

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11
 :
WASHINGTON MUTUAL, INC., et al.,¹ : Case No. 08-12229 (MFW)
 :
Debtors. : (Jointly Administered)
 :
 :
 : Hearing Date: September 25, 2009 at 10:30 a.m. (ET)
-----X : Objection Deadline: September 18, 2009 at 4:00 p.m. (ET)

**MOTION FOR ORDER AUTHORIZING DEBTORS TO
ENTER INTO LETTER OF INTENT WITH
GOLDMAN, SACHS & CO. AND APPROVING
REIMBURSEMENT OF DUE DILIGENCE EXPENSES AND EXCLUSIVITY**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), hereby move for an order, (a) pursuant to sections 105(a), 363(b)(1), and 503(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing WMI Investment to enter into a letter of intent (the "Letter of Intent") with Goldman, Sachs & Co. ("Goldman") in connection with Goldman's potential purchase of WMI Investment's membership interest (the "Wind Power Investment") in JPMC Wind Investment Portfolio LLC, pursuant to which WMI Investment will (i) reimburse Goldman for its reasonable out-of-pocket professional fees and expenses, up to a maximum of \$300,000, subject to certain conditions and limitations described herein and in the Letter of Intent, and (ii) enter into exclusive negotiations with Goldman regarding the Wind Power Investment for the period described herein and in the Letter of Intent, and (b)

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



pursuant to section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) treating certain information as confidential. In support of the Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On September 26, 2008 (the “Commencement Date”), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code. As of the date hereof, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On October 3, 2008, this Court entered an order pursuant to Bankruptcy Rule 1015(b) authorizing the joint administration of the Debtors’ chapter 11 cases.

4. On October 15, 2008, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”). No trustee or examiner has been appointed in these cases.

WMI’s Business

5. WMI is a holding company incorporated in the State of Washington and headquartered at 1301 Second Avenue, Seattle, Washington 98101. WMI is the direct parent of WMI Investment, which serves as an investment vehicle for WMI and holds a variety of securities. WMI Investment is incorporated in the State of Delaware.

6. Prior to the Commencement Date, WMI was a savings and loan holding company that owned Washington Mutual Bank (“WMB”) and such bank’s subsidiaries, including Washington Mutual Bank fsb (“WMBfsb”). WMI also has certain non-banking, non-debtor subsidiaries. Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the “OTS”). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI’s banking and nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”).

7. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB. Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of WMBfsb, to JPMC pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated as of September 25, 2008 (publicly available at <http://www.fdic.gov/about/freedom/popular.html>).

The Wind Power Investment

8. The Wind Power Investment is comprised of WMI Investment’s membership interest in JPMC Wind Investment Portfolio LLC, a portfolio holding company (the “Portfolio Holding Company”), which owns an equity interest in each of four (4) project companies: (a) Airtricity Sand Bluff WF Holdco, LLC, which owns the Airtricity-Sand Bluff wind farm, near Sterling City, Texas, (b) UPC Hawaii Wind Partners II, LLC, which owns the UPC-Kaheawa Pastures wind farm, located in Maui, Hawaii, (c) Whirlwind Energy, LLC, which owns the RES-Whirlwind wind farm, located in Floyd County, Texas, and (d) Buffalo

Gap Holdings 2, LLC, which owns the AES-Buffalo Gap 2 wind farm, located in Nolan and Taylor Counties, Texas.

9. By order, dated February 25, 2009 [Docket No. 724], the Debtors were authorized to retain CP Energy Group, LLC ("CP Energy"), as their investment banker, in order to, among other things, (a) identify potential purchasers of the Wind Power Investment and (b) coordinate technical due diligence and assist in negotiations with prospective purchasers' and/or their representatives, as necessary or appropriate. The Debtors selected CP Energy as their investment banker because of CP Energy's familiarity with the renewable energy sector and, specifically, the divestiture of tax equity investments and wind powered electric generation facilities.

