

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11
:
WASHINGTON MUTUAL, INC., *et al.*, :
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Case No. 08-12229 (MFW)
:
Debtors. : (Jointly Administered)
:
:
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**SECOND MODIFICATION OF SIXTH AMENDED
JOINT PLAN OF AFFILIATED DEBTORS PURSUANT TO
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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- and -

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Dated: November 24, 2010



Washington Mutual, Inc. and WMI Investment Corp. hereby modify the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated October 6, 2010, as previously modified on October 29, 2010 (the "Plan"),¹ as follows:

1. Section 1.162 of the Plan, entitled "**Reorganized Common Stock**," is hereby amended by (i) deleting "One Hundred Forty-Five Million (145,000,000)" in the second line thereof and inserting "One Hundred Fifty-Seven Million Five Hundred Thousand (157,500,000)" in lieu thereof, and (ii) inserting the following prior to the period at the conclusion thereof:

"; and provided, further, that the total number of shares of duly authorized common stock of Reorganized WMI to be issued as of the Effective Date shall be subject to further adjustment such that the aggregate dollar amount of such shares, at an issue price of \$1.00 per share, shall be equal to the value of Reorganized WMI, as determined by Blackstone Advisory Partners, L.P., as of the Effective Date, and as reflected in the Confirmation Order."

2. Section 32.2 of the Plan, entitled "**Timeliness of Payments**," is hereby amended by inserting the following prior to the period at the conclusion of the first sentence thereof:

"; including, without limitation, deeming distributions made pursuant to Section 32.1(a) hereof to have been made on the Effective Date."

3. Section 32.6(b) of the Plan, entitled "**Failure to Claim Undeliverable Distributions**," is hereby amended by (i) deleting "On or about the first (1st) anniversary of" in the first and second lines thereof and inserting "On or prior to the date that is one hundred eighty (180) days from," and (ii) deleting "two (2) years" in the sixth line thereof and inserting "one (1) year" in lieu thereof.

4. Section 42.4 of the Plan, entitled "**Directors of the Reorganized Debtors**", is hereby amended by deleting the first sentence therein and inserting the following in lieu thereof:

"In the event that Reorganized Common Stock is issued pursuant to the Plan, on the Effective Date, the board of directors of each of the Reorganized Debtors shall consist of seven (7) persons selected by the Creditors' Committee, one of which may include the chief executive officer of Reorganized WMI; provided, however, that the first annual election of each such board of directors shall take place within six (6) months after the Effective Date."

¹ All terms used but not defined herein shall have the meanings ascribed to them in the Plan.

5. Section 43.2 of the Plan, entitled “**Discharge and Release of Claims and Termination of Equity Interests**”, is hereby amended by (a) inserting “including, without limitation, Section 43.6 of the Plan,” following (i) “Except as provided in the Plan or the Confirmation Order,” in the first sentence of Section 43.2(b) of the Plan and (ii) “In accordance with the foregoing, except as expressly provided in the Plan or the Confirmation Order,” in the second sentence of Section 43.2(b) of the Plan, and (b) deleting the provisions set forth in Section 43.2(c) of the Plan and inserting the following in lieu thereof:

“(c) Except as expressly provided in the Plan or the Confirmation Order, in furtherance of the foregoing, and except for the JPMC Assumed Liabilities, Allowed WMB Vendor Claims, and Allowed WMI Vendor Claims, to the extent provided in the Global Settlement Agreement, none of the JPMC Entities or any of their Related Persons shall have any liability for, and the Debtors, on behalf of themselves and their respective estates and Related Persons (other than WMB and its subsidiaries), hereby release the JPMC Entities and each of their Related Persons from liability for, any and all Claims that (i) are or were property of the Debtors, their estates, or their respective Related Persons, (other than WMB and its subsidiaries), and (ii) were or could have been brought in any of the Related Actions.”

6. Section 43.5 of the Plan, entitled “**Releases by the Debtors**”, is hereby amended by inserting the words “(other than with respect to the JPMC Entities and their respective Related Persons)” following the word “misconduct” in the first proviso therein.

7. Section 43.6 of the Plan, entitled “**Releases by Holders of Claims and Equity Interests**,” is hereby amended by deleting the provisions set forth therein in their entirety and inserting the following in lieu thereof:

“43.6 Releases by Holders of Claims.

(a) Global Third Party Releases. Except (1) as otherwise expressly provided in (i) the Plan, (ii) the Confirmation Order, or (iii) the Global Settlement Agreement, or (2) with respect to holders of WMB Senior Notes Claims and Non-Filing WMB Senior Note Holders who do not check the box labeled “Grant Plan Section 43.6 Release”, on the Effective Date, for good and valuable consideration, and to the fullest extent Permissible under applicable law, each Entity that has held, currently holds or may hold a Released Claim and that may be entitled to receive, directly or indirectly, a distribution pursuant to the Plan, and each of its respective Related Persons, on their own behalf and on behalf of anyone claiming through them, shall be deemed to have and hereby does irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge each and all of the Released Parties from any and all Released Claims in connection

