

## SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT (the “*Agreement*”), dated as of December 3, 2010, by and among (a) Washington Mutual, Inc. (“*WMI*”) and WMI Investment Corp. (“*WMIC*” and, collectively with WMI, the “*Debtors*”), (b) JPMorgan Chase Bank, N.A. (“*JPMC*”), (c) California Department of Toxic Substances Control (“*DTSC*”), (d) BKK Joint Defense Group, on behalf of itself and each individual group member thereof which is not a signatory hereto, as contained on Exhibit C hereto and (e) Atlantic Richfield Corporation, THUMS Long Beach Company, Shell Exploration & Production Company, Shell Oil Company and Bayer CropScience Inc. (collectively with the BKK Joint Defense Group, the “*BKK Group*”). The signatories hereto, including all of the members of the BKK Group as shown on attached Exhibit C, are referred to hereinafter collectively as the “*Parties*” or individually as a “*Party*.” As used herein, the term “WMI Entities” includes the Debtors and WMI Rainier, LLC.

## RECITALS

A. On September 25, 2008, the Office of Thrift Supervision (the “*OTS*”), by order number 2008-36, closed Washington Mutual Bank (“*WMB*”), appointed the Federal Deposit Insurance Corporation as receiver for WMB (“*FDIC Receiver*”) and advised that the FDIC Receiver was immediately taking possession of WMB’s assets.

B. On or about September 25, 2008, the FDIC Receiver, the Federal Deposit Insurance Corporation in its corporate capacity (“*FDIC Corporate*”) and JPMC entered into that certain Purchase and Assumption Agreement, Whole Bank, dated September 25, 2008, (the “*Purchase and Assumption Agreement*”). Pursuant to the Purchase and Assumption Agreement, JPMC acquired certain WMB assets and assumed certain liabilities. DTSC and the BKK Group allege those liabilities include WMB’s and its affiliates’ environmental liability as former owner and operator of the Facility (as defined below). JPMC disputes this allegation. JPMC has asserted various claims for indemnity against each of the FDIC Receiver and FDIC Corporate arising from the Purchase and Assumption Agreement and has filed an unliquidated proof of claim against WMI’s chapter 11 estate, Claim No. 2559, for contribution associated with any such liabilities.

C. On September 26, 2008 (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, as amended (the “*Bankruptcy Code*”), with the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”). By order, dated October 3, 2008, the Debtors’ chapter 11 cases are being jointly administered and are styled as In re Washington Mutual, Inc., et al., No. 08-12229 (MFW) (the “*Chapter 11 Cases*”).

D. DTSC, BKK Group and separately, certain individual members of the BKK Group: Atlantic Richfield Corporation, THUMS Long Beach Company, Shell Exploration & Production Company, Shell Oil Company, and Bayer CropScience Inc., (collectively, specifically including the aforementioned members of the BKK Group, “*the BKK Claimants*”) each filed a proof of claim against the Debtors and their chapter 11

estates, numbered, respectively, 2213, 2405, 2138, 2233, 2467, 2693 and 3148 (collectively, the "**BKK Proofs of Claim**"). As of the date hereof, the Debtors have not interposed a substantive objection to the BKK Proofs of Claim but intend to do so.

E. The BKK Proofs of Claim assert the liability of WMI in connection with a 583-acre landfill facility located at 2210 South Azusa Avenue, West Covina, California, which includes any associated "area where hazardous substances have come to be located" 42 U.S.C. § 9601(9) (the "**Facility**").

F. The "**Facility**," as used herein, consists of a hazardous waste landfill, a municipal waste landfill, and associated treatment and control facilities and includes any associated "area where hazardous substances have come to be located." 42 U.S.C. § 9601(9).

G. On December 3, 2004, DTSC issued an Imminent and Substantial Endangerment Determination and Order and Remedial Action Order No. 1/SE-D 04/05-004 (the "**ISE Order**") with respect to the Facility to fifty-one (51) separate entities (collectively, "**ISE Respondents**"), including BKK Corporation, the current owner and operator of the facility ("**BKK**"), WMB (as successor to Home Savings of America, FSB and an affiliate of WMI) and certain other members of the BKK Group. The ISE Order required the ISE Respondents to perform certain response actions and to reimburse DTSC for certain response costs incurred at the Facility.

H. DTSC and the BKK Group contend that (1) WMB and WMI Rainier LLC ("**WMI Rainier**") are each successors to prior owners and operators of the Facility and (2) WMB, WMI, and WMI Rainier are each jointly and severally liable for the BKK-related liabilities. JPMC, WMI Rainier, and the Debtors dispute each of these contentions.

