

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : **Case No. 08-1420 (JMP)**
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LEHMAN BROTHERS INC., : **SIPA Liquidation Proceeding**
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 Debtor. :
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HWA 555 OWNERS, LLC, :
:
 Plaintiff, : **Adv. Proc. No. 09-1160 (JMP)**
:
 - against - :
:
LEHMAN BROTHERS INC., :
:
 Defendant. :
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**SETTLEMENT STIPULATION IN CONNECTION WITH ADVERSARY
PROCEEDING NO. 09-1160 (JMP)**

WHEREAS, on or about April 19, 1994, Lehman Brothers Inc. (“LBI”), as tenant, entered into a certain lease agreement (as subsequently amended, the “Lease”) with respect to commercial office space located at 555 California Street, San Francisco, California (the “SF Property”) pursuant to which HWA 555 Owners, LLC (“HWA”) is the landlord, as successor-in-interest to 555 California Street LLC (f/k/a 555 California Street Partners);

WHEREAS, on September 15, 2008, Lehman Brothers Holding Inc. (“LBHI”) and, periodically thereafter, certain subsidiaries (collectively, “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code¹ (the “Chapter 11 Cases”);

WHEREAS, on September 19, 2008, (i) the instant proceeding was commenced under the Securities Investor Protection Act of 1970 (“SIPA”) with respect to LBI; (ii) James W. Giddens (the “Trustee”) was appointed as Trustee to administer LBI’s estate; and (iii) this SIPA proceeding was referred to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on April 17, 2009, HWA filed an adversary complaint against LBI (the “Adversary Complaint”) seeking a declaratory judgment that the Trustee had assumed the Lease

¹ Title 11 of the United States Code.

pursuant to an Asset Purchase Agreement dated September 16, 2008 between LBHI, LBI and LB 745 LLC (collectively, the “Sellers”) and Barclays Capital Inc. (“Barclays”), a letter agreement dated as of September 20, 2008 between Sellers and Barclays and orders entered in the Chapter 11 Cases and the SIPA proceeding on September 20, 2008 (the “Sale Orders²”) and, as a result, that the Trustee was responsible for the rent and related charges under the Lease as administrative expenses of the LBI estate;

WHEREAS, the Trustee filed a motion to dismiss the Adversary Complaint on May 28, 2009 (the “Motion to Dismiss”) asserting that the Lease had not been assumed and was deemed rejected on April 17, 2009;

WHEREAS, a hearing (the “Hearing”) was held on the Motion to Dismiss on August 11, 2009;

WHEREAS, at the conclusion of the Hearing, the Bankruptcy Court (i) directed the parties to stipulate to a schedule providing for limited discovery to be conducted with respect to the Adversary Complaint, and (ii) deemed the Motion to Dismiss to be converted to a motion for summary judgment pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure; and

WHEREAS, HWA, Barclays and the Trustee, on behalf of LBI, have since negotiated at arms-length and in good faith concerning the rights and obligations of the parties with respect to the Lease;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES HERETO THAT:

1. Within three (3) business days after the execution of this stipulation (the “Stipulation”), the Trustee shall file a motion in the form attached hereto as Exhibit A seeking entry by the Bankruptcy Court of an order substantially in the form attached hereto as Exhibit B and reasonably acceptable to Barclays (the “Approval Order”).³ Each of the parties shall cooperate, assist and consult with one another in connection with such efforts to obtain entry of the Approval Order. If approval of this Stipulation is denied by the Bankruptcy Court, (a) the Trustee, on behalf of himself, LBI and the LBI Estate, (b) Barclays, and (c) HWA, and each of their respective agents, employees, principals, professionals, successors, affiliates and assigns, shall each reserve their rights with respect to the subject Lease, the Adversary Complaint and the SF Property, and this Stipulation shall have no force and effect.

