

ORIGINAL

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

WASHINGTON MUTUAL, INC.,¹ *et al.*,

Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

BLACK HORSE CAPITAL LP, *et al.*,

Plaintiffs,

Adv. Pro. No. 10-51387 (MFW)

v.

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

Defendants.

**ORDER APPROVING STIPULATION
AND AGREEMENT AMONG THE DEBTORS,
THE TPS GROUP, THE TPS CONSORTIUM, THE EQUITY
COMMITTEE, THE CREDITORS' COMMITTEE, AND JPMORGAN CHASE
BANK, N.A. WITH RESPECT TO THE DEBTORS' SEVENTH AMENDED PLAN**

Washington Mutual, Inc. WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"), the TPS Group, the TPS Consortium, the Equity Committee, the Creditors' Committee, and JPMorgan Chase Bank, N.A. (collectively, the "Parties"), having entered into that certain *Stipulation and Agreement Among the Debtors, the TPS Group, the TPS Consortium, the Equity Committee, the Creditors' Committee, and JPMorgan Chase Bank, N.A. With Respect to the Debtors' Seventh Amended Plan* (the "Stipulation"); and the Court having reviewed the Stipulation; and the Court having determined

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.



that good cause has been demonstrated for approving the Stipulation;

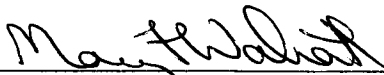
NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Stipulation, a copy of which is attached hereto as Exhibit 1, is APPROVED.

2. The Parties are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of the Stipulation.

3. The Court shall retain jurisdiction over the implementation and enforcement of the Stipulation and this Order.

Dated: February 17, 2012
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

(Stipulation)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

WASHINGTON MUTUAL, INC.,¹ *et al.*,
Debtors.

Chapter 11

Case No. 08-12229 (MFW)

Jointly Administered

BLACK HORSE CAPITAL LP, *et al.*,
Plaintiffs,

Adv. Pro. No. 10-51387 (MFW)

v.

JPMORGAN CHASE BANK, N.A., *et al.*,
Defendants.

**STIPULATION AND
AGREEMENT AMONG THE DEBTORS,
THE TPS GROUP, THE TPS CONSORTIUM, THE EQUITY
COMMITTEE, THE CREDITORS' COMMITTEE, AND JPMORGAN CHASE
BANK, N.A. WITH RESPECT TO THE DEBTORS' SEVENTH AMENDED PLAN**

Washington Mutual, Inc. ("WMI") and WMI Investment Corp., as debtors and debtors in possession (collectively, the "Debtors"),² the Consortium of Trust Preferred Security Holders (the "TPS Consortium"), the TPS Group (together with the TPS Consortium, the "TPS

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

² Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the *Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code*, dated December 12, 2011 [D.I. 9178] (as it has, and may be amended from time to time, the "Seventh Amended Plan"). As used herein, the Seventh Amended Plan shall incorporate the Plan Modification (as defined herein).

Funds³), the Equity Committee, the Creditors' Committee, and JPMorgan Chase Bank, N.A. ("JPMC"), by and through their respective counsel, hereby enter into this stipulation and agreement (this "Stipulation"), and do hereby stipulate as follows:

RECITALS

A. On September 26, 2008, each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code by filing a voluntary petition for relief in the Bankruptcy Court.

B. 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.

C. On October 3, 2008, the Bankruptcy Court entered an order pursuant to Bankruptcy Rule 1015(b) authorizing the joint administration of the Debtors' Chapter 11 Cases. On October 15, 2008, the U.S. Trustee appointed the Creditors' Committee. On January 11, 2010, the U.S. Trustee appointed the Equity Committee.

The TPS Litigation

D. On July 6, 2010, certain holders of Trust Preferred Securities, including, among others, the TPS Funds (collectively, the "TPS Plaintiffs"), commenced litigation styled *Black Horse Capital Master Fund Ltd v. JPMorgan Chase Bank, N.A.*, Adv. Proc. No. 10-51387 (MFW) (Bankr. D. Del.) (the "TPS Action"), against JPMC, WMI and certain other entities.