10. CP Energy generated a list of approximately 30 potential purchasers, including all known experienced investors in wind tax equity transactions, as well as certain potential new investors. On May 21, 2009, CP Energy distributed materials regarding the Wind Power Investment and a form of confidentiality agreement to 23 of these potential purchasers.² In response thereto, seven (7) parties contacted CP Energy to express their interest in the Wind Power Investment and executed confidentiality agreements with the Debtors. After preliminary due diligence regarding the Wind Power Investment, potential purchasers submitted non-binding written offers to purchase the Wind Power Investment.

² The Limited Liability Company Agreement (the "LLC Agreement") of the Portfolio Holding Company contains restrictions regarding, among other things, the identity of proposed solicitees or transferees of WMI Investment's interest. The original list of potential purchasers was modified to exclude certain potential purchasers based on the transferee restrictions in the LLC Agreement. In addition, WMI Investment's solicitations were required to comply with the confidentiality provisions of the LLC Agreement.

The Debtors determined that the bid submitted by Goldman is the highest and best bid remitted to date.

11. Subsequent to the selection of Goldman, WMI Investment and Goldman entered into a non-binding Letter of Intent, a copy of which is annexed hereto as Exhibit “A,” pursuant to which Goldman has expressed interest in acquiring the Wind Power Investment. Goldman’s Letter of Intent is based solely on preliminary information provided by CP Energy and is conditioned on, among other things, Goldman’s completion of due diligence satisfactory to Goldman, in its sole discretion and execution of definitive agreements concerning the transaction. Additionally, WMI Investment and Goldman have agreed, subject to this Court’s approval, that WMI Investment will reimburse Goldman for its reasonable out-of-pocket professional fees and expenses incurred in conducting due diligence, preparing and negotiating definitive documentation, and consummating the transaction, in an amount not to exceed \$300,000 in the aggregate (the “Expense Reimbursement”), provided, that, WMI Investment will only be required to reimburse Goldman if the purchase price, as set forth in the definitive agreements, as the same may have been adjusted in accordance therewith, is greater than \$15 million. Furthermore, such obligation would cease if definitive agreements are entered into between Goldman and WMI Investment with respect to the Wind Power Investment, but the transaction is not consummated as a result of Goldman’s material breach.

12. The Letter of Intent also provides that Goldman will have the exclusive right to negotiate with WMI Investment with respect to the Wind Power Investment from and after the date of the Letter of Intent until the earliest to occur of any of the following, at which time such exclusive right will automatically terminate (the “Exclusivity Period”):

- (a) if the Court does not enter an order authorizing WMI Investment to enter into the Letter of Intent and approve the Expense Reimbursement and exclusivity provisions thereof, prior to November 4, 2009;
- (b) on the date that is sixty days following the entry of an order authorizing WMI Investment to enter into the Letter of Intent and approving the Expense Reimbursement and exclusivity provisions thereof;
- (c) if the purchase price that Goldman offers WMI Investment in respect of the Wind Power Investment, after taking into account any purchase price adjustments that may be agreed between the parties, is less than \$15 million;
- (d) upon the entry of a bidding procedures order by the Court in respect of the proposed sale of the Wind Power Investment to Goldman pursuant to agreed documentation; or
- (e) upon WMI Investment's receipt of written notice from Goldman that Goldman has elected not to proceed with the purchase of the Wind Power Investment.

The Purchase Price Should Remain Confidential Pursuant to Section 107(b) of the Bankruptcy Code and Rule 9018 of the Bankruptcy Rules

13. Goldman has presented an indicative purchase price in excess of the \$15 million minimum described above. However, Goldman has requested that the purchase price offered and set forth in the Letter of Intent be treated as confidential information pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018. To the extent that, after completion of due diligence, and subject to the conditions identified in the Letter of Intent, Goldman and WMI Investment determine to consummate the sale of the Wind Power Investment, the Debtors will file a motion with this Court seeking approval of bidding procedures and any definitive documentation or "stalking horse" agreement with Goldman, subject to higher and better offers, which motion will disclose the actual purchase price.

14. A copy of the Letter of Intent, with the indicative purchase price redacted, has been filed as Exhibit "A" hereto.³ An un-redacted copy of the Letter of Intent has been provided to the Creditors' Committee's advisors.

