

**SETTLEMENT AGREEMENT**  
**BETWEEN LBI TRUSTEE AND LBF**

This Settlement Agreement is made and entered into as of October 3, 2012 among the LBI Trustee and LBF. Capitalized terms are used as defined in the Definitions in Section 1.01.

**RECITALS**

WHEREAS, on September 19, 2008, the Honorable Gerard E. Lynch, District Judge of the United States District Court for the Southern District of New York, entered the LBI Liquidation Order which, among other things, (i) appointed the LBI Trustee for the liquidation of the business of LBI pursuant to SIPA § 78eee(b)(3) and (ii) removed the case to the Bankruptcy Court pursuant to SIPA § 78eee(b)(1);

WHEREAS, on December 19, 2008 (with effect as of December 22, 2008), the Swiss Federal Banking Commission opened bankruptcy proceedings over LBF and appointed PricewaterhouseCoopers (Zurich) as bankruptcy liquidator of LBF;

WHEREAS, on March 12, 2009, the Bankruptcy Court entered an order pursuant to chapter 15 of the Bankruptcy Code recognizing (a) PwC, in its capacity as the bankruptcy liquidator of LBF, as the duly appointed and authorized "foreign representative" of LBF, and (b) the Swiss bankruptcy proceeding related to LBF as a "foreign main proceeding";

WHEREAS, the LBI Trustee and LBF are parties to the Lehman Global Protocol which, among other things, provides for mutual information sharing and cooperation between the parties thereto;

WHEREAS, the LBI Trustee submitted Claims against LBF;

WHEREAS, LBF filed Claims against LBI;

WHEREAS, the Parties are desirous of resolving all disputes and issues between the LBI Trustee/LBI and LBF so as to avoid extensive, uncertain and expensive litigation;

NOW, THEREFORE, in consideration of the recitals stated above, the agreements, promises and warranties set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I. DEFINITIONS, CONSTRUCTION & INTERPRETATION**

Section 1.01 *Definitions.* Capitalized terms used herein shall have the following meanings:

**Affiliate** means each of LBHI and any entity of which LBHI was the direct or indirect ultimate parent company as of September 15, 2008.

**Asset** means, as the context requires, property, rights, Claims and assets, including securities and money.

**US Bankruptcy Code** means title 11 of the United States Code.

**Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of New York.

**Bankruptcy Court Approval** means the entry (a) in the LBI SIPA Proceeding, of a Final Order of the Bankruptcy Court approving the Settlement Agreement and granting the LBI Trustee authority to execute and deliver this Settlement Agreement, perform all obligations hereunder and comply with the terms of this Settlement Agreement; and (b) in the LBF Chapter 15 Proceeding, of a Final Order of the Bankruptcy Court approving the Settlement Agreement and granting PwC, in its capacity as bankruptcy liquidator of LBF, authority to execute and deliver this Settlement Agreement, perform all obligations hereunder and comply with the terms of this Settlement Agreement.

**Business Day** means any day that is not a Saturday, Sunday, United States federal holiday, a New York state holiday, a Swiss national holiday, a holiday in the Canton of Zurich, or a public holiday in the City of Zurich.

**Claim** means: (i) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy (or right to payment to which it gives rise) is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**Conditions to Effectiveness** means the occurrence of each of the following events: (i) Bankruptcy Court Approval, (ii) LBF Creditors' Committee Approval, (iii) the LBF Liquidator publishes the realization plan with respect to this Settlement Agreement no later than 30 days following the approval by the LBF Creditors' Committee, (iv) (a) no creditor of LBF requests an order from FINMA in due time and form, or (b) if such an order is requested in due time and form, (1) FINMA issues a final and enforceable order that does not disapprove in substance the Settlement Agreement, or its execution by the LBF Liquidator (the "FINMA Settlement Order") and such a FINMA Settlement Order is not substantially altered, or modified by FINMA itself (*Wiedererwägung*) prior to the Effective Date, or (2) a competent Swiss court issues a Final Order that does not declare invalid, or set aside in total or in part the FINMA Settlement Order and that thereby does not disapprove in substance the Settlement Agreement, or its execution by the LBF Liquidator, (v) LBF publishes the offer for assignment of the claims asserted by LBF against LBI pursuant to Art. 260 of the Swiss Federal Law on Debt Enforcement and Bankruptcy no later than 30 days following the approval by the LBF Creditors' Committee, and (vi) no creditor of LBF requests the assignment of the LBF claims against LBI according to Article 260 of the Swiss Federal Law on Debt Enforcement and Bankruptcy in due time and form (including deposit of the settlement interest amount as determined by the LBF Liquidator).

