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THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GARY BUUS, et al., individually and on behalf )  
of all others similarly situated, )

Plaintiffs, )

v. )

WAMU PENSION PLAN, et al., )

Defendants. )

No. 07-CV-00903 MJP

**NAMED PLAINTIFFS' AND  
DEFENDANTS' JOINT MOTION FOR  
PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT,  
APPROVAL OF NOTICE PLAN, AND  
TIME FOR FINAL APPROVAL  
HEARING**

**Noted for Consideration: June 30, 2010**

Undersigned counsel for Named Plaintiffs, on behalf of themselves and the subclasses, and the Named Defendants file this joint motion for preliminary approval of the class action settlement that Named Plaintiffs have reached with defendants the Washington Mutual Pension Plan and the Washington Mutual Plan Administration Committee, together with Washington Mutual, Inc., as set forth in the Buus Class Action Settlement Agreement. The parties file this motion pursuant to Federal Rule of Civil Procedure 23, and request the Court enter (1) the proposed Preliminary Approval Order, (2) approve the proposed Class Notice and Publication Notice, and (3) set a date for a Final Approval Hearing. In support of this joint motion for preliminary approval of settlement, the parties jointly file (1) a copy of the executed Settlement Agreement, attached as Exhibit 1 to this motion, (2) the proposed Preliminary Approval Order, attached as Exhibit 2 to this motion (3) the proposed Class Notice and the Publication Notice,

PLAINTIFFS' AND DEFENDANTS' JOINT MOTION FOR  
PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT,  
APPROVAL OF NOTICE PLAN, AND TIME FOR FINAL  
APPROVAL HEARING

LAW OFFICES OF  
**KELLER ROHRBACK L.L.P.**  
1201 THIRD AVENUE, SUITE 3200  
SEATTLE, WASHINGTON 98101-3052  
TELEPHONE: (206) 623-1900  
FACSIMILE: (206) 623-3384

1 attached as Exhibit 3 to this motion. Named Plaintiffs also file herewith their memorandum of  
2 law supporting Preliminary Approval of the Proposed Settlement, Approval of the Notice Plan  
3 and Time for a Final Approval Hearing.

4 DATED this 30th day of June, 2010.

5 KELLER ROHRBACK L.L.P.

6  
7 By s/Derek W. Loeser

8 Lynn Lincoln Sarko, WSBA #16569  
9 Derek W. Loeser, WSBA #24274  
10 Amy Williams-Derry, WSBA #28711  
11 Karin B. Swope, WSBA #24015  
12 Gretchen S. Obrist, WSBA #37071  
13 1201 Third Avenue, Suite 3200  
14 Seattle, WA 98101  
15 Telephone: (206) 623-1900  
16 Facsimile: (206) 623-3384 (FAX)  
17 lsarko@kellerrohrback.com  
18 dloeser@kellerrohrback.com  
19 awilliams-derry@kellerrohrback.com  
20 kswope@kellerrohrback.com  
21 gobrist@kellerrohrback.com

*Attorneys for Plaintiffs and the Sub-Classes*

22 By s/Ladd B. Leavens

23 Ladd B. Leavens WSBA No. 11501  
24 Fred B. Burnside WSBA No. 32491  
25 DAVIS WRIGHT TREMAINE LLP  
26 1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
Telephone: (206) 757-8082  
laddleavens@dwt.com

By s/Anne E. Rea

Anne E. Rea  
Rachel Blum Niewoehner  
SIDLEY AUSTIN LLP  
One South Dearborn Street  
Chicago, IL 60603  
Telephone: (312) 853-7588  
area@sidley.com  
rniewoehner@sidley.com

*Attorneys for Defendants*

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 30, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all known counsel of record, listed below:

Ladd B. Leavens, Fred B. Burnside, Anne E. Rea, Danielle J. Carter and Rachel Blum Niewoehner.

DATED this 30th day of June, 2010.

s/ Derek W. Loeser

---

Karin B. Swope, WSBA #24015  
KELLER ROHRBACK L.L.P.  
1201 3rd Avenue, Suite 3200  
Seattle, WA 98101  
Tel: (206) 623-1900  
Fax: (206) 623-3384  
kswope@kellerrohrback.com

**EXHIBIT 1**

**to**

**NAMED PLAINTIFFS' AND DEFENDANTS' JOINT MOTION  
FOR PRELIMINARY APPROVAL OF PROPOSED  
SETTLEMENT, APPROVAL OF NOTICE PLAN, AND TIME  
FOR FINAL APPROVAL HEARING**

**(Class Action Settlement Agreement)**

EXECUTION COPY – June 29, 2010

## BUUS CLASS ACTION SETTLEMENT AGREEMENT

BUUS CLASS ACTION SETTLEMENT AGREEMENT (the “Agreement”), dated as of June 29, 2010, by and among the Named Plaintiffs in the Buus Action, for and on behalf of themselves and the Settlement Class (each as defined below), Washington Mutual, Inc. (“WMI”), the Washington Mutual Pension Plan Administration Committee (the “PAC”), and the WaMu Pension Plan. The Named Plaintiffs, WMI, the PAC, and the WaMu Pension Plan are sometimes hereafter collectively referred to as the “Settling Parties”.

### RECITALS

A. On or about June 12, 2007, certain of the Named Plaintiffs, on behalf of participants in the WaMu Pension Plan, commenced litigation (the “Buus Action”), styled Buus, et. al. v. WaMu Pension Plan, et al., Case No. 07-903 (W.D. Wa.), currently pending before the Honorable Marsha J. Pechman in the United States District Court for the Western District of Washington (the “District Court”), and alleged that the WaMu Pension Plan’s cash balance formula for calculating pension benefits violates the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* (“ERISA”) and that the WaMu Pension Plan failed to comply with ERISA’s notice and disclosure provisions.

B. By motion, dated September 27, 2007, the WaMu Pension Plan and the PAC, each of which is named as a defendant in the Buus Action (together, the “Named Defendants”), sought to dismiss the Amended Class Action Complaint, dated June 29, 2007 (the “Amended Complaint”) filed in the Buus Action (the “Dismissal Motion”).

C. Pursuant to an order, dated December 18, 2007, the District Court held that the WaMu Pension Plan is not discriminatory because it does not reduce the rate of benefit accrual on the basis of age, and dismissed all claims in the Amended Complaint except for Named Plaintiffs’ claim that the WaMu Pension Plan failed to provide proper notice of reduction in rate of future benefit accrual in violation of ERISA § 204(h).

D. On April 16, 2008, the Named Plaintiffs filed a Second Amended Complaint adding Thomas Schoenleber as a Named Plaintiff.

E. On April 30, 2008, the Named Defendants filed their answer and affirmative defenses to the Amended Complaint.

F. On July 24, 2008, the District Court granted in part and denied in part Named Plaintiffs’ motion for class certification and certified four subclasses (defined herein as the “Certified Class”) pursuant to Rule 23 of the Federal Rules of Civil Procedure (the “Class Certification Order”).

G. On August 7, 2008, the Named Plaintiffs filed a motion to amend the class certification order to include two additional subclasses relating to, (i) the 1998 Great Western merger and transition from Great Western’s cash balance formula to the WaMu Pension Plan’s cash balance formula, and (ii) the 1999 merger and transition of the H.F. Ahmanson & Company

Retirement Plan benefit formula into the WaMu Pension Plan's cash balance formula. The Motion sought to add Named Plaintiff Bryan Buck as a class representative for the H.F. Ahmanson Subclass.

H. On or about September 16, 2008, Named Plaintiffs and Named Defendants filed cross-motions for summary judgment.

I. On September 25, 2008, by order number 2008-36, the Director of the Office of Thrift Supervision appointed the Federal Deposit Insurance Corporation (the "FDIC Receiver") as receiver for Washington Mutual Bank ("WMB") and advised that the FDIC Receiver was immediately taking possession of WMB's assets.

J. Pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated September 25, 2008, as amended, modified or supplemented prior to the date hereof (the "Purchase Agreement"), the FDIC Receiver (1) purportedly sold substantially all of the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank, N.A. ("JPMC"), and (2) JPMC assumed certain of WMB's obligations.

K. On September 26, 2008 (the "Petition Date"), WMI and WMI Investment Corp. ("WMI Investment" and collectively with WMI the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), as jointly administered, In re Washington Mutual, Inc., et al., Case No. 08-12229 (MFW) (the "Chapter 11 Cases").

L. On October 2, 2008, the District Court entered an order staying the Buus Action for thirty days and directing the parties thereto to submit a joint status report at the end of such period. Subsequently, Named Plaintiffs, together with Named Defendants, filed status reports at the direction of the District Court informing the District Court of, inter alia, the status of the Chapter 11 Cases and the corresponding litigation between the Debtors, the FDIC, in its corporate capacity and as FDIC Receiver, and JPMC relating to, among other issues, the disposition of the WaMu Pension Plan and the ownership of the Debtors' other significant assets.

M. On October 15, 2008, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee"). On January 11, 2010, the U.S. Trustee appointed an official committee of WMI's equity security holders (the "Equity Committee").

N. By order, dated January 30, 2009, the Bankruptcy Court established March 31, 2009 at 5:00 p.m. (Eastern Time) (the "Bankruptcy Bar Date") as the date and time by which all proofs of claim against the Debtors and their chapter 11 estates must be filed.

O. Prior to the Bankruptcy Bar Date, the following proofs of claim were filed against the Debtors in the Chapter 11 Cases with respect to the claims asserted in the Buus Action (collectively, the "Class Claims"):

<u>Claim No.</u>	<u>Claimant</u>
1950	Named Plaintiff Thomas Schoenleber, individually and on behalf of the certified class.
1951	Proposed Class Representative Bryan Buck, individually and on behalf of a class of similarly situated persons and on behalf of the WaMu Pension Plan and its predecessor, the H.F. Ahmanson & Company Retirement Plan.
1952	Gary Buus, Sidney Flor, Kellie Plumb, Thomas Schoenleber, and Margaret Weber on behalf of themselves, and a certified class of persons similarly situated, and on behalf of the WaMu Pension Plan.
1957	Named Plaintiff Bryan Buck, individually and on behalf of the WaMu Pension Plan and the putative subclass of the H.F. Ahmanson & Company Retirement Plan.
1959	Named Plaintiff Margaret Weber, individually and on behalf of the certified class.
1972	Named Plaintiff Kellie Plumb, individually and on behalf of the certified class.
1973	Sidney Flor, individually and on behalf of the certified class.
2504	Named Plaintiff Gary Buus, individually and on behalf of the certified class.
2513	Audrey Schulman, former Named Plaintiff and dismissed for lack of standing by the District Court, individually.

P. The Debtors dispute the Class Claims, including, without limitation, the allowance, classification and priority thereof.

Q. On March 24, 2009, JPMC commenced litigation against the Debtors by filing a Complaint, styled JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc., et al., Adversary

Pro. No. 09-50551(MFW), in the Bankruptcy Court, asserting claims against the Debtors with respect to assets that JPMC claims to have acquired pursuant to the Purchase Agreement (the "JPMC Action"), including claims relating to the WaMu Pension Plan. Specifically, in the JPMC Action, JPMC seeks to assume sponsorship of the WaMu Pension Plan, without assuming responsibility for the Buus Action. On May 29, 2009, the Debtors filed an answer and counterclaims. JPMC filed a motion to dismiss such counterclaims, which motion was denied by the Bankruptcy Court on August 24, 2009. Certain parties in interest have intervened in the JPMC Action.

R. On September 1, 2009, Named Plaintiffs filed a motion for relief from the automatic stay (the "Stay Relief Motion") for the purpose of prosecuting the Buus Action and asserted that prosecution of the Buus Action would not impact the Debtors' estates. The Stay Relief Motion was timely opposed by the Debtors. WMI contended that the prosecution of the Buus Action should be postponed until the dispute regarding the sponsorship of the WaMu Pension Plan with JPMC is resolved so that the proper party in interest could take responsibility for defending claims asserted in the Buus Action.

S. In an effort to facilitate a resolution of the outstanding issues, Named Plaintiffs and the Debtors agreed to adjourn the hearing to consider the Stay Relief Motion pending the outcome of their settlement discussions. As of the date hereof, the Buus Action continues to be stayed.

T. The Settling Parties are desirous of promptly and fully resolving and settling, with finality, all of the claims asserted by the Named Plaintiffs, for themselves and on behalf of the Settlement Class, against the WaMu Pension Plan and the PAC, and the Debtors are desirous of promptly and fully resolving and settling with finality such claims, including, without limitation, the Class Claims and the Employee Claims.

U. The Settling Parties have reached a settlement by and through their respective undersigned counsel on the terms and conditions set forth in this Agreement.

V. The Settling Parties executed the Agreement on June 17, 2010. The Settling Parties subsequently determined that Audrey Schulman should be a Named Plaintiff on behalf of the WaMu Pension Plan and the putative 1998 subclass Great Western Cash Balance Plan. Accordingly, the Settling Parties are amending and restating the Agreement to reflect such change as of the date set forth above.

NOW, THEREFORE, the Settling Parties, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

AGREEMENT  
ARTICLE I

RECITALS/DEFINITIONS

Section 1.1. Recitals. The recitals set forth above are incorporated by reference and are explicitly made part of this Agreement.

Section 1.2. Definitions. As used in this Agreement, capitalized terms shall have the meanings provided below, unless defined elsewhere in the Agreement:

(a) "Affiliate" shall mean any entity which owns or controls, is owned or controlled by, or is under common ownership or control with, a Person. For purposes of this definition, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

(b) "Bankruptcy Court Approval Order" shall mean the order of the Bankruptcy Court, in form and substance satisfactory to each of the Settling Parties, providing the relief described in Section 3.4 hereof.

(c) "Case Contribution Awards" shall mean payment of \$10,000 each to Gary Buus, Sidney John Flor, Kellie Plumb, Thomas Schoenleber, Audrey Schulman, and Margaret Weber and \$5000 to Bryan Buck.

(d) "Certified Class" shall mean collectively, the four subclasses certified by the District Court pursuant to the July 24, 2008 Certification Order, as follows: (i) all participants, whether active, inactive or retired, their beneficiaries and estates, who were participants in and entitled to accrue benefits under the WaMu Pension Plan immediately prior to January 1, 1987, and whose accrued benefits or pension benefits are based in whole or in part on the WaMu Pension Plan's cash balance formula, from January 1, 1987 to the present, (ii) all participants, whether active, inactive or retired, their beneficiaries and estates, who were participants in and entitled to accrue benefits under the Great Western Retirement Plan immediately prior to January 1, 1997, and whose accrued benefits or pension benefits are based in whole or in part on the cash balance formulas of the Great Western Retirement Plan and/or the WaMu Pension Plan, from January 1, 1997 to the present, (iii) all participants, whether active, inactive or retired, their beneficiaries and estates, who were participants in and entitled to accrue benefits under the Dime Bancorp, Inc. Retirement Plan immediately prior to April 1, 2002, and whose accrued benefits or pension benefits are based in whole or in part on the WaMu Pension Plan's cash balance formula, from April 1, 2002 to the present, (iv) all participants, whether active, inactive or retired, their beneficiaries and estates, who were participants in and entitled to accrue benefits under the Pacific First Bank Retirement Plan immediately prior to April 1, 1994, and whose accrued benefits or pension benefits are based in whole or in part on the WaMu Pension Plan's cash balance formula, from April 1, 1994 to the present.

(e) "Class Claims" shall have the meaning set forth in Section O of the Recitals hereof.

(f) "Class Notice" shall mean the two notices, in the forms annexed hereto as Exhibit "A" and appended to the Preliminary District Court Order (annexed hereto as Exhibit "B"), which the Settling Parties agree is appropriate settlement notice and is reasonably calculated to apprise the Settlement Class of their rights under the Settlement Agreement, and which shall be approved by the District Court and which shall include the provisions described in Section 3.5(b) hereof and be served in the manner described in Section 3.5(b) hereof.