with or related to any of the Debtors, the Reorganized Debtors, the Affiliated Banks, or their respective subsidiaries, assets, liabilities, operations, property or estates, the Chapter 11 Cases or the Plan or the Disclosure Statement, the assets to be received by JPMC pursuant to the Global Settlement Agreement, the Plan Contribution Assets, the Debtors' Claims, the JPMC Claims, the FDIC Claim, the Purchase and Assumption Agreement, the WMI/WMB Intercompany Claims, any intercompany claims on the books of WMI or WMB related to the WaMu Pension Plan or the Lakeview Plan, claims related in any way to the Trust Preferred Securities (including, without limitation, the creation of the Trust Preferred Securities, the financing associated therewith, the requested assignment of the Trust Preferred Securities by the Office of Thrift Supervision and the transfer and the asserted assignment of the Trust Preferred Securities subsequent thereto), and/or any claim, act, fact, transaction, occurrence, statement, or omission in connection with or alleged in the Actions or in the Texas Litigation, or that could have been alleged in respect of the foregoing or other similar proceeding, including, without limitation, any such claim demand, right, liability, or cause of action for indemnification, contribution or any other basis in law or equity for damages, costs or fees incurred by the releasors herein arising directly or indirectly from or otherwise relating thereto; provided, however, that each Entity that has submitted a Ballot may elect, by checking or not checking, as the case may be, the appropriate box on its Ballot, not to grant the releases set forth in this Section 43.6, in which case, such non-granting Entity shall not receive a distribution pursuant to the Plan; and, provided, further, that, notwithstanding anything contained in this Section 43.6(a) to the contrary, the foregoing release shall not extend to acts of gross negligence or willful misconduct of any Released Persons (other than with respect to the JPMC Entities and their respective Related Persons); and, provided, further, that, notwithstanding the foregoing, solely for purposes of this Section 43.6(a), "Released Parties" shall not include Related Persons other than (i) Related Persons of the JPMC Entities, (ii) officers or directors of the Debtors during the period from the Petition Date up to and including the Effective Date and (iii) the Debtors' respective present Affiliates; and, provided, further, that the foregoing exclusions are not intended, nor shall they be construed, to limit or otherwise affect the releases granted pursuant to, or any other terms of, the Global Settlement Agreement.

(b) Limited Governmental Exceptions. Nothing contained in the Plan or the Confirmation Order shall (1) (i) release, or is intended to release, any non-Debtor, including any non-Debtor Entity that may be a Released Party or a Related Person, in

connection with any legal action or claim brought by the United States Securities and Exchange Commission or (ii) prejudice the rights of any such non-Debtor Entity to defend or otherwise contest any such legal action or claim, (2) (i) to the extent that (A) the Pension Plans are terminated from and after the Effective Date and (B) the Pension Plans are underfunded as of the Effective Date, release, or is intended to release, any non-Debtor, including any non-Debtor Entity that may be a Released Party or a Related Person, from any liability as a fiduciary of the Pension Plans, under any law, government policy or regulatory provision, (ii) enjoin or preclude the Pension Benefit Guaranty Corporation from enforcing such liability against such non-Debtor Entity during the applicable statute of limitations period set forth in 29 U.S.C. § 1303 following any such termination, or (iii) prejudice the rights of any such non-Debtor Entity to defend or otherwise contest any such legal action or claim, and (3) (i) release the claims held by the California Franchise Tax Board, including rights of setoff and recoupment with respect to claims against or among two or more non-Debtor Entities, against any non-Debtor and, notwithstanding the provisions of Section 43.7 of the Plan, the California Franchise Tax Board shall not be enjoined from pursuing any such claims and (ii) prejudice the rights of any such non-Debtor to defend or otherwise contest any such legal action or claim.

(c) BKK Liabilities. Nothing in the Plan or the Confirmation Order is intended to, nor shall it, release any non-Debtor or non-Debtor Entity that may be a Released Party or a Related Person, in connection with any legal action or claim brought by CDTSC or the BKK Group relating to the BKK Site that is the subject of the BKK Litigation; provided, however, that nothing contained in this Section 43.6(c) is intended, nor shall it be construed, to (1) constitute evidence of or any support for an argument that any such non-Debtors have any such liabilities, or (2) create any liability on behalf of the Liquidating Trust.

In addition to, and not in any way limiting the foregoing, each holder of an Allowed WMB Senior Notes Claim and each Accepting Non-Filing WMB Senior Notes Holder shall be deemed to have released the Debtors, the Reorganized Debtors, the Liquidating Trustee, and each of their respective Related Persons from any and all direct and derivative claims arising from or related to such holder's WMB Senior Notes, as well as any misrepresentation or other similar claim for damages arising from the purchase or sale of such holder's WMB Senior Notes (including, without limitation, any Section 510(b) Subordinated WMB Notes Claims that such holder may have)."

8. Section 43.7 of the Plan, entitled "**Injunction Related to Releases**", is hereby amended by (a) deleting "(i)" in the second line thereof and (b) deleting "(ii) all other parties in interest, and (iii) each of the Related Persons of each of the foregoing entities," in the fifth and sixth lines thereof.

9. Section 43.9 of the Plan, entitled "**Bar Order**", is hereby amended by (a) deleting the word "Each" at the beginning thereof and (b) inserting "Except to the limited extent provided in Section 43.6 of the Plan, each" in lieu thereof.

10. Section 43.12 of the Plan, entitled "**Supplemental Injunction**", is hereby amended by inserting "except to the limited extent provided in Section 43.6 of the Plan," following "contrary," in the second line thereof.

11. Except as expressly provided herein, the terms and provisions of the Plan shall remain in full force and effect.

Dated: Seattle, Washington
November 24, 2010

WASHINGTON MUTUAL, INC.

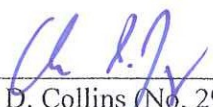
By: 

Name: Charles Edward Smith
Title: Executive Vice President &
General Counsel

WMI INVESTMENT CORP.

By: 

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