Relief Requested

15. By this Motion, the Debtors request entry of the proposed order, substantially in the form attached hereto as Exhibit "B," (a) pursuant to sections 105(a), 363(b)(1), and 503(b)(1) of the Bankruptcy Code, authorizing WMI Investment to enter into the Letter of Intent with Goldman pursuant to which WMI Investment will (i) reimburse Goldman for its reasonable out-of-pocket professional fees and expenses, up to a maximum of \$300,000, subject to the conditions and limitations described herein and in the Letter of Intent, and (ii) enter into exclusive negotiations with Goldman regarding the Wind Power Investment for the period described herein and in the Letter of Intent, and (b) treat the indicative purchase price contained in the Letter of Intent as confidential pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018.

The Relief Requested Herein Should Be Granted

16. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

³ An unredacted copy of the Letter of Intent will be available for the Court's review at the hearing to consider the Motion.

Id. § 105(a). Moreover, section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In determining whether to authorize the use, sale, or lease of property of the estate, courts require a debtor to show a sound business purpose justifying the same. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring judges deciding motions pursuant to section 363(b) to find a “good business reason” to grant such motions); Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (D. Del. 1999) (holding that the debtor must show a sound business purpose to justify the use, sale, or lease of property of the estate); In re Del. & Hudson Ry. Co., 124 B.R. 169, 178-79 (D. Del. 1991) (adopting the Lionel court’s approach to determining whether a sound business purposes exists and approving a sale pursuant to section 363(b) because it was based on reasonable business judgment).

17. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citations omitted). When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985) (quotation

marks and citations omitted), superseded by statute on different grounds, 65 Del. Laws §102(b)(7) (1986), as recognized in *Emerald Partners v. Berlin*, 787 A.2d 85 (Del. 2001).

18. The Debtors submit that sound business reasons exist to grant the relief requested herein. After marketing the Wind Power Investment over the last several months, the Debtors determined that the initial bid submitted by Goldman is the best and highest offer received to date. Accordingly, the Debtors believe that it is in the best interests of their estates and creditors to move forward with the proposed sale transaction with Goldman. Goldman has advised the Debtors that it will only conduct further due diligence in connection with the Wind Power Investment if the Debtors agree, in advance, and obtain Court approval, to compensate Goldman for its out of pocket expenses, including professional fees up to an aggregate amount of \$300,000. This up-front payment of expenses is standard practice in the marketplace for similar tax equity investments.

19. In light of the potential benefits to the Debtors' estates from a sale transaction with Goldman (or another bidder, if a higher or better offer is made at an auction),⁴ the Debtors believe that it is appropriate to proceed in this manner. Furthermore, as described herein, pursuant to the terms of the Letter of Intent, the parties have agreed that WMI Investment will only be required to reimburse Goldman for its fees and expenses if the purchase price, as set forth in the definitive agreements, as the same may have been adjusted in accordance therewith, is greater than \$15 million. Furthermore, such obligation would cease if definitive agreements are entered into between Goldman and WMI Investment with

⁴ It should be noted that pursuant to the LLC Agreement, JPMC Wind Investment LLC, the managing member of the Portfolio Holding Company, has a right of first refusal to purchase WMI Investment's interest in the Portfolio Holding Company.

respect to the Wind Power Investment but the transaction is not consummated as a result of Goldman's material breach.

20. The terms of the Letter of Intent were negotiated in good faith and the preliminary, non-binding, terms and conditions of the proposed transaction, including the fees and expenses to be paid or reimbursed in connection therewith, are the most favorable of the proposals received by the Debtors to date. The Debtors submit that the "capped" amounts requested as fees and expenses are reasonable in comparison to the potential purchase price for the Wind Power Investment. Accordingly, the Debtors believe that the amount of the fees and expenses to be paid are reasonable in light of the opportunity to sell the Wind Power Investment to Goldman or another higher or better bidder.