³ The TPS Funds consist of Black Horse Capital LP; Black Horse Capital Master Fund Ltd; Greywolf Capital Partners II LP; Greywolf Capital Overseas Master Fund; Greywolf Opportunities Fund II LP; Greywolf Structured Products Master Fund, Ltd.; Greywolf Capital Overseas Fund II; Pines Edge Value Investors Ltd.; Pine River Convertibles Master Fund Ltd. (f/k/a Nisswa Convertibles Master Fund Ltd.); Pine River Fixed Income Master Fund Ltd. (f/k/a Nisswa Fixed Income Master Fund Ltd.); Pine River Master Fund Ltd. (f/k/a Nisswa Master Fund Ltd.); LMA SPC for and on behalf of the MAP 89 Segregated Portfolio; Visium Global Master Fund, Ltd.; Visium Catalyst Credit Master Fund, Ltd.; VR Global Partners, L.P.; Scoggin Worldwide Fund Ltd.; Scoggin Capital Management II LLC; Scoggin International Fund Ltd, Karnak Partners, L.P., Ermitage Selz Fund, Ltd., GAM Selection Hedge Investments, Inc., and Varana Onshore, LP.

E. By separate motions, each dated November 2, 2010, WMI and JPMC (collectively, the “TPS Defendants”) sought summary judgment with respect to the claims asserted by the TPS Plaintiffs in the TPS Action [TPS Action, D.I. 105 & 109].

F. On January 7, 2011, the Bankruptcy Court issued an opinion [TPS Action, D.I. 179] and entered an accompanying order [TPS Action, D.I. 180] finding that the TPS Plaintiffs have no interest in the Trust Preferred Securities and hold interests in WMI preferred equity (collectively, the “TPS Order”).

G. On January 14, 2011, certain of the TPS Plaintiffs appealed the TPS Order to the United States District Court for the District of Delaware (the “District Court”), styled as *Black Horse Capital LP v. JPMorgan Chase Bank NA, Inc. (In re Washington Mutual, Inc.)*, No. 11-124 (GMS) (D. Del. Jan. 19, 2012) (the “TPS Appeal,” and together with the TPS Action, and all other litigations, appeals and petitions for review relating to the Chapter 11 Cases, the Initial Global Settlement Agreement, the Global Settlement Agreement, the January Opinion, or the September Opinion, the “TPS Litigation”).

Sixth Amended Plan and the Modified Plan

H. On October 6, 2010, the Debtors filed the Sixth Amended Plan. The Sixth Amended Plan was premised upon a global settlement and compromise contained in that certain Amended and Restated Settlement Agreement, dated as of October 6, 2010, by and among the Debtors, JPMC, the Federal Deposit Insurance Corporation, and certain creditor constituencies (as amended, the “Initial Global Settlement Agreement”). Pursuant to the Sixth Amended Plan, holders of shares of REIT Series that voted to accept the Sixth Amended Plan, and elected to grant the releases set forth in Section 2.24 of the Initial Global Settlement Agreement (the “REIT Releases”), were eligible to receive a pro rata distribution of \$50 million from JPMC. Pursuant

to the solicitation of the Sixth Amended Plan, holders of shares of REIT Series holding approximately twenty-five percent (25%) of the shares of REIT Series elected to grant the REIT Releases and, thus, share in the JPMC distribution. Each member of the TPS Funds elected not to grant the REIT Releases.

I. On January 7, 2011, the Bankruptcy Court entered the January Opinion.

J. On February 8, 2011, the Debtors filed the Modified Plan [D.I. 6696]. Pursuant to an order of the Bankruptcy Court, the Debtors did not resolicit elections to grant the REIT Releases from holders of REIT Series in connection with the Debtors' solicitation of the Modified Plan.

K. On September 13, 2011, the Bankruptcy Court issued the September Opinion and entered the September Order.

The Seventh Amended Plan

L. Following court-ordered mediation, on December 12, 2011, the Debtors filed the Seventh Amended Plan and a related Disclosure Statement.

