

## PLAN SUPPORT AND SETTLEMENT AGREEMENT

THIS PLAN SUPPORT AND SETTLEMENT AGREEMENT (this “Agreement”), dated as of September ~~23~~, 30, 2008, is made by and among, and Blue Water Automotive Systems, Inc. (“BWASI” or the “Company”) and its co-debtor affiliates, Blue Water Automotive Systems Properties, LLC (“Properties”), Blue Water Plastics Mexico, Ltd.; BWAS Holdings, Inc., BWAS Mexico, LLC (collectively, together with the Company, the “Debtors”), Ford Motor Company (“Ford”), the Official Committee of Unsecured Creditors of Blue Water Automotive Systems, Inc. et al. (the “Committee”) and CIT Capital USA, Inc. (“CIT Capital”), CIT Group/Equipment Financing, Inc. (“CIT Equipment”), and CIT Group/Business Credit, Inc. (“CIT Business Credit”) and, collectively with CIT Capital and CIT Equipment, “CIT”). The Debtors, Ford, the Committee and CIT are jointly referred to herein as the “Parties”.

### *Recitals:*

WHEREAS, on February 12, 2008 (the “Petition Date”) the Debtors filed voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Michigan Southern Division (the “Bankruptcy Court”), and the Debtors’ cases are being jointly administered under case no 08-43196 (the “Bankruptcy Case”);

WHEREAS, the Debtors have filed the Debtors’ Amended Joint Plan of Liquidation with Modifications (the “Plan”), and such Plan is set for hearing with respect to its confirmation on September 23, 2008. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan;

WHEREAS, CIT voted to reject the Plan and both CIT and the Committee filed objections to its confirmation;

WHEREAS, the Debtors (a) have commenced an adversary proceeding against CIT (the “CIT Adversary Proceeding”), and (b) preserved various issues and disputes in the Plan which are defined in the Plan as the Valuation Dispute and the Valuation Dispute Action (collectively, the “Valuation Dispute”);

WHEREAS, CIT, the Committee, the Debtors and Ford have negotiated a resolution of the objections to the Plan, the CIT Adversary Proceeding, the Valuation Dispute and other matters that have prevented confirmation of the Plan;

WHEREAS, pursuant to various purchase orders, supply agreements, and/or releases issued by Ford to the Company, the Company manufactures certain component parts or assembled goods (the “Parts”) and supplies them to Ford;

WHEREAS, Ford is willing subject to the Court’s approval of this Agreement to fund chapter 11 plan expenses of the Plan in the manner set forth herein.

WHEREAS, CIT Capital was a pre-petition lender to the Debtors, and pursuant to such loan arrangements and the entered Final Order (I) Authorizing Debtors In Possession To (A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362 And 364 Of The Bankruptcy Code (B) To Utilize Cash Collateral Pursuant To 11 U.S.C. § 363, And (II) Granting Adequate Protection To Prepetition Secured Lenders Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364 (“DIP Financing Order”) obtained a first priority lien in, among other things: (i) the real estate and other assets pledged by Properties to CIT Capital pursuant to the Mortgage, the Assignment of Rents, and the other loan documents, each dated May 17, 2006 (“Loan Documents”); (ii) that certain Lease dated as of May 17, 2006 between BWASI and Properties with respect to the real estate that was subject to the Mortgage; (iii) the CIT Capital Escrow (as defined below); (iv) together with CIT Equipment, and subject to a security interest (if allowed) in favor of KPS Special Situations Fund II LP and KPS Special Situations Fund II(A) LP (the “KPS Lien”), real estate located at 1513 Busha Highway, Marysville, Michigan and 1515 Busha Highway, Marysville, Michigan (“Busha Highway Collateral”); and (v) the proceeds of each of the foregoing, including the CIT Capital Adequate Protection Payments (as defined below) (collectively the “CIT Capital Collateral”).

WHEREAS, CIT Equipment was a pre-petition lender to the Debtors, and pursuant to such loan arrangements and the DIP Financing Order obtained a first priority lien (with certain exceptions) in: (i) the stock that BWASI owns in BWAS Mexico, LLC and Blue Water Plastics Mexico, Ltd; (ii) the stock that BWAS Mexico, LLC and Blue Water Plastics Mexico, Ltd own in the Mexican Non-Debtor Operating Subsidiary (collectively, with (i) above, the “Mexican Stock”); (iii) the CIT Equipment Escrow (as defined below); (iv) the machinery and equipment which is subject to that certain Equipment Lease between CIT Equipment Financing and BWASI dated May 17, 2006; (v) together with CIT Capital, and subject to the KPS Lien, the Busha Highway Collateral; and (vi) the proceeds of any the foregoing, including the Mexican Non-Debtor Operating Subsidiary Sale Proceeds and the CIT Equipment Adequate Protection Payments (as defined below) (collectively the “CIT Equipment Collateral” and together with the CIT Capital Collateral, “CIT Collateral”).

WHEREAS, the claims and liens of CIT Business Credit (including LaSalle Business Credit, Inc. (“LaSalle”)) were satisfied in connection with the DIP Financing Order;

WHEREAS, CIT is willing to allow the Debtors’ continued use of the CIT Collateral for the production of the Parts and is also willing to vote to accept the Plan and withdraw its objection to confirmation provided that certain conditions set forth herein are satisfied;

WHEREAS, the Committee is also willing to withdraw certain motions and objections filed in the Bankruptcy Case, including but not limited to a motion to convert the Bankruptcy

(a) with respect to 1515 Busha Highway, (i) the first \$1,600,000 of proceeds from any disposition is to be applied to the CIT Obligations; (ii) proceeds from any disposition in excess of \$1,600,000, in an amount not to exceed \$2,200,000, is to be applied to the KPS Obligations; and (iii) proceeds from any disposition in excess of \$3,800,000 is to be applied 50% to the CIT Obligations and 50% to the KPS Obligations and (b) with respect to 1513 Busha Highway, (i) the first \$600,000 of proceeds from any disposition is to be applied to the CIT Obligations; (ii) proceeds from any disposition in excess of \$600,000, in an amount not to exceed \$2,200,000, is to be applied to the KPS Obligations; and (iii) proceeds from any disposition in excess of \$2,800,000 is to be applied 50% to the CIT Obligation and 50% to the KPS Obligations.” □

Case to a case under chapter 7, and is further willing to support the Plan provided that certain conditions set forth herein are satisfied;

WHEREAS, the Parties have reached a global settlement of all issues relating to confirmation of the Plan as well as all other issues in the Bankruptcy Case;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereby agree as follows:

**1. Ford Obligations.** In consideration of the Parties' covenants and obligations herein, Ford agrees to the following:

**1.1** Separate and apart from any other obligations of Ford under this or any other agreement or understanding or otherwise, and subject to Court approval of this Agreement and the Debtors' Motion Pursuant to Bankruptcy Rule 9019(A) for Entry of an Order Approving Settlements Between the Debtors and Certain 503(B)(9) Claimants ("503 Motion"), Ford will, immediately upon Bankruptcy Court approval of this Agreement, pay into an escrow account controlled by the Debtors ("Escrow Account") the amount of \$1,700,000 ("Plan Escrow Amount"), which shall be disbursed as set forth below.

