

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is made as of this 13th day of December, 2011, by, between and among the following undersigned parties:

Plaintiff, the Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank, Henderson, Nevada, and the Federal Deposit Insurance Corporation, in its corporate capacity (collectively, the "FDIC"), on the one hand, and Defendants Kerry Killinger ("Killinger"), Stephen Rotella ("Rotella"), David Schneider ("Schneider"), Linda Killinger and Esther Rotella, on the other hand (collectively, "Defendants"). Individually, the FDIC and Defendants may be referred to herein as a "Party," and, collectively, as the "Parties."

RECITALS

WHEREAS:

Before September 25, 2008, Washington Mutual Bank ("Bank") was a depository institution;

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

Among the assets to which the FDIC, as receiver, succeeded were any and all of the Bank's claims, demands and causes of actions against its former directors, officers and employees arising from the performance, nonperformance and manner of performance of their respective functions, duties and acts as directors and/or officers of the Bank;

On March 16, 2011, the FDIC filed a complaint for money damages against Defendants, three of whom had served as directors and/or officers of the Bank. Those claims for damages are now pending in the United States District Court for the Western District of Washington (the "District Court") in *The Federal Deposit Insurance Corporation, as Receiver of Washington Mutual Bank v. Killinger et al.*, Docket No. 2:11-cv-00459-MJP (the "Litigation"). Defendants have denied liability in the Litigation;

Defendants have sought coverage for the Litigation under one or more of the following insurance policies:

- (b)(4) Policy No. [REDACTED], with an aggregate limit of \$25,000,000, issued by XL Specialty Insurance Company ("XL");
- (b)(4) Policy No. [REDACTED], with an aggregate limit of \$25,000,000, issued by Federal Insurance Company ("Federal");
- (b)(4) Policy No. [REDACTED], with an aggregate limit of \$10,000,000, issued by Twin City Fire Insurance Company ("Twin City");
- (b)(4) Policy No. [REDACTED], with an aggregate limit of \$5,000,000, issued by Continental Casualty Company ("Continental Casualty");
- (b)(4) Policy No. RNN [REDACTED], with an aggregate limit of \$10,000,000, issued by AXIS Reinsurance Company ("AXIS"); and
- (b)(4) Policy No. [REDACTED], with an aggregate limit of \$25,000,000, issued by Those Certain Underwriters at Lloyd's, London Severally Subscribed To Excess Liability
- (b)(4) Policy No. [REDACTED] ("Lloyd's").

(collectively, these policies shall be referred to as the "Insurance Policies" and the insurers listed above shall be referred to as the "Insurers");

The Parties, through their respective counsel, have engaged in extensive arm's length negotiations that included numerous in-person and telephonic mediation sessions over the course of many months with an experienced mediator, Retired United States District Judge Layn R. Phillips ("Judge Phillips"), as well as extensive additional direct settlement discussions and negotiations among the Parties and with the Insurers;

The Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, distraction and expense of further litigation; and

The Insurers consent and agree to the terms of this Agreement.

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, (i) the Insurers will pay to the FDIC Thirty-Nine Million Five Hundred Seventy-Five Thousand Dollars (\$39,575,000) (the "Insurance Payment"); (ii) Killinger will pay to the FDIC Two Hundred and Seventy-Five Thousand Dollars (\$275,000) (the "Killinger Cash Payment"); (iii) Rotella will pay to the FDIC One Hundred Thousand Dollars (\$100,000) (the "Rotella Cash Payment"); and (iv) Schneider will pay to the FDIC Fifty Thousand Dollars (\$50,000) (the "Schneider Cash Payment"), for a total of \$40 million in cash payments to the FDIC (in aggregate, the "Defendant Payments").

B. The Insurance Payment described in Section I.A. above and any interest earned thereon will be paid out of the Escrow Account (as defined below) to the FDIC, or, if there is no Escrow Account, then the Insurance Payment will be paid directly to the FDIC by check or wire transfer, within ten (10) business days after the later of (i) the Insurer Order (as defined in Section IV below) has been entered and becomes final and non-appealable, (ii) the judgment of dismissal with prejudice in the Litigation becomes final and non-appealable, and (iii) the Insurers' receipt of wire information from the FDIC and an executed Form W-9.

C. The Killinger Cash Payment, the Rotella Cash Payment and the Schneider Cash Payment described in Section I.A above shall each be paid within ten (10) business days after the judgment of dismissal with prejudice in the Litigation becomes final and non-appealable, and such payments shall each be made in immediately available funds by wire transfer to an account designated by the FDIC.

