

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

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In re:	:	
	:	Chapter 11
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:	
	:	Case No. 08-13555 (SCC)
Debtors.	:	
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LEHMAN BROTHERS HOLDINGS INC.,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
LEHMAN BROTHERS LIMITED (in administration),	:	
MBAM INVESTOR LIMITED, ELDON STREET	:	
HOLDINGS LIMITED (in administration), LB	:	
HOLDINGS INTERMEDIATE 2 LIMITED (in	:	
administration),	:	Adv. Pro. No. 19-01125 (SCC)
	:	
	:	
Defendants.	:	
-----	X	

**AGREED ORDER APPROVING SETTLEMENT
AGREEMENT AND RESOLVING ADVERSARY PROCEEDING**

Plaintiff Lehman Brothers Holdings Inc. (“Plaintiff” or “LBHI”) and Defendants Lehman Brothers Limited (in administration) (“LBL”), MBAM Investor Limited (“MBAM”), Eldon Street Holdings Limited (in administration) (“ESH”), and LB Holdings Intermediate 2 Limited (in administration) (“LBHI2”) (collectively, LBL, MBAM, ESH, and LBHI2 are referred to herein as the “Defendants,” and together with Plaintiff, the “Parties”) hereby submit the following agreed order (the “Order”):

WHEREAS, LBHI and Defendants are party to that certain Settlement Agreement agreed between Defendants, among others, and LBHI, dated October 24, 2011 (the “2011 Settlement Agreement”);

WHEREAS, on April 30, 2019, LBHI initiated an adversary proceeding styled *Lehman Bros. Holdings, Inc. v. Lehman Bros. Limited (in administration), et al.*, Case No. 19-01125-scc (the “Adversary Proceeding”) by filing a complaint (the “Complaint”) against Defendants alleging Defendants’ breach of the 2011 Settlement Agreement;

WHEREAS, on June 28, 2019, certain Defendants filed an answer to the Complaint (the “Answer”) and brought counterclaims against LBHI alleging LBHI’s breach of the 2011 Settlement Agreement;

WHEREAS, on May 23, 2019, Deutsche Bank AG, London Branch, intervened in the Adversary Proceeding, pursuant to an ordered stipulation;

WHEREAS, the Parties specifically deny any fault, culpability, or liability in connection with the Adversary Proceeding or the allegations made therein;

WHEREAS, litigation of the claims and counterclaims in the Adversary Proceeding to final judgment will result in significant expenditures and allocation of resources by the Parties;

WHEREAS, the Parties have engaged in arm’s length, good faith discussions regarding the claims and counterclaims in the Adversary Proceeding;

WHEREAS, to avoid any further expenditure of time, effort and money and the uncertainty attendant to litigation, the Parties desire fully and finally to compromise, settle and resolve all claims and counterclaims asserted in the Adversary Proceeding upon the terms and conditions set forth herein and the settlement agreement attached to this Order as Exhibit

A (the “Settlement Agreement”),¹ subject to the satisfaction of the other terms and conditions set forth therein;

IT IS HEREBY FOUND, DETERMINED AND ORDERED THAT:

1. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. This Court’s findings shall also include any oral findings of fact and conclusions of law made by this Court during or at the conclusion of the Hearing. To the extent of any conflict, the oral rulings control.

2. The Court has jurisdiction to hear and determine the matters raised in the Adversary Proceeding and to enter this Order pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b), and as such, this Court has the authority to enter a final order. Venue of LBHI’s chapter 11 case and the Settlement Agreement in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. Good and sufficient notice of this Order and Settlement Agreement has been provided and such notice is appropriate under the circumstances, and no other or further notice of this Order and the Settlement Agreement is or shall be required. To the extent that any Bankruptcy Rule or order of this Court required additional notice to be provided, such requirement is hereby waived and/or shortened pursuant to Bankruptcy Rules 2002 and 9006.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Agreement.

4. Pursuant to the Plan, LBHI is authorized to enter into and consummate the Settlement Agreement. To the extent that this Court's approval is required, pursuant to Bankruptcy Rule 9019, and in consideration for the benefits provided under the Settlement Agreement and other good and valuable consideration provided to LBHI and the Defendants and upon a review of all of the pleadings filed in this Adversary Proceeding, upon the consummation of the Settlement Agreement, the Settlement Agreement shall constitute a good faith compromise and settlement of all claims, liabilities, and controversies resolved pursuant to the Settlement Agreement. This Order hereby approves the good faith compromise and settlement of all such claims, liabilities and controversies and the entry of this Order shall constitute the Court's approval of such compromise and settlement under Bankruptcy Rule 9019, as well as a finding by the Court that such settlement and compromise is a valid exercise of LBHI's business judgment, fair, equitable, reasonable and in the best interests of LBHI and its estate and that the settlement embodied in the Settlement Agreement represents a reasonable settlement that is above the lowest rung of reasonableness.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order and the Settlement Agreement.