**Effective Date** means the first Business Day after the last Condition to Effectiveness has occurred.

**Encumbrance** means any interest or equity of any Person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, option, restriction, right of first refusal, right of pre-emption, third-party right or interest, other right that encumbers or restricts the entitlement of the owner or holder of an Asset until one or more obligations owed to another Person are discharged in full, other encumbrance or security interest or arrangement of any kind, or another type of preferential arrangement (including, without limitation, a title transfer or retention arrangement) having similar effect and any agreement or obligation to create or grant any of the aforesaid.

**Execution Date** means the date this Settlement Agreement is executed by all Parties.

**Extended Lien Provision** means (1) with respect to LBI, a term in any agreement between LBI and an Affiliate which purports to confer an Encumbrance in favor of any other Affiliate in respect of Assets to secure debts owed by LBI to such other Affiliate; and (2) with respect to LBF, a term in any agreement between that LBF and an Affiliate which purports to confer an Encumbrance in favor of any other Affiliate in respect of Assets to secure debts owed by LBF to such other Affiliate.

**Final Order** means an order of the Bankruptcy Court, a competent Swiss court or any other court of competent jurisdiction that

- i. is in full force and effect;
- ii. is not reversed or vacated; and
- iii. as to which the time to appeal, petition for certiorari, and move for reargument or rehearing has expired and (A) as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or (B) in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been timely sought, such appeal, writ of certiorari, or reargument or rehearing shall have been withdrawn, denied or resolved by the highest court to which such order was appealed or from which certiorari, rehearing or reargument was sought; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, any analogous rule under Swiss law, including Art. 328 et seq. of the Swiss Federal Rules on Civil Procedure (*Zivilprozessordnung*), Art. 121 et seq. of the Swiss Federal Act on the Federal Supreme Court (*Bundesgerichtsgesetz*), Art. 45 of the Swiss Federal Act on Administrative Courts (*Verwaltungsgerichtsgesetz*), or any other applicable law, may be filed with respect to such order shall not prevent such order from being a Final Order.

**FINMA** means the Swiss Financial Market Supervisory Authority, the successor to the Swiss Federal Banking Commission

**LBF** means Lehman Brothers Finance AG in liquidation (a/k/a Lehman Brothers Finance SA en liquidation).

**LBF Asset** means, wherever located and by whomever held, any Asset owned or held directly or indirectly by LBF or to which LBF is directly or indirectly entitled.

**LBF Allowed Claims** means the Claims of LBF in Section 3.01 which are allowed pursuant to this Settlement Agreement.

**LBF Bankruptcy Order** means the Order entered by the Swiss Federal Banking Commission on December 19, 2008 (with effect of December 22, 2008), opening bankruptcy proceedings over LBF and appointing PwC (Zurich) as bankruptcy liquidator of LBF with sole authority to act on LBF's behalf.

**LBF Chapter 15 Proceeding** means the chapter 15 proceeding involving LBF pending in the Bankruptcy Court and captioned *In re Lehman Brothers Finance AG, In Liquidation*, Case No. 09-10583 (JMP).

**LBF Creditors' Committee Approval** means earlier of (1) passage of a resolution by LBF's Creditors' Committee approving entry into a settlement between LBF and LBI substantially in accordance with the terms of this Settlement Agreement; or (2) the passage of 30 days time from the execution of this Settlement Agreement without the LBF Creditors' Committee resolving to reject this Settlement Agreement.

**LBF Liquidation Order** means the Order entered by the Swiss Federal Banking Commission on October 29, 2008, appointing PwC (Zurich) as liquidator of LBF with sole authority to act on LBF's behalf, and prohibiting LBF's board of directors and officers from taking any legal actions on the company's behalf.

**LBF Liquidators** means PwC (Zurich), as liquidators and bankruptcy liquidators of LBF.

**LBF Released Claim** means all claims, demands, rights, duties, remedies, judgments, executions, debts, damages, liabilities, causes of action, costs, expenses, and Claims, of every kind, nature, character and description whatsoever (other than the LBF Allowed Claims), whether accrued or unaccrued, known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, certain or contingent, whether based on contract, federal, state, local, statutory or common law (including Swiss Law) or any other law, rule or regulation of any jurisdiction, or otherwise, that have been, could have been or might hereafter be asserted in any action, suit or proceeding, whether directly, indirectly, representatively or in any other capacity, in law or in equity, by the LBF Releasing Parties against any of the LBF Released Parties arising out of or in any way related to any members of the former Lehman Brothers group (including, without limitation, the business activities, assets or liabilities thereof). The release of the LBF Released Claims by the LBF Releasing Parties shall be a waiver and relinquishment, to the fullest extent permitted by law, of all provisions, laws and rules limiting relinquishment of unknown or unsuspected claims, including the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR”

and any and all provisions, rights and benefits of any similar statute or common law rule of any other jurisdiction. The term LBF Released Claim shall specifically include, without limitation: (i) any administrative expense claim arising under applicable Swiss Law or US Bankruptcy Law, (ii) any US Avoidance Action or Swiss Avoidance Action, (iii) any right of subrogation; and (iv) any Claim based upon any Extended Lien Provision; the term LBF Released Claim shall specifically not include the LBF Allowed Claims and any Non-Party Claim.