**1.2** The Debtors and/or the Creditors<sup>2</sup> Trust, as applicable, may draw and use the Plan Escrow Amount solely:

(a) To pay allowed claims under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"), provided that such payments do not exceed the aggregate amount of \$800,000 (the "503(b)(9) Payment"); and

(b) To pay \$900,000 of initial funding for the Creditors<sup>2</sup> Trust (the "Trust Seed Money"). The Trust Seed Money will be held and used according to the Creditors' Trustee's discretion only for the benefit of general unsecured creditors. Permitted uses of the Trust Seed Money include, but are not limited to, investigation and prosecution of Causes of Action, marketing and sales of Estate assets, any other action that, in the Creditors' Trustee's discretion, may benefit unsecured creditors, and/or distributions to unsecured creditors.

**1.3** There may be other claims, costs or expenses, including administrative expenses, which require funding in order for the Plan to be confirmed and become effective, including professionals fees for the pre-Effective Date period ("Administrative Claims"). Ford agrees, provided the Court has entered an Order approving this Agreement ~~and the Debtors have fully complied with their obligations under Section 2.3 of this Agreement~~, to fund Administrative Claims. Ford's commitment to fund the Administrative Claims is limited to amounts which are not otherwise funded through the Debtor's DIP financing ~~budget~~, wind down budget, settlement funds that may be remitted by Chrysler pursuant to its settlement previously approved by Ford (the "Chrysler Settlement") or settlement funds paid by

General Motors pursuant to a settlement of its prepetition payables to the Debtors (if such settlement is achieved) and is separate and apart from any other financial obligations of Ford. Unless Ford otherwise agrees, Ford's maximum obligation to fund Administrative Claims will not exceed \$1,050,000 (such maximum amount, the "Plan Funding Amount"). Ford will fund the Plan Funding Amount into an escrow account controlled by the Debtors ("Administrative Escrow") within 5 days of Court approval of this Agreement. The Administrative Escrow will be used solely to fund the Administrative Claims, including the following:

- (a) Allowed convenience class claims;
- (b) Allowed construction lien claims;
- (c) Allowed claims of a kind specified under sections 503(b), 507, or 1114(e)(2) of the Bankruptcy Code, including without limitation allowed fees and expenses of professionals to the Debtors and the Committee;
- (d) An executive incentive bonus payable to James Sampson in the amount of \$75,000 (the "Supplemental Sampson Incentive Bonus"), which will be in addition to the similar incentive bonus that has been approved by the Bankruptcy Court for Mr. Sampson and incorporated into the post-petition financing budget, and which Supplemental Sampson Incentive Bonus shall be conditioned in payment only upon the successful completion of resourcing by Ford on or before the Effective Date (the "Ford Resourcing Date"); and
- (e) Mid-level manager incentive bonuses in the aggregate amount of \$429,978, \$174,978 of which has previously been paid, resulting in a balance to be paid of \$255,000, which incentive bonuses will be conditioned in payment only upon the successful completion of resourcing by Ford on or before the Ford Resourcing Date.

**1.4** In the event the Plan is not confirmed, ~~the Administrative Escrow or does not become effective, the Plan Funding Amount~~ will be used by the Debtors solely to fund the items listed in 1.3(c), (d) and (e) above; provided, however, the Plan Funding Amount will not be used to pay 503(b)(9) claims or the Trust Seed Money. Any remainder of the Plan Funding Amount not required to pay such Administrative Claims will immediately be returned to Ford after a determination is made that it is not so required.

**1.5** In consideration for CIT's consent to the Debtors' use of that portion of CIT's collateral that is necessary for the production of parts for Ford, Ford also agrees (whether or not this Global Settlement Agreement is approved by the Court) to fund, by direct payment to CIT, adequate protection payments from the Debtors to CIT Capital in the amount of \$223,173.54 on the first of each month, and to CIT Equipment in the amount of \$297,549.65 payable on the 17<sup>th</sup> of each month, through

~~the Ford Resourcing Date, September 30, 2008,~~ which amounts shall be deemed additional advances by Ford. CIT Capital and CIT Equipment agree to apply such amounts to their respective claims against the Debtors.

**1.6** Notwithstanding anything to the contrary in the Plan or any agreement, all professional fees and all other obligations of the Debtors or the Estates incurred prior to the Ford Resourcing Date relating in any way to continued production shall be paid pursuant to a budget established and funded by Ford and shall in no event be a liability of the Creditors' Trust (subject to the permitted application of the Plan Funding Amount to such obligations if necessary).

**1.7** Provided that Ford has fulfilled its obligations under this Agreement, as of the Effective Date of the Plan, the Debtors or Creditors Trust as applicable shall return to Ford any of the 503(b)(9) Payment that is not needed to fund 503(b)(9) Claims which are required to be paid for the Plan to become effective (the "503(b)(9) Surplus"), provided, however, that an amount of any 503(b)(9) Surplus not to exceed \$130,000 shall not be so returned but rather shall be added to the Trust Seed Money and treated as Trust Seed Money under this Agreement.

**1.8** Ford agrees to fund its allocable share, on a plant by plant basis, of the reasonable wind down expenses, including the cost to administer the estate and professional fees, which are set forth in the budget, prepared by the Debtors prior to March 31, 2008, attached hereto as Exhibit A.

**1.9** Upon the Effective Date, Ford's cash collateral lien (the "Ford Cash Collateral Lien"), which is in the amount of \$2,165,981, will be paid to the extent of funds then available with regard to such lien's priority. Notwithstanding the foregoing, Ford agrees that the payment or non-payment of any liens, superpriority claims or administrative claims that Ford may hold, including and/or resulting from the Ford Cash Collateral Lien, will not prevent the Plan, as modified by this Agreement or as further modified with the consent of Ford, CIT and the Committee, from becoming effective or prevent the payment of other administrative claims without disgorgement for payment of such Ford claims. Ford's cash collateral lien will, to the extent not paid in full on the Effective Date, survive the Effective Date and continue in force until fully paid and discharged.

**1.10** Subject to the Debtors' diligent pursuit of Court approval of this Agreement, and Court approval of this Agreement, Ford agrees to support the Debtors and the Committee in obtaining and use its best efforts to obtain confirmation of the Plan and effectiveness of the Plan on or before the Ford Resourcing Date or as soon thereafter as practicable. Ford's obligations hereunder apply only to the Plan as modified by this Agreement or to be consistent with this Agreement or as further modified with the consent of Ford, CIT and the Committee. Any material modifications of the Plan other than those contained in or required by this Agreement (including those required for consistency with this Agreement), shall be approved by Ford, CIT and the Committee, and are subject to Court approval of this Agreement. In the event that the Court does not approve this Agreement prior to or in conjunction



with confirmation of the Plan or any other plan in the Bankruptcy Case which is acceptable to each of Ford, CIT and the Committee, Ford agrees that without the consent of each of CIT and the Committee, it will not agree to release or subordinate its liens or to waive its rights as the holder of an administrative claim against the Debtors to be paid in full on the Effective Date of any plan.