Dated: New York, New York
January 21, 2021

/S/ Shelley C. Chapman
Honorable Shelley C. Chapman
United States Bankruptcy Judge

Exhibit A

Settlement Agreement

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the “**Agreement**”) is made and entered into as of January 20, 2021 by and among Lehman Brothers Holdings, Inc. (“**LBHI**”) in its capacity as Plan Administrator and a Debtor under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors* (“**Plan**”) approved on December 6, 2011, on the one hand, and Lehman Brothers Limited (in administration) (“**LBL**”), MBAM Investor Limited (“**MBAM**”), Eldon Street Holdings Limited (in administration) (“**ESH**”), and LB Holdings Intermediate 2 Limited (in administration) (“**LBHI2**”) (collectively, “**Defendants**”) on the other hand. This Agreement collectively refers to LBHI and Defendants as the “**Parties**” and to each individually as a “**Party**” to this Agreement.

RECITALS

WHEREAS, on September 15, 2008, LBHI and certain of its affiliates commenced voluntary cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, on September 15, 2008, LBL was placed into administration and four partners at PricewaterhouseCoopers LLP were appointed as joint administrators (such individuals being subject to change and now being Michael John Andrew Jervis, Zelf Hussain, Gillian Eleanor Bruce, Russell Downs and Edward John Macnamara) (the “**LBL Joint Administrators**”¹);

WHEREAS, on December 9, 2008, ESH was placed into administration and three partners of PricewaterhouseCoopers LLP were appointed as joint administrators (such individuals being subject to change and now being Derek Anthony Howell, Gillian Eleanor Bruce, Russell Downs and Edward John Macnamara) (the “**ESH Joint Administrators**”¹);

WHEREAS, on January 14, 2009, LBHI2 was placed into administration and four partners of PricewaterhouseCoopers LLP were appointed as joint administrators (such individuals being subject to change and now being Derek Anthony Howell, Gillian Eleanor Bruce, Ian David Green, Russell Downs and Edward John Macnamara) (the “**LBHI2 Joint Administrators**”¹, and together with the LBL Joint Administrators and the ESH Joint Administrators, the “**Joint Administrators**”)

WHEREAS, MBAM (company registered number 05349993) is a solvent private limited company incorporated in England and Wales and a wholly owned subsidiary of Lehman Brothers Holdings PLC (in administration);

WHEREAS, LBHI and Defendants are party to that certain Settlement Agreement agreed between Defendants, among others, and LBHI, dated October 24, 2011 (the “**2011 Settlement Agreement**”);

¹ Each of the Joint Administrators shall be construed as being the Joint Administrators both jointly and severally and to any other person who is appointed as an administrator in substitution for any administrator or as an additional administrator in conjunction with the Joint Administrators.

WHEREAS, on April 30, 2019, LBHI initiated an adversary proceeding styled *Lehman Bros. Holdings, Inc. v. Lehman Bros. Limited (in administration), et al.*, Case No. 19-01125-scc (the “**Adversary Proceeding**”) by filing a complaint (the “**Complaint**”) against Defendants alleging Defendants’ breach of the 2011 Settlement Agreement;

WHEREAS, on June 28, 2019, certain Defendants filed an answer to the Complaint (the “**Answer**”) and brought counterclaims against LBHI alleging LBHI’s breach of the 2011 Settlement Agreement;

WHEREAS, on May 23, 2019, Deutsche Bank AG, London Branch (“**Deutsche Bank**”), intervened in the Adversary Proceeding, pursuant to an ordered stipulation;

WHEREAS, the Parties specifically deny any fault, culpability, or liability in connection with the Adversary Proceeding or the allegations made therein;

WHEREAS, litigation of the claims and counterclaims in the Adversary Proceeding to final judgment will result in significant expenditures and allocation of resources by the Parties;

WHEREAS, the Parties have engaged in arm’s length, good faith discussions with the objective of settling the claims and counterclaims in the Adversary Proceeding;

WHEREAS, to avoid any further expenditure of time, effort and money and the uncertainty attendant to litigation, the Parties desire fully and finally to compromise, settle and resolve all claims and counterclaims asserted in the Adversary Proceeding upon the terms and conditions set forth herein, subject to presentment and approval of this Agreement by the Bankruptcy Court and satisfaction of the other terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. ***Recitals.*** Each of the recitals is incorporated by reference and made part of this Agreement.