21. Furthermore, the Debtors believe that it is reasonable to treat the indicative purchase price offered by Goldman as confidential information at this time pursuant to section 107 of the Bankruptcy Code.⁵ The indicative purchase price offered by Goldman is commercially sensitive information which Goldman does not wish to disclose at this time. However, to the extent the parties determine, after the completion of due diligence, to proceed toward the consummation of a sale of the Wind Power Investment, the Debtors will disclose – in the very near term – the purchase price in their motion for approval of the sale and bidding procedures.

22. Based on the foregoing, WMI submits that the relief requested herein is necessary and appropriate, is in the best interests of its estate and creditors, and should be granted in all respects.

⁵ An unredacted copy of the Letter of Intent will be available for the Court's review at the hearing to consider the Motion.

Notice

23. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; and (iii) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice need be provided.

No Previous Request

24. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: September 4, 2009
Wilmington, Delaware

/s/ Andrew C. Irgens

Mark D. Collins (No. 2981)
Chun I. Jang (No. 4790)
Andrew C. Irgens (No. 5193)
RICHARDS, LAYTON & FINGER, P.A.
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– and –

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ATTORNEYS TO THE DEBTORS
AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X
: **Chapter 11**
: **Case No. 08-12229 (MFW)**
: **(Jointly Administered)**
: **Hearing Date: September 25, 2009 at 10:30 a.m. EDT**
: **Objection Deadline: September 18, 2009 at 4:00 p.m. EDT**
-----X

In re
WASHINGTON MUTUAL, INC., et al.,¹
Debtors.

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on September 4, 2009, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion for Order Authorizing Debtors to Enter Into Letter of Intent With Goldman, Sachs & Co. and Approving Reimbursement of Due Diligence Expenses and Exclusivity** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be filed in writing with the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **September 18, 2009 at 4:00 p.m. (Eastern Daylight Time)**.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Mary F. Walrath at the Bankruptcy

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **September 25, 2009 at 10:30 a.m. (Eastern Daylight Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: September 4, 2009
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Andrew C. Irgens

Mark D. Collins (No. 2981)
Chun I. Jang (No. 4790)
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– and –

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Attorneys to the Debtors and Debtors in Possession

Exhibit A

**Letter of Intent
[Redacted]**

September 3, 2009

Martin Pasqualini, Managing Director
CP Energy Group, LLC
One Boston Place, Suite 4010
Boston, MA 02109

Dear Mr. Pasqualini:

1. Goldman, Sachs & Co. ("Goldman") is pleased to provide this non-binding letter of intent ("LOI") to WMI Investment Corp. ("WMIIC") to acquire WMIIC's 100% ownership interest ("Transaction") in a portfolio of tax equity ownership interests held by JPMC Wind Investment Portfolio LLC (the "Portfolio Company") in the Buffalo Gap II, Kaheawa, Sand Bluff and Whirlwind wind energy projects (the "Projects") for an indicative non-binding purchase price ("Indicative Purchase Price") of \$[REDACTED]. This Indicative Purchase Price is based solely on preliminary information in the dataroom as provided by CP Energy. This LOI is conditioned upon, among other things, completion of a due diligence investigation satisfactory to Goldman, in its sole discretion, receipt of all necessary internal approvals and execution of definitive agreements concerning the Transaction satisfactory to Goldman in its sole discretion.

2. (a) Subject to the approval of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), WMIIC will reimburse Goldman for the reasonable out-of-pocket professional fees and expenses that Goldman incurs in conducting due diligence, the preparation and negotiation of definitive documentation, and the consummation of the Transaction, up to a maximum amount of \$300,000 in the aggregate (the "Expense Reimbursement"); provided, however, that WMIIC will only be required to reimburse Goldman upon submission to WMIIC of reasonably satisfactory written documentation (which may be redacted to preserve any applicable privilege) evidencing Goldman's incurrence of such fees or expenses; and, provided, further, that WMIIC will not be required to reimburse Goldman for any such fees and expenses if (a) the purchase price that Goldman offers WMIIC in respect of the Transaction, after taking into account any purchase price adjustments that may be agreed between the parties, is less than \$15,000,000, or (b) definitive agreements are entered into between Goldman and WMIIC with respect to the Transaction but the Transaction is not consummated as a result of Goldman's material breach.