~~2. **Debtor Covenants** In consideration for the Parties' support for the Plan, and their respective obligations under this Agreement, the Debtors agree to the following covenants, each of which shall be deemed to be incorporated by reference into the Plan, and each of which shall be deemed to supersede the provisions of the Plan to the extent of any inconsistency (the "Debtors' Covenants"):~~

1.11 Upon the Effective Date, Ford agrees to waive its liens on any proceeds of the litigation or settlement of any action by the estate or Creditors Trust against KPS Special Situations Fund II LP and KPS Special Situations Fund II(A) LP with respect to the real property in which KPS Special Situations Fund II LP and/or KPS Special Situations Fund II(A) LP hold a subordinated lien.

~~2. **2.1 Debtor Covenants** In consideration for the Parties' support for the Plan, and their respective obligations under this Agreement, the Debtors agree to the following covenants, each of which shall be deemed to be incorporated by reference into the Plan, and each of which shall be deemed to supersede the provisions of the Plan to the extent of any inconsistency (the "Debtors' Covenants"):~~ The Debtors and/or Creditors' Trustee will, at the request of Ford, commence and/or continue to use their best commercial efforts, including the commencement or continuation of appropriate litigation, to collect all outstanding pre and post petition accounts receivable and other amounts due from Debtor's customers, including, but not limited to, the (i) the Pre-Petition Claims (as defined below) and (ii) all other amounts due from General Motors Corporation, General Motors of Canada Limited, Saturn Corporation and GM de Mexico ("General Motors") ~~and Chrysler LLC and Chrysler Canada Inc. (together, "Chrysler") set forth on Exhibit B, including,~~ pursuant to their respective Accommodation Agreements, Agreement or otherwise. The fees associated with such collection ~~which may be in excess of the amounts in the Debtors' current financing budget~~ will be paid either from the proceeds of collection or by Ford in accordance with a litigation budget acceptable to Ford and the party pursuing collection. ~~The Cash Collateral Liens of General Motors and Chrysler may be set off against such customers,~~ as agreed by the Debtors or Creditors' Trustee as applicable after obtaining consent of the relevant professionals that will work on such collection. If Ford requests the Debtors or the Creditors Trustee, as the case may be, to commence litigation or otherwise pursue the claims against the Debtors' Customers, the Debtors or the Creditors Trustee will retain counsel designated by Ford. Provided, however, that until the Effective Date the Debtors shall continue to defend the litigation commenced by General Motors (and its affiliates) with respect to the prepetition accounts receivable claimed to be due by the Debtors, Case No. 08-04742. On the Effective Date the defense of such action shall be assigned to counsel designated by Ford. Notwithstanding Article II.C. of the Plan, the Cash Collateral Lien of General Motors may be set off against General Motors' prepetition receivables as part of a consensual resolution with General Motors (if such consensual resolution can be achieved) of all amounts due to the Debtors from such parties General Motors but otherwise will be paid as required by the DIP Financing Order. So long as any amounts remain outstanding with respect

to the claims held by the DIP lender (“DIP Facility Claims”), including the Out of Formula amounts, the Debtors and/or the Creditors’ Trustee will not compromise ~~claims, including without limitation the true up amounts set forth on Exhibit B~~ such claims, or liquidate assets to which the DIP Facility Claims holder holds a first priority lien without the express written consent of the DIP Facility Claims holder and ~~Ford, which shall not be unreasonably withheld,~~ if the DIP Facility Claims have been transferred to Ford, of Ford.

2.1 Upon the approval of this Agreement, or such other date as Ford may designate prior to the Effective Date, but in not event later than the Effective Date, provided Ford has funded the Plan Escrow Amount, the Plan Funding Amount and \$2,099,000 as its allocable share of wind down expenses pursuant to paragraph 1.8, all of the Debtors right, title and interest in any pre-petition accounts receivable or other pre-petition obligations of Chrysler LLC, Chrysler Motors LLC, Chrysler Canada (“Chrysler”) or General Motors (“Pre-Petition Claims”) are assigned to Ford or Ford’s assignee. The Pre-Petition Claims do not include the amounts to be received from Chrysler as part of the pending settlement which Ford has approved (including as to allocation). The Debtors and/or the Creditors Trustee will not compromise the Pre-Petition Claims without the written approval of Ford.

2.2 The Debtors will continue to collect surcharges and other contributions from Debtors’ other customers in order to fund Wind Down Expenses to the extent possible, consistent with existing agreements.

2.3 The Debtors will continue production of Ford Parts and will continue producing inventory banks to the maximum extent possible until the earlier of (i) Ford or Grant Thornton instruct otherwise or (ii) the Ford Resourcing Date.

~~2.4 The intercompany debt owed to the Debtors from the Mexican Non-Debtor Operating Subsidiary, which is presently in the amount of \$379,239.55, shall be paid to the Debtors or Creditors’ Trust as applicable from proceeds of the sale of the stock or assets of the Mexican Non-Debtor Operating Subsidiary upon closing of such sale.~~

~~2.4~~ 2.5 Upon Court approval of this Agreement, the CIT Equipment Escrow (as defined below) and the CIT Capital Escrow (as defined below) will be paid to CIT for application against the respective obligations of the Debtors to CIT Equipment and CIT Capital. In addition, the proceeds of any CIT Capital Collateral and CIT Equipment Collateral sold prior to the Effective Date, net of (i) the direct costs and expenses of any broker or auctioneer conducting such sale or sales which relate to the CIT Collateral (including the fees of Miller Buckfire, in the case of the sale (other than a credit bid) with CIT’s consent of all or a portion of the Mexican Stock or the assets of the Mexican Non-Debtor Operating Subsidiary) and (ii) allowed reasonable professional fees and expenses of the Debtors ~~acceptable to CIT~~ arising from and after August 22, 2008 incurred with respect to the disposition of the CIT Collateral (the “Direct CIT Sales Costs”), which fees and expenses shall be paid by CIT, will be paid to CIT as soon as practicable, with all ~~remaining~~ allowed professional fees that are not Direct CIT Sales Costs to be paid by the funding of the budget. ~~Except for the~~

~~funding of the budget, as provided herein.~~ Notwithstanding the foregoing, the collateral proceeds to CIT shall not be reduced on account of any of the Debtors' professionals' fees after August 22, 2008 whose incurrence was inconsistent with CIT's request that the Debtors' professionals minimize their activities in connection with asset sales of CIT Collateral after that date. If required due to a dispute over whether fees and expenses are Direct CIT Sales Costs or inconsistent with CIT's request pursuant to the foregoing sentence, such dispute will be resolved by the Court in connection with allowance of the fees and expenses through a fee application or other motion or application with notice and an opportunity to be heard provided to the Parties and any affected professional. Ford will have no obligation to pay, directly or indirectly, the Direct CIT Sales Costs. CIT will apply the CIT Equipment Escrow and any proceeds received from a sale of the CIT Equipment Collateral to the CIT Equipment loan. Likewise, CIT will apply the CIT Capital Escrow and any proceeds received from a sale of the CIT Capital Collateral to the CIT Capital loan.