Section 2. *Effective Date.* This Agreement shall become effective, and the obligations contained herein shall become binding upon the Parties (subject to all applicable terms and conditions hereof), upon the first date (the “**Effective Date**”) that the following conditions have been satisfied (each, a “**Condition Precedent**”):

- (a) this Agreement has been executed and delivered by each Party; and
- (b) the Bankruptcy Court has entered an order approving this Agreement and authorizing LBHI to enter into and perform its obligations under this Agreement.

Section 3. *Commitments of the Parties.*

(a) Effective as of the Effective Date, each of the Parties, severally and not jointly, hereby covenants and agrees to:

- (i) promptly take all actions necessary in order to stay and/or hold in abeyance the prosecution of any and all claims and counterclaims in the Adversary Proceeding, including the accrual of any interest related thereto (to the extent such claims and counterclaims have not been previously stayed and held in abeyance or as necessary to continue such stay);
- (ii) cooperate with each other in good faith and coordinate their activities (to the extent reasonably practicable) concerning the implementation and consummation of this Agreement;
- (iii) jointly present this executed Agreement to the Bankruptcy Court for approval; and
- (iv) timely object to any motion, pleading, or appeal filed with the Bankruptcy Court or any higher court by any person seeking relief that (A) is inconsistent with this Agreement in any material respect or (B) would, or could reasonably be expected to, delay, impede, or interfere with the purposes of this Agreement, including, without limitation, any motion, pleading, or appeal that seeks to assert any claim or cause of action that would be a Defendant Released Claim (defined below) or LBHI Released Claim (defined below) if brought by any of the Parties.

(b) Effective as of the Effective Date, each of the Parties hereby covenants and agrees that it shall not, directly or indirectly:

- (i) object to, delay, impede, or take any other action to interfere with or that is inconsistent with, or is intended or could reasonably be expected to interfere with, delay, or impede the approval, consummation or implementation of this Agreement; and
- (ii) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement.

(c) In addition to LBHI's other obligations hereunder, effective as of the Effective Date, LBHI hereby covenants and agrees to, if any legal or structural impediment arises that would prevent, hinder, or delay the consummation and implementation of this Agreement, take all steps reasonably necessary to address any such impediment.

(d) Notwithstanding the foregoing, nothing in this Agreement shall prohibit any Party from enforcing any right, remedy, condition, consent, or approval requirement under this

Agreement; *provided* that, in each case, any such action is not inconsistent with such Party's obligations hereunder, as applicable.

Section 4. *Dismissal of Litigation.* Within three business days² of completion of performance set forth in Section 5, the Parties agree to file all motions and other papers, including under Federal Rule of Bankruptcy Procedure 7041, and take any other steps reasonably necessary or desirable to cause the Adversary Proceeding (including, for the avoidance of doubt, all claims and counterclaims raised therein) to be dismissed with prejudice and without fees or costs to any Party; *provided* that the foregoing dismissal shall have no further force and effect (i) if this Agreement is terminated in accordance with Section 9 or (ii) if the releases set forth in Section 6 of this Agreement are reversed, stayed, modified, amended, or otherwise impacted, in each case in a manner that renders such releases ineffective in whole or in material part, for any reason and without the written consent of the Parties.

Section 5. *Payments.* Within eight calendar days of the Effective Date, (i) LBL shall pay or cause to be paid to LBHI \$96 million (the "LBL First Payment"); (ii) LBHI2 shall pay or cause to be paid to LBHI \$90 million (the "LBHI2 Payment"); (iii) MBAM shall pay or cause to be paid to LBHI \$13 million (the "MBAM Payment"); and (iv) ESH shall pay or cause to be paid to LBHI \$8 million (the "ESH Payment"). Within twenty-seven calendar days of the Effective Date, LBL shall pay or cause to be paid to LBHI \$16 million (the "LBL Second Payment", and collectively with the LBL First Payment, LBHI2 Payment, MBAM Payment, and ESH Payment, the "Payments").