**LBF Released Parties** means the following Persons: (i) LBI, (ii) the LBI Trustee, (iii) SIPC, (iv) all past and present employees, professionals and advisors of SIPC, LBI and the LBI Trustee, respectively, and (v) all successors, assigns, heirs, and personal representatives, and all past and present officers, directors, employees, agents, representatives, consultants, financial advisors, accountants and attorneys, of each Person referred to in this definition.

**LBF Releasing Party** means LBF, on behalf of itself, its estate, its successors and assigns, and any Person claiming through or on behalf of such LBF (including the LBF Liquidators).

**LBHI** means Lehman Brothers Holdings Inc.

**LBI** means Lehman Brothers Inc.

**LBI Asset** means, wherever located and by whomever held, any Asset owned or held directly or indirectly by the LBI Trustee or to which the LBI Trustee is directly or indirectly entitled.

**LBI Fund of Customer Property** means the fund of LBI property available for the payment of customer claims against LBI.

**LBI Liquidation Order** means the Order Commencing Liquidation, entered September 19, 2008, by the Honorable Gerard E. Lynch, District Judge of the United States District Court for the Southern District of New York, pursuant to the provisions of SIPA in the case captioned *SIPC vs. LBI*, Case No. 08-CIV-8119 (GEL).

**LBI Released Claim** means all claims, demands, rights, duties, remedies, judgments, executions, debts, damages, liabilities, causes of action, costs, expenses, and Claims, of every kind, nature, character and description whatsoever, whether accrued or unaccrued, known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, certain or contingent, whether based on contract, federal, state, local, statutory or common law (including Swiss Law) or any other law, rule or regulation of any jurisdiction, or otherwise, that have been, could have been or might hereafter be asserted in any action, suit or proceeding, whether directly, indirectly, representatively or in any other capacity, in law or in equity, by the LBI Releasing Parties against any of the LBI Released Parties arising out of or in any way related to any members of the former Lehman Brothers group (including, without limitation, the business activities, assets or liabilities thereof). The release of the LBI Released Claims by the LBI Releasing Parties shall be a waiver and relinquishment, to the fullest extent permitted by law, of

all provisions, laws and rules limiting relinquishment of unknown or unsuspected claims, including the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR”

and any and all provisions, rights and benefits of any similar statute or common law rule of any other jurisdiction. The term LBI Released Claim shall specifically include, without limitation: (i) any administrative expense claim arising under applicable Swiss Law or US Bankruptcy Law, (ii) any US Avoidance Action or Swiss Avoidance Action, (iii) any right of subrogation; and (iv) any Claim based upon any Extended Lien Provision; the term LBI Released Claim shall specifically not include any Non-Party Claim.

**LBI Released Parties** means the following Persons: (i) LBF, (ii) the LBF Liquidators, (iii) FINMA, (iv) all past and present employees, professionals and advisors of FINMA, LBF and the LBF Liquidators, respectively, and (v) all successors, assigns, heirs, and personal representatives, and all past and present officers, directors, employees, agents, representatives, consultants, financial advisors, accountants and attorneys, of each Person referred to in this definition.

**LBI Releasing Parties** means the LBI Trustee, on behalf of himself, the LBI estate, his successors and assigns, and any entity claiming through or on behalf of the LBI Trustee or LBI.

**LBI SIPA Proceeding** means the SIPA liquidation of LBI pending in the Bankruptcy Court and captioned *In re Lehman Brothers Inc.*, 08-01420 (JMP) SIPA.

**LBI Trustee** means James W. Giddens, as trustee in the SIPA liquidation of LBI, without personal liability and solely in his capacity as trustee and on behalf of LBI.

**Lehman Global Protocol** means the Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies dated May 12, 2009.

**Non-Party Claim** means any Claim of a Party against any Person other than a Party, including without limitation any such Claim arising from the guaranty of an obligation of a Party.

**Party** means the LBI Trustee and LBF.

**Parties** means, collectively, the LBI Trustee and LBF.

**Person** means an individual, partnership, government entity, corporation, limited liability company, limited liability partnership or any other entity.

**PwC (Zurich)** means PricewaterhouseCoopers AG, Zurich.

**Security Interest Claim** means a Claim by a Person to the benefit of an Encumbrance.

**Settlement Agreement** means this agreement.

**SIPA** means the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa *et seq.*, in effect as of September 19, 2008.

**SIPC** means the Securities Investor Protection Corporation.

**Swiss Avoidance Actions** means all avoidance actions and causes of action which may be brought by LBF against any LBF Released Party pursuant to applicable Swiss Law, including but not limited to the provisions of Art. 285 *et seq.* of the Swiss Federal Law on Debt Enforcement and Bankruptcy.

