

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made as of this \_\_\_\_ day of December, 2012, by, between, and among the following undersigned parties:

The Federal Deposit Insurance Corporation, as receiver of Washington Mutual Bank ("FDIC"), and Michigan Mutual, Inc. ("Michigan Mutual") (individually, the FDIC and Michigan Mutual may be referred to herein as "Party" and collectively as the "Parties").

**RECITALS**

**WHEREAS:**

Prior to September 25, 2008, Washington Mutual Bank ("WaMu") was a depository institution organized and existing under the laws of the State of Washington;

On September 25, 2008, WaMu was closed by the Office of Thrift Supervision and pursuant to 12 U.S.C. § 1821(c), the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC as receiver succeeded to all rights, titles, powers and privileges of WaMu, including those with respect to its assets;

Among the assets to which the FDIC as receiver succeeded were any and all of the WaMu's claims, demands, and causes of actions against any person whose action or inaction may be related to any loss incurred by WaMu;

The FDIC has asserted claims against Michigan Mutual arising out of WaMu loan nos.

(b)(4) [redacted] (Wilder), [redacted] (Bolt), and [redacted] (Prange) ("the Subject Loans").

Michigan Mutual has denied liability for the FDIC's claims; and

The undersigned parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC**

A. As an essential covenant and condition to this Agreement, Michigan Mutual agrees to pay the FDIC the sum of \$81,663.03 ("the Settlement Funds").

B. Upon the execution of an original, or originals in counterpart, of this Agreement by each of the undersigned Parties to this Agreement, but no later than January 3, 2013, the Settlement Funds shall be delivered to FDIC by direct wire transfer into an account designated by FDIC or by certified or cashier's check drawn upon a depository institution acceptable to FDIC.

In the event that the Settlement Funds are not delivered to the FDIC (or its counsel) by January 3, 2013, interest shall accrue on all unpaid amounts at the rate of 5% per annum from January 4, 2013 until the date of payment. However, if said Settlement Funds are not delivered to the FDIC by January 3, 2013, as a result of the FDIC's failure to execute this Agreement, no interest shall accrue until five (5) business days after the FDIC executes the Agreement and delivers a signed copy to Michigan Mutual.

C. In addition, and without waiving any other rights that the FDIC may have, in the event that all Settlement Funds (including all accrued interest) are not received by the FDIC on or before January 3, 2013 for any reason other than the FDIC's failure to execute this

Agreement, then, the FDIC, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against Michigan Mutual, in which event Michigan Mutual agrees to jurisdiction in Federal District Court in California and agrees to pay all of the FDIC's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement, provided however, that in the event the FDIC declares this Agreement null and void, the FDIC will return all amounts paid to it under this Agreement by Michigan Mutual.

#### SECTION II: Releases

##### A. Release of Settling Defendant by FDIC.

Effective upon receipt in full of the Settlement Funds plus any accrued interest, and except as provided in Paragraph II.C., the FDIC, for itself and its successors and assigns, hereby releases and discharges Michigan Mutual and its shareholders, officers, board of directors, employees, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Subject Loans.

##### B. Release of FDIC by Michigan Mutual.

Effective simultaneously with the release granted in PARAGRAPH II.A. above, Michigan Mutual, on behalf of itself, and its heirs, executors, administrators, agents,

representatives, successors and assigns, hereby releases and discharges FDIC, and its employees, officers, directors, representatives, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to loans sold to WaMu by Michigan Mutual.

C. Express Reservations From Releases By FDIC.

1. Notwithstanding any other provision, by this Agreement, the FDIC does not release, and expressly preserves fully and to the same extent as if the Agreement had not been executed, any claims or causes of action

a. against Michigan Mutual or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC, WaMu, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC as successor in interest to WaMu or any person or entity other than WaMu;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraph II.A., above.

2. Notwithstanding any other provision, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing or compromising the jurisdiction and authority of the FDIC in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States, through

either the Department of Justice or the United States Attorney's Office for the Eastern District of Michigan or any other federal judicial district. In addition, the FDIC specifically reserves the right to seek court ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, et. seq., if appropriate.

**SECTION III: Representations and Acknowledgements**

A. No Admission of Liability. The undersigned parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any claim.

B. Execution in Counterparts and Facsimile Transmission. This Agreement may be executed in counterparts by one or more of the parties named herein and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all parties hereto; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the party or parties subscribed thereto upon the execution by all parties to this Agreement. Delivery of any executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party hereto or are authorized to sign this Agreement on behalf of the respective party, and that they have the full power and authority to bind such party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and assigns.

D. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of California.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Reasonable Cooperation.

1. The undersigned parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement.

2. Further, Michigan Mutual agrees to cooperate fully with the FDIC in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of the following, all of which shall only relate to the Subject Loans:

a. producing all documents requested by the FDIC, without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to WaMu;

b. making themselves available upon request by the FDIC at reasonable times and places for interviews regarding facts, as determined by the FDIC in its sole discretion, to be relevant to WaMu;

c. appearing to testify, upon request by the FDIC, in any matter determined by the FDIC in its sole discretion, to be related to WaMu, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC, regarding any matter, as determined by the FDIC in its sole discretion, to be relevant to WaMu.

G. Advice of Counsel. Each party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that party by his or her counsel.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6)

[Redacted Signature Box]

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

TITLE: Counsel - FDIC

PRINT NAME: Adam Forester

DATE: Dec 10 - 2012

MICHIGAN MUTUAL, INC.

(b)(6)

[Redacted Signature Box]

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

TITLE: CEO

PRINT NAME: Mark M. Walker

DATE: November 26, 2012

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