Section 6. *Releases.*

(a) Effective upon the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the obligations and contributions of the Parties under this Agreement, to the fullest extent permissible under applicable law (as such law may be extended or integrated after the Effective Date), LBHI on behalf of itself, its respective successors, assigns, and representatives (including, for the avoidance of doubt and without limitation, (i) any reorganized debtor in the Chapter 11 Cases in its capacity as a debtor or debtor-in-possession in a subsequent bankruptcy case or any other context, (ii) any trustee acting or seeking to act on behalf of the estates of any of the debtors in the Chapter 11 Cases or any of their successors in this or any subsequent bankruptcy case or any other context, and/or (iii) any litigation or other trustee acting or seeking to act on behalf of any of the debtors in the Chapter 11 Cases or any of their successors in this or any subsequent bankruptcy case or in any other context), and any and all other Entities ("Entity" as defined pursuant to Section 101 of the Bankruptcy Code) who may assert or purport to assert any claim or cause of action, directly or derivatively, by, through, for, or because of any debtor in the Chapter 11 Cases, hereby conclusively, absolutely, unconditionally, irrevocably, and forever waives, releases, acquits, and discharges each of the Defendant Release Parties³ from any and all claims, interests, obligations, rights, suits, damages,

² References to times and dates herein shall be construed as reference to Eastern Time (ET) (GMT -5).

³ "Defendant Release Parties" means, collectively, and in each case solely in its capacity as such, (i) Defendants, and (ii) each of the Defendants and their current and former administrators, directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns,

causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims, asserted or assertable on behalf of LBHI or its estate, that such Entity would be or would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, Section 2.04 of the 2011 Settlement Agreement, this Agreement, or the administration and implementation of this Agreement (collectively, the “**Defendant Released Claims**”). For the avoidance of doubt and without limiting the scope of the foregoing, the Defendant Released Claims shall include all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever that were or could have been asserted in the Adversary Proceeding, that arise from or relate to, in whole or in part, and any other transactions, occurrence, or facts described or alleged in the Complaint or the Answer, as well as any future claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever that arise from or relate to, in whole or in part, Section 2.04 of the 2011 Settlement Agreement.

(b) Effective upon the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the obligations and contributions of the Parties under this Agreement, to the fullest extent permissible under applicable law, each of the Defendants, on behalf of themselves, their respective successors, assigns, and representatives, and any and all other Entities who may assert or purport to assert any claim or cause of action, directly or derivatively, by, through, for, or because of any Defendant hereby conclusively, absolutely, unconditionally, irrevocably, and forever waives, releases, acquits, and discharges each of the LBHI Release Parties⁴ from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims, asserted or assertable on behalf of any of Defendants or their estates, that such Entity would be or would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, Sections 2.04 and 2.15(c) of the 2011 Settlement Agreement (collectively, the “**LBHI Released Claims**”). For the avoidance of doubt and without limiting the scope of the foregoing, the LBHI Released Claims shall include all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever that were or could have been asserted in the Adversary Proceeding, that arise from or relate to, in whole or in part, and any other transactions, occurrence, or facts described or alleged in the Complaint or the Answer, as well as any future claims, interests, obligations, rights, suits,

managed accounts or funds, and each of their respective current and former administrators, directors, managers, officers, equity holders, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals. The Defendant Release Parties and LBHI Release Parties, in their capacities as parties providing releases, are together referred as the “**Releasing Parties**” herein and the Defendant Release Parties and LBHI Release Parties, in their capacities as parties receiving releases, are together referred as the “**Released Parties**” herein.

⁴ “**LBHI Release Parties**” means, collectively, and in each case solely in its capacity as such, (i) LBHI, and (ii) each of LBHI’s and their current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, assigns, managed accounts or funds, and each of their respective current and former, directors, managers, officers, equity holders, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

damages, causes of action, remedies, and liabilities whatsoever that arise from or relate to, in whole or in part, Sections 2.04 and 2.15(c) of the 2011 Settlement Agreement.

(c) Each of the Releasing Parties hereby agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Entity in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims. If any Releasing Party violates the foregoing covenant, such breaching Releasing Party agrees to pay, in addition to such other damages sustained by any non-breaching Releasing Party or Released Party as a result of such violation, all attorneys' fees and costs incurred by any non-breaching Releasing Party or Released Party as a result of such violation.