(b) Goldman expects any definitive documentation or "stalking horse" agreement to include appropriate "stalking horse" protections including a break-up fee and appropriate overbid protection to be agreed upon by and between WMIIC and Goldman. Goldman understands that any such break up fee or overbid protections will be subject to the approval of the Bankruptcy Court.

(c) Goldman agrees to provide WMIIC with prompt written notice in the event that Goldman at any time elects not to proceed with the Transaction.

3. WMIIC and Goldman agree that Goldman shall have the exclusive right to negotiate with WMIIC with respect to the Transaction from and after the date hereof until the earliest to occur of any of the following, at which time such exclusive right shall automatically terminate (the "Exclusivity Period"):

- (a) if the Bankruptcy Court fails to enter an order authorizing WMIIC to enter into this LOI and approving the Expense Reimbursement and exclusivity provisions hereof, prior to November 4, 2009;
- (b) on the date that is sixty (60) days following the entry of an order authorizing WMIIC to enter into this LOI and approving the Expense Reimbursement and exclusivity provisions hereof;
- (c) if the purchase price that Goldman offers WMIIC in respect of the Transaction, after taking into account any purchase price adjustments that may be agreed between the parties, is less than \$15,000,000;
- (d) upon the entry of a bidding procedures order by the Bankruptcy Court in respect of the proposed sale of WMIIC's ownership interest in the Portfolio Company to Goldman pursuant to agreed documentation; or
- (e) upon WMIIC's receipt of written notice from Goldman that Goldman has elected not to proceed with the Transaction.

4. Goldman is prepared to commence completion of its due diligence investigation as soon as is practicable after WMIIC's acceptance and execution of this LOI and approval of the Bankruptcy Court. This due diligence investigation includes, but is not limited to, a legal, tax, regulatory and technical review of WMIIC, the Portfolio Company, the Projects and the Transaction. Goldman and its representatives would require access to the management and books and records of WMIIC, the Portfolio Company and the Projects, which you would agree to provide. Goldman would also contemplate site visits as part of its due diligence investigation.

5. Except to the extent required by law, or to the extent that disclosure is required to the Bankruptcy Court in order to obtain Bankruptcy Court approval as contemplated by this LOI, WMIIC agrees that neither it, nor any of its affiliates, employees or representatives will, directly or indirectly, disclose or allow disclosure of this LOI, any of the information contained in this LOI or of the existence of discussions regarding a possible transaction between the parties, to any party other than its own personnel, unsecured creditor's committee as it pertains to Transaction and representatives having a "need-to-know" and who agree to keep such information confidential, without the express prior written approval of Goldman.

6. This LOI is intended to serve only as an indication of Goldman's interest in pursuing the transaction contemplated herein and, except for paragraphs 5 and 7 and this paragraph 6, and paragraphs 2 and 3 hereof, which remain subject to the approval of the

Bankruptcy Court, is not intended to and shall not constitute a binding or enforceable agreement of WMIC or Goldman. Any such obligation or agreement will be created only by the execution of definitive agreements, the provisions of which will supersede this and all other understandings between WMIC and Goldman. By signing this LOI, you represent that, except as stated in this paragraph, you are in no way relying on this letter as any more than an indication of interest.

7. This LOI shall be governed by and construed in accordance with the laws of the State of New York, without regard to the choice of law rules thereof that would result in the application of the laws of any other jurisdiction. Each party consents to the exclusive jurisdiction of the Bankruptcy Court with respect to any dispute arising under this letter and to the service of process in any manner provided by law. For avoidance of doubt, the only dispute that may arise under this LOI is a breach of the obligations set forth in paragraphs 2, 3 and 5 hereof.

8. Goldman is prepared to move forward expeditiously to perform and complete the required due diligence in a timely manner. Goldman Sachs has a track record in the alternative energy space and is currently invested in several wind farms.

9. If the terms and conditions of this letter are in accordance with your understanding, please sign and return this letter. This letter may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will be considered one and the same agreement, and will become effective when one or more such counterparts have been signed by each of the parties, delivered to each party, and approved by the Bankruptcy Court.