~~2.5 2.6~~ The Debtors will continue, through the Effective Date, with their current efforts to dispose of their assets. Any sale process not completed prior to the Effective Date shall be completed by the Creditors' ~~Trust. Unpaid real estate taxes with respect to the CIT Capital Collateral shall either be paid from the proceeds of sale of such assets or paid by CIT, in such amounts as provided in the Plan. Personal property taxes accruing with respect to the period prior to the earlier of the sale of the personal property taxes or the Ford Resourcing Date shall be paid by the Debtors and funded by the budget~~ Trust. Any taxes paid by CIT for periods shall increase CIT's Allowed claims, and any such taxes paid out of proceeds of Collateral sales shall not be credited against CIT's Allowed claims for purposes of computing the CIT Equipment Collateral Surplus (as defined below) or otherwise. Provided that the Plan is confirmed, all such sales or other transfers of assets shall be sales or transfers pursuant to §1129 of the Bankruptcy Code, shall be sold or transferred free and clear of liens, claims and encumbrances, and shall be exempt from any transfer taxes or other fees pursuant to §1146 of the Bankruptcy Code. CIT shall have the right to credit bid any portion of its claims in connection with any such sale, and upon any successful credit bid, shall receive title to the assets subject to such bid, free and clear of any liens, claims and encumbrances. Notwithstanding the foregoing, subject to Ford's continuing compliance with the terms of this Agreement, no disposition of assets required for Ford production shall be consummated prior to the Ford Resourcing Date. After confirmation of the Plan but prior to the Effective Date, the Debtors shall consult with the Committee in advance of any disposition of assets of the Debtors and the Estates, and shall promptly provide all information requested by the Committee. No disposition of assets constituting the CIT Capital Collateral or the CIT Equipment Collateral shall occur without CIT's consent, and CIT shall have the right to make a credit bid for any assets constituting CIT's collateral, and such assets shall be conveyed to CIT, pursuant to such instruments of conveyance as CIT may reasonably request, if its credit bid is higher than the purchase price offered by a competing purchaser for such assets.

~~2.6 2.7~~ As of the Effective Date, all right, title and interest to the assets of the Debtors will be transferred to the Creditors' ~~Trust~~, subject to liens and encumbrances,



if any, which will complete the process of disposition of such assets described in paragraph ~~2.62.5~~ above. The transfer to the Committee will be subject to all liens and security interests which attached to such assets prior to the Effective Date. As soon as practicable after the Effective Date, CIT will advise the Creditors' Trustee whether the method of disposition of its collateral commenced by the Debtors prior to the Effective Date should continue, or the assets should be subject to an auction process. CIT may also request an auction process at any time if it determines that the Debtors' disposition process set forth in paragraph ~~2.62.5~~ above should no longer be continued. Upon request of either CIT or, with CIT's consent, the Creditors<sup>2</sup> Trust, the Debtors' financial professionals (if willing) who were seeking to effect such sales will continue in such role subsequent to the Effective Date.

~~2.7 2.8~~ Unless the assets are sold pursuant to a competitive bid among potential auctioneers, any auction shall be conducted by an auctioneer selected by CIT with the consent of the Creditors' Trustee, which consent shall not unreasonably be withheld, and shall be conducted in such lot or lots as CIT shall determine. All proceeds of the collateral subject to the claims of CIT, after payment in accordance with the Plan of any Allowed Secured Claim senior to that of CIT, shall be paid to CIT, without deduction under §506(c) or otherwise for any costs and expenses of the estate or the Creditors<sup>2</sup> Trust, except for the Direct CIT Sales Costs with respect to any auctioneer or other person engaged, with the consent of CIT, to effect such disposition.

~~2.8 2.9~~ The CIT Equipment Collateral Surplus (as defined below) shall be disbursed as follows: (i) ~~the first~~ if the stock or assets of the Mexican Non-Debtor Operating Subsidiary are sold, or if the stock of the owners of the Mexican Non-Debtor Operating Subsidiary is sold, an amount equal to the intercompany obligation of the Mexican Non-Debtor Operating Subsidiary to Blue Water Automotive Systems, Inc., not to exceed \$379,239.55, shall first be paid to Ford; (ii) ~~the next~~ \$3 million of CIT Equipment Collateral Surplus shall be divided as follows: one-third to CIT Capital, for application to the CIT Capital Claim; one-third to DIP Facility Claims holder, for application to the DIP Facility Claims, and one-third to the Creditors<sup>2</sup> Trust; and ~~(iii)~~ the balance of any CIT Equipment Capital Surplus shall be paid to the holder of the DIP Facility Claims; provided, however, that (x) upon satisfaction in full of the DIP Facility Claims, any remaining CIT Equipment Collateral Surplus shall be divided equally between the holder of the CIT Capital Claim and the Creditors<sup>2</sup> Trust; and (y) upon satisfaction in full of both the DIP Facility Claims and the CIT Capital Claim, any remaining CIT Equipment Collateral Surplus shall be paid to the Creditors<sup>2</sup> Trust. In consideration of the foregoing, any sale of the stock or assets of the Mexican Non-Debtor Operating Subsidiary or the stock of the owners of the Mexican Non-Debtor Operating Subsidiary shall include a waiver and release of all intercompany claims.

~~2.9 2.10~~ In the event the Effective Date does not occur by a date which is the later of (i) 30 days after the Ford Resourcing Date or (ii) November ~~16,30~~, 2008, then upon CIT's written request, each of the assets which comprise the CIT Collateral which has not previously been sold or transferred to CIT, will be sold by CIT in such

auction process as CIT will determine, with the consent of Ford and the Committee, not unreasonably to be withheld. CIT will have the right to credit bid at such auction, and the proceeds of such sales will be paid to CIT in the same manner as the proceeds would have been payable to it under this Agreement with respect to sales made after the Effective Date. In addition, in the event the Effective Date does not occur by the later of the dates set forth in the first sentence of this paragraph, CIT shall be paid and be entitled to retain the respective amounts and benefits set forth in Section 4 of this Agreement, without further order of the Bankruptcy Court.

**2.10** ~~2.11~~ The Debtors shall use their best efforts to confirm the Plan and achieve its effectiveness such that the Effective Date occurs on or before ~~the Ford Resourcing Date~~ November 30, 2008.