(d) Notwithstanding the foregoing Sections 6(a)-(c), nothing in this Agreement is intended to release the Parties' rights and obligations under this Agreement, nor bar the Parties from seeking to enforce or effectuate this Agreement.

Section 7. ***Representations.***

(a) Each Party represents and warrants that it (i) is duly organized and validly existing under the laws of the jurisdiction in which it is incorporated, (ii) has the full power to and is authorized and empowered to execute and deliver this Agreement and to bind the Party or Parties on whose behalf it has executed this Agreement (subject, solely in the case of LBHI, to the approval of the Bankruptcy Court), (iii) has been represented by counsel, or has had the full opportunity to be represented by counsel, in connection with entering into this Agreement, (iv) has carefully read this Agreement and knows and understands the contents thereof, (v) understands and agrees to all provisions of this Agreement, and (vi) has freely and voluntarily caused the Agreement to be executed without duress and, except as stated in this Agreement, without reliance upon any statement, inducement, or representation of any of the Parties or their respective representatives concerning the nature and extent of any damages or injuries and/or legal liability thereof, (vii) has ownership and control of the claims, causes of action, and other matters being released sufficient to grant the releases of those claims, causes of action, and other matters contemplated by this Agreement, and (viii) has not assigned the claims, issues, causes of action, or other matters alleged or released and discharged by this Agreement.

(b) The Parties each represent that, to its knowledge after reasonable diligence and consultation with its professional advisors, it is not aware as of the execution of this Agreement of any fact or circumstance that would prevent the consideration hereunder from being rendered in connection with the consummation of the Agreement.

Section 8. ***Amendments, Waivers, and Modifications.*** Except as otherwise provided herein, no supplement, modification, amendment, or waiver of this Agreement shall be binding, unless executed in writing by each of the Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar.

Section 9. ***Termination.*** This Agreement and the obligations of all Parties hereunder may be terminated by mutual written agreement of the Parties. In the event this Agreement is terminated, this Agreement shall be void *ab initio* and shall have no further force and effect and

the *status quo ante* shall be restored for each of the Parties; *provided*, that Sections 8-27 of this Agreement shall survive such termination.

Section 10. ***Reversal.*** If, after the Effective Date occurs, the releases set forth in Section 6(a) and/or 6(b) of this Agreement are terminated, reversed, stayed, modified, amended, or otherwise impacted, in each case in a manner that renders such releases ineffective in whole or in material part, for any reason and without the written consent of Defendants, then LBHI shall promptly return to Defendants the amount of the Payments (*provided*, that if LBHI is unable to return to Defendants the amount of the Payments because such Payments have already been paid to LBHI's creditors, LBHI hereby assigns to Defendants any right LBHI has to pursue return of such Payments (if any) and solely to the extent permitted by applicable law), the *status quo ante* shall be restored for each of the Parties and each of the Parties shall have the right to pursue litigation of the Released Claims (including by recommencing the Adversary Proceeding).

Section 11. ***No Admission.*** Except as expressly set forth herein, neither the negotiation, nor the performance, nor the terms and conditions of this Agreement shall be deemed or construed to be an admission of fact, wrongdoing, liability, or otherwise by any Party for any purpose. If the transactions contemplated by this Agreement are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights pursuant to Federal Rule of Evidence 408 and any other relevant defenses, doctrines, privileges, and immunities.

Section 12. ***Construction.*** This Agreement has been jointly drafted by the Parties at arm's length and each Party has had access to and the opportunity to consult with independent legal counsel and to comment fully on the Agreement. No Party shall be deemed to be the drafter of this Agreement for any purpose. Accordingly, this Agreement shall be interpreted and construed in a neutral manner in accordance with the plain meaning of the language contained herein and shall not be presumptively construed against any Party, and no provision of this Agreement shall be applied or interpreted by reference to any rule construing provisions against the drafter.

Section 13. ***Governing Law and Jurisdiction.*** This Agreement and the rights and duties of the Parties hereunder will be governed by and construed, enforced and performed in accordance with the Bankruptcy Code (to the extent applicable) and the laws of the State of New York, without giving effect to the principles of conflicts of laws that would require the application of the law of any other jurisdiction. Each Party agrees and consents that the exclusive jurisdiction and venue for any dispute relating to this Agreement shall be the Bankruptcy Court.

Section 14. ***Waiver of Right to Trial by Jury.*** Each of the Parties waives any right to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise, between any of the Parties arising out of, connected with, relating to, or incidental to the relationship established between any of them in connection with this Agreement. Instead, any disputes resolved in court shall be resolved in a bench trial without a jury.