Very truly yours,

GOLDMAN SACHS & CO

By: 

Name: ~~ALBERT DOMBROWSKI~~ *all*

Title: AUTHORIZED SIGNATORY *DeWay Skle*

ACCEPTED AND AGREED TO
THIS ____ DAY OF SEPTEMBER, 2009

WMI INVESTMENT CORP.

By: _____
Name:
Title:

Bankruptcy Court, is not intended to and shall not constitute a binding or enforceable agreement of WMIIC or Goldman. Any such obligation or agreement will be created only by the execution of definitive agreements, the provisions of which will supersede this and all other understandings between WMIIC and Goldman. By signing this LOI, you represent that, except as stated in this paragraph, you are in no way relying on this letter as any more than an indication of interest.

7. This LOI shall be governed by and construed in accordance with the laws of the State of New York, without regard to the choice of law rules thereof that would result in the application of the laws of any other jurisdiction. Each party consents to the exclusive jurisdiction of the Bankruptcy Court with respect to any dispute arising under this letter and to the service of process in any manner provided by law. For avoidance of doubt, the only dispute that may arise under this LOI is a breach of the obligations set forth in paragraphs 2, 3 and 5 hereof.

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Very truly yours,

GOLDMAN, SACHS & CO.

By: _____
Name: ALBERT DOMBROWSKI
Title: AUTHORIZED SIGNATORY

ACCEPTED AND AGREED TO
THIS _____ DAY OF SEPTEMBER, 2009

WMI INVESTMENT CORP.


By: 
Name: Jonathan Goulding
Title: Treasurer

Exhibit B
Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	(Jointly Administered)
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**ORDER AUTHORIZING DEBTORS TO ENTER INTO
LETTER OF INTENT WITH GOLDMAN, SACHS & CO.
AND APPROVING REIMBURSEMENT OF
DUE DILIGENCE EXPENSES AND EXCLUSIVITY**

Upon the motion, dated September 4, 2009 (the "Motion") of Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order, (a) pursuant to sections 105(a), 363(b)(1), and 503(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing WMI Investment to enter into a letter of intent (the "Letter of Intent") with Goldman, Sachs & Co. ("Goldman") in connection with Goldman's potential purchase of WMI Investment's membership interest (the "Wind Power Investment") in JPMC Wind Investment Portfolio LLC, pursuant to which WMI Investment will (i) reimburse Goldman for its reasonable out-of-pocket professional fees and expenses, up to a maximum of \$300,000, subject to certain conditions and limitations described in the Motion and in the Letter of Intent, and (ii) enter into exclusive negotiations with Goldman regarding the Wind Power

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Investment for the period described in the Motion and in the Letter of Intent, and (b) pursuant to section 107(b) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) treating certain information as confidential, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having determined that the relief sought in the Motion, is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Debtors are authorized to enter into the Letter of Intent; and it is further

ORDERED that, in connection with the Letter of Intent, the Debtors are authorized to reimburse Goldman for its reasonable out-of-pocket professional fees and expenses incurred in conducting due diligence, preparing and negotiating definitive documentation, and consummating the sale of the Wind Power Investment, up to a maximum of \$300,000, as administrative expense claims under section 503(b)(1) of the Bankruptcy Code, provided, that, WMI Investment shall only be required to reimburse Goldman if the purchase price, as set forth in the definitive agreements, as the same may have been adjusted

in accordance with therewith, is greater than \$15 million, provided, further, that, WMI Investment's obligation to reimburse Goldman shall cease if definitive agreements are entered into between Goldman and WMI Investment with respect to the Wind Power Investment, but the transaction is not consummated as a result of Goldman's material breach; and it is further

ORDERED that the Debtors are authorized to negotiate exclusively with Goldman during the Exclusivity Period (as defined in the Letter of Intent); and it is further

ORDERED that the indicative purchase price in the Letter of Intent shall be treated as confidential information pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018; and it is further

ORDERED that the Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the interpretation and enforcement of this Order or the Letter of Intent.

Dated: _____, 2009
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE