

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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*In re* : **Chapter 11**  
:   
WASHINGTON MUTUAL, INC., et al.,<sup>1</sup> : **Case No. 08-12229 (MFW)**  
: **(Jointly Administered)**  
:   
**Debtors.** : **Hearing Date: January 28, 2010 at 4:00 p.m. ET**  
: **Objection Deadline: January 19, 2010 at 4:00 p.m. ET**  
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**MOTION OF DEBTORS PURSUANT TO SECTION 105(a)  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019(a) FOR  
APPROVAL OF SETTLEMENTS WITH OLD REPUBLIC INSURANCE COMPANY,  
ZURICH AMERICAN INSURANCE COMPANY AND JPMORGAN CHASE BANK, N.A.**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp. ("WMI Investment"), as debtors and debtors in possession (collectively, the "Debtors"), hereby file this motion (the "Motion") for approval of (a) a settlement between the Debtors, Old Republic Insurance Company ("Old Republic") and JPMorgan Chase Bank, N.A. ("JPMC") pursuant to which, among other things, JPMC shall assume all liabilities and obligations of the Debtors and their non-debtor affiliates to Old Republic under the Old Republic Insurance Agreements (as defined below), as set forth in that certain Settlement Agreement, dated December 23, 2009, a copy of which is annexed hereto as Exhibit "A" (the "Old Republic Settlement Agreement") and (b) a settlement between the Debtors, Zurich American Insurance Company ("Zurich") and JPMC pursuant to which, among other things, JPMC shall assume all liabilities and obligations of the Debtors and their non-debtor affiliates to Zurich under the Zurich Insurance Agreements (as defined below), as set forth in that certain Settlement Agreement, dated December 23, 2009,

<sup>1</sup> 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.



a copy of which is annexed hereto as Exhibit “B” (the “Zurich Settlement Agreement”), and respectfully represent:

### **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 title 11 of the United States Code (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 Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 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.

#### **The Old Republic Settlement Agreement**

8. Old Republic provided workers’ compensation and employers’ liability, commercial general liability and business automobile liability insurance to WMI and its affiliates, including WMB, through various policies of insurance for the periods March 1, 2006 to March 1, 2007; March 1, 2007 to March 1, 2008; and March 1, 2008 to March 1, 2009 (collectively, the “Old Republic Policies”). Old Republic issued these policies pursuant to that certain Program Agreement, dated March 1, 2006 (the “Program Agreement” and, together with the Old Republic Policies, the “Old Republic Insurance Agreements”), which provides that any and all amounts WMI is required to pay under the Old Republic Policies, including losses, premiums and indemnification expenses, are the joint and several obligations of WMI and its

affiliates. Although Old Republic's recourse is not limited to WMI, the Program Agreement provides that Old Republic will look primarily to WMI for all such obligations. To secure WMI and its affiliates' obligations to Old Republic under the Old Republic Insurance Agreements, WMB, as account party, provided Old Republic with two clean irrevocable evergreen letters of credit in the amounts of \$19,500,000 and \$1,450,000, issued by The Bank of New York and Federal Home Loan Bank of San Francisco, respectively (as amended, the "Old Republic Letters of Credit").

9. The vast majority of the employees covered by the Old Republic Insurance Agreements were employees of WMB and its subsidiaries, substantially all of whom transferred employment to JPMC on September 25, 2008. In view of this transition of employment, the Debtors, on behalf of themselves and their affiliates, have entered into the Old Republic Settlement Agreement, pursuant to which JPMC has agreed to assume all of the liabilities and obligations of WMI and its affiliates to Old Republic under the Old Republic Insurance Agreements, including those not directly related to WMB, in exchange for the Debtors' agreement to assign and transfer all of their rights, title and interest in any return premium or dividends now owing or which may become due to them with respect to the Old Republic Policies to JPMC. Consequently, JPMC will assume liability for approximately \$46,000 in unpaid premiums owed to Old Republic and will assume the Debtors' rights, title and interest in approximately \$183,000 in return premiums, which were paid by WMB.

10. In addition, pursuant to the Old Republic Settlement Agreement, the parties have agreed that—

- Within five days of the entry of an order by this Court approving the Old Republic Settlement Agreement (the "Old Republic Approval Order"), JPMC shall (i) enter into that

certain Assumption Agreement with Old Republic, in the form attached to the Old Republic Settlement Agreement as Exhibit “A,” pursuant to which JPMC shall assume 100% of the liabilities and obligations of WMI and its affiliates under the Program Agreement; (ii) provide Old Republic with a clean, irrevocable evergreen letter of credit (the “Old Republic Replacement LC”) to secure its obligations under the Old Republic Insurance Agreements; (iii) amend Proof of Claim No. 2343, which it filed against the Debtors in these cases, to withdraw, with prejudice, its claims related to the Old Republic Insurance Agreements, the Old Republic Letters of Credit and the funds held in escrow by Specialty Risk Services, Inc.<sup>2</sup> supporting the obligations under the Old Republic Policies and the Zurich Policies (the “Escrow”); and (iv) waive and release the Debtors and their affiliates, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Old Republic Insurance Agreements, the Old Republic Letters of Credit and the Escrow.

- Upon Old Republic’s receipt of the Old Republic Replacement LC, the Debtors and their affiliates shall waive and release JPMC, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Old Republic Insurance Agreements, the Old Republic Letters of Credit and the Escrow.
- Upon receipt of the Old Republic Replacement LC, Old Republic shall return the Old Republic Letters of Credit to the issuing banks for cancellation.
- Old Republic shall release and forever discharge the Debtors, the Debtors’ estates, and each of their non-debtor affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns and other representatives from liability for any claims or obligations arising under the Program Agreement, and shall withdraw, with prejudice, the proofs of claim it filed in these chapter 11 cases, Claim Nos. 2383 and 2753, effective upon the latest to occur of (i) JPMC’s execution of the Old Republic Assumption Agreement; (ii) Old Republic’s receipt of the Old Republic Replacement LC from JPMC; and (iii) entry of the Old Republic Approval Order.

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<sup>2</sup> Specialty Risk Services, Inc. is a third-party claims administrator, which holds certain paid loss deposits in escrow. These deposits were funded by WMB in connection with the Old Republic Insurance Agreements and the Zurich Insurance Agreements.

- The Debtors and their non-debtor affiliates shall release Old Republic from liability for any claims or obligations relating to the Old Republic Insurance Agreements; provided, however, that Old Republic shall continue to defend and pay all claims insured under the Old Republic Policies in accordance with the terms of those policies and applicable law.
- To the extent required under the Old Republic Insurance Agreements, JPMC, the Debtors and their non-debtor affiliates shall continue to cooperate with Old Republic and provide Old Republic with the necessary information required under the Old Republic Insurance Agreements, including, but not limited to, claims information and documentation.

### **The Zurich Settlement Agreement**

11. Zurich provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including WMB, through various policies of insurance for the periods March 1, 2003 to March 1, 2004; March 1, 2004 to March 1, 2005; and March 1, 2005 to March 1, 2006 (collectively, the "Zurich Policies"). In connection with the Zurich Policies, WMI and Zurich entered into a Deductible Agreement and into a Deducible and Paid Loss Retrospective Rating Agreement, each dated as of March 1, 2003, and annual specifications and addendums thereto, describing the scope, terms and structure of the deductible program and the obligations of WMI and Zurich with respect thereto (as amended, the "Deductible Agreements" and, together with the Zurich Policies, the "Zurich Insurance Agreements"). The Deductible Agreements set forth the applicable deductible amounts under each of the Zurich Policies and the related premiums. To secure its obligations to Zurich under the Zurich Insurance Agreements, WMI, as account party, provided Zurich with a clean irrevocable evergreen letter of credit in the amount of \$18,000,000, issued by JPMC (as amended, the "Zurich Letter of Credit").<sup>3</sup>

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<sup>3</sup> The Zurich Letter of Credit is still outstanding in the amount of \$18,000,000.

12. The vast majority of the employees covered by the Zurich Insurance Agreements were employees of WMB and its subsidiaries, substantially all of whom transferred employment to JPMC on September 25, 2008. In view of this transfer of employment, the Debtors, on behalf of themselves and their affiliates, have entered into the Zurich Settlement Agreement pursuant to which JPMC has agreed to assume all of the liabilities and obligations of WMI and its affiliates to Zurich under the Zurich Insurance Agreements, including those not directly related to WMB, in exchange for the Debtors and their affiliates' agreement to assign and transfer all of their rights, title and interest in any return premium or dividends now owing or which may become due to them with respect to the Zurich Policies to JPMC. Consequently, JPMC will assume liability for approximately \$138,000 in unpaid premiums owed to Zurich.

13. In addition, pursuant to the Zurich Settlement Agreement, the parties have agreed that—

- Within five days of the entry of an order by this Court approving the Zurich Settlement Agreement (the "Zurich Approval Order"), JPMC will (i) enter into that certain Assumption Agreement with Zurich, in the form attached to the Zurich Settlement Agreement as Exhibit "A," pursuant to which JPMC will assume 100% of the liabilities and obligations of WMI and its affiliates under the Deductible Agreements; and (ii) provide Zurich with a clean, irrevocable evergreen letter of credit (the "Zurich Replacement LC") to secure its obligations under the Zurich Insurance Agreements.
- Upon receipt of the Zurich Replacement LC, Zurich shall return the Zurich Letter of Credit to the issuing bank for cancellation.
- Upon its receipt of the un-drawn Zurich Letter of Credit, JPMC (1) shall amend Proof of Claim No. 2609, filed against WMI in these cases, to withdraw, with prejudice, all portions of the claim to the extent related to the Zurich Insurance Agreements, the Zurich Letter of Credit and the Escrow, including but not limited to, its contingent reimbursement claim for any draws on the Zurich Letter of Credit and its claim for unpaid fees

relating to the Zurich Letter of Credit; (2) amend Proof of Claim No. 2343, which it filed against the Debtors in these cases, to withdraw, with prejudice, its claims to the extent related to the Zurich Insurance Agreements, the Zurich Letter of Credit and the Escrow; and (3) waive and release the Debtors and their affiliates, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Zurich Insurance Agreements, the Zurich Letter of Credit and the Escrow.

- Upon receipt by Zurich of the Zurich Replacement LC, the Debtors and their affiliates will waive and release JPMC, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Zurich Insurance Agreements, the Zurich Letter of Credit and the Escrow.
- Zurich shall release and forever discharge the Debtors, the Debtors' estates, and each of their non-debtor affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns and other representatives from liability for any claims or obligations arising under the Zurich Insurance Agreements, and withdraw, with prejudice, Proof of Claim No. 264, effective upon the latest to occur of (i) JPMC's execution of the Zurich Assumption Agreement; (ii) Zurich's receipt of the Zurich Replacement LC from JPMC; and (iii) entry of the Zurich Approval Order.
- The Debtors and their affiliates shall release Zurich from liability for any claims or obligations relating to the Zurich Insurance Agreements; provided, however, that Zurich shall continue to defend and pay all claims insured under the Zurich Policies in accordance with the terms of those policies and applicable law.
- To the extent required under the Zurich Insurance Agreements, JPMC, the Debtors and their affiliates shall continue to cooperate with Zurich and provide Zurich with the necessary information required under the Zurich Insurance Agreements, including, but not limited to, providing claims information and documentation.

### **Relief Requested**

14. By this Motion, the Debtors seek entry of an order, substantially in the form annexed hereto as Exhibit "C" (the "Proposed Order"), pursuant to section 105(a) of the



Bankruptcy Code and Bankruptcy Rule 9019(a), approving the Old Republic Settlement Agreement and the Zurich Settlement Agreement (together, the “Settlement Agreements”).

**Approval of the Settlement Agreements is Appropriate and Warranted Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019**

15. The Debtors submit that the Court may approve the Settlement Agreements pursuant to section 105(a) and Bankruptcy Rule 9019(a). Bankruptcy Code section 105(a) provides that, “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy Rule 9019(a) governs the approval of compromises and settlements, and provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a). A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. See Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996). The standard by which courts evaluate a proposed compromise and settlement is well established. The United States District Court for the District of Delaware “has described the ultimate inquiry to be whether ‘the compromise is fair, reasonable, and in the interest of the estate.’” In re Marvel Entm’t Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting In re Louise’s, Inc., 211 B.R. 798, 801 (D. Del. 1997)).

16. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006). In determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the

range of reasonableness.” Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972)); see also World Health Alternatives, 344 B.R. at 296; In re Key3Media Group, Inc., 336 B.R. 87, 92-93 (Bankr. D. Del. 2005).

17. When considering whether a proposed settlement is fair, reasonable, and in the best interests of a debtor’s estate and within the “range of reasonableness,” a court should consider four principal factors: (1) the probability of success in litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interest of the creditors. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); In re RFE Industries, Inc., 283 F.3d 159, 165 (3d Cir. 2002); Martin, 91 F.3d at 393; World Health Alternatives, 344 B.R. at 296. These factors continue to be applied by courts in this Circuit. See, e.g., Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006); In re RNI Wind Down Corp., No. 06-10110, 2007 WL 949647 at \*4 (Bankr. D. Del. March 29, 2007). These factors seek to balance the probable benefit and potential cost of pursuing a claim or defense against the costs of the proposed settlement.

18. The Debtors submit that, in light of the above-referenced factors, the Settlement Agreements are fair, reasonable, and in the best interests of the Debtors’ estates and creditors. Approval of the Settlement Agreements will extinguish the obligations and liabilities of the Debtors and their non-debtor affiliates to Old Republic and Zurich and cancel the existing Old Republic and Zurich Letters of Credit. Without approval of the Settlement Agreements, the Debtors will remain jointly and severally liable for all amounts due pursuant to the Old Republic Program Agreement, including losses, premiums and indemnification expenses, and for all

payments owed and obligations under the Zurich Deductible Agreements. For instance, as of the date of this motion, Old Republic and Zurich are owed approximately \$183,000 for unpaid premiums and assessments. Absent the Settlement Agreements, the Debtors and their non-debtor affiliates could continue to be liable for these amounts, even though WMB historically paid all premiums due under the Old Republic Insurance Agreements and the Zurich Insurance Agreements and the vast majority of the employees covered by the Old Republic and Zurich Policies have transferred their employment to JPMC. In fact, the Program Agreement provides that Old Republic will look primarily to WMI, as the named insured, for all such obligations. Therefore, without the Settlement Agreements, the Debtors will continue to incur costs in connection with the Insurance Agreements and costs to maintain outstanding letters of credit.

19. Accordingly, the Settlement Agreements will reduce the Debtors' outstanding obligations and liabilities and protect the estates' assets. In addition, Old Republic, Zurich and JPMC have agreed to withdraw or amend, with prejudice, the proofs of claim they filed against the Debtors in these chapter 11 cases. The withdrawal of these claims inures to the benefit of the Debtors' estates and creditors. For all of these reasons, the Debtors submit that entry into the Settlement Agreements is in the best interests of the Debtors' estates and creditors.

**Notice**

20. No trustee or examiner has been appointed in these chapter 11 cases.

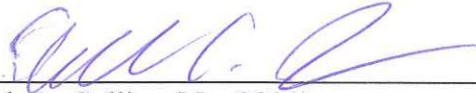
Notice of this Motion and the Motion have been provided to: (i) the U.S. Trustee; (ii) counsel for the Creditors' Committee; (iii) counsel to Zurich and Old Republic; (iv) counsel to JPMC; and (v) parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

**No Previous Request**

21. 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: Wilmington, Delaware  
January 4, 2010



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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: January 28, 2010 at 4:00 p.m. EST**  
: **Objection Deadline: January 19, 2010 at 4:00 p.m. EST**  
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<i>In re</i>  <b>WASHINGTON MUTUAL, INC., <u>et al.</u>,<sup>1</sup></b>  <b>Debtors.</b>	: <b>Chapter 11</b> : <b>Case No. 08-12229 (MFW)</b> : <b>(Jointly Administered)</b> : <b>Hearing Date: January 28, 2010 at 4:00 p.m. EST</b> : <b>Objection Deadline: January 19, 2010 at 4:00 p.m. EST</b>
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**NOTICE OF MOTION AND HEARING**

PLEASE TAKE NOTICE that, on January 4, 2010, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the **Motion of Debtors Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) for Approval of Settlements with Old REpublic Insurance Company, Zurich American Insurance company and JPMorgan Chase Bank, N.A.** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> 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, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **January 19, 2010 at 4:00 p.m. (Eastern Standard 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

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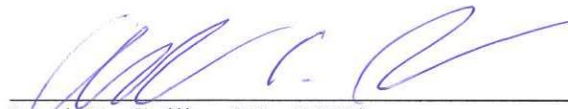
<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

objection and the Motion will be held before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801 on **January 28, 2009 at 4:00 p.m. (Eastern Standard 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: January 4, 2010  
Wilmington, Delaware

**RICHARDS, LAYTON & FINGER, P.A.**



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*Attorneys to the Debtors and Debtors in Possession*

**Exhibit A**

**Old Republic Settlement Agreement**



## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of December 23, 2009, by and between Old Republic Insurance Company and its subsidiaries and affiliated companies ("ORIC"), Washington Mutual, Inc., ("WMI") and WMI Investment Corp ("Investment" and collectively with WMI, the "Debtors"), and JPMorgan Chase Bank, National Association ("JPMC") (ORIC, Debtors and JPMC each a "Party" and together the "Parties"), who hereby covenant and agree as follows:

### **RECITALS**

WHEREAS, on September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 08-12229, et al. (the "Bankruptcy Case");

WHEREAS, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed Washington Mutual Bank (the "Bank") and was appointed Receiver thereof;

WHEREAS, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank;

WHEREAS, the Bank is a wholly-owned subsidiary of WMI;

WHEREAS, ORIC provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for policy periods from March 1, 2006 to March 1, 2009, with the workers' compensation and employers' liability policy canceled by WMI as of January 21, 2009, the automobile liability policy being

canceled by WMI as of September 25, 2008, and the general liability policy expiring by its own terms on March 1, 2009 (collectively, the “Policies”);

WHEREAS, in connection with the Policies, ORIC and WMI entered into a Program Agreement dated as of March 1, 2006, as amended, and into annual Specifications thereto (the “Agreement” and with the Policies, the “Insurance Agreements”);

WHEREAS, to secure its obligations to ORIC under the Insurance Agreements, the Bank, as account party, provided ORIC with two clean irrevocable, evergreen letters of credit in the amounts of \$19,500,000 and \$1,450,000 issued by The Bank of New York and Federal Home Loan Bank of San Francisco, respectively (the “Issuing Banks”), as amended (the “Existing Letters of Credit”);

WHEREAS, JPMC has agreed to assume all liabilities and obligations of the Debtors and the Non-Debtor Affiliates (as hereinafter defined) to ORIC under the Insurance Agreements, including those not directly related to the Bank, in exchange for the Debtors and the Non-Debtors Affiliates assigning to JPMC all of their rights, title and interest in any return premium or dividends now owing or which may become due to any insureds with respect to the Policies (the “Return Premium”) and the funds held in escrow by Specialty Risk Services, Inc. supporting the obligations under the Policies (the “Escrow”).

WHEREAS, ORIC, the Debtors and JPMC now wish to settle any disputes regarding ORIC’s claims against the Debtors and JPMC, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of the Agreement.

2. To the extent provided under applicable law, this Agreement shall become binding upon the Parties upon its execution by all of the Parties; provided, however, that: (a) within five (5) business days after the execution of this Agreement by all of the Parties, counsel for the Debtors shall file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking an order approving the Agreement (the “Approval Order”); and (b) this Agreement shall not be enforceable against the Debtors or their estate or against JPMC until the Approval Order has been entered by the Bankruptcy Court and has become a final order no longer subject to appeal.

3. WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the “Non-Debtor Affiliates”) and Investment, hereby assign to JPMC all of their rights, title and interest in the Return Premium.

4. Within five business days after the Approval Order is final and nonappealable, JPMC will (1) enter into an Assumption Agreement with ORIC in form attached hereto as Exhibit A, which Assumption Agreement is incorporated herein, (2) provide ORIC with a clean, irrevocable, evergreen letter of credit, in form and substance satisfactory to ORIC, in the amount to be agreed upon by ORIC and JPMC, issued by a bank, other than JPMC, acceptable to ORIC in its sole reasonable discretion (the “Replacement Letter of Credit”), (3) amend Proof of Claim No. 2343 to withdraw with prejudice its claims related to the Insurance Agreements, the Existing Letters of Credit and the Escrow, and (4) waive and release the Debtors and the Non-Debtor Affiliates with prejudice from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letters of Credit and the

Escrow. Upon ORIC's receipt of the Replacement Letter of Credit, the Debtors and Non-Debtor Affiliates will waive and release JPMC with prejudice from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letters of Credit and the Escrow. Upon receipt of the Replacement Letter of Credit, ORIC shall return the Existing Letters of Credit to the Issuing Banks for cancellation.

5. Except as provided for herein, the Debtors and the Non-Debtor Affiliates hereby release and forever discharge ORIC and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against ORIC, other than the obligations arising under this Agreement, including, but not limited to, any claims relating to any of the Insurance Agreements; provided, however, ORIC will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.

6. Except as provided for herein, effective upon the latest to occur of (i) JPMC's execution of the Assumption Agreement, (ii) ORIC's receipt of the Replacement Letter of Credit, and (iii) the Approval Order becoming final and nonappealable, ORIC releases and forever discharges the Debtors, the Debtors' estates and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments

and liabilities of any nature whatsoever at law or in equity, past, present or future, arising under the Insurance Agreements, whether or not now or heretofore known, suspected, or claimed against the Debtors, the Debtors' estates or the Non-Debtor Affiliates, and ORIC will withdraw with prejudice the Proofs of Claim it filed in the Bankruptcy Case, claim nos. 2383 and 2753.

7. To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with ORIC and provide ORIC with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from ORIC provide ORIC with the information it needs to conduct premium audits for the Policies.

8. This Agreement shall be interpreted and governed by the laws of the State of Pennsylvania without regard to principles of conflicts of law. In the event that this paragraph is deemed unenforceable in any judicial, arbitration or governmental proceeding, the remaining provisions of this Agreement shall remain in full force and effect.

9. Each Party hereto shall have the right at any time to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of such Party in refraining from so doing at any time or times. The failure of any Party at any time or times to enforce its rights under such provisions shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

10. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or if sent by fax or certified mail,

postage prepaid, return receipt requested, as follows, unless such address is changed by written notice hereunder:

If to ORIC:

Lawrence J. Francione  
Old Republic Insurance Company  
445 South Moorland Road, Suite 300  
Brookfield, WI 53005  
Phone: 262.797.3455  
Fax: 262.797.0486  
[lfrancione@orrm.com](mailto:lfrancione@orrm.com)

With a copy to:

Margaret M. Anderson  
Fox, Hefter, Swibel, Levin and Carroll, LLP  
200 W. Madison Street, Suite 3000  
Chicago, IL 60606  
Phone: 312.224.1224  
Fax: 312.224.1201  
[panderson@fhslc.com](mailto:panderson@fhslc.com)

If to the Debtors and  
the Non-Debtor Affiliates:

Chad Smith  
Washington Mutual, Inc.  
1301 Second Avenue, WMC 3601  
Seattle, WA 98101  
Phone: 206.432.8731  
Fax: 206.432.8879  
[Chad.smith@wamuinc.net](mailto:Chad.smith@wamuinc.net)

With a copy to:

David R. Berz  
Weil, Gotshal & Manges LLP  
1300 I Street, N.W., Suite 900  
Washington, D.C. 20005  
Phone: 202.682.7190  
Fax: 202.857.0940  
[david.berz@weil.com](mailto:david.berz@weil.com)

If to JPMC:

Roberta Martoza  
JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Phone: 212.623.3268  
Fax: 212.623.3289  
[roberta.l.martoza@chase.com](mailto:roberta.l.martoza@chase.com)

With a copy to:

Berrie Martinis  
Assistant General Counsel  
JPMorgan Chase & Co.  
1301 Second Avenue, 13<sup>th</sup> Floor  
Mailstop, WA1-3449  
Seattle, WA 98101  
Phone: 206-500-4427  
Fax: 206.377.0078  
[berrie.martinis@chase.com](mailto:berrie.martinis@chase.com)

11. JPMC warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

12. The Debtors and the Non-Debtor Affiliates warrant that:

(a) They have been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) Upon entry of the Approval Order, they will be duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) They have voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

13. ORIC represents and warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

14. This Agreement contains the entire Agreement between the Parties as respects its subject matter. All discussions and Agreements previously entertained between the Parties concerning the subject matter of the Agreement are merged into this Agreement. This Agreement may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by all Parties hereunder.

15. This Agreement and any amendment hereto may be executed in several counterparts and by each party on separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile signature shall be treated as an original signature.

16. This Agreement was negotiated and drafted with full participation of the Parties and their respective counsel. In the event that it is determined that any ambiguity exists in this Agreement, any such ambiguity shall not be resolved or otherwise construed against any particular Party, but rather shall be resolved by a fair reading of the intent of the Parties as established herein.


17. If any provision of this Agreement is found to be contrary to law or void, the remainder of the Agreement shall be considered valid and enforceable and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.



18. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**OLD REPUBLIC INSURANCE  
COMPANY**

By: 

Name: LAWRENCE J. FRANCIONE

Its: VICE PRESIDENT

**WASHINGTON MUTUAL, INC.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

18. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**OLD REPUBLIC INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: Roberta Martozca  
Name: Roberta Martozca  
Its: Senior Vice President  
Corporate Insurance

**WASHINGTON MUTUAL, INC.**

By: \_\_\_\_\_  
Name: Charles Edward Smith  
Executive Vice President &  
General Counsel  
Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

By: \_\_\_\_\_  
Name: Charles Edward Smith  
Its: SVP

**ASSUMPTION AGREEMENT**

**Between**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

**and**

**OLD REPUBLIC INSURANCE COMPANY**

**Dated**

**February \_\_, 2010**

## ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT (this "Agreement"), effective and dated as of the \_\_\_ day of February, 2010 ("Effective Date") is made and entered into, by and among **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, organized under the laws of the United States of America and having its principal place of business in New York, New York ("JPMC"), and **OLD REPUBLIC INSURANCE COMPANY**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, on behalf of itself and its affiliates ("ORIC"), in accordance with the terms, conditions and definitions set forth below (JPMC and ORIC each is individually referred to herein as a "Party" or collectively, as the "Parties").

### RECITALS:

**WHEREAS**, on or about March 1, 2006, Washington Mutual, Inc. ("WMI"), on behalf of itself and its affiliates, including Washington Mutual Bank ("Bank"), entered into the Program Agreement with ORIC attached hereto as Exhibit A ("Program Agreement"); and

**WHEREAS**, ORIC provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for policy periods from March 1, 2006 to March 1, 2009, with the workers' compensation and employers' liability policy canceled by WMI as of January 21, 2009, the automobile liability policy being canceled by WMI as of September 25, 2008, and the general liability policy expiring by its own terms on March 1, 2009 (collectively, the "Policies" and with the Program Agreement, the "Insurance Agreements"); and

**WHEREAS**, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed the Bank and was appointed Receiver thereof; and

**WHEREAS**, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank; and

**WHEREAS**, JPMC has agreed to assume WMI's obligations and liabilities under the Program Agreement under certain terms and conditions reflected in a certain Settlement Agreement between JPMC, WMI, WMI Investment Corp. ("Investment"), and ORIC; and

**WHEREAS**, the Parties have each received the advice of counsel in the preparation, drafting and execution of this Agreement, which was negotiated voluntarily and at arm's length.

**NOW, THEREFORE**, in consideration of and in reliance upon the premises, recitals, and Exhibits (all of which are incorporated in full into this Agreement), and the mutual promises, covenants and premises, recitals and agreements, subject to the terms and conditions stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

**Article 1**

**Party Obligations**

- 1.1 Effective on the Effective Date, JPMC hereby assumes one hundred percent (100%) of WMI's, Investment's and WMI's non-debtor direct and indirect subsidiaries' (the "Non-Debtor Affiliates") liabilities and obligations under the Insurance Agreements.
- 1.2 ORIC reaffirms its agreement to perform its obligations under the Insurance Agreements.

**Article 2**

**Notices and Reports**

Except as otherwise specifically set forth herein, all notices and reports to be given by a Party shall be in writing and shall be sufficiently given if sent or delivered by hand delivery, nationally recognized overnight delivery service with proof of delivery or by prepaid, registered or certified mail, return receipt requested. No notice or report shall be effective until received by the Party to whom it is addressed. The addresses of the parties for notices and reports are as follows:

If to JPMC:

JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Attn: Roberta Martoza

If to ORIC:

Old Republic Insurance Company  
445 South Moorland Road  
Brookfield WI 53005  
Attention: Michael Weber, Vice President

Changes in notice addresses or recipients may be made by ORIC or JPMC by following the procedure specified in this Article 2 rather than the procedure for amendment of this Agreement.

**Article 3**

**Incontestability**

In consideration of the mutual covenants and agreements contained herein, each Party hereto does hereby agree that this Agreement, and each and every provision hereof, is and shall be enforceable by and between them according to its terms, and each Party does hereby agree that it shall not, directly or indirectly, contest the validity or enforceability hereof.

#### **Article 4**

##### **Entire Agreement**

This Agreement, including the Recitals, together with the Exhibit constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals, and negotiations, both written and oral, among such parties with respect to such subject matter.

#### **Article 5**

##### **Counterparts**

This Agreement may be executed in counterparts (or by counterpart signature pages), each of which shall be deemed an original and all of which constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail transmission shall be deemed to be their original signatures for all purposes.

#### **Article 6**

##### **No Third Party Beneficiaries**

Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

#### **Article 7**

##### **Third-Party Claims**

Notwithstanding anything to the contrary in this Agreement, any liability associated with claims of any third party, whether or not such liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to incident, occurrence or accident involving WMI, Investment, any of the Non-Debtor Affiliates, or any of their employees, or to any injury suffered by employees of WMI, Investment, or any of the Non-Debtor Affiliates are specifically not assumed by JPMC.

#### **Article 8**

##### **Assignment**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right hereunder may be assigned by any Party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

**Article 9**

**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania, without giving effect to the principles of conflicts of laws thereof.

**Article 10**

**Exercise of Rights**

The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no verbal communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

**Article 11**

**Duty of Cooperation**

Each Party hereto shall cooperate in good faith fully with the other parties using reasonable commercial efforts in light of each Party's circumstances in order to accomplish the objectives of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Dated: February \_\_, 2010      **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: February \_\_, 2010      **OLD REPUBLIC INSURANCE COMPANY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit B**

**Zurich Settlement Agreement**



## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of December 23, 2009, by and between Zurich American Insurance Company and its subsidiaries and affiliated companies ("Zurich"), Washington Mutual, Inc., ("WMI") and WMI Investment Corp. ("Investment" and collectively with WMI, the "Debtors"), and JPMorgan Chase Bank, National Association ("JPMC") (Zurich, Debtors and JPMC each a "Party" and together the "Parties"), who hereby covenant and agree as follows:

### **RECITALS**

WHEREAS, on September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 08-12229, et al. (the "Bankruptcy Case");

WHEREAS, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed Washington Mutual Bank (the "Bank") and was appointed Receiver thereof;

WHEREAS, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank;

WHEREAS, the Bank is a wholly-owned subsidiary of WMI;

WHEREAS, Zurich provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for the periods of March 1, 2003 to March 1, 2004 and from March 1, 2004 to March 1, 2005 and from March 1, 2005 to March 1, 2006 (collectively, the "Policies");

WHEREAS, in connection with the Policies, Zurich and WMI entered into a Deductible

Agreement and into a Paid Loss Retrospective Rating Agreement and Deductible Agreement dated as of March 1, 2003, as amended, and into annual Specifications thereto (collectively, the “Non-Policy Agreements” and with the Policies, the “Insurance Agreements”);

WHEREAS, to secure its obligations to Zurich under the Insurance Agreements, WMI, as account party, provided Zurich with a clean irrevocable, evergreen letters of credit in the amount of \$18,000,000, issued by JPMC, as amended (the “Existing Letter of Credit”);

WHEREAS, JPMC has agreed to assume all liabilities and obligations of the Debtors and the Non-Debtor Affiliates (as hereinafter defined) to Zurich under the Insurance Agreements, including those not directly related to the Bank, in exchange for the Debtors and the Non-Debtors Affiliates assigning to JPMC all of their rights, title and interest in any return premium or dividends now owing or which may become due to any insureds with respect to the Policies (the “Return Premium”) and the funds held in escrow by Specialty Risk Services, Inc. supporting the obligations under the Policies (the “Escrow”); and

WHEREAS, Zurich, the Debtors and JPMC now wish to settle any disputes regarding Zurich’s claims against the Debtors and JPMC, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of the Agreement.
2. To the extent provided under applicable law, this Agreement shall become binding upon the Parties upon its execution by all of the Parties; provided, however, that:  
(a) within five (5) business days after the execution of this Agreement by all of the Parties,

counsel for the Debtors shall file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking an order approving the Agreement (the “Approval Order”); and (b) this Agreement shall not be enforceable against the Debtors or their estate or against JPMC until the Approval Order has been entered by the Bankruptcy Court and has become a final order no longer subject to appeal.

3. WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the “Non-Debtor Affiliates”) and Investment, hereby assign to JPMC all of their rights, title and interest in the Return Premium.

4. Within five business days after the Approval Order is final and nonappealable, JPMC will enter into an Assumption Agreement with Zurich in form attached hereto as Exhibit A, which Assumption Agreement is incorporated herein, and will provide Zurich with a clean, irrevocable, evergreen letter of credit, in form and substance satisfactory to Zurich, in the amount to be agreed upon by Zurich and JPMC, issued by a bank, other than JPMC, acceptable to Zurich in its sole reasonable discretion (the “Replacement Letter of Credit”). Upon receipt of the Replacement Letter of Credit, Zurich shall return the Existing Letter of Credit to JPMC for cancellation. Upon its receipt of the undrawn Existing Letter of Credit, JPMC (1) shall amend the Proof of Claim it filed in the Bankruptcy Case, Claim No. 2609, to withdraw with prejudice all portions of the claim to the extent related to the Insurance Agreements, the Existing Letter of Credit and the Escrow, including but not limited to, its contingent reimbursement claim for any draws on the Existing Letter of Credit and its claim for unpaid fees relating to the Letter of Credit; (2) amend Proof of Claim No. 2343 to withdraw with prejudice its claims to the extent related to the Insurance Agreements, the Existing Letter of Credit and the Escrow; and (3) waive and release the Debtors and the Non-Debtor Affiliates with prejudice from any claims, asserted

or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letter of Credit and the Escrow. Upon receipt by Zurich of the Replacement Letter of Credit, the Debtors and the Non-Debtor Affiliates will waive and release JPMC with prejudice from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letter of Credit and the Escrow.

5. Except as provided for herein, the Debtors and the Non-Debtor Affiliates hereby release and forever discharge Zurich and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against Zurich, other than the obligations arising under this Agreement, including, but not limited to, any claims relating to any of the Insurance Agreements; provided, however, Zurich will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.

6. Except as provided for herein, effective upon the latest to occur of (i) JPMC's execution of the Assumption Agreement, (ii) Zurich's receipt of the Replacement Letter of Credit, and (iii) the Approval Order becoming final and nonappealable, Zurich releases and forever discharges the Debtors, the Debtors' estates, and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action,

demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, arising under the Insurance Agreements, whether or not now or heretofore known, suspected, or claimed against the Debtors, the Debtors' estates, or any of the Non-Debtor Affiliates, and Zurich will withdraw with prejudice the Proof of Claim it filed in the Bankruptcy Case, Claim No. 264.

7. To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with Zurich and provide Zurich with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from Zurich provide Zurich with the information it needs to conduct premium audits for the Policies.

8. This Agreement shall be interpreted and governed by the laws of the State of New York without regard to principles of conflicts of law. In the event that this paragraph is deemed unenforceable in any judicial, arbitration or governmental proceeding, the remaining provisions of this Agreement shall remain in full force and effect.

9. Each Party hereto shall have the right at any time to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of such Party in refraining from so doing at any time or times. The failure of any Party at any time or times to enforce its rights under such provisions shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

10. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or if sent by fax or certified mail,

postage prepaid, return receipt requested, as follows, unless such address is changed by written notice hereunder:

If to Zurich: Zurich American Insurance Company  
Office of the General Counsel  
1400 American Lane  
Schaumburg, IL 60196

With a copy to: Margaret M. Anderson  
Fox, Hefter, Swibel, Levin and Carroll, LLP  
200 W. Madison Street  
Chicago, IL 60606  
Phone: 312.224.1224  
Fax: 312.224.1201  
[panderson@fhslc.com](mailto:panderson@fhslc.com)

If to the Debtors and the Non-Debtor Affiliates: Chad Smith  
Washington Mutual, Inc.  
1301 Second Avenue, WMC 3601  
Seattle, WA 98101  
Phone: 206.432.8731  
Fax: 206.432.8879  
[Chad.smith@wamuinc.net](mailto:Chad.smith@wamuinc.net)

With a copy to: David R. Berz  
Weil, Gotshal & Manges LLP  
1300 I Street, N.W., Suite 900  
Washington, D.C. 20005  
Phone: 202.682.7190  
Fax: 202.857.0940  
[david.berz@weil.com](mailto:david.berz@weil.com)

If to JPMC: Roberta Martoza  
JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Phone: 212.623.3268  
Fax: 212.623.3289  
[roberta.l.martoza@chase.com](mailto:roberta.l.martoza@chase.com)

With a copy to:

Berrie Martinis  
Assistant General Counsel  
JPMorgan Chase & Co.  
1301 Second Avenue, 13<sup>th</sup> Floor  
Mailstop, WA1-3449  
Seattle, WA 98101  
Phone: 206-500-4427  
Fax: 206.377.0078  
[berrie.martinis@chase.com](mailto:berrie.martinis@chase.com)

11. JPMC warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

12. The Debtors and the Non-Debtor Affiliates warrant that:

(a) They have been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) Upon entry of the Approval Order, they will be duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) They have voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

13. Zurich represents and warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

14. This Agreement contains the entire Agreement between the Parties as respects its subject matter. All discussions and Agreements previously entertained between the Parties concerning the subject matter of the Agreement are merged into this Agreement. This Agreement may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by all Parties hereunder.

15. This Agreement and any amendment hereto may be executed in several counterparts and by each party on separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile signature shall be treated as an original signature.

16. This Agreement was negotiated and drafted with full participation of the Parties and their respective counsel. In the event that it is determined that any ambiguity exists in this Agreement, any such ambiguity shall not be resolved or otherwise construed against any particular Party, but rather shall be resolved by a fair reading of the intent of the Parties as established herein.

17. If any provision of this Agreement is found to be contrary to law or void, the remainder of the Agreement shall be considered valid and enforceable and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.





18. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**ZURICH AMERICAN INSURANCE COMPANY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: Roberta Martoza

Name: Roberta Martoza

Its: Senior Vice President  
Corporate Insurance

**WASHINGTON MUTUAL, INC.**

By: [Signature]

Name: Charles Edward Smith  
Executive Vice President &  
General Counsel

Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

By: [Signature]

Name: Charles Edward Smith

Its: SVP

**ASSUMPTION AGREEMENT**

**Between**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

**and**

**ZURICH AMERICAN INSURANCE COMPANY**

**Dated**

**February \_\_, 2010**

## ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT (this “Agreement”), effective and dated as of the \_\_\_ day of February, 2010 (“Effective Date”) is made and entered into, by and among **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, organized under the laws of the United States of America and having its principal place of business in New York, New York (“JPMC”), and **ZURICH AMERICAN INSURANCE COMPANY**, a corporation organized and existing under the laws of the state of New York on behalf of itself and its affiliates (“Zurich”), in accordance with the terms, conditions and definitions set forth below (JPMC and Zurich each is individually referred to herein as a “Party” or collectively, as the “Parties”).

### RECITALS:

**WHEREAS**, on or about March 1, 2003, Washington Mutual, Inc. (“WMI”), on behalf of itself and its affiliates, including Washington Mutual Bank (“Bank”), entered into a Deductible Agreement and into a Paid Loss Retrospective Rating Agreement and Deductible Agreement with Zurich, as amended, together with annual specifications thereto, which are attached hereto as Exhibit A (collectively, the “Non-Policy Agreements”); and

**WHEREAS**, Zurich provided workers’ compensation and employers’ liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for the periods of March 1, 2003 to March 1, 2004 and from March 1, 2004 to March 1, 2005 and from March 1, 2005 to March 1, 2006 (collectively, the “Policies” and with the Non-Policy Agreements, the “Insurance Agreements”);

**WHEREAS**, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed the Bank and was appointed Receiver thereof; and

**WHEREAS**, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank; and

**WHEREAS**, JPMC has agreed to assume WMI’s obligations and liabilities under the Non-Policy Agreements under certain terms and conditions reflected in a certain Settlement Agreement between JPMC, WMI, WMI Investment Corp (“Investment”), and Zurich; and

**WHEREAS**, the Parties have each received the advice of counsel in the preparation, drafting and execution of this Agreement, which was negotiated voluntarily and at arm’s length.

**NOW, THEREFORE**, in consideration of and in reliance upon the premises, recitals, and Exhibits (all of which are incorporated in full into this Agreement), and the mutual promises, covenants and premises, recitals and agreements, subject to the terms and conditions stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

**Article 1**

**Party Obligations**

- 1.1 Effective on the Effective Date, JPMC hereby assumes one hundred percent (100%) of WMI's, Investment's and WMI's non-debtor direct and indirect subsidiaries' (the "Non-Debtor Affiliates") liabilities and obligations under the Insurance Agreements.
- 1.2 Zurich reaffirms its agreement to perform its obligations under the Insurance Agreements.

**Article 2**

**Notices and Reports**

Except as otherwise specifically set forth herein, all notices and reports to be given by a Party shall be in writing and shall be sufficiently given if sent or delivered by hand delivery, nationally recognized overnight delivery service with proof of delivery or by prepaid, registered or certified mail, return receipt requested. No notice or report shall be effective until received by the Party to whom it is addressed. The addresses of the parties for notices and reports are as follows:

If to JPMC:	JPMorgan Chase Bank, N.A. Corporate Insurance Services 4 New York Plaza (12 <sup>th</sup> Floor) New York, NY 10004-2413 Attn: Roberta Martoza
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If to Zurich:	Zurich American Insurance Company Office of General Counsel 1400 American Lane Schaumburg, IL 60196
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Changes in notice addresses or recipients may be made by Zurich or JPMC by following the procedure specified in this Article 2 rather than the procedure for amendment of this Agreement.

**Article 3**

**Incontestability**

In consideration of the mutual covenants and agreements contained herein, each Party hereto does hereby agree that this Agreement, and each and every provision hereof, is and shall be enforceable by and between them according to its terms, and each Party does hereby agree that it shall not, directly or indirectly, contest the validity or enforceability hereof.

**Article 4**

**Entire Agreement**

This Agreement, including the Recitals, together with the Exhibit constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals, and negotiations, both written and oral, among such parties with respect to such subject matter.

**Article 5**

**Counterparts**

This Agreement may be executed in counterparts (or by counterpart signature pages), each of which shall be deemed an original and all of which constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail transmission shall be deemed to be their original signatures for all purposes.

**Article 6**

**No Third Party Beneficiaries**

Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

**Article 7**

**Third-Party Claims**

Notwithstanding anything to the contrary in this Agreement, any liability associated with claims of any third party, whether or not such liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to incident, occurrence or accident involving WMI, Investment, any of the Non-Debtor Affiliates, or any of their employees, or to any injury suffered by employees of WMI, Investment, or any of the Non-Debtor Affiliates are specifically not assumed by JPMC.

**Article 8**

**Assignment**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right hereunder may be assigned by any Party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

**Article 9**

**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof.

**Article 10**

**Exercise of Rights**

The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no verbal communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

**Article 11**

**Duty of Cooperation**

Each Party hereto shall cooperate in good faith fully with the other parties using reasonable commercial efforts in light of each Party's circumstances in order to accomplish the objectives of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Dated: February \_\_, 2010      **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: February \_\_, 2010      **ZURICH AMERICAN INSURANCE COMPANY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**Exhibit C**  
**Proposed Order**



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 therefore, it is

ORDERED that the Motion is granted; and it further

ORDERED that, pursuant to Bankruptcy Rule 9019, the terms and conditions of the Settlement Agreements are approved and the Debtors are authorized to consummate the compromise and settlement embodied in the Settlement Agreements; and it is further

ORDERED that within five business days after this order is final and nonappealable, JPMC shall (1) enter into the Assumption Agreements attached hereto as Exhibits "1" and "2;" (2) provide Old Republic with a clean, irrevocable, evergreen letter of credit, in form and substance satisfactory to Old Republic, in an amount to be agreed upon by Old Republic and JPMC, issued by a bank, other than JPMC, acceptable to Old Republic in its sole reasonable discretion; (3) provide Zurich with a clean, irrevocable, evergreen letter of credit, in form and substance satisfactory to Zurich, in an amount to be agreed upon by Zurich and JPMC, issued by a bank, other than JPMC, acceptable to Zurich in its sole reasonable discretion; (4) amend Proof of Claim No. 2343 to withdraw, with prejudice, its claims related

to the Old Republic Insurance Agreements, the Old Republic Letters of Credit and the Escrow; and (5) waive and release the Debtors and their affiliates, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Old Republic Insurance Agreements, the Old Republic Letters of Credit and the Escrow; and it is further

ORDERED that upon receipt of the Old Republic Replacement LC, Old Republic shall return the Old Republic Letters of Credit to the issuing banks for cancellation and the Debtors and their affiliates shall waive and release JPMC, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Old Republic Insurance Agreements, the Old Republic Letters of Credit and the Escrow; and it is further

ORDERED that upon receipt of the Zurich Replacement LC, Zurich shall return the Zurich Letter of Credit to the issuing bank for cancellation and the Debtors and their affiliates shall waive and release JPMC, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Zurich Insurance Agreements, the Zurich Letters of Credit and the Escrow and ; and it is further

ORDERED that upon JPMC's receipt of the un-drawn Zurich Letter of Credit, JPMC shall (1) amend the proof of claim it filed in these chapter 11 cases, Proof of Claim No. 2609, to withdraw, with prejudice, all portions of the claim to the extent related to the Zurich Letter of Credit and the Escrow, including but not limited to, its contingent reimbursement claim for any draws on the Zurich Letter of Credit and its claim for unpaid fees relating to the Zurich Letter of Credit; (2) amend Proof of Claim No. 2343 to withdraw, with prejudice, its claims to the extent related to the Zurich Insurance Agreements, the Zurich Letter of Credit

and the Escrow; and (3) waive and release the Debtors and their affiliates, with prejudice, from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Zurich Insurance Agreements, the Zurich Letter of Credit and the Escrow; and it is further

ORDERED that Old Republic is directed, upon the later of (1) JPMC's execution of the Old Republic Assumption Agreement, (2) Old Republic's receipt of the Old Republic Replacement LC, and (3) the this order becoming final and nonappealable, to release and forever discharge the Debtors, the Debtors' estates and each of their affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives, except as provided in the Old Republic Settlement Agreement, from liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, arising under the Old Republic Insurance Agreements, whether or not now or heretofore known, suspected, or claimed against the Debtors, the Debtors' estates or their affiliates, and to withdraw, with prejudice, the proofs of claim it filed in these chapter 11 cases, Proofs of Claim Nos. 2383 and 2753; and it is further

ORDERED that that Zurich is directed, upon the later of (1) JPMC's execution of the Zurich Assumption Agreement, (2) Zurich's receipt of the Zurich Replacement LC, and (3) the this order becoming final and nonappealable, to release and forever discharge the Debtors, the Debtors' estates and each of their affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives, except as provided in the Zurich Settlement Agreement, from liability for any and all claims,

controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, arising under the Zurich Insurance Agreements, whether or not now or heretofore known, suspected, or claimed against the Debtors, the Debtors' estates or their affiliates, and to withdraw, with prejudice, the proof of claim it filed in these chapter 11 cases, Proofs of Claim No. 264; and its further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of the Settlement Agreements and this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2010

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1 to Order**

**Old Republic Settlement Agreement**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into as of December 23, 2009, by and between Old Republic Insurance Company and its subsidiaries and affiliated companies ("ORIC"), Washington Mutual, Inc., ("WMI") and WMI Investment Corp ("Investment" and collectively with WMI, the "Debtors"), and JPMorgan Chase Bank, National Association ("JPMC") (ORIC, Debtors and JPMC each a "Party" and together the "Parties"), who hereby covenant and agree as follows:

### **RECITALS**

WHEREAS, on September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 08-12229, et al. (the "Bankruptcy Case");

WHEREAS, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed Washington Mutual Bank (the "Bank") and was appointed Receiver thereof;

WHEREAS, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank;

WHEREAS, the Bank is a wholly-owned subsidiary of WMI;

WHEREAS, ORIC provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for policy periods from March 1, 2006 to March 1, 2009, with the workers' compensation and employers' liability policy canceled by WMI as of January 21, 2009, the automobile liability policy being



canceled by WMI as of September 25, 2008, and the general liability policy expiring by its own terms on March 1, 2009 (collectively, the “Policies”);

WHEREAS, in connection with the Policies, ORIC and WMI entered into a Program Agreement dated as of March 1, 2006, as amended, and into annual Specifications thereto (the “Agreement” and with the Policies, the “Insurance Agreements”);

WHEREAS, to secure its obligations to ORIC under the Insurance Agreements, the Bank, as account party, provided ORIC with two clean irrevocable, evergreen letters of credit in the amounts of \$19,500,000 and \$1,450,000 issued by The Bank of New York and Federal Home Loan Bank of San Francisco, respectively (the “Issuing Banks”), as amended (the “Existing Letters of Credit”);

WHEREAS, JPMC has agreed to assume all liabilities and obligations of the Debtors and the Non-Debtor Affiliates (as hereinafter defined) to ORIC under the Insurance Agreements, including those not directly related to the Bank, in exchange for the Debtors and the Non-Debtors Affiliates assigning to JPMC all of their rights, title and interest in any return premium or dividends now owing or which may become due to any insureds with respect to the Policies (the “Return Premium”) and the funds held in escrow by Specialty Risk Services, Inc. supporting the obligations under the Policies (the “Escrow”).

WHEREAS, ORIC, the Debtors and JPMC now wish to settle any disputes regarding ORIC’s claims against the Debtors and JPMC, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of the Agreement.

2. To the extent provided under applicable law, this Agreement shall become binding upon the Parties upon its execution by all of the Parties; provided, however, that: (a) within five (5) business days after the execution of this Agreement by all of the Parties, counsel for the Debtors shall file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking an order approving the Agreement (the “Approval Order”); and (b) this Agreement shall not be enforceable against the Debtors or their estate or against JPMC until the Approval Order has been entered by the Bankruptcy Court and has become a final order no longer subject to appeal.

3. WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the “Non-Debtor Affiliates”) and Investment, hereby assign to JPMC all of their rights, title and interest in the Return Premium.

4. Within five business days after the Approval Order is final and nonappealable, JPMC will (1) enter into an Assumption Agreement with ORIC in form attached hereto as Exhibit A, which Assumption Agreement is incorporated herein, (2) provide ORIC with a clean, irrevocable, evergreen letter of credit, in form and substance satisfactory to ORIC, in the amount to be agreed upon by ORIC and JPMC, issued by a bank, other than JPMC, acceptable to ORIC in its sole reasonable discretion (the “Replacement Letter of Credit”), (3) amend Proof of Claim No. 2343 to withdraw with prejudice its claims related to the Insurance Agreements, the Existing Letters of Credit and the Escrow, and (4) waive and release the Debtors and the Non-Debtor Affiliates with prejudice from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letters of Credit and the

Escrow. Upon ORIC's receipt of the Replacement Letter of Credit, the Debtors and Non-Debtor Affiliates will waive and release JPMC with prejudice from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letters of Credit and the Escrow. Upon receipt of the Replacement Letter of Credit, ORIC shall return the Existing Letters of Credit to the Issuing Banks for cancellation.

5. Except as provided for herein, the Debtors and the Non-Debtor Affiliates hereby release and forever discharge ORIC and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against ORIC, other than the obligations arising under this Agreement, including, but not limited to, any claims relating to any of the Insurance Agreements; provided, however, ORIC will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.

6. Except as provided for herein, effective upon the latest to occur of (i) JPMC's execution of the Assumption Agreement, (ii) ORIC's receipt of the Replacement Letter of Credit, and (iii) the Approval Order becoming final and nonappealable, ORIC releases and forever discharges the Debtors, the Debtors' estates and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments

and liabilities of any nature whatsoever at law or in equity, past, present or future, arising under the Insurance Agreements, whether or not now or heretofore known, suspected, or claimed against the Debtors, the Debtors' estates or the Non-Debtor Affiliates, and ORIC will withdraw with prejudice the Proofs of Claim it filed in the Bankruptcy Case, claim nos. 2383 and 2753.

7. To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with ORIC and provide ORIC with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from ORIC provide ORIC with the information it needs to conduct premium audits for the Policies.

8. This Agreement shall be interpreted and governed by the laws of the State of Pennsylvania without regard to principles of conflicts of law. In the event that this paragraph is deemed unenforceable in any judicial, arbitration or governmental proceeding, the remaining provisions of this Agreement shall remain in full force and effect.

9. Each Party hereto shall have the right at any time to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of such Party in refraining from so doing at any time or times. The failure of any Party at any time or times to enforce its rights under such provisions shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

10. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or if sent by fax or certified mail,

postage prepaid, return receipt requested, as follows, unless such address is changed by written notice hereunder:

If to ORIC:

Lawrence J. Francione  
Old Republic Insurance Company  
445 South Moorland Road, Suite 300  
Brookfield, WI 53005  
Phone: 262.797.3455  
Fax: 262.797.0486  
[lfrancione@orm.com](mailto:lfrancione@orm.com)

With a copy to:

Margaret M. Anderson  
Fox, Hefter, Swibel, Levin and Carroll, LLP  
200 W. Madison Street, Suite 3000  
Chicago, IL 60606  
Phone: 312.224.1224  
Fax: 312.224.1201  
[panderson@fhslc.com](mailto:panderson@fhslc.com)

If to the Debtors and  
the Non-Debtor Affiliates:

Chad Smith  
Washington Mutual, Inc.  
1301 Second Avenue, WMC 3601  
Seattle, WA 98101  
Phone: 206.432.8731  
Fax: 206.432.8879  
[Chad.smith@wamuinc.net](mailto:Chad.smith@wamuinc.net)

With a copy to:

David R. Berz  
Weil, Gotshal & Manges LLP  
1300 I Street, N.W., Suite 900  
Washington, D.C. 20005  
Phone: 202.682.7190  
Fax: 202.857.0940  
[david.berz@weil.com](mailto:david.berz@weil.com)

If to JPMC:

Roberta Martoza  
JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Phone: 212.623.3268  
Fax: 212.623.3289  
[roberta.l.martoza@chase.com](mailto:roberta.l.martoza@chase.com)

With a copy to:

Berrie Martinis  
Assistant General Counsel  
JPMorgan Chase & Co.  
1301 Second Avenue, 13<sup>th</sup> Floor  
Mailstop, WA1-3449  
Seattle, WA 98101  
Phone: 206-500-4427  
Fax: 206.377.0078  
[berrie.martinis@chase.com](mailto:berrie.martinis@chase.com)

11. JPMC warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

12. The Debtors and the Non-Debtor Affiliates warrant that:

(a) They have been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) Upon entry of the Approval Order, they will be duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) They have voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

13. ORIC represents and warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

14. This Agreement contains the entire Agreement between the Parties as respects its subject matter. All discussions and Agreements previously entertained between the Parties concerning the subject matter of the Agreement are merged into this Agreement. This Agreement may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by all Parties hereunder.

15. This Agreement and any amendment hereto may be executed in several counterparts and by each party on separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile signature shall be treated as an original signature.


16. This Agreement was negotiated and drafted with full participation of the Parties and their respective counsel. In the event that it is determined that any ambiguity exists in this Agreement, any such ambiguity shall not be resolved or otherwise construed against any particular Party, but rather shall be resolved by a fair reading of the intent of the Parties as established herein.

17. If any provision of this Agreement is found to be contrary to law or void, the remainder of the Agreement shall be considered valid and enforceable and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

18. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**OLD REPUBLIC INSURANCE  
COMPANY**

By: 

Name: LAWRENCE J. FRANCIONE

Its: VICE PRESIDENT

**WASHINGTON MUTUAL, INC.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_



18. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**OLD REPUBLIC INSURANCE COMPANY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: Roberta Martoza

Name: Roberta Martoza

Its: Senior Vice President  
Corporate Insurance

**WASHINGTON MUTUAL, INC.**

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

Name: Charles Edward Smith  
Executive Vice President &  
General Counsel

Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

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

Name: Charles Edward Smith

Its: SVP

**ASSUMPTION AGREEMENT**

**Between**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

**and**

**OLD REPUBLIC INSURANCE COMPANY**

**Dated**

**February \_\_, 2010**

## ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT (this "Agreement"), effective and dated as of the \_\_\_ day of February, 2010 ("Effective Date") is made and entered into, by and among **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, organized under the laws of the United States of America and having its principal place of business in New York, New York ("JPMC"), and **OLD REPUBLIC INSURANCE COMPANY**, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, on behalf of itself and its affiliates ("ORIC"), in accordance with the terms, conditions and definitions set forth below (JPMC and ORIC each is individually referred to herein as a "Party" or collectively, as the "Parties").

### RECITALS:

**WHEREAS**, on or about March 1, 2006, Washington Mutual, Inc. ("WMI"), on behalf of itself and its affiliates, including Washington Mutual Bank ("Bank"), entered into the Program Agreement with ORIC attached hereto as Exhibit A ("Program Agreement"); and

**WHEREAS**, ORIC provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for policy periods from March 1, 2006 to March 1, 2009, with the workers' compensation and employers' liability policy canceled by WMI as of January 21, 2009, the automobile liability policy being canceled by WMI as of September 25, 2008, and the general liability policy expiring by its own terms on March 1, 2009 (collectively, the "Policies" and with the Program Agreement, the "Insurance Agreements"); and

**WHEREAS**, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed the Bank and was appointed Receiver thereof; and

**WHEREAS**, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank; and

**WHEREAS**, JPMC has agreed to assume WMI's obligations and liabilities under the Program Agreement under certain terms and conditions reflected in a certain Settlement Agreement between JPMC, WMI, WMI Investment Corp. ("Investment"), and ORIC; and

**WHEREAS**, the Parties have each received the advice of counsel in the preparation, drafting and execution of this Agreement, which was negotiated voluntarily and at arm's length.