D. Without waiving any other rights that the FDIC may have, in the event that (a) any portion of the Defendant Payments has not been received by the FDIC on or before the date it is due under the terms of this Agreement, (b) the FDIC provides notice of such non-payment to the appropriate representative(s) of the defaulting Party(ies), and copies such notice to all other Parties, in accordance with Section VIII.P. below, and (c) the defaulting Party or Parties fails to cure the payment deficiency within seven (7) business days, then the FDIC (i) shall have 60 days thereafter to declare this Agreement null and void as to all Parties, (ii) shall

have the right to extend the payment due dates under this Agreement for any period of time until it receives all required payments, and/or (iii) shall have the right to enforce this Agreement against the Party or Parties failing to deliver his, her or its respective portion of the Defendant Payments, in which event the non-delivering Party or Parties agree to jurisdiction in the District Court to enforce the terms of this Agreement. Any decision by the FDIC to extend the time period for payments under subsection (ii) herein or to enforce the Agreement under subsection (iii) herein shall not operate to extend the time within which the FDIC may declare the Agreement null and void under subsection (i) herein. Any decision by the FDIC to extend the payment due dates under this Agreement or to accept a portion of the settlement funds shall not prejudice its rights to enforce the terms of this Agreement or to declare this Agreement null and void in accordance with subsection (i) herein by providing written notice of such action to all Defendants; provided, however, that in the event the FDIC declares this Agreement null and void, the FDIC will immediately return all amounts previously paid to it under this Agreement to the Parties and/or to the Insurers which made such payments. In the event that the Insurance Payment is made to an Escrow Account, and the 60-day period in subsection (i) has not expired, the Insurance Payment will not be paid to the FDIC under Section I.B. of this Agreement until the FDIC either (a) confirms receipt of the Killinger Cash Payment, the Rotella Cash Payment and the Schneider Cash Payment or (b) notifies all Parties that it does not intend to enforce its right to terminate this Agreement pursuant to subsection (i) herein based on any non-payment of the Killinger Cash Payment, the Rotella Cash Payment or the Schneider Cash Payment; provided, however, that, in the event the FDIC so notifies the Parties, the FDIC nonetheless retains its right to void this Agreement until it receives the Insurance Payment from the Escrow Account.

E. In addition to the Killinger Cash Payment described in Section I.A. above, Killinger will also pay to the FDIC a cash amount calculated as follows: 100% of the amount of any and all payments actually received by Killinger, if any, net of any applicable taxes (including federal, state, social security and Medicare), from the Washington Mutual, Inc. ("WMI")

bankruptcy estate in connection with his claims under WMI's ETRIP retirement plan (such claim

(b)(4),(b) in the amount of [redacted] plus interest) and under WMI's SERAP retirement plan (such claim (6)

(b)(4),(b) in the amount of [redacted] plus interest), as set forth and described more fully in Killinger's

(b)(4),(b) Proof of Claim No. [redacted] ("Killinger's Bankruptcy Claims"). Killinger's (6)

Bankruptcy Claims do not include Killinger's indemnity claims set forth in Proof of Claim No.

(b)(4),(b) [redacted] (6)

F. In addition to the Rotella Cash Payment described in Section I.A. above, Rotella

will also pay to the FDIC a cash amount calculated as follows: 100% of the amount of any and

all payments actually received by Rotella, if any, net of any applicable taxes (including federal,

state, social security and Medicare), from WMI's bankruptcy estate as set forth and described

more fully in Exhibit B to Rotella's Proof of Claim No. [redacted] (such claim (b)(4),(b) (6)

(b)(4),(b) in the amount of [redacted] plus interest) ("Rotella's Bankruptcy Claim"). Rotella's (6)

Bankruptcy Claim does not include Rotella's retirement benefit or indemnity claims set forth in

(b)(4),(b) Proof of Claim Nos. [redacted] (6)

G. In addition to the Schneider Cash Payment described in Section I.A. above,

Schneider will also pay to the FDIC a cash amount calculated as follows: 100% of the amount of

any and all payments actually received by Schneider, if any, net of any applicable taxes

(including federal, state, social security and Medicare), from WMI's bankruptcy estate based

upon (i) Schneider's Change in Control Agreement (such claim in the amount of [redacted] (b)(4),(b) (6)

plus interest) and (ii) Schneider's bonus claim (such claim in the amount of [redacted] plus (b)(4),(b) (6)

interest), as set forth and described more fully in Proof of Claim No. [redacted] (b)(4),(b) (6)

("Schneider's Bankruptcy Claims," and, together with Killinger's Bankruptcy Claims and

Rotella's Bankruptcy Claim, the "Bankruptcy Claims"). Schneider's Bankruptcy Claims do not

include Schneider's retirement benefit or indemnity claims set forth in Proof of Claim No. [redacted] (b)(4),(b) (6)

H. For purposes of Sections I.E., I.F. and I.G. above, "net of any applicable taxes"

shall mean that Killinger, Rotella and Schneider will deduct from their respective payments to

the FDIC such amounts that each actually pays in taxes resulting from his receipt of his

respective Bankruptcy Claims. Killinger, Rotella and Schneider will provide the FDIC with relevant supporting documentation reasonably requested by the FDIC related to the determination of the taxes owed, and will confer with the FDIC in connection with such determination. The final determination of the taxes owed shall be made by Killinger, Rotella and Schneider in their respective sole discretion; provided, however, that the FDIC reserves the right to challenge the amount of the deduction from their payments to the FDIC on the basis that such deductions are unreasonable in light of the applicable tax laws. Any such dispute shall be fully and finally decided by Judge Phillips in accordance with the dispute resolution procedure set forth in Section VIII.E. below.