(g) "Debtors' Counsel" shall mean Weil, Gotshal & Manges LLP.

(h) "Dime Bancorp, Inc. Retirement Plan" shall mean the retirement plan maintained by Dime Bancorp, Inc., the assets and liabilities of which were assumed by WMI and which were merged into the WaMu Pension Plan.

(i) "District Court Final Approval Order" shall mean the final order and form of judgment of the District Court, in the form annexed hereto as Exhibit "C," providing the relief described in Section 3.5(c) hereof.

(j) "District Court Preliminary Approval Order" shall mean the order of the District Court, in the form annexed hereto as Exhibit "B", preliminarily approving this Settlement Agreement and making the requisite findings and establishing the respective procedures and dates as set forth in Section 3.5(a) hereof.

(k) "Effective Date" shall mean the date established pursuant to Section 7.1 hereof on which all of the conditions to settlement set forth in Section 3.1 through 3.6 hereof shall have been fully satisfied or waived by the appropriate party.

(l) "Employee Claims" shall mean the proofs of claim, if any, other than the Class Claims, filed against the Debtors in the Chapter 11 Cases by individual, current or former, employees of the Debtors and/or any WaMu Predecessor Companies or any other individuals asserting rights to recovery on the same or similar bases as asserted in the Buus Action, including but not limited to violations of ERISA Section 204(h).

(m) "Fairness Hearing" shall mean the hearing established by the District Court in the District Court Preliminary Approval Order to consider final approval of the Settlement embodied herein and entry of the District Court Final Approval Order.

(n) "Final Order" shall mean, with respect to any judgment or order as to which the time to appeal, petition for certiorari, move for reconsideration, or rehearing or any other proceedings for review has expired and as to which no appeal, petition for certiorari or other proceedings for re-argument or rehearing shall then be pending; and if an appeal, writ of certiorari, re-argument or rehearing has been sought, such judgment or order shall have been affirmed by the highest court to which such judgment or order was appealed, or certiorari shall have been denied or re-argument or rehearing shall have been denied or resulted in no

modification of such judgment or order, and the time to take any further appeal, petition for certiorari or move for re-argument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules, may be but has not then been filed with respect to such judgment or order, shall not cause such judgment or order not to be a Final Order; and, provided, further, that, such judgment or order may become a Final Order regardless of whether the District Court has entered an order regarding the Plan of Allocation or the award of legal fees and expenses and regardless of whether any such order, if entered, has become final.

(o) “Great Western Retirement Plan” shall mean the retirement plan maintained by Great Western Financial Corporation, the assets and liabilities of which were assumed by WMI and which were merged into the WaMu Pension Plan.

(p) “H.F. Ahmanson & Company Retirement Plan” shall mean the retirement plan maintained by H.F. Ahmanson & Company, the assets and liabilities of which were assumed by WMI and which were merged into the WaMu Pension Plan.

(q) “Immediate Family” shall mean parents, grandparents, children and grandchildren.

(r) “Lead Counsel” shall mean Keller Rohrback, L.L.P., as lead counsel for the Named Plaintiffs in the Buus Action.

(s) “Named Plaintiffs” shall mean the following persons, as plaintiffs on behalf of themselves and on behalf of all members of the Settlement Class: Gary Buus, Bryan Buck, Sidney John Flor, Kellie Plumb, Thomas Schoenleber, Audrey Schulman, and Margaret Weber and each of their Successors-In-Interest; provided, however, that, whether or not expressly stated herein, all rights and obligations that are binding on the Named Plaintiffs pursuant to this Agreement, including each and every covenant, agreement, and warranty, also shall be binding on all members of the Settlement Class.

(t) “Net Settlement Amount” shall mean the Settlement Amount less (1) the lesser of (a) the sum of Sidley Austin’s unpaid legal fees and expenses for representing the WaMu Pension Plan in the Buus Action, to the extent not paid by the Debtors’ insurance within sixty (60) days of submission of the invoices to the insurance carriers, and (b) \$1 million; (2) the actuarial expenses and record keeping expenses relating to implementation of this Agreement, and the expenses reasonably incurred by the Plan Administrator relating to the execution of the Plan of Allocation and distributions, allocations and crediting pursuant to the Plan of Allocation to the extent not covered by the Debtors’ insurance; (3) expenses relating to publication and other notice of the Class Notice; (4) subject to District Court approval, Case Contribution Awards to the Named Plaintiffs in the aggregate amount of up to \$65,000.00; and (5) subject to District Court approval, Lead Counsel’s attorneys’ fees not to exceed 21% of the Settlement Amount and Lead Counsel’s reasonable expenses incurred in this litigation.

(u) "Pacific First Bank Pension Plan" shall mean the retirement plan maintained by Pacific First Bank, the assets and liabilities of which were assumed by WMI and which were merged into the WaMu Pension Plan.

(v) "PBGC" shall mean the Pension Benefit Guaranty Corporation.

(w) "Person" shall mean an individual, partnership, corporation, governmental entity or any other form of entity or organization.

(x) "Plaintiff Releasees" shall have the meaning set forth in Section 5.3 hereof.

(y) "Plan of Allocation" shall mean the plan of allocation and/or amendment to the WaMu Pension Plan pursuant to which additional benefits will be provided to certain participants in the WaMu Pension Plan on account of the Net Settlement Amount, approved by the District Court as set forth in Section 7.3 hereof.

(z) "Plan Trustee" shall mean JPMorgan Chase Bank, N.A., as Trustee for the WaMu Pension Plan, on behalf of the WaMu Pension Plan.

(aa) "Plan Actuary" shall mean Towers Watson, as the Enrolled Actuary pursuant to ERISA § 3042 and the provider of various employee benefit plan consultation and administration services to the Debtors.

(bb) "Plan Administrator" shall mean the PAC, as plan administrator of the WaMu Pension Plan, on behalf of the WaMu Pension Plan.

(cc) "Plan Record Keeper" shall mean Excellerate HRO, as record keeper of the WaMu Pension Plan.

(dd) "Preliminary Motion" shall mean the motion to be jointly filed by the Named Plaintiffs, Named Defendants, and the Debtors seeking, among other things, preliminary approval of this Agreement and the Settlement embodied herein and the entry of the Preliminary District Court Order.

(ee) "Released Claims" shall have the meaning set forth in Section 5.2 hereof.

(ff) "Releasees" shall mean each of the Debtors and their non-Debtor affiliates, the WaMu Pension Plan and all predecessors and successors thereto, the sponsor of the WaMu Pension Plan and any successor plan sponsor and any contributing employer with respect to the WaMu Pension Plan and any successor contributory employer and any plan into which the WaMu Pension Plan is merged, including, but not limited to the WaMu Predecessor Plans, the Plan Trustee, the PAC, the Plan Record Keeper, and all predecessors, successors, parents, subsidiaries, affiliates, divisions, assigns, officers, directors, committees, employees, fiduciaries, administrators, actuaries, agents, insurers, representatives, attorneys, retained experts and trustees of each of them.

(gg) “Releases” shall mean the releases set forth in Section 5.1 and 5.4 hereof.

(hh) “Representatives” shall mean representatives, attorneys, agents, directors, officers, employees, insurers and reinsurers.

(ii) “Settlement” shall mean the settlement to be consummated pursuant to this Agreement the Bankruptcy Court Approval Order and the District Court Final Approval Order.

(jj) “Settlement Amount” shall mean Twenty Million Dollars (\$20,000,000.00).

(kk) “Settlement Class” shall mean collectively, all Persons within the scope of the Certified Class and the Settlement Subclasses, including the Named Plaintiffs, and as to each such Person, his, her or its beneficiaries, alternate payees (including spouses of deceased Persons who were WaMu Pension Plan participants), Representatives and Successors-In-Interest to the extent identified by the records of the WaMu Pension Plan; provided, however, that the “Settlement Class” shall not include any Named Defendant in the Buus Action, or any of their Immediate Family, beneficiaries, alternate payees (including spouses of deceased Persons who were WaMu Pension Plan participants), Representatives or Successors-In-Interest, except for spouses and immediate family members who themselves are or were participants in the WaMu Pension Plan or any of the WaMu Predecessor Plans, who shall be considered members of the Settlement Class with respect to their own WaMu Pension Plan accounts.

(ll) “Settlement Subclass or Settlement Subclasses” shall mean (i) all participants, whether active, inactive or retired, their beneficiaries and estates, who were participants in and entitled to accrue benefits under the H.F. Ahmanson & Company Retirement Plan immediately prior to July 1, 1999, and whose accrued benefits or pension benefits are based in part on the WaMu Pension Plan’s cash balance formula, from July 1, 1999 to the present; and (ii) all participants, whether active, inactive, or retired, their beneficiaries and estates, who were participants in and entitled to accrue benefits under the Great Western Retirement Plan immediately prior to January 1, 1998, and whose accrued benefits or pension benefits are based in whole or in part on the WaMu Pension Plan’s cash balance formula, from January 1, 1998 to the present, but only with respect to such participants not described in subsection (ii) of Section 1.2(d) hereof.

(mm) “Settling Defendants” shall mean (i) the WaMu Pension Plan, (ii) the PAC, and (iii) for purposes of this defined term only, non-defendant WMI and its debtor and non-debtor affiliates, subsidiaries, successors and assigns.

(nn) “Sidley Austin” shall mean Sidley Austin, LLP, counsel of record in the Buus Action to Named Defendants.

(oo) “Stipulated Dismissals” shall mean the stipulated dismissals of (1) the Buus Action against the Named Defendants and (2) the Class Claims in the Chapter 11 Cases.

(pp) "Successor-In-Interest" shall mean a Person's estate, legal representatives, heirs, successors or assigns.

(qq) "Tax Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

(rr) "WaMu Pension Plan" shall mean that certain "employee pension benefit plan," within the meaning of ERISA § 3(2)(A), 29 U.S.C § 1002(2)(A), and a "defined benefit plan," within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35), which plan is intended to satisfy the tax requirements of Section 401 of the Internal Revenue Code and which plan is sponsored by WMI, together with any and all WaMu Predecessor Plans.

(ss) "WaMu Predecessor Companies" shall mean, collectively, Great Western Financial Corporation; Dime Bancorp., Inc.; H.F. Ahmanson & Company; and Pacific First Federal Savings Bank, whose former employees participated or participate in the WaMu Pension Plan and/or whose prior retirement plans have been merged into the WaMu Pension Plan.

(tt) "WaMu Predecessor Plans" shall mean, collectively, the Dime Bancorp, Inc. Retirement Plan, the Great Western Retirement Plan, the H.F. Ahmanson & Company Retirement Plan, the Pacific First Bank Pension Plan, and the Washington Mutual Savings Bank Retirement Plan.

Section 1.3. Singular and Plural. Definitions used herein shall apply to the singular and plural forms of each term defined.

Section 1.4. Gender. Definitions used herein shall apply to the masculine, feminine, and neuter genders of each term defined.

Section 1.5. References to a Person. References to a Person are also to the Person's permitted successors and assigns.

Section 1.6. Terms of Inclusion. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Settling Parties' Representations and Warranties. The Settling Parties, and each of them, represent and warrant, to the extent applicable, as follows:

(a) Each of the Settling Parties is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to carry on the business in which it is engaged, to own the properties it owns, to execute this Agreement and to consummate the transactions contemplated hereby.

(b) Each of the Settling Parties (with respect to WMI, upon entry of the Bankruptcy Court Approval Order) has the full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith (i) have been duly and validly authorized by it and (ii) are not in contravention of its organizational documents or any agreements specifically applicable to it.

(c) Each of the Settling Parties is voluntarily entering into this Agreement as a result of arm's-length negotiations among its respective counsel, that, in executing this Agreement, it is relying solely upon its own judgment, belief and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof, and that, except as provided herein, it has not been influenced to any extent whatsoever in executing this Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any party or by any person representing any party to this Agreement.

(d) Each of the Settling Parties has carefully read the contents of this Agreement, and this Agreement is signed freely by each Person executing this Agreement.

(e) Each of the Settling Parties does not have knowledge of any proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body that is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder.

Section 2.2. Named Plaintiffs' Representations and Warranties.

(a) The Named Plaintiffs, jointly and severally, represent and warrant that the Named Plaintiffs have not filed a proof of claim against any of the Debtors in connection with the issues asserted or that could have been asserted in the Buus Action other than the Class Claims.

(b) The Named Plaintiffs represent and warrant that the claims and causes of action asserted, or that could have been asserted, in the Amended Complaint represent all the claims and causes of action that are maintained by the Named Plaintiffs, for and on behalf of themselves and the Settlement Class that could have been asserted in the Amended Complaint.

Section 2.3. No Admission of Liability. The Settling Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing in this Agreement, including, without limitation, the furnishing of consideration for this Agreement, shall be deemed to constitute any finding of wrongdoing by any of the Settling Defendants, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This Agreement and the distributions, allocations and crediting to be made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual, and the Settling Defendants expressly deny any such liability or wrongdoing. Neither the fact nor the terms of this Agreement shall or may be

offered or received in evidence in the Buus Action or any other action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising from or relating to the Bankruptcy Court Approval Order, the District Court Preliminary Approval Order or the District Court Final Approval Order. None of the Settling Parties or the Releasees waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements, or proceedings relating to this Settlement Agreement.

### ARTICLE III

#### CONDITIONS TO EFFECTIVENESS OF THE SETTLEMENT

Section 3.1. Final and Unconditional Settlement/Approval Orders. The occurrence of the Effective Date and the consummation of the Settlement provided for herein are subject to satisfaction of the following conditions precedent: (a) the Bankruptcy Court Approval Order has been entered by the Bankruptcy Court and has become a Final Order, (b) the District Court Final Approval Order has been entered by the District Court and has become a Final Order, and (c) each of the conditions set forth in Section 3.2 through 3.6 hereof has been satisfied in full or waived, in whole or in part.

Section 3.2. Stipulation to Certify Settlement Subclasses for Purposes of Settlement. Solely for settlement purposes on the terms set forth in this Agreement, the Settling Parties agree to stipulate to certification of the Settlement Subclasses pursuant to Rule 23 of the Federal Rules of Civil Procedure; provided, however, that, in the event that the Effective Date does not occur, the Settlement Subclasses shall not be deemed to have been certified by or as a result of this Agreement, and the Buus Action and the claims asserted by the Named Plaintiffs and members of the Settlement Class in the Chapter 11 Cases, including, without limitation, the Class Claims and the Employee Claims, shall, for all purposes with respect to the Settling Parties, revert to their status as of the day immediately prior to the execution hereof; provided, further, that, in such event, the Settling Defendants shall not be deemed to have consented to the allowance or priority of any Claim, the certification of any subclass, the agreements and stipulations in this Agreement concerning class definition or certification of any subclasses shall not be used as evidence or argument to support certification of any subclasses or class definition, and the Settling Defendants will retain all rights to object to the Claims asserted by the Named Plaintiffs and members of the Settlement Class in the Chapter 11 Cases, including, without limitation, the Class Claims, and oppose class certification of the Settlement Subclass.

Section 3.3. District Court Certification. The District Court shall have certified the Settlement Subclass for settlement purposes pursuant to Rule 23(a)(1)-(4), 23(b)(1) or (2) and 23(e) of the Federal Rules of Civil Procedure, with the Named Plaintiffs as the named class representatives, with Lead Counsel as counsel for the Named Plaintiffs and with a "Settlement Class," comprised of the Certified Class and the Settlement Subclass as a non opt-out class.