M. On January 11, 2012, the Bankruptcy Court held a hearing (the "Disclosure Statement Hearing") to consider, among other things, the adequacy of the information in the Disclosure Statement, and certain motions filed by the TPS Consortium seeking, respectively, (i) a stay pending appeal of the Bankruptcy Court's ruling in an adversary proceeding commenced by the TPS Consortium, and (ii) separate classification of the REIT Series from all other Preferred Equity Interests. *See Motion of the Consortium of Trust Preferred Security Holders for Stay of Confirmation Proceedings Pending Appeal*, dated December 23, 2011 [D.I. 9260] (the "Stay Motion"); *Motion of the Consortium of Trust Preferred Security Holders to Determine Propriety of Proposed Classification of Interests Subject to Treatment Under Class 19 of the Seventh Amended Plan of Liquidation*, dated December 23, 2011 [D.I. 9257]. At the

Disclosure Statement Hearing, the Bankruptcy Court, by bench ruling, see Hr'g Tr. 1/11/2012 at 73:3 (denying stay motion); id. at 94:3 (denying motion to separately classify REIT Series), and by order, [D.I. 9397], denied each of the motions filed by the TPS Consortium.

N. By order, dated January 19, 2012, the District Court denied the TPS Consortium's motion to stay the Confirmation Hearing and their petition for a writ of mandamus (the "District Court Rulings").

O. On February 10, 2012, the United States Court of Appeals for the Third Circuit dismissed the TPS Consortium's appeal of the District Court Rulings for lack of jurisdiction and denied their remaining requests for relief.

P. Pursuant to the Disclosure Statement Order [D.I. 9414], the Bankruptcy Court, among other things, approved the adequacy of the information contained in the Disclosure Statement in accordance with section 1125 of the Bankruptcy Code and established certain procedures in connection with the solicitation of acceptances and rejections of the Seventh Amended Plan and the granting of releases and the making of elections in connection therewith.

Q. As of the date hereof, the TPS Funds hold shares of REIT Series, as defined in the Seventh Amended Plan, in the face amount, calculated by applicable liquidation preference, of One Billion Six Hundred Fifty Four Million Nine Hundred Sixty Five Thousand Dollars (\$1,654,965,000.00) (collectively, the "REIT Series Preferred Equity Interests"). On or prior to February 8, 2012, substantially all of the members of the TPS Funds tendered ballots in the face amount, calculated by applicable liquidation preference, of One Billion Six Hundred Seven Million Two Hundred Twenty Five Thousand Dollars (\$1,607,225,000.00) (collectively, the "Ballots") in connection with the Seventh Amended Plan, and voted each Ballot to (1) reject the

Seventh Amended Plan and (2) not provide the release required pursuant to Section 41.6 of the Seventh Amended Plan.

R. On February 8, 2012, the TPS Consortium filed the *Objection of the Consortium of Trust Preferred Security Holders to Confirmation of Debtors' Plan of Liquidation* [D.I. 9594] (the "TPS Consortium Objection").

S. On February 8, 2012, the TPS Group filed the *Objection of the TPS Group to Confirmation of the Modified Seventh Amended Plan of Liquidation* [D.I. 9593] (the "TPS Group Objection") and together with the TPS Consortium Objection, the "TPS Funds Objections").

T. On February 13, 2012, the Debtors filed the Debtors' Omnibus Response to Objections to Confirmation of the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code [D.I. 9663]. A hearing to consider confirmation of the Seventh Amended Plan is scheduled to commence on February 16, 2012.

U. The Debtors, the Equity Committee, the Creditors' Committee, JPMC and the TPS Funds (collectively, the "Parties") have agreed to enter into this Stipulation for purposes of resolving the TPS Litigation and TPS Funds Objections. This is a compromise of matters that are in dispute and nothing shall be construed as evidence or an acknowledgement on the part of any Party that the positions of the any of the other Parties has merit.

V. The TPS Funds represent that, through their retained professionals, Brown Rudnick LLP, Campbell & Levine LLC, Arkin Kaplan Rice LLP, Schnader Harrison Segal & Lewis LLP, and Mesirow Financial Consulting, LLC, the TPS Funds have incurred fees and expenses in the aggregate amount of approximately Fifteen Million Dollars (\$15,000,000.00) (collectively, the "Fees and Expenses") in connection with the TPS Litigation, the TPS Funds Objections, and these Chapter 11 Cases.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Debtors, the Equity Committee, the Creditors' Committee, JPMC and the TPS Funds:

AGREEMENT

1. This Stipulation shall become effective and binding upon entry of an order by the Bankruptcy Court approving the Stipulation (the "Stipulation Effective Date"). The Debtors shall use their reasonable best efforts to obtain prompt approval hereof.