I. Defendants' additional payments to the FDIC under Sections I.E., I.F. and I.G. above shall be due within thirty (30) days of receipt of their respective payments from the Debtors' (as defined below) bankruptcy estate, and shall be made in immediately available funds by wire transfer to an account designated by the FDIC. For purposes of this Agreement, "Debtors" is defined as: WMI and WMI Investment Corp., as debtors and debtors in possession, in *In re Washington Mutual, Inc., et al.*, Case No. 08-12229, United States Bankruptcy Court, District of Delaware (the "Bankruptcy Court").

SECTION II: Stipulation and Dismissal

A. Upon execution of this Agreement by each of the undersigned Parties and the entry of the Insurer Order (as defined in Section IV below), the Parties shall promptly file a joint stipulation to dismiss the Litigation with prejudice, with each Party to bear his, her or its own costs.

B. In connection with seeking dismissal with prejudice of the Litigation, the FDIC will support Defendants' pursuit of a final judgment from the District Court that shall contain: (i) a bar order in a form satisfactory to Defendants and the FDIC, which shall, to the fullest extent permitted by federal and state law, permanently and forever bar any claims for contribution or indemnity against any Defendant by any other person or entity arising out of or relating to the facts and circumstances of the Litigation or the matters released herein by the

FDIC (“District Court Bar Order”); and (ii) a finding consistent with RCW 4.22.060 that this settlement was fair and reasonable, the product of arm’s length negotiations, and not the result of collusion (“Fairness Finding”). The Parties agree that this Agreement is not contingent upon the entry by the District Court of a final judgment containing the District Court Bar Order specified in clause (i) of the preceding sentence. If the District Court does not enter a final judgment containing the Fairness Finding in clause (ii) of the first sentence of this Section II.B., the Parties agree to submit the failure of this condition and its effect upon the settlement to Judge Phillips for binding resolution in accordance with the dispute resolution procedure set forth in Section VIII.E. below. The Parties also agree to request that Judge Phillips submit a declaration in support of the proposed Fairness Finding in the final judgment.

C. If Defendants are unable to secure the District Court Bar Order contemplated by Section II.B. above, the FDIC agrees that if (i) the FDIC asserts a claim against any person or entity other than Defendants (“Third-Party Defendant”), (ii) the FDIC obtains a judgment or settlement against such Third-Party Defendant that was not reduced on the basis of comparative fault, apportionment of liability or set-off (“FDIC Judgment or Settlement”), and (iii) such Third-Party Defendant asserts a claim for contribution against any Defendant with respect to the amount of the FDIC Judgment or Settlement, then the FDIC will either obtain a release from such Third-Party Defendant, or take such other action with respect to the FDIC Judgment or Settlement as may be required to ensure that such Defendant pays nothing as contribution for the FDIC Judgment or Settlement.

SECTION III: Releases

A. FDIC’s Release of Defendants. Effective upon receipt in full of the Defendant Payments plus any accrued interest, if applicable, or upon the FDIC’s decision that it does not intend to enforce its right to terminate this Agreement based upon any non-payment of the Defendant Payments as set forth in Section I.D., and except as provided in Section III.B. below, the FDIC, in all capacities, including its corporate capacity, will release all claims, known or unknown, against Defendants, the Insured Releasees (as defined below) and the Insurers with

respect to the specified D&O policies listed in this Agreement: (i) arising out of or relating to Defendants' or the Insured Releasees' conduct as officers, directors, trustees, comptrollers, governors or employees of the Bank or WMI or any of its current or former subsidiaries, (ii) alleged in the Litigation, and/or (iii) that otherwise belong to the FDIC in its capacity as receiver for the Bank under FIRREA, 12 U.S.C. §1821 et seq. The FDIC will not pursue any administrative enforcement proceedings seeking removal, prohibition, civil money penalties or restitution, or take any other actions seeking relief against Defendants arising out of or relating to their conduct as officers, directors, trustees, comptrollers, governors or employees of the Bank or WMI or any of its current or former subsidiaries. "Insured Releasees" is defined as: Defendants or any past, present or future officer, director, trustee, comptroller, governor or employee of WMI or any of its current or former subsidiaries, or any of their lawful spouses or domestic partners.