**3. Committee's Covenants.** In consideration for payment of the Plan Escrow Amount and the Parties' covenants set forth in this Agreement, the Committee agrees to the following covenants (the "Committee's Covenants"):

**3.1** Immediately upon Court approval of this Agreement, the Committee will (i) dismiss its appeal of the DIP Financing Order (ii) withdraw its motion to convert the Debtors' cases to chapter 7 of the Bankruptcy Code and (iii) withdraw with prejudice its motion for a confirmation deposit.

**3.2** The Committee will use its best efforts to submit to the Court for approval by the time of the filing of the motion to approve such settlement, but in no event later than 1 day prior to the date of the hearing on confirmation of the Plan (the "503(b)(9) Stipulation Deadline"), stipulations or other binding agreements (the "503(b)(9) Stipulations") with the holders of allowed claims under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claimants") which (i) resolve all objections to confirmation of the Plan by such 503(b)(9) Claimants and (ii) collectively contain agreements of the 503(b)(9) Claimants to receive in full satisfaction of all such 503(b)(9) Claimants' allowed 503(b)(9) claims in an amount that is no greater than \$800,000 in the aggregate, without conditions other than approval of the compromise by the Court or confirmation of the Plan and waiver of preference liability. If such settlement is approved before confirmation of the Plan, such approved amounts shall be paid as provided in the order approving the settlement, which may be before confirmation of the Plan.

**3.3** The Committee will use its best efforts to confirm the Plan and achieve its effectiveness such that the Effective Date occurs on or before ~~the Ford Resourcing Date~~ November 30, 2008.

**4. Treatment of the CIT Claims.** Notwithstanding the provisions of the Plan, upon approval of this Agreement and provided CIT withdraws objections to and votes in favor of the Plan, the following treatment shall apply to the claims of CIT:

**4.1** The claim of CIT Capital will be allowed in the amount of ~~\$14,981,372.16~~ 14,980,925, and the claim of CIT Equipment will be allowed in the

amount of \$14,460,230.00, each as of the Petition Date, plus in each case all interest (including default interest), fees and expenses (including, to the extent paid by CIT, the Direct CIT Sales Costs) accrued or incurred after the Petition Date (such total, the “Full Claim Amount”).

**4.2** In satisfaction of its allowed claims, notwithstanding any provision of the Plan, CIT Equipment shall receive or be permitted to retain the CIT Equipment Escrow, the CIT Equipment Adequate Protection Payments, and the Collateral Proceeds of the other CIT Equipment Financing Collateral, in an aggregate amount not to exceed the Full Claim Amount of the claim of CIT Equipment Financing;

**4.3** In satisfaction of its allowed claims, notwithstanding any provision of the Plan, CIT Capital will receive or be permitted to retain the CIT Capital Escrow, the CIT Capital Adequate Protection Payments, the Collateral Proceeds of the other CIT Capital Collateral, and one-third of the CIT Equipment Surplus as more fully described in paragraph [2-92.8](#) above, in an aggregate amount not to exceed the Full Claim Amount of the claim of CIT Capital.

**4.4** As soon as practicable upon Court approval of this Agreement, the Debtors shall transfer to CIT any and all cash which comprises the CIT Capital Collateral and the CIT Equipment Collateral. In addition, upon such Court approval, all of the Debtors’ right, title and interest in any cash which comprises the CIT Capital Collateral or the CIT Equipment Collateral held by CIT shall be conveyed to CIT, which CIT shall be authorized to exercise its rights of set off with respect to any such escrows or other obligations due from CIT to the Debtors. All such amounts, when received or set off by CIT, shall be applied to the claims of CIT so as to reduce the accrual of interest on such claims.

**4.5** For purposes of this Agreement, the following definitions shall apply:

(1) “CIT Capital Adequate Protection Payments” means the monthly payments of \$223,173.54 paid or payable by BWASI or by Ford hereunder from and after the Petition Date through ~~the Ford Resourcing Date~~ [September 30, 2008](#) (including all payments or portions thereof held in escrow).

(2) “CIT Capital Escrow” means all escrow accounts and other amounts held by CIT, Properties, or any other person pursuant to the CIT Capital Loan Documents, or otherwise constituting proceeds of the lease between Properties and BWASI, including any amounts as to which CIT may have a right of setoff or recoupment, whether or not any formal escrow account is in existence, together with all accrued interest thereon, and any other proceeds thereof, provided, however, that the CIT Capital Escrow does not include any claim in favor of CIT for an amount in excess of (i) the \$223,173.54 per month payable by BWASI under the lease between Properties and BWASI (or by Ford hereunder) over (ii) the debt service due to CIT Capital from Properties.

(3) “CIT Equipment Adequate Protection Payments” means the monthly payment of \$297,549.65 paid or payable by BWASI or by Ford hereunder from and after the Petition Date through ~~the Ford Resourcing Date~~ September 30, 2008.

(4) “CIT Equipment Collateral Surplus” means, the amount, if any, by which the Collateral Proceeds of the CIT Equipment Financing Collateral exceeds the Full Claim Amount of the claim of CIT Equipment, provided that no CIT Equipment Collateral Surplus shall be deemed to exist unless and until the Full Claim Amount of the CIT Equipment Claim has been paid to CIT Equipment pursuant to final order of the Bankruptcy Court.

(5) “CIT Equipment Escrow” means that certain \$2.5 million escrow account established under paragraph 22.b of the Bankruptcy Court’s March 3, 2008 interim postpetition financing order, together with all accrued interest thereon, and any other proceeds thereof.

(6) “Collateral Proceeds” means the cash proceeds paid to CIT in connection with a disposition of the CIT Capital Collateral or the CIT Equipment Collateral, as the case may be, provided, however, that in the event of a credit bid by CIT which results in the conveyance to CIT of any collateral, the amount of such credit bid.

**4.6** With respect to the Busha Highway Collateral, CIT may elect for purposes of the treatment set forth in this Section 4 to apply the Collateral Proceeds thereof which are received by CIT (i.e., not including such collateral proceeds received or receivable by KPS Special Situations Fund II LP and KPS Special Situations Fund II(A) LP) to the CIT Equipment Financing Claim or the CIT Capital Claim, in such proportions as CIT may determine in its sole discretion.

**4.7** The distributions to CIT under the Plan, as modified by this Agreement, shall not be subject to offset, counterclaim, surcharge, or other deduction.

**4.8** CIT shall also receive the releases set forth in Section 5 hereof, contingent on its granting the releases set forth in such section. These mutual releases shall be effective upon Court approval of this Agreement.