2. The Debtors shall file a modification to the Seventh Amended Plan, substantially in the form attached hereto as Exhibit "A" (the "Plan Modification").

3. Upon the Stipulation Effective Date, and without further action being taken by the TPS Funds, the Ballots shall be deemed modified, *nunc pro tunc* to their date of submission, to provide that (i) the TPS Funds shall be deemed to have voted the REIT Series Preferred Equity Interests to accept the Seventh Amended Plan, and (ii) the TPS Funds shall be deemed to have granted the releases contained in Section 41.6 of the Seventh Amended Plan; provided, however, that, in the event that a member of the TPS Funds has not executed and delivered a ballot with respect to the Seventh Amended Plan, within three (3) Business Days of the date hereof, such member shall execute and deliver a ballot accepting the Seventh Amended Plan and granting the release required in accordance with Section 41.6 of the Seventh Amended Plan.

4. Notwithstanding the Stipulation Effective Date, from and after the date hereof, the TPS Funds shall (a) not oppose, and otherwise support and take any and all actions reasonably requested by the Debtors (provided the same are at no material cost to the TPS Funds) to support confirmation of the Seventh Amended Plan in accordance with section 1129

of the Bankruptcy Code (or, subject to the provisions of section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, any modification thereof provided that such modification does not materially adversely affect the rights pursuant to this Stipulation), (b) be deemed to have withdrawn the TPS Funds Objections, (c) not oppose the partial vacatur of the September Opinion and the September Order as requested by the Debtors, (d) otherwise take no action to impede or preclude the entry of the Confirmation Order, or the consummation, implementation and administration of, the Seventh Amended Plan, and (e) not take any steps to prosecute, and shall take whatever steps are reasonably necessary to stay (including making filings with the District Court), the TPS Appeal, and any other appeals, petitions, or other filings seeking review of any decisions of the Bankruptcy Court.

5. Upon the "Effective Date" of the Seventh Amended Plan in accordance with the provisions set forth therein (the "Plan Effective Date"), and the execution and delivery of the releases by each member of the TPS Funds in accordance with Section 41.6 of the Seventh Amended Plan and decretal paragraph 3 hereof, on account of the claims and causes of actions asserted or that could have been asserted by the TPS Funds in any litigation relating to WMI, WMB, the Trust Preferred Securities, the REIT Series, the Global Settlement Agreement and the Chapter 11 Cases, including, without limitation, the TPS Litigation, (a) the TPS Funds, in the aggregate, shall be deemed to have an Allowed Claim in Class 12 of the Seventh Amended Plan in the amount of Six Hundred Eighteen Thousand Three Hundred Fifty Six Dollars and Twenty Five Cents (\$618,356.25), which Allowed Claim shall receive distributions in accordance with the provisions of the Seventh Amended Plan, and (b) within (5) Business Days of the foregoing, JPMC shall pay in the aggregate, by wire transfer, to a single payee to be designated by the TPS Funds, the sum of Eighteen Million

Dollars (\$18,000,000.00) (a share of amounts previously offered by JPMC in the Sixth Amended Plan), which amount shall be allocated by the TPS Funds among the members of the TPS Funds as they shall determine.

6. In accordance with Section 41.18 of the Seventh Amended Plan, the TPS Funds shall file with the Bankruptcy Court an application seeking reimbursement of the Fees and Expenses, and, in the event that such application is equal to or less than Fifteen Million Dollars (\$15,000,000.00), the Parties shall not oppose such application. If such application is approved, the TPS Funds shall be paid the first Three Million Dollars (\$3,000,000.00) of the Fees and Expenses in cash, and the remaining allowed portion thereof, up to Twelve Million Dollars (\$12,000,000.00), shall be treated and receive distributions as an Allowed Claim in Class 18 of the Seventh Amended Plan.