Section 3.4. Bankruptcy Court Approval. Without limiting the provisions of Section 3.1 or Article VII hereof, within seven (7) days following entry of the District Court Preliminary Approval Order in accordance with the terms and provisions of Section 3.5 hereof, the Debtors shall file a motion in the Bankruptcy Court, pursuant to Rule 9019 of the Federal

Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking entry of the Bankruptcy Court Approval Order approving this Agreement and the Settlement contemplated herein, subject to the occurrence of the Effective Date (the "Bankruptcy Court Approval Motion"). The Bankruptcy Court Approval Motion shall further provide that, on and effective as of the Effective Date, the Class Claims and the Employee Claims shall be released and expunged in their entirety. Notwithstanding anything contained herein to the contrary, all of the Settling Parties agree to cooperate in good faith and, as may be requested by the Debtors, use their reasonable best efforts to obtain entry of the Bankruptcy Court Approval Order. The hearing before the Bankruptcy Court to consider entry of the Bankruptcy Court Approval Order shall be held subsequent to entry of the Preliminary District Court Order and, if determined by the Bankruptcy Court and the District Court, jointly with the hearing before the District Court to consider entry of the District Court Final Approval Order.

Section 3.5. District Court Approval. Without limiting the provisions of Section 3.1 and Article VII hereof, within fourteen (14) days from the execution hereof by the Settling Parties, absent an agreement by the Settling Parties to extend this time period, Lead Counsel shall prepare and file, as a joint pleading on behalf of the Named Plaintiffs and the Settling Defendants, a motion, including all proposed orders, notices and any other exhibits thereto, with the District Court seeking (i) approval of this Agreement and the Settlement embodied herein as fair and reasonable, (ii) entry of the District Court Preliminary Approval Order, in the form attached hereto as Exhibit "B" and (iii) entry of the District Court Final Approval Order, in the form attached hereto as Exhibit "C" (the "District Court Motion"), which motion and the exhibits thereto, including the Class Notice shall be reasonably satisfactory to the Settling Defendants and the Releasees. Lead Counsel shall also prepare and file a memorandum of law, on behalf of the Named Plaintiffs, in support of the relief requested in the District Court Motion. Notwithstanding anything contained herein to the contrary, all of the Settling Parties agree to cooperate in good faith, including, without limitation, by taking all reasonable steps and efforts contemplated by this Agreement and any other steps or efforts which may become necessary by order of the District Court (unless such order materially modifies the terms of this Agreement), to carry out the transactions contemplated by this Agreement, including, without limitation, the following:

(a) Preliminary Approval of Settlement and of Notices. The District Court Motion shall seek entry of the District Court Preliminary Approval Order, including the exhibits thereto, which order shall (i) preliminarily approve the Settlement embodied herein, (ii) establish a date and time for the Fairness Hearing, (iii) direct the time and manner of the Class Notice to be served upon the Settlement Class, (iv) find (1) that the proposed form of Class Notice fairly and adequately (A) describes the terms and effect of this Agreement and the Settlement, (B) provides notice to the Settlement Class of the time and place of the Fairness Hearing, and (C) describes how the recipients of the Class Notice may object to approval of the Settlement, and (2) that the proposed manner of serving the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances, (v) authorize the disbursement from the Plan of up to \$100,000 for the payment of costs of the Class Notice, (vi) approve the payment by the WaMu Pension Plan of up to \$1,000,000 of Sidley Austin's fees and expenses from the WaMu Pension Plan as an administrative expense of the WaMu Pension Plan, which Sidley

Austin incurred in connection with assisting in administering the Settlement, including, but not limited to, assisting in the following activities: (A) identifying and locating class members, (B) preparing a Plan of Allocation, (C) preparing a Plan amendment, (D) distributing notice and information about the Settlement to the Settlement Class, and (E) distributing the Net Settlement Amount to the Settlement Class; which payment shall be made within thirty (30) days of the expiration of the period set forth in Section 1.2(t) for payment by the Debtors' insurance; and (vii) preliminarily enjoin (1) any member or members of the Settlement Class from asserting rights to recovery on the same or similar bases as asserted in the Buus Action, the Class Claims, or the Employee Claims and (2) any Person from bringing, in any forum, action or proceeding of any kind, any claims against the Releasees for indemnity and/or contribution arising out of the Buus Action or any other Claims arising out or related to the Released Claims.

(b) Issuance of Class Notice. Within sixty (60) days of the District Court's entry of the Preliminary District Court Order, Class Notice shall be (1) delivered to the following Persons, in the form and manner approved by the District Court, as directed by the District Court in the District Court Preliminary Approval Order: (i) all of the Settling Parties; (ii) all members of the Settlement Class who after reasonable efforts have been identified and whose current mailing addresses have been ascertained, (iii) any Person against whom the Named Plaintiffs have asserted a claim based upon any of the events or transactions giving rise to the Buus Action, (iv) the Bankruptcy Court, and (v) every Person currently acting as a fiduciary to the WaMu Pension Plan, to the extent their identity and address is known by Lead Counsel and (2) published once in the Seattle Times, by newswire, and on the following websites: www.kellersettlements.com and www.kccllc.com; provided that should additional time beyond sixty (60) days be needed in good faith by any Settling Party to effectuate the issuance of Class Notice, the Settling Parties will then consent to an extension of the sixty (60) day period for the additional amount of time needed in good faith to effectuate the issuance of Class Notice, and such extension will not require additional Court approval.

(c) The District Court Final Approval Order. The District Court Motion shall also seek entry of the District Court Final Approval Order, which shall (i) approve the Settlement; (ii) approve the Net Settlement Amount; (iii) dismiss the Buus Action with prejudice and enter judgment; (iv) approve the payment of Lead Counsel's attorneys' fees and costs, and Case Contribution Awards for Named Plaintiffs in the manner provided for in Section 9.1; and (v) permanently enjoin the members of the Settlement Class from bringing any Released Claim against any Settling Defendant and any Releasee, either derivatively or on behalf of themselves, or through any Person purporting to act on their behalf or purporting to assert a Released Claim under or through them, in any forum, action or proceeding of any kind; and (vi) permanently enjoin any Person from bringing, in any forum, action or proceeding of any kind, any claims against the Releasees for indemnity and/or contribution arising out of the Buus Action or any other claims arising out of or related to the Released Claims. The District Court Final Approval Order shall not award costs to any Person except as explicitly set forth in this Agreement.

(d) The Fairness Hearing. At the Fairness Hearing, the District Court shall determine: (i) whether to enter the District Court Final Approval Order; (ii) whether the distribution, allocation and crediting of the Net Settlement Amount as provided in the Plan of Allocation should be approved; and (iii) the amount of legal fees, compensation and further

expenses that should be awarded to Lead Counsel and the Named Plaintiffs as contemplated by Article IX of this Agreement. The Settling Parties agree to support entry of the District Court Final Approval Order as contemplated by clause (i) of this Section 3.5(d), it being expressly understood that neither the District Court Final Approval Order nor this Agreement shall, or shall be construed to, derogate or otherwise modify any prior order of the Bankruptcy Court; provided, however, that the Bankruptcy Court Approval Order shall specifically state that WMI's performance of its obligations under this Agreement is not in derogation of, nor does it require a modification of any prior order of the Bankruptcy Court. The Settling Defendants agree not to take any position with respect to the matters described in clauses (ii) or (iii) of this Section 3.5(d).

Section 3.6. Internal Revenue Service Approval. The sponsor of the WaMu Pension Plan and any successor sponsor thereto shall have received approval from the Internal Revenue Service of an amendment to the WaMu Pension Plan, which amendment, shall provide for the Plan of Allocation of the Net Settlement Amount, Case Contribution Awards, the payment of Lead Counsel attorneys fees and expenses, and payment of other fees and expenses as provided for in this Agreement; provided, however, that within fourteen (14) days from the execution hereof by the Settling Parties, absent an agreement by the Settling Parties to extend such time period, the sponsor of the WaMu Pension Plan shall submit such amendment to the WaMu Pension Plan to the Internal Revenue Service for its consideration and approval. Should the Effective Date not occur because the WaMu Pension Plan is unable to secure a favorable determination of approval from the Internal Revenue Service as such amendment, then this Agreement shall be null and void, the District Court Preliminary Approval Order shall be vacated and the underlying litigation shall resume without prejudice to the parties, provided, however, that the parties will negotiate in good faith regarding any modifications to this Agreement that may be necessary to obtain IRS Approval.