~~**4.9** The Debtors shall pay or cause to be paid any and all personal property taxes required to be paid with respect to the CIT Equipment Collateral as of the Effective Date, and shall indemnify CIT and hold CIT harmless with respect to any claim by any person for such personal property taxes. Unpaid real estate taxes with respect to the CIT Capital Collateral shall either be paid from the proceeds of sale of such assets or paid by CIT, in such amounts as provided in the Plan.~~ **4.09** Unpaid real estate taxes with respect to the CIT Capital Collateral shall either be paid from the proceeds of sale of such assets or, in the case of tax claims in Class 2 of the Plan, paid by CIT as of the Effective Date in such amounts as are required to be paid by the Plan. Unpaid personal property taxes with respect to the CIT Collateral that were incurred or are payable on or before the Effective

Date shall be paid from the auction proceeds of the sale of the machinery and equipment comprising CIT's Collateral. In the event the CIT Equipment loan is not paid in full, CIT shall have claims against the estate that have the same priority as the taxes paid (for example, a secured, administrative or priority claim) to the extent that any such taxes are paid by CIT hereunder or out of CIT's Collateral, provided that the parties reserve their rights to raise as to any such claims of CIT the same arguments that could have been raised as to the underlying tax claims (for example, as to the secured, administrative and/or priority character of such claims and the effect thereof). Such claims shall not be payable from the Debtors' wind down or DIP financing budgets, the Trust Seed Money transferred to the Creditors Trust by Ford hereunder or other amounts provided by Ford hereunder. The payment or non-payment of any such administrative claims or priority claims that CIT may subsequently be deemed to hold pursuant to the foregoing sentence will not prevent the Plan, as modified by this Agreement or as further modified with the consent of Ford, CIT and the Committee, from becoming effective.

~~**4.10** The payment obligations of the Debtors to CIT hereunder shall constitute administrative expenses which are required to be satisfied in full in cash on the Effective Date of the Plan.~~

~~**4.11**~~**4.10** In consideration of the treatment provided herein, and subject to the Court's approval of this Agreement, immediately upon approval of this Agreement CIT agrees to change its vote to a vote in favor of the Plan.

## **5. Mutual Releases.**

**5.1** Effective upon Court approval of this Agreement, the Debtors and the Committee (but not its individual members) forever release, discharge and acquit each of Ford and CIT and their respective predecessors, assigns, officers, managers, directors, shareholders, employees, agents, attorneys, professionals and Representatives (collectively, the "Ford and CIT Releasees"), from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including without limitation, all claims, demands, and causes of action for contribution or indemnity, whether arising at law or in equity (including without limitation claims of fraud, duress, mistake, tortious interference or usury), whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, for or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damage, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever, or thing done, omitted or suffered to be done by the Ford and CIT Releasees which have occurred in whole or in part or were initiated at any time up to and through the date of the order confirming the Plan, including without limitation any claims related in any way to the Debtors, the Committee, the Final DIP Order, or the Debtors' Plan, the CIT Adversary Proceeding but excluding Ford accounts receivable arising in the ordinary course of business, including ED&T and packaging amounts and further excluding all claims,



rights and other obligations specifically arising under this Agreement and, to the extent not inconsistent with this Agreement, the Plan and the Order confirming the Plan.

**5.2** Upon Court approval of this Agreement, Ford and its affiliates forever release, discharge and acquit the Debtors and the Committee (but not its individual members) and CIT and their respective predecessors, assigns, officers, managers, directors, shareholders, employees, agents, attorneys, professionals and Representatives (collectively, the “Estate and CIT Releasees”), from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including without limitation, all claims, demands, and causes of action for contribution or indemnity, whether arising at law or in equity (including without limitation claims of fraud, duress, mistake, or tortious interference), whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, for or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damage, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever, or thing done, omitted or suffered to be done by the Estate and CIT Releasees which have occurred in whole or in part or were initiated at any time up to and through the date of the order confirming the Plan, including without limitation any claims related in any way to these cases, the Final DIP Order, or the Debtors’ Plan, but excluding ordinary trade shipment obligations, and further excluding all claims, rights and other obligations specifically arising under this Agreement and, to the extent not inconsistent with this Agreement, the Plan and the Order confirming the Plan. The Ford release of CIT hereunder shall be limited to matters related to the Debtors. The release shall include any objections (including in any objection to interim or final fee applications) to any fees or expenses contained in fee statements by any professionals that have been submitted on before the date of this Agreement.

**5.3** Upon Court approval of this Agreement, CIT and its affiliates forever release, discharge and acquit the Debtors and the Committee (but not its individual members) and Ford and their respective predecessors, assigns, officers, managers, directors, shareholders, employees, agents, attorneys, professionals and Representatives (collectively, the “Estate and Ford Releasees”), from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including without limitation, all claims, demands, and causes of action for contribution or indemnity, whether arising at law or in equity (including without limitation claims of fraud, duress, mistake, or tortious interference), whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, for or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damage, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever, or thing done,

omitted or suffered to be done by the Estate and Ford Releasees which have occurred in whole or in part or were initiated at any time up to and through the date of the order confirming the Plan, including without limitation any claims related in any way to these cases, the Final DIP Order, or the Debtors' Plan, but excluding ordinary trade shipment obligations, and further excluding all claims, rights and other obligations specifically arising under this Agreement and, to the extent not inconsistent with this Agreement, the Plan and the Order confirming the Plan. The CIT release of Ford hereunder shall be limited to matters related to the Debtors. The release shall include any objections (including in any objection to interim or final fee applications) to any fees or expenses contained in fee statements by any professionals that have been submitted on before the date of this Agreement, provided that such release shall not apply to fees and expenses accruing after August 22, 2008.

**5.4** Effective upon Court approval of this Agreement, the Committee (but not its individual members) forever releases, discharges and acquits the Debtors and their respective predecessors, assigns, officers, managers, directors, employees, agents, attorneys, professionals and representatives (collectively, the "Debtor Releasees"), from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including without limitation, all claims, demands, and causes of action for contribution or indemnity, whether arising at law or in equity (including without limitation claims of fraud, duress, mistake, tortious interference or usury), whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, for or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damage, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever, or thing done, omitted or suffered to be done by the Debtor Releasees which have occurred in whole or in part or were initiated at any time after the Petition Date up to and through the date of the order confirming the Plan, including without limitation any claims related in any way to the Debtors, the Committee, the Final DIP Order, or the Debtors' Plan, the CIT Adversary Proceeding but excluding all claims, rights and other obligations specifically arising under this Agreement and, to the extent not inconsistent with this Agreement, the Plan and the Order confirming the Plan. The release shall include any objections (including in any objection to interim or final fee applications) to any fees or expenses contained in fee statements by any professionals that have been submitted on before the date of this Agreement.

**5.5** Pursuant to the releases set forth above, all litigation between the parties exchanging releases, including the CIT adversary proceeding, will be dismissed with prejudice as of the Court Approval Date.

**5.6** For avoidance of any doubt, no release provided hereunder will affect the rights of any party under this Agreement, all of which will be determined as if no release had been granted.