7. Upon the Plan Effective Date, with respect to their respective Pro Rata Share of REIT Series Preferred Equity Interests, each member of the TPS Funds shall be entitled to receive distributions pursuant to the terms and conditions of Section 23.1 of the Seventh Amended Plan.

8. The Equity Committee agrees to appoint a member selected by the TPS Funds to the Trust Advisory Board as an EC Member (the "TPS Related Member").

9. The Parties agree that the Debtors shall modify the Liquidating Trust Agreement to provide that the Litigation Subcommittee shall be increased from three (3) members to five (5) members by the addition of the TPS Related Member and Joel Klein as the Creditors' Committee's designee.

10. The board of directors of Reorganized WMI shall be increased to seven (7) members: six (6) members selected by the Equity Committee and one (1) member selected

by the lenders party to the Credit Facility. Subject to the approval of the Equity Committee, which approval shall not be unreasonably withheld, the Equity Committee agrees to designate a representative of the TPS Funds as one of its designees to the board of directors of Reorganized WMI.

11. Upon the Plan Effective Date, pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure and Rule 41(a) of the Federal Rules of Civil Procedure, any and all claims and causes of action asserted by the TPS Funds in the TPS Litigation shall be deemed dismissed, with prejudice and without the assessment of costs, and the TPS Funds shall take such actions as may be required to cause the dismissal of the TPS Litigation with prejudice and without the assessment of costs, including, without limitation, the filing of notices or a stipulation of dismissal as are necessary in the Bankruptcy Court and the District Court. Prior to the Plan Effective Date, all actions associated with the TPS Litigation shall be stayed.

12. The TPS Funds shall not file any appeal from any order confirming the Seventh Amended Plan.

13. Upon the Effective Date, Kurtzman Carson Consultants, LLC, the Debtors' court-appointed claims and noticing agent, shall be authorized and directed to take such action as is necessary to effectuate this Stipulation.

14. Upon the Plan Effective Date, and upon payment of the amounts required pursuant to decretal paragraph 5 hereof, the TPS Funds, each member of the TPS Funds (but not with respect to each other), the Debtors, each of the Debtors' chapter 11 estates, the Reorganized Debtors, the JPMC Entities and each of their respective past or present parent entities and directors and officers, shall be deemed to have unconditionally,

fully, finally, and forever waived and released each other from any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown, whether asserted or unasserted, that they may have or claim to have, now or in the future, that are based upon, related to, or arise out of or in connection with the Chapter 11 Cases, the Debtors, the Trust Preferred Securities, the REIT Series, the Global Settlement Agreement, the TPS Litigation, or any claim, act, fact, transaction, occurrence, statement, or omission in connection with, or alleged or that could have been alleged in connection with the foregoing. The provisions of this paragraph 14 shall not, however, release any obligations benefiting the Parties established in this Stipulation and the Seventh Amended Plan.

15. This Stipulation contains the entire agreement between the Parties as to the subject matter hereof and supersedes all prior agreements and undertakings between the Parties relating thereto.

16. Other than with respect to the agreement of the Parties set forth in decretal paragraph 4 hereof, this Stipulation is subject to approval of the Bankruptcy Court and shall be of no force and effect in the event that the Bankruptcy Court denies approval hereof or confirmation of the Seventh Amended Plan or if the Plan Effective Date does not occur.

17. Each person who executes this Stipulation represents that he or she is duly authorized to execute this Stipulation on behalf of the respective Parties hereto and that each such party has full knowledge and has consented to this Stipulation. Counsel executing this on behalf of the TPS Consortium and the TPS Group represent that ⁽ⁱ⁾ all persons or entities party to the TPS Litigation have either (a) authorized the execution of this Stipulation by

counsel on their behalf or (b) executed a release in accordance with Section 41.6 of the Seventh Amended Plan.

18. This Stipulation may not be modified other than by a signed writing executed by the Parties hereto or, upon consent of the Parties, by further order of the Bankruptcy Court. This Stipulation may be executed in one or more counterparts, any of which may be transmitted by facsimile or electronic (e-mail) transmission, and each of which shall be deemed an original, but all of which together shall constitute one and the same document.