#### ARTICLE IV

#### COMPROMISE AND SETTLEMENT

Section 4.1. Increase in Liabilities of WaMu Pension Plan. As soon as reasonably practicable, but in no event later than thirty (30) days following the Effective Date, the sponsor of the WaMu Pension Plan and any successor sponsor thereto shall adopt an amendment to the WaMu Pension Plan which will increase the liabilities of the WaMu Pension Plan to those participants of the WaMu Pension Plan who are members of the Settlement Class by the Net Settlement Amount in accordance with the Plan of Allocation (such increase in liabilities of the WaMu Pension Plan and the steps necessary to effectuate the terms of this Settlement are referred to herein as the "Settlement Implementation"). The increase in liabilities of the WaMu Pension Plan pursuant to this Section 4.1 shall be in full and final satisfaction of all claims asserted in the Buus Action, the Class Claims, and the Employee Claims, including the Released Claims pursuant to Section 5.2 hereof, and no other payments or increases in liabilities shall be made by or incurred on behalf of the Settling Defendants or the Releasees to the Settlement Class in connection with the Settlement. Except as set forth in Art. VII and IX hereof or as otherwise specified in this Agreement, the Settling Parties shall bear their own costs and expenses, including, without limitation, attorneys' fees and expenses, in connection with

effectuating the Settlement and securing all necessary court orders and approvals with respect to the same.

Section 4.2. Acknowledgements Regarding Net Settlement Amount. The Settling Defendants agree and acknowledge that, unless this Agreement is terminated as provided in Article VIII hereof, the Settlement Implementation must be effectuated pursuant to this Agreement regardless of whether any court or jury ultimately determines that the fault, if any, of the respective Settling Defendants is less in proportion to the WaMu Pension Plan's damages than the Net Settlement Amount. The Named Plaintiffs agree and acknowledge on their own behalves and on behalf of the members of the Settlement Class that they have no right to seek additional sums or to further increase the liabilities of the WaMu Pension Plan from the Releasees based on the Released Claims, regardless of whether any court or jury ultimately determines that the fault, if any, of the Releasees is greater in proportion to the damages sought by the Named Plaintiffs than the Net Settlement Amount.

Section 4.3. Withdrawal of the Section 362 Motion. As soon as reasonably practicable following the Effective Date, the Named Plaintiffs shall take any and all actions as are necessary to cause the withdrawal of the Stay Relief Motion, filed in the Bankruptcy Court, with prejudice.

## ARTICLE V

### RELEASES AND COVENANT NOT TO SUE

Section 5.1. Named Plaintiffs' Release of the Releasees. On the Effective Date, and without the need for the execution and delivery of additional documentation or the entry of any additional orders of the District Court or the Bankruptcy Court, except as expressly provided in this Agreement, the Named Plaintiffs, on behalf of themselves and on behalf of the Settlement Class, and their predecessors, successors and assigns and each of their affiliates, officers, employees and agents (collectively, the "Buus Releasors") shall be deemed to have irrevocably, absolutely and unconditionally released, acquitted and forever discharged the Releasees, their affiliates, their successors and assigns and each of their respective past and present officers and directors and employees from the Released Claims that the Named Plaintiffs and the Settlement Class, directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have, including, without limitation, the Class Claims and the Employee Claims. Without limiting the foregoing, on the Effective Date and notwithstanding that an appeal of the Bankruptcy Court Approval Order, the Preliminary District Court Order or the District Court Final Approval Order may be pending and ultimately sustained, in whole or in part, each Buus Releasor, which is not an appellant to any such appeal shall be deemed to have irrevocably, absolutely and unconditionally waived any and all rights to (a) receive consideration in excess of that portion of the Net Settlement Amount that shall be allocated and payable to or for the benefit of such Buus Releasor in accordance with the terms and provisions of Article VII hereof and (b) seek relief against the Settling Defendants in the Buus Action beyond that provided in this Agreement. Notwithstanding anything contained herein or elsewhere to the contrary, the foregoing is not intended to nor shall it have the effect of releasing the Releasees from the

performance of their obligations in accordance with this Agreement and the terms of the District Court Final Approval Order and the Bankruptcy Court Approval Order.

Section 5.2. Released Claims. The "Released Claims" shall mean any and all claims, demands, liabilities and causes of action of any nature whatsoever, including, without limitation, claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief, whether accrued or not, whether already acquired or acquired in the future, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise, arising from or relating to (a) the causes of action asserted or that could have been asserted in the Amended Complaint, the Class Claims or the Employee Claims or that would be barred by principles of res judicata had the claims asserted in the Amended Complaint or in the Class Claims or the Employee Claims been fully litigated and resulted in a judgment or order; (b) the actions or claims asserted by any Person in the Chapter 11 Cases that arose out of the breach or alleged breach of any duty owed to the WaMu Pension Plan, the WaMu Predecessor Plans, or their participants under ERISA; (c) the WaMu Pension Plan's and/or the WaMu Predecessor Plan's cash balance formula for calculating pension benefits or the alleged failure to comply with ERISA's notice and disclosure provisions in connection therewith, including, without limitation, any claims and causes of action asserted, or that could have been asserted, for and on behalf of the Named Plaintiffs, the members of the Settlement Class, or the WaMu Pension Plan against any of the Releasees; or (d) for indemnity or contribution with respect to any claim (i) described in the foregoing clauses (a) or (b) or (c), or (ii) arising out of or relating to this Agreement and/or the Settlement Amount. The Released Claims do not include (i) unrelated claims for vested benefits or (ii) claims based on improper benefit calculations not related to the causes of action asserted or that could have been asserted in the Amended Complaint, the Class Claims or the Employee Claims.

Section 5.3. Settling Defendants' Releases of the Named Plaintiffs, the Settlement Class and Plaintiffs' Counsel. Effective upon the entry of the District Court Final Approval Order, the Settling Defendants shall be deemed to have irrevocably, absolutely and unconditionally released, acquitted and forever discharged the Named Plaintiffs, the Settlement Class, Lead Counsel and other counsel who represent members of the Settlement Class, if any (collectively, the "Plaintiff Releasees") from any and all claims relating to the institution or prosecution of the Buus Action or the settlement of any Released Claims, as well as any and all claims for contribution, for indemnification, or any other claims relating to the Settlement Amount effectuated on account of the Settling Defendants (collectively, the "WMI Released Claims").

Section 5.4. Releases Among Settling Defendants. Effective upon the entry of the District Court Final Approval Order, each Settling Defendant absolutely and unconditionally releases and forever discharges each Releasee from any and all claims arising out of the Released Claims, including, without limitation, any and all claims for contribution or indemnification for such Released Claims, or any other claims relating to payment of the Settlement Amount. Notwithstanding the foregoing, if any Releasee who is not a signatory to this Agreement asserts a Claim against a Settling Defendant arising out of the Released Claims, including, without

limitation, any and all claims for contribution or indemnification for such Released Claims, or any other claims relating to the Class Settlement Amount, then the release provided in this Section 5.4 in favor of such Releasee shall be null and void as against such Settling Defendant, unless such Claim by the non-signatory Releasee is asserted against the Settling Defendant as a counterclaim to a Claim asserted by such Settling Defendant against such non-signatory Releasee arising out of the Released Claims, including, without limitation, any and all claims for contribution or indemnification for such Released Claims, or any other claims relating to the Settlement Amount.

Section 5.5. Covenants Not to Sue. The Named Plaintiffs covenant and agree on their own behalf, and on behalf of the Settlement Class: (i) not to file against any Releasee any claim or action based on or arising from any Released Claim and (ii) that the foregoing covenants and agreements shall be a complete defense to any such Released Claims against any of the respective Releasees. The Settling Defendants covenant and agree on their own behalf, and on behalf of any agents or representatives thereof: (i) not to file against any Plaintiff Releasees any claim or action based on or arising from any WMI Released Claim and (ii) that the foregoing covenants and agreements shall be a complete defense to any such WMI Released Claims against the Plaintiff Releasees.