B. FDIC's Express Reservations From Releases. Notwithstanding any other provision of this Agreement or otherwise, the FDIC does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

1. against Defendants or the Insured Releasees for liability incurred, if any, as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC, the Bank or any other person or entity, including, without limitation, any claims acquired by FDIC as successor in interest to the Bank or any person or entity other than the Bank; and

2. against any person, other than Defendants, currently listed under paragraphs B and C of Exhibit BB to that certain Second Amended and Restated Settlement Agreement, dated as of February 7, 2011, between, among others, WMI and the FDIC, and any amendments thereto (the "Global Settlement Agreement"); and

3. for administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or

regulation against any person other than Defendants; and

4. involving any rights the FDIC may have based upon any validly issued subpoena; and

5. against any person, other than Defendants, who is currently a party in an existing lawsuit in which the FDIC is also a party; and

6. for cross- or counter-claims against any person or entity in a suit or claim brought against the FDIC by such person in the future; and

7. any claims asserting a breach of this Agreement.

C. Defendants' Release of FDIC. Effective simultaneously with the release granted in Section III.A. above, Defendants, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, release and discharge the FDIC in all of its capacities, 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, known or unknown, in law or in equity; provided, however, that Defendants shall not release any claims asserting a breach of this Agreement.

D. Defendants' and Insurers' Release of Indemnification and Subrogation Claims Against WMI. Effective simultaneously with the release granted in Section III.A. above, Defendants release all claims they have or may have against the WMI bankruptcy estate for indemnification of attorneys' fees, costs and settlement payments made by Defendants, or on their behalf, in connection with their defense and settlement of the FDIC's investigation of Defendants or the Litigation. Effective simultaneously with the release granted in Section III.A. above, the Insurers release their subrogation rights against the WMI bankruptcy estate with respect to defense fees, costs and settlement payments made on behalf of Defendants in connection with the defense and settlement of the FDIC's investigation of Defendants and the Litigation. Defendants and the Insurers also covenant not to file any claim or lawsuit that arises out of or relates to their defense and settlement of the FDIC's investigation of Defendants or the Litigation or that may implicate the judgment or settlement reduction terms in Section 3.6 of the

Global Settlement Agreement.

E. No Release to WMI for Defendants' Bankruptcy Claims or Under Global Settlement Agreement. This Agreement is not intended to and will not operate to release WMI with respect to its obligations to pay any bankruptcy claim by Killinger, Rotella or Schneider or any obligations due to the FDIC pursuant to the Global Settlement Agreement.

F. No Release of Other Government Agencies. Notwithstanding any other provision, this Agreement does not waive any claims or actions that could be brought by any agency or instrumentality of the United States government other than the FDIC.

G. Express Reservation of Rights of Bond Carrier. Nothing in this Agreement shall release or prejudice the rights of any underwriter of any financial institution bond, fidelity bond, or banker's blanket bond on which the Bank is an insured, to bring any claims by way of subrogation to the claims of the FDIC, against (a) any directors, officers or employees of the Bank, including, but not limited to, Killinger, Rotella and Schneider, in their capacity as directors, officers or employees of the Bank or in any other capacity, or (b) any other individual or entity for dishonest or fraudulent conduct that directly caused any losses to the Bank. Nothing herein shall be construed to admit the existence of, or to establish, any claim or cause of action on the part of any financial institution bond carrier or any other bond underwriter by way of subrogation to claims of the FDIC that would not exist had this Agreement not been executed.

SECTION IV: Bankruptcy Court Orders

To the extent not previously done by the time this Agreement is executed, the Parties will move promptly for an order from the Bankruptcy Court authorizing the Insurers to pay the Insurance Payment into an interest bearing escrow account ("Escrow Account") in accordance with the provisions of this Agreement ("Interim Order"). The Interim Order will contain, in substantially the same or materially equivalent language and form, the following:

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, to the extent applicable, is hereby modified so as to permit, and the Insurers are hereby authorized, to the extent necessary, to pay the Insurance Payment into an interest

bearing escrow account (the "Escrow Account") from which escrow fees will be deducted; and,

ORDERED that the Escrow Account will remain in effect until the first of the following occurs: (1) this Court issues a final and non-appealable Order discharging the Insurers from liability to Insured Releasees or other claimants for having paid the Insurance Payment and the District Court has entered a judgment of dismissal with prejudice in the Litigation that has become final and non-appealable; (2) thirty (30) days after this Court denies a request to discharge the Insurers from any liability to any Insured Releasees or other claimants as required by the Insurer Order as defined below; or (3) upon entry of an order by this Court refusing to allow the settlement to go forward for any reason other than subparagraph (2) above.