2. The Trustee shall send counsel to Barclays a notice by electronic mail,⁴ with a copy to counsel for HWA, indicating the date upon which the Approval Order becomes

² The Sale Orders are comprised of docket entry 258 in Case No. 08-13555 and docket entry 3 in Case No. 08-01420.

³ The form of the Approval Order attached hereto as Exhibit B is acceptable to Barclays.

⁴ Delivery of such notice by electronic mail to lbarefoot@cgsh.com and lgranfield@cgsh.com shall be deemed sufficient notice.

final and non-appealable.⁵ Within five (5) business days of the date of such electronic mail notice, (a) Barclays shall pay (without right of setoff or recoupment) to HWA One Million Dollars (\$1,000,000.00) (the “HWA Cash Settlement Amount”) by wire transfer to: Bank of America N.A., New York, New York; ABA No.: 026009593; Account Name: HWA 555 Owners LLC Main Account; Account No.: 004580262982; Reference: Lehman Brothers Inc./555 California Street; and (b) without the filing of an application or motion by HWA, without further action taken by or on behalf of HWA, and without further order of the Bankruptcy Court, HWA shall have an allowed administrative claim against the LBI estate in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) pursuant to Section 503(b)(1)(A) of the Bankruptcy Code (the “HWA Administrative Claim”), and such claim shall be entitled to priority pursuant to Section 507(a)(1)(C) of the Bankruptcy Code.

3. Upon Barclays’ wiring the HWA Cash Settlement Amount in accordance with the directions set forth in paragraph 2 hereof, HWA and its respective agents, employees, principals, professionals, successors, affiliates and assigns, shall be deemed to have fully, finally and forever waived, settled, compromised and released any and all claims, liabilities and obligations they might have (including, without limitation, claims that are now unknown, contingent and/or unliquidated and including any claims filed by or on behalf of HWA against LBI or the LBI estate) on account of, or relating to, (i) the Lease or any provision thereof, (ii) the Adversary Complaint or (iii) the use and occupancy of the SF Property against (a) the Trustee, his respective agents, employees, principals, professionals, successors and assigns, LBI or the LBI estate, and the Securities Investment Protection Corporation, and (b) Barclays and its respective agents, employees, principals, professionals, successors, affiliates and assigns (the “Barclays Releasees”), with the sole exceptions of (x) the HWA Administrative Claim against the LBI estate, and (y) as to the Barclays Releasees, and solely with respect to subsection (iii) above, any claim with respect to Barclays’ use and occupancy of the SF Property after April 17, 2009, each of which is specifically preserved (the “HWA Released Claims”). HWA represents and warrants that it has not assigned any of the HWA Released Claims.

4. Upon Barclays’ wiring the HWA Cash Settlement Amount in accordance with the directions set forth in paragraph 2 hereof, Barclays and its respective agents, employees, principals, professionals, successors, affiliates and assigns, on the one hand, and the Trustee on behalf of himself, LBI and the LBI estate, and his respective agents, employees, principals, professionals, successors and assigns, on the other hand, shall each be deemed to have fully, finally, and forever, waived, settled, compromised and released any and all claims, liabilities and obligations (including, without limitation, claims that are now unknown, contingent, and/or unliquidated) that each might have against the other on account of, or relating to, (i) the Lease or any provision thereof, (ii) the Adversary Complaint, or (iii) the use or occupancy of the SF Property (including without limitation any claims under that certain letter agreement between Barclays and the Trustee dated April 6, 2009 relating to occupancy of the SF Property) (the “LBI-Barclays Released Claims”).

⁵ For purposes of this Stipulation, the time to file a timely notice of appeal under Rule 8002 of the Federal Rules of Bankruptcy Procedure shall be fourteen (14) days after the entry of such order.

5. Within five (5) business days after HWA's receipt of the HWA Cash Settlement Amount in accordance with the directions set forth in paragraph 2 hereof, HWA shall (a) dismiss the Adversary Complaint with prejudice and without costs to either party pursuant to the Stipulation of Dismissal in a form attached hereto, and (b) file a notice of withdrawal with prejudice of the Limited Objection of HWA to Proposed Cure Amounts and Assumption and Assignment of Lease (Docket No. 173, Bankr. Case No. 08-13555, the "Cure Objection").

6. Upon HWA's dismissal of the Adversary Complaint and withdrawal of the Cure Objection as set forth in paragraph 5 hereof, (a) the Trustee, on behalf of himself and his respective agents, employees, principals, professionals, successors and assigns, and on behalf of LBI and the LBI estate, and (b) Barclays, on behalf of itself and its respective agents, employees, principals, professionals, successors, affiliates and assigns, shall be deemed to have fully, finally and forever waived, settled, compromised and released any and all claims, liabilities and obligations they might have (including, without limitation, claims that are now unknown, contingent, and/or unliquidated) against HWA and its respective agents, employees, principals, professionals, successors, affiliates and assigns, on account of, or relating to, (i) the Lease or any provision thereof, (ii) the Adversary Complaint or (iii) the use and occupancy of the SF Property, except, solely with respect to this subsection (iii), any claims by the Barclays Releasees on account of their use and occupancy of the SF Property after April 17, 2009 (the "LBI-Barclays-HWA Released Claims"), and together with the HWA Released Claims and the LBI-Barclays Released Claims, the "Released Claims").

7. WITH RESPECT TO THE RELEASES PROVIDED HEREIN, THE PARTIES HERETO FURTHER ACKNOWLEDGE AND EXPRESSLY WAIVE THE BENEFIT OF ANY STATUTORY PROVISION OR COMMON LAW RULE THAT PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH A PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTION, INCLUDING, WITHOUT LIMITATION, THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542.

8. Each of the parties hereto hereby covenants that it will not, in its own capacity, as successor, by reason of assignment or otherwise, assert, commence, join in, or assist or encourage any third party in asserting, filing, commencing, continuing, prosecuting or joining in, any claim or action of any nature whatsoever, arising out of, based upon, or relating to, any of the Released Claims.

9. Each of (a) the Trustee, on behalf of himself, LBI and the LBI estate, (b) Barclays, and (c) HWA, and each of their respective agents, employees, principals, professionals, successors, affiliates and assigns, expressly reserve all of the rights and defenses with respect to any claims each might have against the other that are not on account of, or relating to, the Released Claims, and are not otherwise released hereunder. For the avoidance of doubt and notwithstanding anything expressly or impliedly to the contrary contained in this or any other paragraph herein, the releases provided herein do not apply or relate to, nor shall they be deemed to apply or relate to any claims, liabilities or obligations arising under any lease or agreement (other than the Lease) between Barclays or any of its affiliates and HWA or any of its affiliates including, without limitation, (i) the license agreement, dated as of April 18, 2009, between