Section 5.6. Expungement of Claims. Notwithstanding the terms and provisions of Section 5.2 hereof, on the Effective Date, all Released Claims, Class Claims and Employee Claims shall be deemed released and expunged, and the Debtors shall be authorized to take any and all actions as may be necessary to cause the release and expungement thereof to be reflected on the Debtors' claims registry in the Chapter 11 Cases.

Section 5.7. Cal. Civil Code Section 1542. The Settling Parties stipulate and agree that, by the terms of the District Court Final Approval Order and the Bankruptcy Court Approval Order, each member of the Settlement Class shall have and be deemed to have waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code or any federal, state, or foreign law, rule, regulation or common law doctrine that is similar, comparable, equivalent, or identical to, or which has the effect of, Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Notwithstanding the provisions of Section 1542 and any similar provisions, rights and benefits conferred by any law, rule, regulation or common law doctrine of California or in any federal, state or foreign jurisdiction, the Settling Parties understand and agree that the releases to be given pursuant to this Settlement Agreement shall include Released Claims that are not known or suspected to exist at the time such releases are given.

ARTICLE VI

COVENANTS

Notwithstanding the covenants set forth in Article III hereof, the Settling Parties further covenant and agree as follows:

Section 6.1. Taxation of Settlement Amount. The Named Plaintiffs acknowledge that the Releasees have no responsibility for any taxes due on the Settlement Amount, if any, or that the WaMu Pension Plan or the Named Plaintiffs or Lead Counsel receive on account of the Settlement Amount, should any be awarded pursuant to Article IX hereof. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

Section 6.2. Tax Qualification of Settlement Amount and of Allocation of Net Settlement Amount. The Settling Parties recognize that the Settlement Amount, including amounts to be distributed, allocated or credited to participants who are members of the Settlement Class, attorneys' fees and expenses paid to Lead Counsel and the Case Contribution Awards, will be paid from a tax-qualified defined benefit pension plan, and that the sponsor of the WaMu Pension Plan and any successor sponsor thereto will take measures, as appropriate, to ensure that the actions contemplated under this Agreement satisfy the tax-qualification requirements of the Tax Code. This Agreement is not intended to require any of the Settling Parties or the Releasees to perform an unlawful act or an act that would violate the tax-qualification requirements of the Tax Code, but to the extent that the Agreement unambiguously purports to require any such act, the Settling Parties agree to amend the Agreement to bring it into conformity with the law and the tax-qualification requirements of the Tax Code, as necessary, in the manner that best effectuates, to the extent possible under applicable law, the intent of the Agreement as expressed in its written terms.

ARTICLE VII

EFFECTIVE DATE OF SETTLEMENT;  
THE CLASS SETTLEMENT AMOUNT

Section 7.1. Establishment of Effective Date of Settlement. The Effective Date shall be the first (1st) Business Day on which (a) all of the conditions to settlement set forth in Section 3.1 through 3.6 hereof shall have been satisfied in full or waived by the appropriate party, and (b) the WaMu Pension Plan has received notice of satisfaction or waiver by the appropriate party of all conditions set forth in Section 3.1 through 3.6 hereof from Lead Counsel; provided that if within ten (10) business days of such notice from Lead Counsel any Settling Defendants' counsel shall deliver to Lead Counsel and the WaMu Pension Plan a notice contending that one or more of the conditions set forth in Section 3.1 through 3.6 hereof has not been met and identifying each such condition, then the Effective Date shall be the date, if any, that the Bankruptcy Court renders a decision concurring with Lead Counsel that each and every condition set for in Section 3.1 through 3.6 hereof has been satisfied or waived by the appropriate party. There shall be no increase in the liabilities of the WaMu Pension Plan on

account of the Settlement Amount prior to the Effective Date. Following the Effective Date, the Settling Parties shall use best efforts to promptly effectuate the Settlement Implementation, and in any event will do so no later than ninety (90) days after the Effective Date, provided that should additional time beyond ninety (90) days be needed in good faith by any Settling Party to effectuate the Settlement Implementation, the Settling Parties will then consent to an extension of the ninety (90) day period for the additional amount of time needed in good faith to effectuate the Settlement Implementation, and such extension will not require additional Court approval.

Section 7.2. Disbursement from WaMu Pension Plan for Payment of Class Notice. Lead Counsel shall direct the WaMu Pension Plan in writing, with notice to the Settling Defendants, but without further order of the Bankruptcy Court or the District Court, to disburse an amount for the payment of reasonable costs of the Class Notice not to exceed \$100,000. If Lead Counsel wishes to have additional costs of the Class Notice paid by the WaMu Pension Plan before the Settlement is final, Lead Counsel shall seek approval from the District Court upon due notice to the Settling Defendants. If the Agreement is terminated or the Settlement does not become final and unconditional for any other reason, Lead Counsel shall have no obligation to reimburse the WaMu Pension Plan or any other entity the costs of the Class Notice, or other costs or expenses charged to the WaMu Pension Plan under this Agreement, to the extent already incurred.

Section 7.3. Plan of Allocation of Settlement Amount.

(a) The allocation of the Net Settlement Amount shall be performed pursuant to the Plan of Allocation set forth in Section 7.3(b) hereof and, as required, an amendment to the WaMu Pension Plan effectuating such Plan of Allocation, after consultation with the Plan Administrator and based upon reasonably accessible records maintained by the WaMu Pension Plan and/or the Plan Administrator, and approved by the District Court. In all circumstances, distributions, allocations or crediting pursuant to the Plan of Allocation shall be made by the WaMu Pension Plan. The Plan of Allocation is a matter separate and apart from the Settlement between the Settling Parties, and no decision by the District Court concerning the Plan of Allocation shall affect the validity of this Agreement or finality of the Settlement in any manner. The Settling Defendants and the Releasees shall have the right to review the Plan of Allocation before it is filed with the District Court and the opportunity to object to the extent that the Settling Defendants or the Releasees determine that the Plan of Allocation cannot be implemented in a reasonable time and manner and without imposing undue expense or burden. Once approved by the District Court, the Plaintiff Releasees shall have no responsibility or bear any liability for the implementation of the Plan of Allocation by the WaMu Pension Plan.

(b) The proposed Plan of Allocation is to provide members of the Settlement Class who have been identified after reasonable best efforts and whose addresses have been ascertained after reasonable best efforts with an additional benefit under the WaMu Pension Plan calculated as the quotient of (i) the Net Settlement Amount divided by (ii) the aggregate

number of such members who have been identified and whose current address has been ascertained.

Section 7.4. Appeals With Respect to the Bankruptcy Court Approval Order, the Preliminary District Court Order or the District Court Final Approval Order. In the event that an appeal of the Bankruptcy Court Approval Order, the Preliminary District Court Order or the District Court Final Approval Order with respect to the compromise and settlement embodied herein is taken, any funds of the WaMu Pension Plan which would otherwise be distributable, allocable or credited and payable to any such appellant shall be (i) held by the WaMu Pension Plan until each of the orders appealed from become a Final Order and (ii) prior to the distribution, allocation or crediting thereof to the applicable appellant, and if authorized by an order of the District Court, the Bankruptcy Court or such other court of competent jurisdiction, assessed all fees and expenses incurred by the Settling Defendants in the defense of any such appeal.

## ARTICLE VIII

### TERMINATIONS

Section 8.1. Termination. This Agreement may be terminated by the Settling Parties, and thereupon become null and void, in the following circumstances:

(a) If (i) the Bankruptcy Court declines to approve the Settlement and if such order declining approval has become Final, or (ii) the Bankruptcy Court Approval Order is reversed and such reversal has become Final, or (iii) if the District Court declines to enter the District Court Final Approval Order, then this Agreement shall automatically terminate, and thereupon become null and void.