The Insurers will pay the Insurance Payment into the Escrow Account within ten (10) business days after the later of (1) the entry of the Interim Order, (2) the execution of an escrow agreement, mutually agreeable to the FDIC and the Insurers, and (3) the Insurers' receipt of wire information from the FDIC and an executed Form W-9 (the "Escrow Agreement"). The FDIC will have the right to consent to the Insurers' selection of an Escrow Account agent, such consent not to be unreasonably withheld. The Escrow Agreement also will provide that any accrued interest will be for the benefit of the FDIC unless the escrowed funds are returned to the Insurers pursuant to the terms of this Agreement or the Escrow Agreement, as applicable. Any escrow fees are to be paid out of the Insurance Payment and any accrued interest thereon. To the extent the settlement is not finalized and the amount returned from the Escrow Account to the Insurers is less than the Insurance Payment, the shortfall will be deemed "Loss" under the terms of the Directors' and Officers' Insurance Policies.

If the Bankruptcy Court refuses to enter the Interim Order for any reason, then the Insurers agree that the Insurance Payment will not be committed to, or paid on behalf of, any other insured until the first of the following occurs: (1) thirty (30) days after the Bankruptcy Court denies a request to discharge the Insurers from any liability to any Insured Releasees or other claimants as required by the Insurer Order (as defined below); or (2) upon entry of an order by the Bankruptcy Court refusing to allow the settlement to go forward for any reason other than as provided in clause (1) of this paragraph.

Within five (5) business days after the execution of this Agreement, the Parties and/or

Debtors will seek an order from the Bankruptcy Court allowing the settlement to go forward and which authorizes the Insurers to make the Insurance Payment and specifically provides that, on and effective as of the order, the Insurers will be deemed discharged from any liability to any Insured Releasees or other claimants for having paid the Insurance Payment (the "Insurer Order"). Specifically, the Insurer Order will contain, in substantially the same or materially equivalent language and form, the following provisions:

ORDERED that the automatic stay, extant pursuant to section 362 of the Bankruptcy Code, to the extent applicable, is hereby modified so as to permit, and the Insurers are hereby authorized, to the extent necessary, to pay the Insurance Payment [*if applicable*: from the Escrow Account with all earned interest] to the FDIC in accordance with the terms of the Settlement Agreement; and

ORDERED that, on and effective as of the date of the payment by the Insurers of the Insurance Payment [*if applicable*: into the Escrow Account], the Insurers will be deemed discharged from any liability to all Insured Releasees (as defined by the Settlement Agreement) or other claimants for having paid the Insurance Payment.

Defendants, the FDIC and the Insurers will support and take all reasonable actions that may be required to obtain the Interim Order and the Insurer Order. If the Bankruptcy Court denies a motion to enter the Insurer Order, or has neither denied nor entered the Insurer Order by February 24, 2012, the Parties and the Insurers agree to submit to non-binding mediation before Judge Phillips within thirty (30) days thereafter to address whether any additional efforts should be undertaken to obtain and/or modify the Insurer Order and whether modifications should be made to this Agreement. If the Bankruptcy Court does not ultimately enter the Insurer Order and it does not become final and non-appealable, this Agreement shall become null and void, except for any provisions related to the return of the Insurance Payment. In the event this Agreement becomes null and void and if the Insurance Payment has been made into the Escrow Account, the escrow agent will return the Insurance Payment, together with any interest earned thereon, less any fees and costs of the escrow agent, to the Insurers in accordance with written instructions to be provided to the escrow agent.

SECTION V: Defendants' Pursuit of Bankruptcy Claims

A. Killinger, Rotella and Schneider will take all reasonable actions to pursue their respective Bankruptcy Claims described in Sections I.E., I.F. and I.G. above in order to collect the full amount to which they are lawfully entitled. Killinger, Rotella and Schneider will, upon request by the FDIC, promptly provide to the FDIC all relevant, non-privileged information and documents regarding their Bankruptcy Claims. Killinger, Rotella and Schneider may not compromise, impair, reduce, offset or settle their respective Bankruptcy Claims without the express written consent of the FDIC, such consent not to be unreasonably withheld. If any dispute arises about whether Killinger, Rotella or Schneider or the FDIC have complied with the provisions of this Section V, the Parties agree to resolve any such disputes before U.S. District Judge Phillips in accordance with the dispute resolution procedure set forth in Section VIII.E. below. In resolving any such dispute, Judge Phillips shall consider whether Killinger, Rotella and Schneider would incur an undue burden in their additional expenditure of fees and costs and whether such additional expenditures would be cost-effective given the probable monetary recovery on their claims; provided, however, that in making any such determination, no weight shall be given to whether it would be advantageous for Killinger, Rotella and Schneider to settle or offset any portion of their Bankruptcy Claims to gain an advantage for themselves in connection with their defense or prosecution of any other claim, or to eliminate any amounts they may owe to others. A breach of this provision shall not affect the validity and enforceability of this Agreement or the releases provided herein. Nothing in this Agreement shall be interpreted to mean that Killinger, Rotella or Schneider are guaranteeing any outcome (*i.e.*, the FDIC assumes all risks of an unsuccessful outcome) or be interpreted to require Killinger, Rotella or Schneider to appeal any adverse verdict in the Bankruptcy Court.