Section 15. ***Entire Agreement.*** When the Parties execute this Agreement, it shall constitute the entire agreement among the Parties on the subjects addressed in the Agreement. All prior and contemporaneous conversations, agreements, understandings, covenants, representations, and negotiations with respect to the subject matter hereof are merged in this Agreement and superseded hereby. No Party has relied on any representation, warranty, or other

undertaking or promise not expressly included in this Agreement and the Parties disclaim the existence of any and all implied representations, warranties, or other undertakings or promises not expressly included in this Agreement. No contrary or supplementary oral agreement shall be admissible in a court to contradict, alter, supplement, or otherwise change the meaning of this Agreement.

Section 16. *Invalidity; severability.* If any part of this Agreement should be held or deemed to be void, illegal, invalid or unenforceable under any applicable enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement and the validity, legality and enforceability of the remainder of this Agreement shall not in any way be affected or impaired and shall remain in full force and effect.

Section 17. *Survival.* The terms, conditions, representations, and warranties contained in this Agreement shall survive the execution of this Agreement and the dissolution of any Party, and shall be fully binding upon the successors or assigns of each Party, *provided*, however, that this Agreement has not been terminated pursuant to Section 9.

Section 18. *Defense.* So long as this Agreement is not terminated in accordance with its terms, this Agreement may be pleaded as a full and complete defense to any subsequent action or other proceeding arising out of, relating to, or having anything to do with, any and all of the claims, counterclaims, judgments, issues, defenses, or other matters specifically released and discharged by this Agreement, except as otherwise provided in the Agreement.

Section 19. *Specific Performance.* It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Bankruptcy Court requiring any Party to comply promptly with any of its obligations hereunder, in each case without any requirement of posting a bond or other undertaking. Such remedies, however, shall be cumulative and not exclusive and shall be in addition to any other remedies that the Parties may have under this Agreement or otherwise.

Section 20. *Exercise of Remedies.* No failure or delay by any Party in exercising any right or remedy provided by law under or pursuant to this Agreement shall impair such right or remedy or be construed as a waiver or variation of it or preclude its exercise at any subsequent time, and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

Section 21. *Successors and Assigns.*

(a) This Agreement and all of the terms, conditions and provisions hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective employees, agents, representatives, heirs, successors and assigns, including any trustee appointed in the Chapter 11 Cases, any chapter 7 bankruptcy trustee if the Chapter 11 Cases are converted, any litigation trust or other estate representative appointed under the Plan.

(b) This Agreement, and the rights, interests, and obligations hereunder, may not be assigned by any Party (by operation of law or otherwise) without the express written consent of the other Parties. Any attempted or purported assignment in violation of this Section 21 will be deemed void *ab initio*.

Section 22. No Personal Liability of the Joint Administrators.

(a) Each of the Joint Administrators have entered into and signed this Agreement as agents for and on behalf of LBL, LBHI2 or ESH and neither they, their firm, its current and former members, partners, directors, officers, employees, agents, advisers or representatives shall incur any personal liability whatever in respect of any of the obligations under or in relation to this Agreement or otherwise, including those undertaken by LBL, LBHI2 and/or ESH or in respect of any failure on the part of LBL, LBHI2 and/or ESH to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Agreement. The exclusion of liability set out in this Section 22 shall arise and continue notwithstanding the termination of the agency of the Joint Administrators and shall operate as a waiver of any and all claims (including, but not limited to, claims in tort, equity and common law as well as under the laws of contract).

(b) Each of the Joint Administrators' firm, its current and former members, partners, directors, officers, employees, agents, advisers and representatives are express third party beneficiaries hereunder and shall be entitled to rely on, enforce and enjoy the benefit of this Section 22 as if they were a party to this Agreement.

(c) Each Party accepts and agrees that this Agreement and all transactions and measures contained herein do not give rise to any personal liability on the part of any officers, directors, employees, members, consultants, agents, asset managers, representatives or professional advisors of any Party and, to the extent personal liability existed, each Party explicitly waives any and all potential rights and claims against all of the aforementioned persons.

Section 23. *No Third-Party Beneficiaries.* Other than the Defendant Release Parties, any persons identified in Section 22(b), and the LBHI Release Parties, this Agreement shall be solely for the benefit of the Parties and no other person or Entity shall be a third-party beneficiary of this Agreement.