**Swiss Law** means the laws of Switzerland .

**US\$** means the lawful currency of the United States of America.

**US Avoidance Action** means (i) any and all actions under US Bankruptcy Law seeking the avoidance of a transfer or obligation, including Sections 542-553 of the US Bankruptcy Code; and (ii) similar actions under other applicable law.

**US Bankruptcy Law** means the US Bankruptcy Code, SIPA and any other law applicable in the LBI SIPA Proceeding.

Section 1.02 *Construction.* This Settlement Agreement shall be interpreted according to the following rules of construction:

- (a) This Settlement Agreement constitutes a fully negotiated agreement among commercially sophisticated parties and therefore shall not be construed or interpreted for or against any Party, and any rule or maxim of construction to such effect shall not apply to this Settlement Agreement.
- (b) Words or terms expressed in the plural include the singular and vice versa.
- (c) Words importing a gender include every gender.
- (d) The word “including” does not limit the generality of any preceding words.
- (e) The word “or” shall not be exclusive.

Section 1.03 *Severability.* If any term or other provision of this Settlement Agreement is invalid, illegal or incapable of being enforced, all other terms and provisions of this Settlement Agreement shall nevertheless remain in full force and effect.

Section 1.04 *Headings.* The headings utilized in this Settlement Agreement are for convenience only and shall in no way affect the construction, meaning or interpretation hereof.

Section 1.05 *Binding Effect; Successor and Assigns.*

- (a) Any declaration or statement of the LBI Trustee shall only be made in his capacity and function as the LBI Trustee and shall in no circumstance be construed as being a declaration or statement of the LBI Trustee on his own and personal behalf.
- (b) Any declaration or statement of the LBF Liquidators shall only be made in their respective capacities and functions as the liquidators of LBF, and shall in no circumstance be construed as being a declaration or statement of the LBF Liquidators on their own and personal behalf.
- (c) This Settlement Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

Section 1.06 *Entire Agreement*. This Settlement Agreement constitutes the entire and only agreement of the Parties concerning the subject matter hereof. This Settlement Agreement supersedes and replaces any and all prior or contemporaneous verbal or written agreements between the Parties concerning the subject matter hereof.

Section 1.07 *No Oral Modifications*. This Settlement Agreement may not be modified or amended except by written agreement of the Parties. No waiver of any provision of this agreement shall be valid unless in writing signed by the waiving Party. No waiver of any breach of any term or provision of this Settlement Agreement shall be construed as a waiver of any subsequent breach.

Section 1.08 *No Admission of Liability*. Each Party acknowledges that this Settlement Agreement effects a settlement of potential Claims and counterclaims some or all of which are denied and contested, and that nothing contained herein shall be construed as an admission of liability or wrongdoing.

## **ARTICLE II. EFFECTIVENESS**

Section 2.01 *Effectiveness*. This Settlement Agreement shall become effective on and from the Effective Date.

Section 2.02 *Counterparts*. This Settlement Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart. A copy or a facsimile of a signature shall be binding upon the signatory as if it were an original signature.

## **ARTICLE III. SETTLEMENT OF CLAIMS**

Section 3.01 *LBF Allowed Claims*. The LBI Trustee agrees that the following LBF Allowed Claims shall be allowed against the estate of LBI and paid, without reserve or holdback (except to the extent that a person not a party to this Settlement Agreement timely asserts that the LBF Allowed Claims are subject, in whole or in part, to an Encumbrance), in the manner provided in the LBI SIPA Proceeding: (1) a customer claim in the amount of US\$189,924,000.00 (one hundred eighty-nine million nine hundred twenty-four thousand U.S. dollars) representing the September 19, 2008 value of 1,292 (one thousand two hundred ninety-two) shares of Berkshire Hathaway Class A common stock (the "LBF Allowed Customer Claim"); and (2) an unsecured



non-priority general creditor claim in the amount of US\$360,000,000.00 (three hundred sixty million U.S. dollars) (the "LBF Allowed Unsecured Claim").

Section 3.02 *Expungement and Disallowance of Claims.* Other than as provided for in Section 3.01 or Article VIII, any and all Claims which have been, or could be, asserted by LBF or the LBI Trustee against each other, in any proceeding or forum, shall be expunged, disallowed and released in accordance with Article VIII.