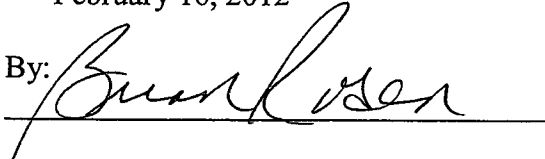
→ and (ii) in connection with Paige Opportunity Partners LP and Paige Opportunity Partners Master Fund (collectively, the "Paige Funds"), that (a) on August 26, 2011, the Delaware Chancery Court issued an order in favor of Lerner Master Fund, LLC ("Lerner") ordering the transfer of all Paige Funds' assets to Lerner and (b) Lerner executed and delivered a release in accordance with Section 41.6 of the Seventh Amended Plan

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19. The Bankruptcy Court shall have sole and exclusive jurisdiction to hear disputes arising out of or related to this Stipulation.

Dated: Wilmington, Delaware
February 16, 2012

By:



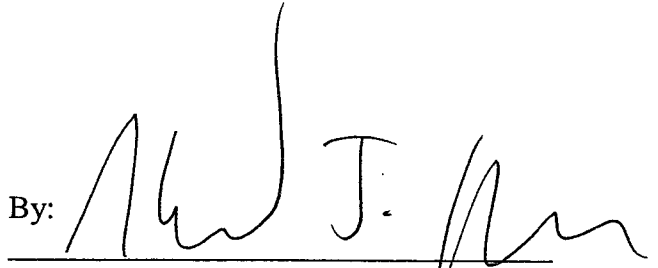
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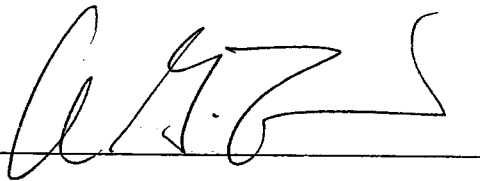
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*Counsel to the Official Committee of
Equity Security Holders of Washington
Mutual, Inc., et al.*

EXHIBIT A

Plan Modification

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----X
In re : Chapter 11
 :
WASHINGTON MUTUAL, INC., *et al.*, :
 :
 : Case No. 08-12229 (MFW)
 :
 Debtors. : (Jointly Administered)
 :
 :
 :
-----X

THIRD MODIFICATION OF
SEVENTH AMENDED JOINT PLAN OF AFFILIATED DEBTORS
PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

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(302) 651-7700

Dated: February 16, 2012

Washington Mutual, Inc. and WMI Investment Corp. hereby modify the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011 (the “Plan”),¹ as follows:

1. Definitions. Section 1.231 of the Plan, entitled “**Trust Advisory Board**”, is hereby amended by deleting the provisions therein and inserting the following in lieu thereof:

“The trust advisory board provided for in the Liquidating Trust Agreement, which board shall (a) be initially comprised of ten (10) members: (i) four (4) members selected solely by the Creditors’ Committee, (ii) four (4) members selected solely by the Equity Committee, (iii) one (1) member selected by the Creditors’ Committee and approved by the Equity Committee, which approval shall not be unreasonably withheld, and (iv) one (1) member selected by HoldCo Advisors, LLC serving in a non-voting *ex officio* capacity, and (b) have an oversight function with respect to the Liquidating Trust, and the composition of which may change only in accordance with the provisions of the Liquidating Trust Agreement.”

2. Section 3.3 of the Plan, entitled “**Priority Tax Claims**”, is hereby amended by inserting the following after the words “Allowed Claim,” in the seventh line thereof:

“and to the extent that payment is made after the Effective Date, together with interest accrued thereon at the applicable non-bankruptcy rate as of the calendar month in which the Confirmation Order is entered,”

3. Treatment of Preferred Equity Interests. Section 23.1 of the Plan, entitled “**Treatment of Preferred Equity Interests**,” is hereby amended by deleting the reference to “seventy percent (70%)” in the fifth line thereof and inserting “seventy-five percent (75%)” in lieu thereof.

4. Treatment of Dime Warrants. Section 24.1 of the Plan, entitled “**Treatment of Dime Warrants**”, shall be amended by deleting the provisions set forth therein and inserting the following in lieu thereof:

“Commencing on the Effective Date, and subject to the execution and delivery of a release in accordance with the provisions of Section 41.6 of the Plan, each holder of Dime Warrants shall be entitled to receive such holder’s Pro Rata Share of distributions to be made in accordance with the terms and provisions of the LTW Stipulation.”

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

5. Treatment of Common Equity Interests. Section 25.1 of the Plan, entitled “**Treatment of Common Equity Interests**”, is hereby amended by deleting the provisions set forth therein and inserting the following in lieu thereof:

“Commencing on the Effective Date, and subject to the execution and delivery of a release in accordance with the provisions of Section 41.6 of the Plan, each holder of Common Equity Interests shall be entitled to receive such holder’s Pro Rata Share of twenty-five percent (25%) of (a) subject to (i) the right of election provided in Sections 6.2(b), 7.2(b), 16.1(b)(ii), 18.2(b), 19.2(b), and 20.2(b) of the Plan and (ii) the rights of holders of Dime Warrants pursuant to the LTW Stipulation, the Reorganized Common Stock, and (b) in the event that all Allowed Claims and Postpetition Interest Claims in respect of Allowed Claims are paid in full (including with respect to Allowed Subordinated Claims), any Liquidating Trust Interests to be redistributed; provided, however, that, in the event at the Confirmation Hearing and in the Confirmation Order, the Bankruptcy Court determines that a different percentage should apply, the foregoing percentage shall be adjusted in accordance with the determination of the Bankruptcy Court and be binding upon each holder of a Common Equity Interest.”

6. Section 40.4 of the Plan, entitled “**Directors of the Reorganized Debtors**”, is hereby amended by deleting the first sentence thereof and inserting the following in lieu thereof:

“On the Effective Date, the board of directors of each of the Reorganized Debtors shall consist of seven (7) persons: six (6) members selected by the Equity Committee and one (1) member selected by the lenders party to the Credit Facility.”

7. Section 41.6(e) of the Plan, entitled “**Tranquility Claim**”, is hereby deleted in its entirety and the words “Intentionally Deleted” are inserted in lieu thereof.

8. Section 41.6(f) of the Plan, entitled “**Truck and Fire**”, is hereby amended by deleting the words “Supplemental Disclosure Statement Order” in the second line thereof and inserting the words “Order [D.I. 7081] approving the Supplemental Disclosure Statement” in lieu thereof.

9. Section 41.8 of the Plan, entitled “**Exculpation**”, is hereby amended by deleting the second proviso in the first sentence thereof.

10. Section 41.12 of the Plan, entitled “**Supplemental Injunction**”, is hereby amended by inserting the following prior to the period at the conclusion thereof:

“and, provided, further, that the supplemental injunction provided pursuant to the terms of this Section 41.12 shall not preclude any current or former officers or directors of WMI

from asserting any setoff or recoupment rights against any judgment or other obligation due to the Debtors, the Debtors' estates, or the Liquidating Trust or against the property of the Debtors or the Debtors' estates, to the extent such individuals have such rights pursuant to applicable non-bankruptcy law."

11. Section 41.18 of the Plan, entitled "**Payment of Fees and Expenses of Certain Creditors**", is hereby amended by deleting "and (viii)" in the fifth line thereof and inserting "(viii) Kilpatrick Townsend & Stockton LLP, (ix) Brown Rudnick LLP, (x) Arkin Kaplan Rice LLP, (xi) Campbell & Levine, LLC, (xii) Mesirov Financial Consulting, LLC, (xiii) Schnader Harrison Segal & Lewis LLP, and (xiv)" in lieu thereof.

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

Dated: Wilmington, Delaware
February 16, 2012

WASHINGTON MUTUAL, INC.

By: /s/ William C. Kosturos
Name: William C. Kosturos
Title: Chief Restructuring Officer

WMI INVESTMENT CORP.

By: /s/ William C. Kosturos
Name: William C. Kosturos
Title: President & Chief Executive
Officer

/s/ Travis A. McRoberts

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