
 - 4.1.9.1 the abstract land charge certificates, if certificated abstract land charges have been created for Portfolio Liens;
 - 4.1.9.2 the abstract land charge deeds for the Portfolio Liens;
 - 4.1.9.3 the contracts for the Portfolio Loan Agreements;
 - 4.1.9.4 the notarized acknowledgments of liability delivered for the Portfolio Receivables; and
 - 4.1.9.5 the contracts of insurance for the life insurance policies referenced in Section 4.1.3.2.

5. Assets Not Subject to Hive-Off

- 5.1 The following assets are not part of the Aareal Loan Portfolio and as such are not subject to transfer to Transferee:
 - 5.1.1 all Portfolio Loan Agreements and Portfolio Receivables (including related Portfolio Collateral and Other Portfolio Agreements) with a Customer, if at least some of these Portfolio Loan Agreements and/or Portfolio Receivables
 - 5.1.1.1 are past due on the Transfer Effective Date in an amount of at least €100.00 (in words: one hundred euros) for more than 90 (ninety) consecutive calendar days; or
 - 5.1.1.2 are subject to any pending legal actions on the Transfer Effective Date;
 - 5.1.2 all Portfolio Loan Agreements and Portfolio Receivables (including related Portfolio Collateral and Other Portfolio Agreements) with a Customer, if at least some of these Portfolio Receivables are secured by Portfolio Liens recorded against properties which simultaneously also secure Portfolio Receivables of another Customer (hereinafter "**Property-Related Customer**"), and if such Property-Related Customer is subject to any of the events described in Section 5.1.1;
 - 5.1.3 all banker's liens (*AGB-Pfandrechte*) of Transferor on accounts of Customers or third parties, including banker' liens securing Portfolio Receivables;
 - 5.1.4 all rights and obligations under Portfolio Loan Agreements for which Portfolio Receivables were fully repaid by the Transfer Effective Date; and

- 5.1.5 the servicing agreements with the Servicer, including all rights, claims and obligations associated therewith and including all amendments and addenda thereto, and including servicing agreements related to loan agreements that are part of the Aareal Loan Portfolio.
- 5.2 For clarification purposes, the Parties hereby further agree that employment agreements with employees of Transferor are not part of the Aareal Loan Portfolio and as such shall not transfer to Transferee in accordance with this Agreement.

6. Management of the Aareal Loan Portfolio from the Hive-Off Effective Date

- 6.1 From the Hive-Off Effective Date up to the Transfer Effective Date Transferor shall manage the Aareal Loan Portfolio for the account of Transferee.
- 6.2 "**Portfolio Receipts**" shall mean all payments or substitute performance (including offsets) received in settlement of Portfolio Receivables or Portfolio Collateral, including, without limitation, principal payments, interest payment, or expense reimbursements made irrevocably and without any reservation of rights. The date of receipt shall in each case be determined with reference to the date payment is posted to the Customer account, except that in the case of offset, receipt shall be determined with reference to the date offset is claimed. In the event that a receivable due after the Hive-Off Effective Date is paid by direct debit prior to the Hive-Off Effective Date and payment is therefore posted to the Customer account prior to the Hive-Off Effective Date, the date of receipt shall be determined with reference to the payment due date rather than the date payment is posted to the Customer account.
- 6.3 "**Portfolio Expenses**" shall mean all necessary or appropriate expenses within the meaning of § 670 of the German Civil Code (*BGB*; hereinafter the "**Civil Code**") incurred by Transferor in conformity with Transferor's business practice prior to the Hive-Off Effective Date in connection with the Aareal Loan Portfolio, including, without limitation, all costs incurred in the ordinary course of business and charged to Customers, such as costs of preserving the commercial value of the Portfolio Receivables or Portfolio Collateral, court costs, attorneys' fees and notary fees (in each case plus applicable VAT). The date of payment shall in each case be determined with reference to the date payment is posted to the Customer account.
- 6.4 Portfolio Receipts collected from (and including) the Hive-Off Effective Date up to (and including) the Transfer Effective Date shall be netted with Portfolio Expenses. If such Portfolio Receipts exceed such Portfolio Expenses, Transferee shall have a claim for payment in the amount of the difference against Transferor, and if such Portfolio Expenses exceed such Portfolio Receipts, Transferor shall have a claim for payment in the amount of the difference against Transferee.