#### ARTICLE IV. EXTENDED LIENS

Section 4.01 *LBI Trustee's Release of Extended Liens.* The LBI Trustee:

- (a) Waives and releases any Claim, right and entitlement that LBI or the LBI Trustee may have to the exercise of any Extended Lien Provision or enforcement of any Encumbrance over any LBF Asset.
- (b) Covenants and agrees that he shall not, on behalf of himself, LBI or for the benefit of another Person, apply or exercise, or seek the application or exercise of any Extended Lien Provision or enforcement of any Encumbrance or right of set-off or counterclaim or any similar or analogous procedure or right in respect of any LBF Asset.

Section 4.02 *LBF's Release of Extended Liens.* LBF:

- (a) Waives and releases any Claim, right and entitlement that LBF or the LBF Liquidators may have to the exercise of any Extended Lien Provision or enforcement of any Encumbrance over any LBI Asset.
- (b) Covenants and agrees that it shall not, on behalf of itself or for the benefit of another Person apply or exercise, or seek the application or exercise of any Extended Lien Provision or enforcement of any Encumbrance or right of set-off or counterclaim or any similar or analogous procedure or right in respect of any LBI Asset.

Section 4.03 *Valid Extended Lien Provision.* Without limiting the generality of the release of extended liens provided in Section 4.01 and 4.02, if: (i) a Person (other than LBI) asserts that it has a claim against LBF that is secured by an Extended Lien Provision over either the LBF Allowed Customer Claim or the LBF Allowed Unsecured Claim (an "Extended Lien Claim"), then LBI shall follow any Final Order resolving a dispute between the relevant parties to the dispute or, in the alternative, follow the joint instruction of LBF and the Person asserting the Extended Lien Claim. Where any such Extended Lien Claim is asserted against the LBF Allowed Customer Claim or the LBF Allowed Unsecured Claim, LBI shall, at LBF's expense, provide reasonable assistance (including access to witnesses and non-privileged documents) in support of any defense that LBF may assert in any legal proceedings with respect to the same. LBI shall not take a position with respect to the validity of an Extended Lien Claim asserted against the LBF Allowed Customer Claim or the LBF Allowed Unsecured Claim.

## ARTICLE V. COVENANTS, REPRESENTATIONS & WARRANTIES

Section 5.01 *Covenants, Representations & Warranties by the LBI Trustee.* In order to induce LBF and the LBF Liquidators to enter into and perform their obligations under this Settlement Agreement, the LBI Trustee hereby covenants, represents, warrants and acknowledges as follows:

- (a) *Bankruptcy Court Approval.* As soon as practicable after execution of this Settlement Agreement, the LBI Trustee shall seek Bankruptcy Court Approval.
- (b) *Authority.* Subject to Bankruptcy Court Approval, (i) the LBI Trustee has the power and authority to execute, deliver and perform his obligations under this Settlement Agreement and to bind the LBI estate, and to consummate the transactions contemplated herein; and (ii) the execution, delivery and performance of this Settlement Agreement by the LBI Trustee and the consummation of the transactions contemplated herein have been duly authorized by all necessary action on the part of the LBI Trustee and no other proceedings on the part of the LBI Trustee are necessary to authorize and approve this Settlement Agreement or any of the transactions contemplated herein.
- (c) *Validity.* Subject to Bankruptcy Court Approval, this Settlement Agreement has been duly executed and delivered by the LBI Trustee and constitutes the legal, valid and binding agreement of the LBI Trustee, enforceable against the LBI Trustee in accordance with its terms.
- (d) *Authorization of Governmental Authorities and Creditors.* Subject to Bankruptcy Court Approval, no action by (including any authorization, consent or approval), in respect of, or filing with, any governmental authority is required for, or in connection with, the valid and lawful authorization, execution, delivery and performance by the LBI Trustee pursuant to this Settlement Agreement, other than as provided herein.
- (e) *No Reliance Other Than Representations, Warranties & Covenants.* The LBI Trustee and LBI, acting through the LBI Trustee: (i) is a sophisticated party with respect to the subject matter of this Settlement Agreement, (ii) has been represented and advised by legal counsel in connection with this Settlement Agreement, (iii) has adequate information concerning the matters that are the subject of this Settlement Agreement, (iv) acknowledges that he has entered into this Settlement Agreement voluntarily and of his own choice and not under coercion or duress, and (v) has independently and without reliance upon LBF, the LBF Liquidators or any officer, employee, agent, counsel or other representative thereof, and based on such information as the LBI Trustee has deemed appropriate, made his own analysis and decision to enter into this Settlement Agreement, provided, that the LBI Trustee has relied upon the express representations, warranties and covenants of the LBF and LBF Liquidators in this Settlement Agreement.

Section 5.02 *Covenants, Representations & Warranties by LBF.* In order to induce the LBI Trustee to enter into and perform his obligations under this Settlement Agreement, each of the LBF Liquidators and LBF hereby covenants, represents, warrants and acknowledges as follows:

- (a) *LBF Creditors' Committee Approval.* As soon as practicable after execution of this Settlement Agreement, LBF, acting through the LBF Liquidators, shall seek LBF Creditors' Committee Approval and Bankruptcy Court Approval.
- (b) *Authority.* Subject to the Conditions to Effectiveness, (i) LBF has the power and authority to execute, deliver and perform its obligations under this Settlement Agreement, and to consummate the transactions contemplated herein; and (ii) the execution, delivery and performance of this Settlement Agreement by LBF and the consummation of the transactions contemplated herein have been duly authorized by all necessary action on the part of LBF and no other proceedings on the part of LBF are necessary to authorize and approve this Settlement Agreement or any of the transactions contemplated herein.
- (c) *Validity.* Subject to the Conditions to Effectiveness, this Settlement Agreement has been duly executed and delivered by LBF and constitutes the legal, valid and binding agreement of LBF, enforceable against LBF in accordance with its terms.
- (d) *Authorization of Governmental Authorities and Creditors.* Subject to the Conditions to Effectiveness, no action by (including any authorization, consent or approval), in respect of, or filing with, any governmental authority is required for, or in connection with, the valid and lawful authorization, execution, delivery and performance by LBF and/or the LBF Liquidators pursuant to this Settlement Agreement, other than as provided herein.
- (e) *No Reliance Other Than Representations, Warranties & Covenants.* The LBF Liquidators and LBF acting through the LBF Liquidators (i) is a sophisticated party with respect to the subject matter of this Settlement Agreement, (ii) has been represented and advised by legal counsel in connection with this Settlement Agreement, (iii) has adequate information concerning the matters that are the subject of this Settlement Agreement, (iv) acknowledges that it has entered into this Settlement Agreement voluntarily and of its own choice and not under coercion or duress; and (v) has independently and without reliance upon the LBI Trustee or any of the LBI Trustee's or LBI's respective affiliates or any officer, employee, agent, counsel or other representative thereof, and based on such information as each of the LBF Liquidators and LBF has deemed appropriate, made its own analysis and decision to enter into this Settlement Agreement, provided, that each of the LBF Liquidators and LBF has relied upon the express representations, warranties and covenants of the LBI Trustee in this Settlement Agreement.
- (f) *Title; No Prior Transfer of Claims.*
  - (i) As of the Execution Date, LBF owns and has good title to its respective LBF Allowed Claims, free and clear of any and all liens, security interests, participations or Encumbrances created or incurred by or against LBF and has not transferred or assigned to any other person any of the LBF Allowed Claims that are the subject of this Settlement Agreement, in whole or in part.
  - (ii) After the Effective Date, LBF may transfer any LBF Allowed Claim, or any rights or interests arising thereunder, in whole or in part, to one or more transferees; provided, that any transferee of such LBF Allowed Claims agrees in writing that the terms of this

Settlement Agreement shall be binding in all respects upon, and shall govern its acts and those of any successor transferees. This subsection (ii) shall constitute consent by the LBI Trustee to any transfer or assignment of the LBF Allowed Claims, in whole or in part, that complies with this subsection.

#### **ARTICLE VI. CONTRACTS**

Section 6.01 *Contracts*. Any contract or agreement not identified in this section that is between (i) LBI or the LBI Trustee, and (ii) LBF or any LBF Liquidator, shall be rejected pursuant to section 365 of the Bankruptcy Code or otherwise terminated. Any Claim that arises from the rejection or termination of such contract or agreement is deemed to be satisfied in full by the terms and provisions of this Settlement Agreement. The following contract shall survive the execution and consummation of this Settlement Agreement and shall continue to be enforceable pursuant to the terms thereof: The Lehman Global Protocol

#### **ARTICLE VII. CONTINUING CO-OPERATION**

Section 7.01 The Parties will continue to exchange data relating to the respective bankruptcy cases and insolvency proceedings in order to assist each other in resolving Claims of Affiliates and other creditors pursuant to and subject to the terms of: (i) any data sharing agreement between (among others) the Parties, and (ii) the Lehman Global Protocol.

#### **ARTICLE VIII. RELEASES**

Section 8.01 *LBI Release*.

- (a) In consideration for LBF's execution of this Settlement Agreement and in exchange for the obligations of LBF and the LBF Liquidator under this Settlement Agreement, including the mutual release provisions of this Article VIII, effective upon the occurrence of the Effective Date each LBI Releasing Party hereby irrevocably releases, discharges and acquits, fully and forever, each LBI Released Party from any and all LBI Released Claims.
- (b) Nothing in this Settlement Agreement shall operate as a release or waiver of any LBI Non-Party Claim.

Section 8.02 *LBF Release*.

- (a) In consideration for the LBI Trustee's execution of this Settlement Agreement and in exchange for the obligations of LBI and the LBI Trustee under this Settlement Agreement, including the allowance of the LBF Allowed Claims and the mutual release provisions of this Article VIII, effective upon the occurrence of the Effective Date, each LBF Releasing Party hereby irrevocably releases, discharges and acquits, fully and forever, each LBF Released Party from any and all LBF Released Claims.
- (b) Nothing in this Settlement Agreement shall operate as a release or waiver of any LBF Non-Party Claim.

Section 8.03 *Interpretation of Releases.* For the avoidance of any doubt, nothing in this agreement shall be interpreted or construed (a) as a release or waiver of any claim for (1) breach of any provision of this Settlement Agreement; or (2) breach of any provision of the Lehman Global Protocol that occurs after the Effective Date; or (b) as a release or waiver that impairs or restricts the ability to assert, pursue or prove Non-Party Claims, including Non-Party Claims that arise with respect to or are related to the LBF Allowed Claims or the LBF Released Claims.

#### ARTICLE IX. TERMINATION

Section 9.01 *Automatic Termination.* This Settlement Agreement shall automatically terminate upon the occurrence of any of the following events: (i) the entry of a Final Order denying Bankruptcy Court Approval, (ii) the LBF Creditors' Committee resolves to reject this Settlement Agreement within 30 days of the execution of this Settlement Agreement, (iii) if a creditor of LBF requests the assignment of the LBF claims against LBI according to Article 260 of the Swiss Federal Law on Debt Enforcement and Bankruptcy in due time and form (including deposit of the settlement interest amount as determined by the LBF Liquidator), (iv) if FINMA issues an order substantially disapproving the Settlement Agreement, or its execution by the LBF Liquidator prior to the Effective Date, or (v) a competent Swiss court by Final Order declares invalid, or sets aside in total or in part the FINMA Settlement Order and thereby substantially disapproves the Settlement Agreement, or its execution by the LBF Liquidator.

Section 9.02 *The LBI Trustee's Right to Terminate.* The LBI Trustee shall have the right to terminate this Settlement Agreement before the Effective Date by written notice to LBF consistent with Article XI hereof if there is a material breach of the representations, warranties or covenants of LBF hereunder, and LBF shall fail to cure such breach within ten (10) Business Days following written notice of such breach from the LBI Trustee.

Section 9.03 *LBF's Right to Terminate.* LBF shall have the right to terminate this Settlement Agreement before the Effective Date by written notice to the LBI Trustee consistent with Article XI if there is a material breach of the representations, warranties or covenants of the LBI Trustee hereunder, and the LBI Trustee shall fail to cure such breach within ten (10) Business Days following written notice of such breach from the LBF Liquidators.

Section 9.04 *Effect of Termination.* In the event that this Settlement Agreement is terminated in accordance with its terms, then neither this Settlement Agreement, nor any motion or other pleading filed in the Bankruptcy Court or Swiss Court with respect to the approval of this Settlement Agreement, shall have any *res judicata*, evidentiary or collateral estoppel effect or be of any force or effect. Each of the Parties' respective interests, rights, remedies and defenses shall be restored without prejudice as if this Settlement Agreement had never been executed (except as to this Section) and the Parties hereto shall be automatically relieved of any further obligations hereunder. Except as expressly provided herein, this Settlement Agreement and all communications and negotiations among the Parties with respect hereto or any of the transactions contemplated hereunder are without waiver of or prejudice to the Parties' rights and remedies and the Parties hereby reserve all claims, defenses and positions that they may have with respect to each other.

## ARTICLE X. VENUE AND CHOICE OF LAW

### Section 10.01 *Venue.*

- (a) To the maximum extent permissible by law, the Parties expressly consent and submit to the exclusive jurisdiction of the Bankruptcy Court over any actions or proceedings relating to the enforcement or interpretation of this Settlement Agreement and any Party bringing such action or proceeding shall bring such action or proceeding in the Bankruptcy Court.
- (b) Each of the Parties agrees that a final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.
- (c) If the Bankruptcy Court refuses or abstains from exercising jurisdiction over the enforcement of this Settlement Agreement and/or any actions or proceedings arising hereunder or thereunder, then the Parties agree that venue shall be in any court in the State of New York having proper jurisdiction.
- (d) Each Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, (i) any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Settlement Agreement with the Bankruptcy Court or with any other state or federal court located within the County of New York in the State of New York; and (ii) the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.
- (e) Each Party irrevocably consents to service of process in the manner provided for notices in Article XI hereof. Nothing in this Settlement Agreement will affect the right, or requirement, of any Party to this Settlement Agreement to serve process in any other manner permitted or required by applicable law.

Section 10.02 *Choice of Law.* This Settlement Agreement and all claims and disputes arising out of or in connection with this Settlement Agreement, shall be governed by and construed in accordance with the laws of the State of New York and US Bankruptcy Law, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of New York or US Bankruptcy Law.

## ARTICLE XI. NOTICES

All notices and other communications given or made pursuant to this Settlement Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next Business Day, (c) three days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one Business Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

To the LBI Trustee at:

Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, New York 10004  
Attn: James B. Kobak, Jr. & Jeffrey M. Greilsheimer  
Email: [kobak@hugheshubbard.com](mailto:kobak@hugheshubbard.com)  
[greilshe@hugheshubbard.com](mailto:greilshe@hugheshubbard.com)

To LBF:

PricewaterhouseCoopers AG, Zurich  
As Bankruptcy Liquidator for Lehman  
Brothers Finance AG In Liquidation  
Stampfenbachstrasse 48  
Zurich, Switzerland  
Attn: Christiana Suhr Brunner & Marco Grossi  
Email: [christiana.suhr.brunner@ch.pwc.com](mailto:christiana.suhr.brunner@ch.pwc.com)  
[marco.grossi@ch.pwc.com](mailto:marco.grossi@ch.pwc.com)

With a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166-0193  
Attn: Michael A. Rosenthal  
Email: [MRosenthal@gibsondunn.com](mailto:MRosenthal@gibsondunn.com)

-and-

Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue, Suite 1100  
Dallas, Texas 75201  
Attn: Robert B. Krakow  
Email: [rkrakow@gibsondunn.com](mailto:rkrakow@gibsondunn.com)

or to such other address as may have been furnished by a Party to the other Party by notice given in accordance with the requirements set forth above.

## **ARTICLE XII. EXPENSES**

The fees and expenses incurred by each Party (including the fees of any attorneys, accountants, investment bankers, financial advisors or any other professionals engaged by such Party) in connection with this Settlement Agreement and the transactions contemplated hereby, whether or not the transactions contemplated hereby are consummated, shall be paid by such Party.

#### ARTICLE XIII. NO PERSONAL LIABILITY

Section 13.01 *LBI Trustee*. The Parties accept and agree that this Settlement Agreement and all actions and measures contained herein do not give rise to any personal liability on the part of the LBI Trustee, his firm and its partners and employees, and their representatives or other professional advisors, and to the extent any such personal liability existed, the Parties explicitly waive any and all potential rights and claims against them, their firm and its partners and employees, and their representatives and other professional advisors. Any claim by a Party against the LBI Trustee or LBI arising under or relating to this Settlement Agreement shall, except with respect to the LBF Allowed Customer Claim, only be satisfied out of the assets of LBI that are allocated to the LBI general estate. Any claim by a Party against the LBI Trustee or LBI arising under or relating to this Settlement Agreement with respect to the LBF Allowed Customer Claim shall only be satisfied out of the assets of the LBI general estate and the LBI Fund of Customer Property in accordance with SIPA.

Section 13.02 *LBF Liquidators*. The Parties accept and agree that this Settlement Agreement and all actions and measures contained herein do not give rise to any personal liability on the part of the LBF Liquidators, their firm and its partners and employees, and their representatives or other professional advisors, and to the extent any such personal liability existed, the Parties explicitly waive any and all potential rights and claims against them, their firm and its partners and employees, and their representatives and other professional advisors. Any claim by a Party against the LBF Liquidators or LBF arising under or relating to this Settlement Agreement shall only be satisfied out of the assets of the insolvency estate of LBF.

#### ARTICLE XIV. WAIVER OF JURY TRIAL

EACH OF THE PARTIES HERETO HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS SETTLEMENT AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH OR IN RESPECT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ARISING OUT OF ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS SETTLEMENT AGREEMENT OR IN ANY WAY RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY ACTION TO RESCIND OR CANCEL THIS SETTLEMENT AGREEMENT AND WITH RESPECT TO ANY CLAIM OR DEFENSE ASSERTING THAT THIS SETTLEMENT AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER OF RIGHT TO TRIAL BY JURY IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF THE PARTIES HERETO IS HEREBY AUTHORIZED TO FILE A COPY OF THIS ARTICLE XIV IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER. THIS WAIVER OF JURY TRIAL IS A MATERIAL



INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS SETTLEMENT  
AGREEMENT.


James. W. Giddens, as SIPA Trustee for the  
Liquidation of Lehman Brothers Inc.

  
By: Jeffrey M. Greilsheimer


Title: Counsel

Lehman Brothers Finance AG in liquidation  
(a/k/a Lehman Brothers Finance SA en  
liquidation)

By: PricewaterhouseCoopers AG (Zurich),  
as bankruptcy liquidator of Lehman  
Brothers Finance AG in Liquidation

  
S. NEWARK FOR C. SUHR  
By: Christiana Suhr Brunner

Title: Liquidator

  
By: Pascal Portmann

Title: Liquidator