**NOW, THEREFORE**, in consideration of and in reliance upon the premises, recitals, and Exhibits (all of which are incorporated in full into this Agreement), and the mutual promises, covenants and premises, recitals and agreements, subject to the terms and conditions stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

**Article 1**

**Party Obligations**

- 1.1 Effective on the Effective Date, JPMC hereby assumes one hundred percent (100%) of WMI's, Investment's and WMI's non-debtor direct and indirect subsidiaries' (the "Non-Debtor Affiliates") liabilities and obligations under the Insurance Agreements.
- 1.2 ORIC reaffirms its agreement to perform its obligations under the Insurance Agreements.

**Article 2**

**Notices and Reports**

Except as otherwise specifically set forth herein, all notices and reports to be given by a Party shall be in writing and shall be sufficiently given if sent or delivered by hand delivery, nationally recognized overnight delivery service with proof of delivery or by prepaid, registered or certified mail, return receipt requested. No notice or report shall be effective until received by the Party to whom it is addressed. The addresses of the parties for notices and reports are as follows:

If to JPMC:

JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Attn: Roberta Martoza

If to ORIC:

Old Republic Insurance Company  
445 South Moorland Road  
Brookfield WI 53005  
Attention: Michael Weber, Vice President

Changes in notice addresses or recipients may be made by ORIC or JPMC by following the procedure specified in this Article 2 rather than the procedure for amendment of this Agreement.

**Article 3**

**Incontestability**

In consideration of the mutual covenants and agreements contained herein, each Party hereto does hereby agree that this Agreement, and each and every provision hereof, is and shall be enforceable by and between them according to its terms, and each Party does hereby agree that it shall not, directly or indirectly, contest the validity or enforceability hereof.

#### **Article 4**

#### **Entire Agreement**

This Agreement, including the Recitals, together with the Exhibit constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals, and negotiations, both written and oral, among such parties with respect to such subject matter.

#### **Article 5**

#### **Counterparts**

This Agreement may be executed in counterparts (or by counterpart signature pages), each of which shall be deemed an original and all of which constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail transmission shall be deemed to be their original signatures for all purposes.

#### **Article 6**

#### **No Third Party Beneficiaries**

Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

#### **Article 7**

#### **Third-Party Claims**

Notwithstanding anything to the contrary in this Agreement, any liability associated with claims of any third party, whether or not such liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to incident, occurrence or accident involving WMI, Investment, any of the Non-Debtor Affiliates, or any of their employees, or to any injury suffered by employees of WMI, Investment, or any of the Non-Debtor Affiliates are specifically not assumed by JPMC.

#### **Article 8**

#### **Assignment**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right hereunder may be assigned by any Party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

**Article 9**

**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania, without giving effect to the principles of conflicts of laws thereof.

**Article 10**

**Exercise of Rights**

The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no verbal communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

**Article 11**

**Duty of Cooperation**

Each Party hereto shall cooperate in good faith fully with the other parties using reasonable commercial efforts in light of each Party's circumstances in order to accomplish the objectives of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Dated: February \_\_, 2010      **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: February \_\_, 2010      **OLD REPUBLIC INSURANCE COMPANY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Exhibit 2 to Order**

**Zurich Settlement Agreement**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into as of December 23, 2009, by and between Zurich American Insurance Company and its subsidiaries and affiliated companies ("Zurich"), Washington Mutual, Inc., ("WMI") and WMI Investment Corp. ("Investment" and collectively with WMI, the "Debtors"), and JPMorgan Chase Bank, National Association ("JPMC") (Zurich, Debtors and JPMC each a "Party" and together the "Parties"), who hereby covenant and agree as follows:

### **RECITALS**

WHEREAS, on September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 08-12229, et al. (the "Bankruptcy Case");

WHEREAS, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed Washington Mutual Bank (the "Bank") and was appointed Receiver thereof;

WHEREAS, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank;

WHEREAS, the Bank is a wholly-owned subsidiary of WMI;

WHEREAS, Zurich provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for the periods of March 1, 2003 to March 1, 2004 and from March 1, 2004 to March 1, 2005 and from March 1, 2005 to March 1, 2006 (collectively, the "Policies");

WHEREAS, in connection with the Policies, Zurich and WMI entered into a Deductible



Agreement and into a Paid Loss Retrospective Rating Agreement and Deductible Agreement dated as of March 1, 2003, as amended, and into annual Specifications thereto (collectively, the “Non-Policy Agreements” and with the Policies, the “Insurance Agreements”);

WHEREAS, to secure its obligations to Zurich under the Insurance Agreements, WMI, as account party, provided Zurich with a clean irrevocable, evergreen letters of credit in the amount of \$18,000,000, issued by JPMC, as amended (the “Existing Letter of Credit”);

WHEREAS, JPMC has agreed to assume all liabilities and obligations of the Debtors and the Non-Debtor Affiliates (as hereinafter defined) to Zurich under the Insurance Agreements, including those not directly related to the Bank, in exchange for the Debtors and the Non-Debtors Affiliates assigning to JPMC all of their rights, title and interest in any return premium or dividends now owing or which may become due to any insureds with respect to the Policies (the “Return Premium”) and the funds held in escrow by Specialty Risk Services, Inc. supporting the obligations under the Policies (the “Escrow”); and

WHEREAS, Zurich, the Debtors and JPMC now wish to settle any disputes regarding Zurich’s claims against the Debtors and JPMC, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The foregoing recitals are incorporated herein as if fully set forth in the text of the Agreement.
2. To the extent provided under applicable law, this Agreement shall become binding upon the Parties upon its execution by all of the Parties; provided, however, that:
  - (a) within five (5) business days after the execution of this Agreement by all of the Parties,

counsel for the Debtors shall file a motion with the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure seeking an order approving the Agreement (the “Approval Order”); and (b) this Agreement shall not be enforceable against the Debtors or their estate or against JPMC until the Approval Order has been entered by the Bankruptcy Court and has become a final order no longer subject to appeal.

3. WMI, on behalf of itself and its non-debtor direct and indirect subsidiaries (the “Non-Debtor Affiliates”) and Investment, hereby assign to JPMC all of their rights, title and interest in the Return Premium.

4. Within five business days after the Approval Order is final and nonappealable, JPMC will enter into an Assumption Agreement with Zurich in form attached hereto as Exhibit A, which Assumption Agreement is incorporated herein, and will provide Zurich with a clean, irrevocable, evergreen letter of credit, in form and substance satisfactory to Zurich, in the amount to be agreed upon by Zurich and JPMC, issued by a bank, other than JPMC, acceptable to Zurich in its sole reasonable discretion (the “Replacement Letter of Credit”). Upon receipt of the Replacement Letter of Credit, Zurich shall return the Existing Letter of Credit to JPMC for cancellation. Upon its receipt of the undrawn Existing Letter of Credit, JPMC (1) shall amend the Proof of Claim it filed in the Bankruptcy Case, Claim No. 2609, to withdraw with prejudice all portions of the claim to the extent related to the Insurance Agreements, the Existing Letter of Credit and the Escrow, including but not limited to, its contingent reimbursement claim for any draws on the Existing Letter of Credit and its claim for unpaid fees relating to the Letter of Credit; (2) amend Proof of Claim No. 2343 to withdraw with prejudice its claims to the extent related to the Insurance Agreements, the Existing Letter of Credit and the Escrow; and (3) waive and release the Debtors and the Non-Debtor Affiliates with prejudice from any claims, asserted

or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letter of Credit and the Escrow. Upon receipt by Zurich of the Replacement Letter of Credit, the Debtors and the Non-Debtor Affiliates will waive and release JPMC with prejudice from any claims, asserted or unasserted, known or unknown, contingent or non-contingent, related to the Insurance Agreements, the Existing Letter of Credit and the Escrow.

5. Except as provided for herein, the Debtors and the Non-Debtor Affiliates hereby release and forever discharge Zurich and all its affiliates, subsidiaries, officers, directors, partners, employees, agents, attorneys, shareholders, successors, assigns, and other representatives from any liability for any and all claims, controversies, actions, causes of action, demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, in contract, in tort or otherwise that they have, whether or not now or heretofore known, suspected, or claimed against Zurich, other than the obligations arising under this Agreement, including, but not limited to, any claims relating to any of the Insurance Agreements; provided, however, Zurich will continue to defend and pay all claims insured under the Policies in accordance with the terms of the Policies and the applicable law.

6. Except as provided for herein, effective upon the latest to occur of (i) JPMC's execution of the Assumption Agreement, (ii) Zurich's receipt of the Replacement Letter of Credit, and (iii) the Approval Order becoming final and nonappealable, Zurich releases and forever discharges the Debtors, the Debtors' estates, and each of the Non-Debtor Affiliates and each of their officers, directors, employees, agents, attorneys, successors, assigns, and other representatives from liability for any and all claims, controversies, actions, causes of action,

demands, debts, damages, costs, attorneys' fees, monies due on account, obligations, judgments and liabilities of any nature whatsoever at law or in equity, past, present or future, arising under the Insurance Agreements, whether or not now or heretofore known, suspected, or claimed against the Debtors, the Debtors' estates, or any of the Non-Debtor Affiliates, and Zurich will withdraw with prejudice the Proof of Claim it filed in the Bankruptcy Case, Claim No. 264.