(b) If any Settling Party concludes that the District Court Final Approval Order does not satisfy the terms and conditions of this Agreement in any material respect, such Settling Party may, within ten (10) days after the District Court's entry of the District Court Final Approval Order, give the Settling Parties written notice thereof. If within fourteen (14) days after the giving of such written notice the Settling Parties have not agreed in writing to proceed with all or part of the Agreement pursuant to the District Court Final Approval Order as entered by the District Court, any Settling Party may submit to the District Court the issue as to whether the District Court Final Approval Order in fact does not satisfy the terms and conditions of this Agreement in any material respect. Such submission to the District Court shall be pursuant to 28 U.S.C. § 636(c), and the District Court's decision on the issue shall be binding. If the District Court concludes that the District Court Final Approval Order does not satisfy the terms and conditions of this Agreement in any material respect, then, when such ruling has become a Final Order, the Settling Party who submitted the written notice contemplated by this Section 8.1(b) may terminate this Agreement by giving further written notice to all Settling Parties.

(c) If the District Court Final Approval Order entered by the District Court is reversed or modified in any material respect on appeal, and if within thirty-one (31) days after the date when such reversal or modification becomes a Final Order the Settling Parties have not agreed, in writing, to proceed with all or part of the Agreement in light of such ruling, then this Agreement shall automatically terminate, and thereupon become null and void.

(d) If the provisions of Article III hereof are not fully satisfied or waived by the appropriate party in accordance with their respective terms, on the timetable set forth in the respective Sections, then this Agreement shall terminate, and thereupon become null and void.

Section 8.2. Consequences of Termination of the Agreement. If the Agreement is terminated and rendered null and void for any reason specified in Section 8.1 hereof, the following shall occur:

(a) The Buus Action and the parties' claims and defenses in the Chapter 11 Cases shall for all purposes with respect to the Settling Parties revert to their status as of the day immediately prior to the date hereof, including that the Class Claims will not be expunged *nunc pro tunc*.

(b) All Releases given under or pursuant to this Agreement, and all Stipulated Dismissals, shall be null and void; none of the terms of the Agreement shall be effective or enforceable, including, without limitation, Article VII and those provisions providing for reimbursement of costs as set forth in Section 7.2 hereof; neither the fact nor the terms of this Agreement shall be offered or received in evidence in the Buus Action, in the Chapter 11 Cases, or in any other action or proceeding for any purpose, except in an action or proceeding arising under this Agreement or arising out of or relating to the Final Order.

Section 8.3. Return of Materials. Except for attorney notes, pleadings, other court submissions and transcripts of depositions and exhibits thereto, Named Plaintiffs agree to return to the Settling Defendants, at the Settling Defendants' option, all discovery obtained from the Settling Defendants within forty-five (45) days after all the claims in the Buus Action against all Defendants have been settled, tried to final judgment or otherwise resolved by a final judgment; provided, however, that the Settling Defendants requesting the return of such materials shall reimburse Named Plaintiffs for the reasonable costs of assembling and shipping such materials; and provided, further, however, in the alternative, Named Plaintiffs and their counsel shall comply with any request by Settling Defendants that Named Plaintiffs destroy such materials.

## ARTICLE IX

### ATTORNEYS' FEES AND EXPENSES

Section 9.1. Application for Attorneys' Fees and Expenses and Case Contribution Awards for the Named Plaintiffs. As provided in Section 3.5(c) hereof, and pursuant to the common fund doctrine and/or any applicable statutory fee provision, Lead Counsel will apply to the District Court by motion for an award to Lead Counsel for attorneys'

fees of \$4.2 million, which represents 21% of the Settlement Amount, and for reimbursement of reasonable expenses, to be paid from the Settlement Amount. Lead Counsel will also apply for Case Contribution Awards for the Named Plaintiffs in aggregate amount of \$65,000 payable from the Settlement Amount, and shall be entitled to receive such compensation to the extent awarded by the District Court. The Settling Defendants and their agents agree not to oppose the applications for attorneys' fees or expenses, or for Named Plaintiff Case Contributions Awards as set forth herein. Application for attorneys' fees or expenses, or for Named Plaintiff Case Contributions Awards as set forth herein is a matter separate and apart from the Settlement between the Settling Parties, and no decision by the District Court concerning the granting, in whole or in part, of such attorneys' fees or expenses, or for Named Plaintiff Case Contributions Awards as set forth herein shall affect the validity of this Agreement or finality of the Settlement in any manner.

Section 9.2. Disbursement of Attorneys' Fees and Expenses and Named Plaintiff Compensation. Pursuant to written directions from Lead Counsel to the WaMu Pension Plan, Lead Counsel's attorneys' fees and expenses and Named Plaintiff Case Contribution Award awarded by the District Court shall be paid as set forth in the Net Settlement Amount to counsel and/or Named Plaintiffs to whom such fees, expenses, and compensation are awarded by the District Court within fourteen (14) days after the later of (i) the date the District Court enters its order awarding such fees and expenses, and (ii) the Effective Date. If at the time of any allocation, crediting and disbursement from the Settlement Amount, pursuant to the Plan of Allocation, there shall be a pending application for attorney's fees or expenses or Named Plaintiff compensation, there shall be reserved by the WaMu Pension Plan an amount equal to the amount of the pending application, until such time as the District Court shall rule upon such application.

## ARTICLE X

### MISCELLANEOUS

Section 10.1. Transfer of WaMu Pension Plan. In the event the proposed settlement agreement among, in addition to others, the Debtors, JPMC, the FDIC Receiver and WMBfsb (the "Global Settlement Agreement"), is approved by the Bankruptcy Court prior to the Effective Date, sponsorship of the WaMu Pension Plan shall be transferred from WMI to JPMC in accordance with, and at such time as provided in, Section 2.10 of the Global Settlement Agreement. Such transfer will not affect any of the condition precedents to the occurrence of the Effective Date as set forth in Article III hereof. In addition, upon such transfer, JPMC will be a Releasee pursuant to Section 5.1 hereof.

Section 10.2. Stay of Proceedings. Until the District Court Preliminary Approval Order has been entered, Named Plaintiffs and Lead Counsel covenant and agree that they shall not pursue litigation proceedings against the Releasees; Settling Defendants shall not pursue litigation proceedings against the Buus Releasees; and the Settling Parties and their respective counsel shall not in any way subsequently argue that the Releasees or Buus Releasees have failed to comply with their litigation obligations in any respect by reason of the Releasees' and Buus Releasees' suspension of litigation efforts following the execution of this Settlement

Agreement. Upon entry of the District Court Preliminary Approval Order, all proceedings in the Buus Action, other than proceedings necessary to carry out the terms and conditions of this Settlement Agreement, shall be stayed and suspended until further order of the Court.

Section 10.3. Dispute Resolution. Except as otherwise provided in Section 7.2 and 8.1(b) hereof, any dispute or controversy with respect to the rights or obligations of any Settling Party, or with respect to the terms and conditions of this Agreement shall be submitted to the Bankruptcy Court or District Court, as appropriate, for final and binding determination.

Section 10.4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States, including ERISA preemption, governs any matter set forth herein, in which case such federal law shall govern.

Section 10.5. Severability. The terms and provisions of this Agreement are not severable in any respect.

Section 10.6. Amendment. This Agreement may be modified, amended or supplemented only by written agreement signed by or on behalf of all Settling Parties and, if such modification, amendment or supplement is to be executed and become effective subsequent to the entry of the District Court Order, only with the approval of the District Court and to the extent of any modification, amendment or supplement of or to the Class Claims or the Employee Claims, with the approval of the Bankruptcy Court.

Section 10.7. Waiver. The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

Section 10.8. Construction. None of the Settling Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

Section 10.9. Headings. The headings of the Sections, paragraphs and subsections of this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

Section 10.10. Further Assurances. Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, to take all such action as the other Settling Parties may reasonably request in order to effectuate the intent and purposes of, and to carry out the terms of this Agreement.

Section 10.11. Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the