7. Special Rights

- 7.1 No rights within the meaning of Section 126 (1) No. 7 of the Reorganization Act have been or will be granted. No measures with the meaning of Section 126 (1) No. 7 of the Reorganization Act are contemplated.
- 7.2 No special privileges within the meaning of Section 126 (1) No. 8 of the Reorganization Act have been or will be granted to any members of the Management Board or Supervisory Board of Transferor, to the managing directors of the General Partner, or to any auditors of Transferor or Transferee.

8. Consequences for Employees and Employee Representations

- 8.1 No operations or operational divisions within the meaning of Section 126 (1) No. 9 of the Reorganization Act, and no employment agreements shall transfer to Transferee.
- 8.2 No other consequences or measures within the meaning of Section 126 (1) No. 11 of the Reorganization Act are currently anticipated or contemplated. In particular, no operational changes, layoffs, or transfers of employees are currently contemplated in connection with the transfer of the Aareal Loan Portfolio. Nor shall the Hive-Off otherwise have any effect on the employees of Transferor or their representative bodies. Transferee has no employees or employee representative bodies.

9. Indemnity

- 9.1 Transferor and Transferee hereby agree that each Party shall indemnify the other Party against any and all claims made by creditors in accordance with Section 133 of the Reorganization Act or any other legal or contractual provisions based upon any obligations or liabilities and other contingencies which, under the terms of this Hive-Off Agreement, are attributable to such Party.
- 9.2 The limitation period for any and all claims under Section 9.1 hereof shall be three (3) months from expiration of the limitation period provided for in Section 133 (3) and (4) and Section 19 (3) of the Reorganization Act.

10. Warranty and Damages

- 10.1 Transferor assumes no warranty of any kind under this Hive-Off Agreement for any defects in quality or defects in title or for the existence of any assets/liabilities and/or legal rights/obligations or other parts of the Aareal Loan Portfolio subject to transfer under this Hive-Off Agreement. Any claims of Transferee for cure of breach of contract, rescission, frustration of contract, damages or a price reduction based upon any defects in quality or defects in title of any assets/liabilities and/or legal rights/obligations or other parts of the Aareal Loan Portfolio transferred under this Hive-Off Agreement are hereby excluded, except in cases of fraudulent or willful

misconduct by Transferor. Transferor makes no guarantee or warranty of any kind with respect to the quality or condition of such assets.

- 10.2 Any claims for damages of Transferee against Transferor based upon or in connection with the execution or performance of this Hive-Off Agreement, whatever their legal grounds, are hereby excluded, except in cases of fraudulent or willful misconduct by Transferor. In particular, Transferee shall have no claims for damages based upon the violation of any pre-contractual obligations (*culpa in contrahendo*) in accordance with Civil Code Section 311 (2) in conjunction with Civil Code Section 241 (2), no claims for damages based upon any violation of duties of consideration or other subsidiary obligations in accordance with Civil Code Section 280 and Section 282 in conjunction with Civil Code Section 241 (2), and no claims for damages in lieu of performance based upon non-performance or defective performance (Civil Code Section 281).

11. Declarations to the Land Register Office

- 11.1 Transferor hereby consents to the amendment of the land register files for the properties referenced in Schedule 4.1.2 such that Transferee or its general legal successor shall be recorded as the new creditor of the abstract land charges and mortgages referenced in the aforementioned Schedule.
- 11.2 All costs of amending the Land Register shall be borne by Transferee or its general legal successor (*Gesamtrechtsnachfolgerin*).
- 11.3 With respect to any Portfolio Liens for which the competent Land Register Office refuses to record the transfer in the name of Transferee or Transferee's general legal successor (*Gesamtrechtsnachfolgerin*) despite submission of this Hive-Off Agreement, Transferor shall upon written demand after the Transfer Effective Date promptly transmit to Transferee an appropriate declaration of consent to recording of such Portfolio Liens executed by the registered rights holder in compliance with applicable form requirements for recording in the Land Register. The costs of such declaration of consent to recording and other costs of transfer shall be paid by Transferee.

12. Change of Effective Date

- 12.1 If the Hive-Off is not recorded in the Commercial Register for Transferor by March 31, 2009, the Hive-Off Effective Date shall, in derogation of Section 2.1 of this Hive-Off Agreement, be changed to January 1, 2009, 00:00 hours. In such case the audited balance sheet of Transferor dated December 31, 2008 shall serve as the Closing Balance Sheet within the meaning of Section 2.3 of this Hive-Off Agreement for the Hive-Off. If recording of the Hive-Off is delayed beyond March 31 of the following year, the effective date shall in each case be postponed for one additional year.
- 12.2 If the Hive-Off is not recorded in the Commercial Register for Transferor by March 31, 2009, the increased limited partner share in Transferee granted to Transferor as consideration for transfer of the Aareal Loan Portfolio shall, in derogation of Section

3.3 of this Hive-Off Agreement, not carry dividend rights until January 1, 2009. If recording of the Hive-Off is delayed beyond March 31 of the following year, dividend rights shall in each case be postponed for one additional year.