7. To the extent required under the Insurance Agreements, JPMC, the Debtors and the Non-Debtor Affiliates will continue to cooperate with Zurich and provide Zurich with the necessary information required under the Insurance Agreements, including, but not limited to, providing claims information and documentation. JPMC, the Debtors and the Non-Debtor Affiliates will promptly upon written request from Zurich provide Zurich with the information it needs to conduct premium audits for the Policies.

8. This Agreement shall be interpreted and governed by the laws of the State of New York without regard to principles of conflicts of law. In the event that this paragraph is deemed unenforceable in any judicial, arbitration or governmental proceeding, the remaining provisions of this Agreement shall remain in full force and effect.

9. Each Party hereto shall have the right at any time to enforce the provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of such Party in refraining from so doing at any time or times. The failure of any Party at any time or times to enforce its rights under such provisions shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Agreement or as having in any way or manner modified or waived the same.

10. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or if sent by fax or certified mail,

postage prepaid, return receipt requested, as follows, unless such address is changed by written notice hereunder:

If to Zurich: Zurich American Insurance Company  
Office of the General Counsel  
1400 American Lane  
Schaumburg, IL 60196

With a copy to: Margaret M. Anderson  
Fox, Hefter, Swibel, Levin and Carroll, LLP  
200 W. Madison Street  
Chicago, IL 60606  
Phone: 312.224.1224  
Fax: 312.224.1201  
[panderson@fhslc.com](mailto:panderson@fhslc.com)

If to the Debtors and  
the Non-Debtor Affiliates: Chad Smith  
Washington Mutual, Inc.  
1301 Second Avenue, WMC 3601  
Seattle, WA 98101  
Phone: 206.432.8731  
Fax: 206.432.8879  
[Chad.smith@wamuinc.net](mailto:Chad.smith@wamuinc.net)

With a copy to: David R. Berz  
Weil, Gotshal & Manges LLP  
1300 I Street, N.W., Suite 900  
Washington, D.C. 20005  
Phone: 202.682.7190  
Fax: 202.857.0940  
[david.berz@weil.com](mailto:david.berz@weil.com)

If to JPMC: Roberta Martoza  
JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Phone: 212.623.3268  
Fax: 212.623.3289  
[roberta.l.martoza@chase.com](mailto:roberta.l.martoza@chase.com)

With a copy to:

Berrie Martinis  
Assistant General Counsel  
JPMorgan Chase & Co.  
1301 Second Avenue, 13<sup>th</sup> Floor  
Mailstop, WA1-3449  
Seattle, WA 98101  
Phone: 206-500-4427  
Fax: 206.377.0078  
[berrie.martinis@chase.com](mailto:berrie.martinis@chase.com)

11. JPMC warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

12. The Debtors and the Non-Debtor Affiliates warrant that:

(a) They have been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) Upon entry of the Approval Order, they will be duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) They have voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

13. Zurich represents and warrants that:

(a) It has been advised by counsel in the negotiation, execution and delivery of this Agreement;

(b) It is duly authorized to enter into, execute, deliver and perform this Agreement; and

(c) It has voluntarily, with full knowledge and without fraud, coercion, duress or undue influence of any kind, entered into this Agreement.

14. This Agreement contains the entire Agreement between the Parties as respects its subject matter. All discussions and Agreements previously entertained between the Parties concerning the subject matter of the Agreement are merged into this Agreement. This Agreement may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by all Parties hereunder.

15. This Agreement and any amendment hereto may be executed in several counterparts and by each party on separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile signature shall be treated as an original signature.

16. This Agreement was negotiated and drafted with full participation of the Parties and their respective counsel. In the event that it is determined that any ambiguity exists in this Agreement, any such ambiguity shall not be resolved or otherwise construed against any particular Party, but rather shall be resolved by a fair reading of the intent of the Parties as established herein.

17. If any provision of this Agreement is found to be contrary to law or void, the remainder of the Agreement shall be considered valid and enforceable and shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.





18. This Agreement shall be binding upon all successors and assigns of each of the Parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and date first written above.

**ZURICH AMERICAN INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**JPMORGAN CHASE BANK, N.A.**

By: Roberta Matos  
Name: Roberta Matos  
Its: Senior Vice President  
Corporate Insurance

**WASHINGTON MUTUAL, INC.**

By: [Signature]  
Name: Charles Edward Smith  
Executive Vice President &  
General Counsel  
Its: \_\_\_\_\_

**WMI INVESTMENT CORP.**

By: [Signature]  
Name: Charles Edward Smith  
Its: SVP

**ASSUMPTION AGREEMENT**

**Between**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

**and**

**ZURICH AMERICAN INSURANCE COMPANY**

**Dated**

**February \_\_, 2010**

## ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT (this "Agreement"), effective and dated as of the \_\_\_ day of February, 2010 ("Effective Date") is made and entered into, by and among **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, organized under the laws of the United States of America and having its principal place of business in New York, New York ("JPMC"), and **ZURICH AMERICAN INSURANCE COMPANY**, a corporation organized and existing under the laws of the state of New York on behalf of itself and its affiliates ("Zurich"), in accordance with the terms, conditions and definitions set forth below (JPMC and Zurich each is individually referred to herein as a "Party" or collectively, as the "Parties").

### RECITALS:

**WHEREAS**, on or about March 1, 2003, Washington Mutual, Inc. ("WMI"), on behalf of itself and its affiliates, including Washington Mutual Bank ("Bank"), entered into a Deductible Agreement and into a Paid Loss Retrospective Rating Agreement and Deductible Agreement with Zurich, as amended, together with annual specifications thereto, which are attached hereto as Exhibit A (collectively, the "Non-Policy Agreements"); and

**WHEREAS**, Zurich provided workers' compensation and employers' liability, commercial general liability, and business automobile liability insurance to WMI and its affiliates, including Investment and the Bank, through various policies of insurance for the periods of March 1, 2003 to March 1, 2004 and from March 1, 2004 to March 1, 2005 and from March 1, 2005 to March 1, 2006 (collectively, the "Policies" and with the Non-Policy Agreements, the "Insurance Agreements");

**WHEREAS**, on or about September 25, 2008, the Federal Deposit Insurance Corporation closed the Bank and was appointed Receiver thereof; and

**WHEREAS**, on or about September 25, 2008, JPMC entered into a certain Purchase and Assumption Agreement with the Federal Deposit Insurance Corporation to purchase certain assets and to assume certain liabilities of Bank; and

**WHEREAS**, JPMC has agreed to assume WMI's obligations and liabilities under the Non-Policy Agreements under certain terms and conditions reflected in a certain Settlement Agreement between JPMC, WMI, WMI Investment Corp ("Investment"), and Zurich; and

**WHEREAS**, the Parties have each received the advice of counsel in the preparation, drafting and execution of this Agreement, which was negotiated voluntarily and at arm's length.

**NOW, THEREFORE**, in consideration of and in reliance upon the premises, recitals, and Exhibits (all of which are incorporated in full into this Agreement), and the mutual promises, covenants and premises, recitals and agreements, subject to the terms and conditions stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

## **Article 1**

### **Party Obligations**

- 1.1 Effective on the Effective Date, JPMC hereby assumes one hundred percent (100%) of WMI's, Investment's and WMI's non-debtor direct and indirect subsidiaries' (the "Non-Debtor Affiliates") liabilities and obligations under the Insurance Agreements.
- 1.2 Zurich reaffirms its agreement to perform its obligations under the Insurance Agreements.

## **Article 2**

### **Notices and Reports**

Except as otherwise specifically set forth herein, all notices and reports to be given by a Party shall be in writing and shall be sufficiently given if sent or delivered by hand delivery, nationally recognized overnight delivery service with proof of delivery or by prepaid, registered or certified mail, return receipt requested. No notice or report shall be effective until received by the Party to whom it is addressed. The addresses of the parties for notices and reports are as follows:

If to JPMC: JPMorgan Chase Bank, N.A.  
Corporate Insurance Services  
4 New York Plaza (12<sup>th</sup> Floor)  
New York, NY 10004-2413  
Attn: Roberta Martoza

If to Zurich: Zurich American Insurance Company  
Office of General Counsel  
1400 American Lane  
Schaumburg, IL 60196

Changes in notice addresses or recipients may be made by Zurich or JPMC by following the procedure specified in this Article 2 rather than the procedure for amendment of this Agreement.

## **Article 3**

### **Incontestability**

In consideration of the mutual covenants and agreements contained herein, each Party hereto does hereby agree that this Agreement, and each and every provision hereof, is and shall be enforceable by and between them according to its terms, and each Party does hereby agree that it shall not, directly or indirectly, contest the validity or enforceability hereof.

#### **Article 4**

##### **Entire Agreement**

This Agreement, including the Recitals, together with the Exhibit constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals, and negotiations, both written and oral, among such parties with respect to such subject matter.

#### **Article 5**

##### **Counterparts**

This Agreement may be executed in counterparts (or by counterpart signature pages), each of which shall be deemed an original and all of which constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronic mail transmission shall be deemed to be their original signatures for all purposes.

#### **Article 6**

##### **No Third Party Beneficiaries**

Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

#### **Article 7**

##### **Third-Party Claims**

Notwithstanding anything to the contrary in this Agreement, any liability associated with claims of any third party, whether or not such liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to incident, occurrence or accident involving WMI, Investment, any of the Non-Debtor Affiliates, or any of their employees, or to any injury suffered by employees of WMI, Investment, or any of the Non-Debtor Affiliates are specifically not assumed by JPMC.

**Article 8**

**Assignment**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right hereunder may be assigned by any Party without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

**Article 9**

**Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof.

**Article 10**

**Exercise of Rights**

The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no verbal communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

**Article 11**

**Duty of Cooperation**

Each Party hereto shall cooperate in good faith fully with the other parties using reasonable commercial efforts in light of each Party's circumstances in order to accomplish the objectives of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Dated: February \_\_, 2010

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: February \_\_, 2010

**ZURICH AMERICAN INSURANCE COMPANY**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_