HWA and Barclays, or (ii) the Office Lease, dated August 26, 2009, between HWA and Barclays Services Corporation, nor shall anything in this Stipulation, the Trustee's motion seeking entry of the Approval Order, any joinders filed by Barclays in respect of such motion, or the Approval Order (a) bind, be collateral estoppel, res judicata or otherwise prejudice any other matter (other than the matters in this Stipulation, and the performance thereof) in the SIPA proceeding or the Chapter 11 Cases with respect to the legal or factual assertions set forth in the Stipulation, the Trustee's motion seeking entry of the Approval Order, any joinders filed by Barclays in respect of such motion, or the Approval Order; (b) impair or modify the rights and remedies of the Trustee, LBI, the debtors in the Chapter 11 Cases or any other party in respect of any claims that have been asserted, or may be asserted against Barclays (or any affiliates of Barclays), and, for the avoidance of doubt, any claims that are the subject of or related to one or more of the Motions of the Trustee, LBHI, and the Official Committee of Unsecured Creditors of LBHI for relief pursuant to Fed. R. Civ. P. 60 (as incorporated by Federal Rule of Bankruptcy Procedure 9024) (such motions, collectively, the "Rule 60 Motions"⁶) or otherwise with respect to the Sale Orders or the related adversary proceedings commenced against Barclays by the Trustee, LBHI and the LBHI Creditors Committee on or about November 16, 2009 (such adversary proceedings, the "Barclays Adversary Proceedings")⁷; or (c) impair or modify the rights and remedies of Barclays (or any affiliate of Barclays), the Trustee, the debtors in the Chapter 11 Cases or any other party in respect of any other claims that have been asserted, or may be asserted, by Barclays (or any affiliates of Barclays) against LBI (or the Trustee as trustee for LBI), the debtors in any of the Chapter 11 Cases, their respective present or former affiliates, or any third parties, with respect to any other matter in the Chapter 11 Cases or the SIPA proceeding, and, for the avoidance of doubt, all rights of Barclays and its affiliates to: (i) seek the dismissal or the denial of the Rule 60 Motions and/or dismissal or other relief in connection with the Barclays Adversary Proceedings or (ii) seek enforcement of the Sale Orders and secure delivery of any allegedly undelivered assets thereunder, all of which rights are hereby reserved. Notwithstanding the above language in this paragraph 8, nothing in this paragraph 8 shall affect or limit the rights and obligations of each of the parties under this Stipulation. For clarity, the rights and obligations of the parties under this Stipulation, including without limitation the obligations to pay money and the right to an administrative expense claim, and the releases hereunder, shall not be affected by any other proceeding or ruling of the court in the Chapter 11 Cases or SIPA proceeding, including without limitation any ruling on the Rule 60 Motions or in the Barclays Adversary Proceedings.

10. Except as otherwise specifically provided for herein, nothing contained in this Stipulation shall create any rights, remedies, or defenses in favor of any party in interest that is not a party to this Stipulation.

11. Upon the Approval Order becoming final and non-appealable, this Stipulation shall be binding on the parties and their respective successors or assigns, including any subsequent trustee elected or appointed for LBI. Each party hereto is relying on the timely

⁶. The Rule 60 Motions are comprised of docket entries 5148, 5149, 5150, 5151, 5154, 5156, 5169, 5170, 5171, 5172, and 5173 in Case No. 08-13555 and docket entries 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, and 1702 in Case No. 08-01420.

⁷. The Adversary Proceedings are: Adv. Pro. 09-01732 (JMP), Adv. Pro. 09-01731(JMP) and 09-01733 (JMP), respectively.

fulfillment of the obligations hereunder in entering into this Stipulation, and each party shall be entitled to recover reasonable attorneys fees and expenses from non-performing parties incurred in connection with enforcement of the respective obligations under this Stipulation for failure to perform hereunder in accordance with the deadlines set forth herein unless extended by written agreement among the parties hereto.

12. Each party hereby submits to the jurisdiction of the Bankruptcy Court for any action, suit or proceeding to enforce this Stipulation or the underlying claims and agrees that any such action, suit or proceeding shall be brought only in the Bankruptcy Court. The Bankruptcy Court shall retain exclusive jurisdiction to interpret, implement or enforce the terms of this Stipulation and/or the Approval Order. To the extent that the Bankruptcy Court abstains from or otherwise declines to exercise such jurisdiction, the parties consent to jurisdiction of any federal or state court in the Borough of Manhattan with subject matter jurisdiction but solely with respect to any action, suit or proceeding to enforce this Stipulation or the underlying claims and/or the Approval Order. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit, or proceeding brought in such a court.

13. Neither this Stipulation, nor any of the terms hereof, nor any negotiations or proceedings in connection herewith, shall constitute or be construed as or be deemed to be evidence of an admission on the part of any party of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party; nor shall this Stipulation, or any of the terms hereof, or any negotiations or proceedings in connection herewith, or any performance or forbearance hereunder, be offered or received in evidence or used in any proceeding against any party, or used in any proceeding, or otherwise, for any purpose whatsoever except with respect to the effectuation and enforcement of this Stipulation.

14. This Stipulation may be signed in multiple counterparts, each of which shall be deemed to be an original but all of which together, when taken as a whole, shall constitute one and the same document; and PDF or fax signatures shall be deemed originals.

15. The professionals executing this Stipulation on behalf of the parties hereto acknowledge that they have the authority to do so. For the avoidance of any doubt, subject to Bankruptcy Court approval of this Stipulation by final nonappealable order, the Trustee hereby represents and warrants that he has the authority to enter into the above-referenced Stipulation and bind LBI and the LBI estate.

16. This Stipulation shall be governed by and shall be interpreted in accordance with the laws of the State of New York, except to the extent that the Bankruptcy Code or SIPA apply, without regard to New York's rules governing conflicts of laws.

Dated: New York, New York
February 24, 2010

HWA 555 OWNERS, LLC,
a Delaware limited liability company

By: HWA 555 Mezz-1, LLC, a Delaware
limited liability company, its sole equity
member

By: HWA 555 Mezz-2, LLC, a Delaware
limited liability company, its sole equity
member

By: HWA 555 Mezz-3, LLC, a Delaware
limited liability company, its sole equity
member

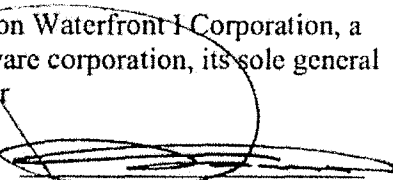
By: HWA 555 Mezz-4, LLC, a Delaware
limited liability company, its sole equity
member

By: HWA 555 Mezz-5, LLC, a Delaware
limited liability company, its sole equity
member

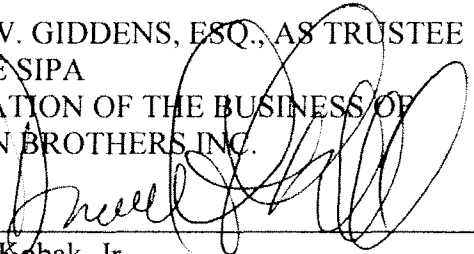
By: Hudson Waterfront Associates I, L.P.,
a Delaware limited partnership, its sole
equity member

By: Hudson Waterfront I Corporation, a
Delaware corporation, its sole general
partner

By:


Name: DAVID R. GLANVILLE
Title: PRESIDENT

JAMES W. GIDDENS, ESQ., AS TRUSTEE
FOR THE SIPA
LIQUIDATION OF THE BUSINESS OF
LEHMAN BROTHERS INC.

By:  _____

James B. Kobak, Jr.
Daniel S. Lubell
Jeffrey S. Margolin
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

ATTORNEYS FOR JAMES W. GIDDENS,
ESQ., AS TRUSTEE FOR THE SIPA
LIQUIDATION OF THE BUSINESS OF
LEHMAN BROTHERS INC.

BARCLAYS CAPITAL INC.

By: _____

Name:

Title:

JAMES W. GIDDENS, ESQ., AS TRUSTEE
FOR THE SIPA
LIQUIDATION OF THE BUSINESS OF
LEHMAN BROTHERS INC.

By: _____

James B. Kobak, Jr.
Daniel S. Lubell
Jeffrey S. Margolin
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004
(212) 837-6000

ATTORNEYS FOR JAMES W. GIDDENS,
ESQ., AS TRUSTEE FOR THE SIPA
LIQUIDATION OF THE BUSINESS OF
LEHMAN BROTHERS INC.

BARCLAYS CAPITAL INC.

By: _____

Name:

Title:

A handwritten signature in cursive script, appearing to read "Leonard A. Roca", is written over a horizontal line. The signature is fluid and extends below the line.