**6. Representations and Warranties.**

**6.1 Existence and Power.** Ford and CIT each represents and warrants that it is a corporation, validly existing and in good standing under the laws of the state of its organization, and is in good standing and authorized to transact business in the state of its organization.

**6.2 Authority.** Ford, the Committee, CIT and the Debtors, upon approval of this Agreement by the Court, represent that each has full power and authority to enter into, execute, deliver and carry out the terms of this Agreement and to incur its obligations herein, all of which have been duly authorized by all proper and necessary action and are not prohibited by the organizational instruments of each. This Agreement constitutes valid and legally binding obligations of each party, enforceable against each party in accordance with its terms.

**7. Plan Revisions.** The Parties agree that the Order confirming the Plan, in addition to containing language which incorporates the provisions of this Agreement as superseding the provisions of the Plan, shall include the following provisions modifying the version of the Plan currently on file with the Bankruptcy Court:

**7.1** Article I.B.62 is amended by adding to the following to the end of that section “or supplemented by the Committee before the Effective Date. The Debtors shall consult with the Committee prior to submitting any further version of the Plan Supplement, and any such further version of the Plan Supplement shall be reasonably acceptable to the Committee.”

**7.2** Article IV.C.7 is amended to add to the last sentence of that section “without the necessity of application for payment or approval of the Bankruptcy Court.”

**7.3** Article IV.C.9 is amended by adding the following to the end of that section: “Any successor Creditors’ Trustee shall be appointed by vote of the beneficiaries of the Creditors<sup>2</sup> Trust with the three (3) the largest undisputed unsecured claims (not including claims that have been waived).”

**7.4** The following new section is added as Article IV.C.10: “Limited Waiver of Preference Actions. Any non-insider recipient of potentially preferential payments with an allowed non-subordinated claim against the Debtors in excess of \$50,000 (each a “Preference Defendant”) may elect to receive a full release from all preference liability in exchange for the Preference Defendant’s waiver of all claims against the Debtors’ estates and all claims to any distribution from the Creditors<sup>2</sup> Trust. Such election must be made within ninety days of the Effective Date in writing (not by email or facsimile) to the Creditors’ Trustee. The Creditors’ Trustee may request that the Court revoke a preference waiver where the effect of the waiver would be inequitable as to other creditors due to the Preference Defendant’s pre or postpetition conduct or otherwise.”

**7.5** The following new section is added as Article IV.C.11: “Notwithstanding anything to the contrary in the Plan or the Plan Support and Settlement Agreement, only one Creditor’s Trust shall be created on the Effective Date. All of the assets of the Debtors and Debtors-in-Possession, including all causes of action, avoidance actions, claims, rights, interests, equity rights, ownership rights, titles, property, intellectual property, accounts, deposits and all other assets of any description whatsoever and wherever located, shall be automatically transferred to and vest in the Creditor’s Trust upon the Effective Date without further Court order, and the Creditor’s Trust shall be deemed to be the successor in interest to each of the Debtors and Debtors-in-possession. This transfer and vesting of assets in the Creditor’s Trust shall not be a substantive consolidation of the Debtors’ estates, and each of the Debtors’ various liabilities shall attach to the assets transferred by that particular Debtor. To the extent a Debtor’s assets exceed the amount of allowed claims asserted against that Debtor, the value of the assets in excess of the liabilities shall be an asset of the Creditor’s Trust unencumbered by any liabilities or obligations except for the liabilities and obligations imposed under the Plan Support and Settlement Agreement, the Plan or this Order Confirming the Plan. Notwithstanding anything to the contrary in this paragraph or otherwise, the Trust Seed Money shall be an asset only of the Creditor’s Trust unencumbered by any liabilities or assets whatsoever. Neither the confirmation of the Plan nor the entry of this Order shall in any way impair the transfer of the causes of action, and shall have no res judicata or collateral or judicial estoppel effect on the causes of action. After all assets and causes of action of the Debtors and Debtors-in-Possession (except those released or otherwise assets transferred to another person under the Plan Support and Settlement Agreement or other order of the Court) have been transferred to the Creditor’s Trust pursuant to this paragraph, all the Debtors’ bankruptcy cases shall be immediately dismissed except for the bankruptcy case of Blue Water Automotive Systems, Inc., Case No. 08-43196, which shall remain open until the Creditor’s Trust has fully administered all of the assets and causes of action and distributed the proceeds consistent with the Plan Support and Settlement Agreement, the Plan and any further Court order.”

**7.6** Article V.A.2 is amended by adding the following to the end of that section: “The Debtors shall consult with the Committee prior to filing any motion to assume or reject any contract, and the Committee shall have standing with respect to the assumption or rejection of any contracts.”

**7.7** Article V.C is amended by adding the following to the end of that section: “Notwithstanding anything to the contrary in this Plan or any agreement, any cure payment for contracts assumed by the Debtors prior to the Effective Date shall be payable from the Debtors’ budget and in no event will be an obligation of the Creditors’ Trust.”

**7.8** Article V.D is struck in its entirety, and the remaining sections renumbered accordingly.

**7.9** Article V.E (renumbered Article V.D) is struck in its entirety and replaced by the following: “Before the Effective Date, the Debtors, subject to the written

consent of the Committee, has the option to assume all of the Debtors' unexpired directors' and officers' liability insurance policies pursuant to section 365(a) of the Bankruptcy Code and may obtain sufficient tail coverage for a period of up to six (6) years and under a directors' and officers' insurance policy for current and former officers and directors of the Debtors. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the foregoing assumption of each of the unexpired directors' and officers' liability insurance policies and purchase of tail coverage. Both the assumption of the directors' and officers' liability insurance and the purchase of tail coverage shall be fully funded by the Debtors prior to the Effective Date, and shall not be a liability of the Creditors Trust."

**7.10** Article XI.A.1 is amended by adding the following to the end of that section: ", and shall continue to have standing and a right to be heard on all issues arising in these Bankruptcy Cases."

**7.11** Article XI.A.3 is amended by striking the word "until" and replacing it with the word "after" so that the section reads in full as follows: "Notwithstanding anything in this Article XI.A, after the passage of the Effective Date, the Committee shall continue to have standing and a right to be heard with respect to: (a) claims for Accrued Professional Compensation of all Retained Professionals; (b) any appeals of the Confirmation Order; and (c) any adversary proceedings or contested matters pending as of the Effective Date to which it is a party."

**7.12** Article IX.D is struck in its entirety.

**7.13** The confirmation order shall include the following language with respect to additional preservation of Causes of Action: "Subject, like all preserved Causes of Action to releases approved by the Court including through the approval of the Plan Support and Settlement Agreement and the terms of the Plan, Causes of Action preserved in the Plan shall include: causes of action for fraudulent transfers, preferences, other avoidance actions, subordination, recharacterization, unlawful distributions, commercial tort claims, contract claims, conversion, deepening insolvency, breach of fiduciary duties and all similar or related causes of action against (i) Sarnamotive, Sarna Michigan, Inc., Sarna Kunststoff Holding, AG (ii) KPS Special Situations Fund II, L.P., KPS Special Situation Fund II(A), L.P. and any other non-Debtor holder of equity interests in any of the Debtors (or the Debtors' respective non-Debtor predecessors in interest) during the six (6) years prior to the Debtors' Petition Date, (iii) Comerica Bank and any other non-Debtor entity that loaned funds to the Debtors (or the Debtors' respective predecessors in interest) during the six (6) years prior to the Petition Date that are not expressly released in the Plan or the Plan Support and Settlement Agreement, (iv) any non-Debtor predecessors or successors in interest to any of the foregoing, their parent companies, subsidiaries and affiliates, and all directors, officers, accountants, attorneys or other employees, professionals or agents employed or retained by any of the foregoing, and (v) all insiders, including but not limited to all individuals that held positions as an



officer or director of any of the Debtors or their predecessors in interest within six (6) years prior to the Petition Date.”

**8. Use of Funding.** Amounts funded directly by Ford, including under this Agreement, and amounts funded pursuant to the debtor-in-possession financing or wind down budgets shall be used to fund and satisfy the pre-Effective Date chapter 11 administration costs and claims for which they are intended pursuant to the operative documents and budgets underlying them (the “Operative Documents”), prior to any application of such amounts to any other claims subject to and if permitted by the Operative Documents.

**9. Successors and Assigns.** This Agreement shall inure to the benefit and be binding upon the Parties and their successors and assigns, including without limitation the Committee, Creditors Trust and Creditors Trustee and any chapter 7 trustee. This Agreement will survive any failure of confirmation or effectiveness of the Plan.

**10. Extension of Effective Date.** The effective date of the Plan shall be ~~September 30, 2008 (as may be extended~~ October 30, 2008 or such earlier date as Ford may designate after October 15, 2008, in writing and subject to the approval of the Committee and the Debtors, which consent shall not be unreasonably withheld and provided further that in the event no objection to an earlier Effective Date is received by Ford within two (2) business days from the date of the Ford designation, the Debtors and the Committee shall be deemed to have consented (as may be modified in accordance with this paragraph, the “Effective Date”). The Administrative Claim funding by Ford as described herein is based upon an Effective Date of the Plan occurring on September 30, 2008. ~~The Effective Date may be extended for up to an additional 30 days (as extended, the “Ford Extended Date”) if Ford has not completed resourcing and Ford agrees to fund any costs incurred by the Debtors, the Committee or the Estates as a result of the extension in an amendment to this Agreement~~ Ford shall have no additional financial obligations (beyond amounts otherwise to be funded by Ford under this Agreement or the Debtors’ existing DIP Facility budget) for any additional costs or expenses incurred by the Debtors between September 30, 2008 and the Effective Date by virtue of the delay in the Effective Date from the originally contemplated date of September 30, 2008, whether in the form of further incremental cash funding or further diminution of DIP Facility collateral or otherwise.

**11. No Waiver of Rights.** Neither any delay in exercising, nor any failure on the part of either party to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance among the Parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law and may be exercised singularly, successively or concurrently.

**12. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Michigan. The United States Bankruptcy Court for the Eastern District of Michigan shall have jurisdiction over and determine any disputes arising from this Agreement.

**13. Waiver of Jury Trial.** Ford, the Committee, CIT and the Debtors hereby waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Agreement and any amendment, instrument, document or agreement delivered or which may in the future be delivered in connection herewith, and agree that any such action or proceeding will be tried before a court and not before a jury.

**14. Further Assurance.** Ford, the Committee, CIT and the Debtors will do such acts and things as may, from time to time, be reasonably necessary or desirable to carry out the purposes of this Agreement.

**15. Time of Essence.** Time is of the essence in the performance of obligations under this Agreement.

**16. Severability.** In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or any other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provisions hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

**17. Notices.** Any notice to be given hereunder shall be in writing and, except as otherwise provided in this Agreement, shall be deemed to be duly given if (a) mailed, (b) delivered by hand or (c) sent by electronic mail and facsimile to the Party to whom such communication is intended to be given and any notice so delivered or sent shall be deemed to have been duly given at the time of service on the day on which it was so delivered or sent, except that if such notice is mailed, it shall be deemed to be given three (3) days following the date of mailing. Until changed by notice in the manner described above, the addresses of the parties for the purpose of notice shall be:

**If to Ford:**

Timothy Fusco  
Eric Carlson  
Miller Canfield Paddock & Stone  
150 West Jefferson, Suite 2500  
Detroit, Michigan 48226  
fusco@millercanfield.com  
carlson@millercanfield.com  
Facsimile: 313.496.7500

**If to the Debtors:**

Judy O'Neill  
Nicole Lamb-Hale  
John Simon  
Foley & Lardner LLP  
500 Woodward, Suite 2700

Detroit, Michigan 48226  
joneill@foley.com  
jsimon@foley.com  
Facsimile: 313.234.2800

**If to the Committee:**

Michael Baum  
Ryan Heilman  
Schafer & Weiner PLLC  
40950 Woodward Ave., Suite 100  
Bloomfield Hills, MI 48304  
mbaum@schaferandweiner.com  
rheilman@schaferandweiner.com  
Facsimile: 248.540.3340

**If to CIT:**

Shalom L. Kohn  
Brian J. Lohan  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
skohn@sidley.com  
blohan@sidley.com  
Facsimile: 312-853-7036

**18. Captions.** The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

**19. Survival.** All covenants, agreements, representations and warranties of the Parties hereunder shall survive execution and delivery of this Agreement and continue in full force and effect until the Parties' obligations are paid in full or this Agreement terminates.

**20. Entire Agreement.** This Agreement constitutes the entire agreement among the Parties hereto with respect to the transactions contemplated hereby and supersedes any prior agreements (other than the Ford Accommodation Agreement, as amended), whether written or oral, relating to the subject matter hereof.

*[Remainder of this Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, each party has executed this Agreement as of the date first above written.

FORD MOTOR COMPANY

BLUE WATER AUTOMOTIVE  
SYSTEMS, INC.,  
B WAS HOLDINGS, INC.,  
BLUE WATER PLASTICS  
MEXICO, LTD.,  
B WAS MEXICO, LLC AND  
BLUE WATER AUTOMOTIVE  
SYSTEMS  
PROPERTIES, LLC

\_\_\_\_\_  
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

\_\_\_\_\_

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

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

THE OFFICIAL  
COMMITTEE OF  
UNSECURED CREDITORS  
OF BLUE WATER  
AUTOMOTIVE SYSTEMS,  
INC. ET AL.

CIT CAPITAL USA, INC. AND  
CIT GROUP/EQUIPMENT  
FINANCING, INC.

\_\_\_\_\_  
BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

TITLE: \_\_\_\_\_

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