B. Rotella shall bear the costs of the prosecution of Rotella's Bankruptcy Claim; provided, however, that if Rotella actually receives from WMI's bankruptcy estate more than \$3,819,127 with respect to the Bankruptcy Claims (prior to the deduction of any applicable taxes), then Rotella may deduct from the cash amount payable to the FDIC as a result of such

recovery Rotella's reasonable attorneys' fees and costs expended directly in connection with the prosecution of Rotella's Bankruptcy Claim (and not expended in defense of any claim(s) brought by WMI or other parties against Rotella or the prosecution of any other claim(s)), provided that, in such circumstance:

- (1) the amount payable to the FDIC will be at least \$3,819,127, less any applicable taxes (including federal, state, social security and Medicare); and
- (2) the FDIC shall have the opportunity to review the attorneys' fees and costs for reasonableness, with any disputes as to reasonableness submitted to Judge Phillips for binding resolution in accordance with the dispute resolution procedure set forth in Section VIII.E. below.

C. Schneider shall bear the costs of the prosecution of Schneider's Bankruptcy Claims; provided, however, that if Schneider actually receives from WMI's bankruptcy estate more than \$1,631,562 with respect to the Bankruptcy Claims (prior to the deduction of any applicable taxes), then Schneider may deduct from the cash amount payable to the FDIC as a result of such recovery Schneider's reasonable attorneys' fees and costs expended directly in connection with the prosecution of Schneider's Bankruptcy Claims (and not expended in defense of any claim(s) brought by WMI or other parties against Schneider or the prosecution of any other claim(s)), provided that, in such circumstance:

- (1) the amount payable to the FDIC will be at least \$1,631,562, less any applicable taxes (including federal, state, social security and Medicare); and
- (2) the FDIC shall have the opportunity to review the attorneys' fees and costs for reasonableness, with any disputes as to reasonableness submitted to Judge Phillips for binding resolution in accordance with the dispute resolution procedure set forth in Section VIII.E. below.

SECTION VI: FDIC's Motion to Intervene and Dismiss

If any other person or entity files an action or asserts a claim against Defendants or any Insured Releasee that involves or relates to their conduct as officers, directors, trustees,

comptrollers, governors or employees of the Bank or any of its current or former subsidiaries, or as the lawful spouses or domestic partners of any of the foregoing, and such claim belongs exclusively to the FDIC as receiver for the Bank under FIRREA, 12 U.S.C. § 1821 et seq. or other applicable state or federal law (including any action or claim asserted by WMI, any person or entity acting on behalf of WMI, the Official Committee of Unsecured Creditors or the Official Committee of Equity Holders), then the FDIC will move to intervene and dismiss such action or claim. The FDIC shall have the sole discretion to prosecute any appeal from an order denying the FDIC's motion to intervene or dismiss; provided, however, that nothing in this Section shall preclude any Defendants from seeking an appeal of any order denying the FDIC's motion to intervene or dismiss if the FDIC elects not to pursue an appeal.

SECTION VII: Allocation of Settlement Proceeds

The proceeds of the above settlement shall be allocated by the FDIC among the losses that the Bank incurred on its single family residential mortgage loan portfolios involving HELOC, Option ARM and Subprime loans originated or acquired by the Bank between September 25, 2005 and September 25, 2008, which loans were held by the Bank at the Receiver Date, on a *pro rata* basis based upon the amount of loss, if any, associated with each such loan. The allocation shall have no effect on any of the releases provided for under Section III of this Agreement and shall not be construed to limit those releases in any way.

SECTION VIII: Representations, Acknowledgements and Miscellaneous Provisions

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that this Agreement and all negotiations, discussions and proceedings in connection with this settlement shall not be deemed or constitute an admission by Defendants of fault, liability or wrongdoing as to any facts or claims alleged or asserted in the Litigation or in any other actions or proceedings, and shall not be received in evidence or otherwise used by any person in the Litigation, or in any other action or proceeding for any purpose, except in connection with a proceeding to enforce this Agreement.

B. Execution in Counterparts. 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. Signed signature pages may be delivered by facsimile, e-mail or pdf transmission, which will constitute complete delivery without the necessity of delivery of originally signed signature pages.

C. Binding Effect. Each of the undersigned 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. However, if this Agreement does not become effective or is voided for any of the reasons set forth in this Agreement, then the Parties will revert to their respective litigation positions as if this Agreement never existed.