Section 24. *Expenses and Fees.* Except as otherwise set forth herein, each Party shall be responsible for the payment of its own fees, expenses, and disbursements and those of its respective agents, representatives, and counsel that have arisen, could have arisen, or that may arise in connection with the Adversary Proceeding, including fees, expenses, and disbursements related to this Agreement.

Section 25. *Title and Headings.* All titles and headings contained in this Agreement are for convenience of reference only and will not be construed to limit or extend the terms of this Agreement.

Section 26. *Counterparts.* This Agreement may be executed in multiple counterparts and any Party hereto may execute any such counterpart, each of which when executed and delivered

shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. For purposes of this Agreement, facsimile or PDF signatures shall be deemed originals, and the Parties agree to exchange original signatures via electronic mail as promptly as possible.

Section 27. **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given (i) when delivered by hand (with written confirmation of receipt), (ii) when sent by email (with read receipt received or receipt acknowledged by the recipient), (iii) one business day following the day sent by reputable overnight courier (with written confirmation of receipt), or (iv) when received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses and representatives (if applicable) set forth below (or to such other addresses and representatives as a Party may designate by notice to the other Parties in accordance with this Section):

- (a) If to LBHI, then to:

Lehman Brothers Holdings, Inc..
Attn: Ronald J. Geraghty
110 East 42nd Street, Suite 820
New York, NY 10172
Email: ronald.geraghty@lehmanholdings.com

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

Weil, Gotshal & Manges LLP
Attn: Susan L. Shin
Garrett A. Fail
767 Fifth Avenue
New York, NY 10153
Email: susan.shin@weil.com
garrett.fail@weil.com

- (b) If to LBL, then to:

Michael J.A. Jervis, Joint Administrator of Lehman Brothers Limited (in administration), acting as its agent and without personal liability
7 More London
Riverside, London
United Kingdom SE1 2RT
Email: mike.jervis@pwc.com

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

Davis Polk & Wardwell LLP
Attn: James H.R. Windels
Elliot Moskowitz

450 Lexington Avenue
New York, NY 10017
Email: james.windels@davispolk.com
elliott.moskowitz@davispolk.com

(c) If to LBHI2, then to:

Derek A. Howell, Joint Administrator of LB Holdings Intermediate 2 Limited (in
administration), acting as its agent and without personal liability
7 More London
Riverside, London
United Kingdom SE1 2RT
Email: derek.a.howell@pwc.com

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

Davis Polk & Wardwell LLP
Attn: James H.R. Windels
Elliot Moskowitz
450 Lexington Avenue
New York, NY 10017
Email: james.windels@davispolk.com
elliott.moskowitz@davispolk.com

(d) If to MBAM, then to:

Richard Harper
c/o Monika Lorenzo-Perez
Brown Rudnick LLP
8 Clifford Street
London
United Kingdom W1S 2LQ
Email: richard@harperenergy.co.uk

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

Davis Polk & Wardwell LLP
Attn: James H.R. Windels
Elliot Moskowitz
450 Lexington Avenue
New York, NY 10017
Email: james.windels@davispolk.com
elliott.moskowitz@davispolk.com

(e) If to ESH, then to:

Gillian Bruce, Joint Administrator of Eldon Street Holdings Limited (in
administration), acting as its agent and without personal liability
7 More London
Riverside, London
United Kingdom SE1 2RT
Email: gillian.bruce@pwc.com

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

Davis Polk & Wardwell LLP
Attn: James H.R. Windels
Elliot Moskowitz
450 Lexington Avenue
New York, NY 10017
Email: james.windels@davispolk.com
elliot.moskowitz@davispolk.com

IN WITNESS WHEREOF, each of the signatories has read and understood this Agreement, has executed it, represents that such signatory is authorized to execute this Agreement on behalf of the represented Party, has agreed to be bound by its terms, and has entered into this Agreement as of the date of execution.

LEHMAN BROTHERS HOLDINGS, INC.

By: _____
Name:
Title:
Date: _____

LEHMAN BROTHERS LIMITED (in administration)

By: _____
Name:
Title:
Date: _____

LB HOLDINGS INTERMEDIATE 2 LIMITED (in administration)

By: _____
Name:
Title:
Date: _____

MBAM INVESTOR LIMITED

By: _____

Name:

Title:

Date: _____

**ELDON STREET HOLDINGS LIMITED (in
administration)**

By: _____

Name:

Title:

Date: _____