13. Final Provisions

- 13.1 All costs incurred in connection with the execution and performance of this Hive-Off Agreement shall, as between Transferor and Transferee, be borne exclusively by Transferee.
- 13.2 Upon request of Transferee or its legal successor, Transferor shall make available to Transferee or its legal successor and to the officiating Notary after the Transfer Effective Date an electronic file setting forth the contents of the Loan Portfolio as of the Transfer Effective Date. Transferor and Transferee agree to confirm in notarially certified form on a printout of such electronic file that all individual components of the Loan Portfolio listed on such printout are subject to the Hive-Off. Such notarial deed shall be deposited in the records of the officiating Notary. Both Transferor and Transferee or its legal successor may request delivery of an identical notarial deed for their own records. Transferor and Transferee hereby unilaterally and irrevocably instruct and authorize the Notary safekeeping the aforementioned printout to confirm, upon request of Transferee, in specific cases by notarial deed that certain agreements and/or rights are subject to the Hive-Off. Such notarial confirmations shall be submitted to Transferee or its legal successor upon written request.
- 13.3 Schedules 4.1.1 and 4.1.2 to this Hive-Off Agreement are hereby made a part of and incorporated by reference into this Hive-Off Agreement. In the event of any conflicts between the Schedules to this Hive-Off Agreement and any provisions of this Hive-Off Agreement, the provisions of the Hive-Off Agreement shall prevail.
- 13.4 Any modifications or amendments to this Hive-Off Agreement, including this provision, shall be invalid unless executed in writing and, if required by law, officially recorded by a notary. The foregoing shall also apply to any waiver of this requirement of written form.
- 13.5 Any disputes between Transferor and Transferee arising from this Hive-Off Agreement, including any disputes regarding the validity of this Hive-Off Agreement, shall be referred to arbitration for a final decision. The Parties agree that arbitration decisions shall not be subject to review in a court of law, and the Parties hereby waive any right to adjudicate disputes in a court of law. Arbitration decisions shall be made by three (3) arbitrators in accordance with the arbitration rules of the German Arbitration Institute (*Deutsches Institut für Schiedsgerichtsbarkeit e.V. - DIS*). Any arbitration proceedings shall be held in Wiesbaden, Germany. The official language of any arbitration proceedings shall be German.
- 13.6 This Hive-Off Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, with the exception of the provisions of the Vienna Convention on Contracts for the International Sale of Goods.

13.7 If any provisions of this Hive-Off Agreement are invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected thereby. Any invalid or unenforceable provision shall be replaced by such valid and enforceable provision as most closely reflects the commercial intent and purpose of the original provision. The foregoing provisions shall apply analogously if any provision has been inadvertently omitted from this Hive-Off Agreement.

14. Powers of Attorney

The Parties hereby authorize

Christa Khan,
Thomas Böhm,
Stefanie Marx,
and Simone Schneider

each having his or her business address at Gustav-Freytag-Straße 19 in 65189 Wiesbaden to make individually all declarations and representations necessary for recording of this Deed in the Land Register.

Whereupon this Agreement, including the list of definitions, was read aloud to the Parties by the officiating Notary, and was approved and personally signed by each of them as follows:

List of Definitions

Future Interests	as defined in Section 4.1.1.2
Hive-Off	as defined in Section (C) of the Recitals
Hive-Off Effective Date	as defined in Section 2.1
Hive-Off Agreement	as defined in Section (D) of the Recitals
General Partner	as defined in Section (B) of the Recitals
Customers	as defined in Section 4.1.1
Property-Related Customer	as defined in Section 5.1.2.1
Portfolio Expenses	as defined in Section 6.3
Portfolio Receipts	as defined in Section 6.2
Portfolio Receivables	as defined in Section 4.1.1.1
Portfolio Liens	as defined in Section 4.1.2
Portfolio Loan Agreements	as defined in Section 4.1.1
Portfolio Collateral	as defined in Section 4.1.8
Closing Balance Sheet	as defined in Section 2.3
Servicer	as defined in Section 4.1.9
Other Portfolio Collateral	as defined in Section 4.1.7
Other Portfolio Agreements	as defined in Section 4.1.8
Transferee	as defined in Section (B) of the Recitals
Transferor	as defined in Section (A) of the Recitals
Transfer Effective Date	as defined in Section 2.4