D. Tolling of Limitations in the Event of Dismissal. In the event (i) the Court dismisses the Litigation subject to reinstatement prior to the completion of any contingencies to final settlement or (ii) after any dismissal of the Litigation, this Agreement does not become effective or is voided for any of the reasons set forth in this Agreement, the Parties agree that any applicable statutes of limitations will be tolled from the date of the filing of the FDIC's March 16, 2011, Complaint in the Litigation through the date of any re-filing of the FDIC's Complaint or reinstatement of the Litigation.

E. Dispute Resolution. Where this Agreement provides that particular disputes be submitted to Judge Phillips for resolution, such disputes shall be resolved first by way of non-binding expedited telephonic mediation and, if unsuccessful, then by way of final, binding, nonappealable resolution by Judge Phillips. If Judge Phillips is unable to fulfill his obligations under this Section, the parties shall mutually select another person or persons in his place. The

costs for such dispute resolution will be split evenly among the Parties and/or Insurers involved in the dispute.

F. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable Federal laws and the laws of the State of Washington without regard to its internal choice-of-law rules.

G. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes and preempts any prior agreements and understandings concerning the subject matter hereof. This Agreement may not be amended or modified except by another written instrument signed by the Party or Parties to be bound thereby.

H. No Construction Against Drafter. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Agreement is the result of arm's length negotiations among the Parties, and all Parties have contributed substantially and materially to the preparation of this Agreement.

I. Specific Representations, Warranties and Disclaimers. The Parties expressly acknowledge that, in determining to settle the claims released herein, the FDIC has reasonably and justifiably relied upon the accuracy of financial information in the financial statement and affidavit forms submitted by Killinger, Rotella, and Schneider. If, in their financial statement and affidavit forms submitted to the FDIC, Killinger, Rotella, or Schneider has failed to disclose any asset or group of related assets with a value in excess of \$25,000 owned by Killinger, Rotella, or Schneider, respectively, and not otherwise disclosed to the FDIC prior to the execution of this Agreement, such asset or group of related assets will be forfeited to the FDIC; provided, however, that any such nondisclosure of an asset or group of related assets to the FDIC shall not have been the result of inadvertent error.

J. Reasonable Cooperation.

The undersigned Parties and the Insurers agree to cooperate in good faith to

effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording and entry of any documents necessary to conclude the Litigation and to otherwise perform the terms of this Agreement.

K. Consent of Insurers. Within three (3) business days after this Agreement is executed by all of the Parties, each of the Insurers will execute and deliver a signed writing in the form attached hereto as Exhibit A; otherwise, this Agreement may be deemed null and void by any Party hereto. Such consent may be electronically delivered.

L. Press Release. The Parties will use their best efforts to reach agreement on both the content and timing of any press releases. Any press releases issued or other statements made to the press concerning this settlement shall contain no disparaging statements.

M. No Confidentiality. The Parties acknowledge and agree that this Agreement is a public document that will need to be disclosed pursuant to applicable laws and regulations.

N. 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.

O. Construction. The descriptive headings of this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

P. Notices. If any Party is required to give notice to another Party under this Agreement, such notice shall be (i) delivered personally, (ii) sent by Federal Express (or another recognized overnight or two-day courier) requesting next or second business day delivery, (iii) sent by facsimile, or (iv) sent by United States certified or registered mail, postage prepaid, return receipt requested. Any such notice shall be deemed given when (i) so delivered personally, (ii) if sent by express courier, one or two business days (as the case may be) following delivery to the courier, (iii) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, or, if not, then on the next business day, or (iv) if sent by certified or registered mail, three business days after the date of

deposit in the United States mail to the respective address of the Party as set forth below, with copies sent to the persons indicated below:

If to the FDIC:	Barry S. Rosen Reed Smith LLP 10 S. Wacker Dr., 40 th Floor Chicago, IL 60606 Telephone: (312) 207-6483 Facsimile: (312) 207-6400
	Leonard J. DePasquale Supervisory Counsel Federal Deposit Insurance Corporation 3501 North Fairfax Drive, VS-B-7058 Arlington, VA 22226 Telephone: (703) 562-2063
If to Defendants Kerry and Linda Killinger:	Jerome F. Birn, Jr. Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, California 94304 Telephone: (650) 493-9300 Facsimile: (650) 493-6811
If to Defendants Stephen and Esther Rotella and David Schneider:	Barry R. Ostrager Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, New York 10017-3954 Telephone: (212) 455-3093 Facsimile: (212) 455-2502

or to such other address as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

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
as Receiver for Washington Mutual Bank

(b)(6) Date: December 14, 2011

BY: 

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

FEDERAL DEPOSIT INSURANCE CORPORATION

(b)(6) Date: December 14, 2011

BY: 

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

Date: December __, 2011

BY: KERRY KILLINGER

PRINT NAME:

Date: December __, 2011

BY: STEPHEN ROTELLA

PRINT NAME:

Date: December __, 2011

BY: DAVID SCHNEIDER

PRINT NAME:

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
as Receiver for Washington Mutual Bank

Date: December __, 2011

BY: _____

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

FEDERAL DEPOSIT INSURANCE CORPORATION

Date: December __, 2011

BY: _____

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

(b)(6)

Date: December 13, 2011

[Redacted Signature]

BY: KERRY KILLINGER

PRINT NAME: Kerry Killinger

Date: December __, 2011

BY: STEPHEN ROTELLA

PRINT NAME:

Date: December __, 2011

BY: DAVID SCHNEIDER

PRINT NAME:

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
as Receiver for Washington Mutual Bank

Date: December __, 2011

BY: _____

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

FEDERAL DEPOSIT INSURANCE CORPORATION

Date: December __, 2011

BY: _____

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

Date: December __, 2011

BY: KERRY KILLINGER

(b)(6)

Date: December 13, 2011

BY: ^DSTEPHEN ROTELLA

Date: December 13, 2011

BY: DAVID SCHNEIDER

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
as Receiver for Washington Mutual Bank

Date: December __, 2011

BY: _____

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

FEDERAL DEPOSIT INSURANCE CORPORATION

Date: December __, 2011

BY: _____

TITLE: Supervisory Counsel, FDIC

PRINT NAME: Leonard J. DePasquale

Date: December __, 2011

BY: KERRY KILLINGER

Date: December 13, 2011

BY: STEPHEN ROTELLA

(b)(6)

Date: December 13, 2011

[Redacted Signature Box]

BY: DAVID SCHNEIDER

(b)(6)

Date: December 13, 2011



BY: LINDA KILLINGER

~~LINDA KILLINGER~~

PRINT NAME:

Date: December __, 2011

BY: ESTHER ROTELLA

PRINT NAME:

Date: December __, 2011

BY: LINDA KILLINGER

(b)(6)

Date: December 13, 2011



BY: ESTHER ROTELLA

Exhibit A

In connection with the Settlement and Release Agreement (the "Agreement") executed on December ___, 2011 by the Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, Henderson, Nevada, and the Federal Deposit Insurance Corporation, in its corporate capacity (collectively, the "FDIC"), on the one part, and Kerry Killinger, Stephen Rotella, David Schneider, Linda Killinger, and Esther Rotella (the "Insured Defendants"), on the other part, the Insured Defendants have sought coverage under one or more of the following insurance policies:

- (b)(4) • Policy No. [REDACTED], with an aggregate limit of \$25,000,000, issued by XL Specialty Insurance Company ("XL");
- (b)(4) • Policy No. [REDACTED], with an aggregate limit of \$25,000,000, issued by Federal Insurance Company ("Federal");
- (b)(4) • Policy No. [REDACTED], with an aggregate limit of \$10,000,000, issued by Twin City Fire Insurance Company ("Twin City");
- (b)(4) • Policy No. [REDACTED], with an aggregate limit of \$5,000,000, issued by Continental Casualty Company ("Continental Casualty");
- (b)(4) • Policy No. [REDACTED], with an aggregate limit of \$10,000,000, issued by AXIS Reinsurance Company ("AXIS");
- (b)(4) • Policy No. [REDACTED], with an aggregate limit of \$25,000,000, issued by Those Certain Underwriters at Lloyd's, London Severally Subscribed To Excess Liability
- (b)(4) Policy No. [REDACTED] ("Lloyd's").

(XL, Federal, Twin City, Continental Casualty, AXIS, and Lloyd's are collectively the "Insurers"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

The Insurers have reviewed the Agreement and consent to the Insured Defendants entering into the settlement on the terms stated in the Agreement, including, without limitation, the provisions of Section III.D. concerning the insurers' release of subrogation rights.

The Insurers hereby agree that the Insurance Payment will not be committed to, or paid on behalf of, any other insured, except in accordance with the specific terms and conditions set forth in the Agreement.

[Signature Page Follows.]

IN WITNESS WHEREOF, the FDIC and the undersigned Insurers, themselves or through their duly authorized representatives, have caused this Exhibit A to the Agreement to be executed as of the dates indicated below:

For the Insurers:

XL Specialty Insurance Company

By: _____
Name:
Position:
Date:

Chubb & Son, a Division of Federal Insurance Company

By: _____
Name:
Position:
Date:

Twin City Fire Insurance Company

By: _____
Name:
Position:
Date:

AXIS Reinsurance Company

By: _____
Name:
Position:
Date:

Continental Casualty Company

By: _____
Name:
Position:
Date:

Lloyd's Underwriters and Companies

By: _____
Name:
Position:
Date:

For the FDIC:

Federal Deposit Insurance Corporation

By:

Name: *Leonard J. DePasquale*
Position: *SUPERVISORY COUNSEL, FDIC*
Date: *12-14-11*

(b)(6)