I. Prior to the Petition Date and without admitting liability, the BKK Group members, including then BKK Group member WMB, reached an agreement with DTSC in the case of *California Department of Toxic Substances Control, et al. v. American Honda Motor Co., et al.*, United States District Court, Central District of California, Case No. CV05-7746 CAS (JWJx) (the "**BKK Litigation**"), which was memorialized in a consent decree, approved and entered by the District Court on March 9, 2006, as amended (the "**Consent Decree**").

J. The Debtors, JPMC, the FDIC Receiver, FDIC Corporate, the Official Committee of Unsecured Creditors and certain creditors of the Debtors' estates are parties to that certain Settlement Agreement, dated May 21, 2010, as amended and restated October 6, 2010 (the "**Global Settlement Agreement**"), which agreement sets forth a compromise and settlement between the parties thereto of certain disputes and claims. The Global Settlement Agreement remains subject to approval by the Bankruptcy Court.

K. Section 2.21 of the Global Settlement Agreement memorializes an agreement among JPMC, WMI and the FDIC Receiver regarding, among other matters,

the Facility, and whereby JPMC will fund or pay certain liabilities and obligations of certain of the WMI Entities related to the BKK Litigation and the BKK Proofs of Claim.

L. JPMC has asserted that there are insurance policies (the “*BKK-Related Policies*”) issued by certain insurance carriers (the “*BKK-Related Carriers*”) that may provide coverage for some or all of the liabilities relating to the Facility and for which the insureds include some or all of WMB, WMI, WMI Rainier and/or their Related Persons (as defined in the Plan). The BKK-Related Policies are set forth in Schedule 2.21 of the Global Settlement Agreement.

M. On October 6, 2010, the Debtors filed with the Bankruptcy Court a proposed sixth amended chapter 11 plan (as has been and may be amended or modified from time to time, the “*Plan*”) and a proposed disclosure statement in connection therewith (as has been and may be amended or modified from time to time, the “*Disclosure Statement*”). A condition to the effectiveness of the Plan is the Bankruptcy Court’s approval of the Global Settlement Agreement. The Disclosure Statement was approved by the Court pursuant to an order, dated October 21, 2010.

N. The Parties now desire to resolve any objections DTSC and the BKK Group might have to approval of the Global Settlement Agreement and confirmation of the Plan on terms set forth in this Agreement.

O. Nothing contained in this Agreement is intended, nor shall it be construed, to resolve, bear on, constitute evidence of, or provide any support for or against any Party’s contentions as set forth in these recitals or elsewhere.

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, do hereby mutually agree as follows:

## ARTICLE I SETTLEMENT TERMS

Section 1.1. Recitals. The recitals set forth above are incorporated by reference and are explicitly made a part of this Agreement. Terms used in this Agreement, and not defined herein, are used in the manner specified in the Global Settlement Agreement; provided, however, that, in the event of a conflict between this Agreement and the Global Settlement Agreement with regard to the matters addressed herein, the terms of this Agreement shall prevail.

Section 1.2. Plan Non-Opposition Commitment. From and after the Effective Date of this Agreement, and provided that the proposed and approved Confirmation Order includes the BKK Release Carve-Out, as defined and discussed in Section 3.11 of this Agreement, the BKK Claimants, on behalf of themselves individually and, in the case of the BKK Group, each individual member thereof, agree (i) to withdraw any objections that they have filed to the Plan, not to seek any modifications of the Plan, and not to oppose confirmation of the Plan in accordance with section 1129 of

the Bankruptcy Code, (ii) to take such action as may be reasonably requested by the Debtors to indicate such non-opposition, and (iii) to take no action to impede or preclude the entry of the Confirmation Order, or the consummation, implementation and administration of the Plan, provided that such Disclosure Statement, Plan and Confirmation Order are not inconsistent with the terms set forth in this Agreement and have not been amended in a manner that adversely affects the rights of the BKK Claimants under this Agreement. For the avoidance of doubt, nothing in this Agreement shall provide DTSC or the BKK Group voting rights with respect to the Plan.

**Section 1.3. Withdrawal of BKK Proofs of Claim/Lifting of Automatic Stay.** From and after the Effective Date of this Agreement, and pending the Bankruptcy Court's determination whether to approve the Global Settlement Agreement and confirm the Plan, and provided that the proposed and approved Confirmation Order includes the BKK Release Carve-Out, the BKK Claimants shall take no action to prosecute or to seek estimation of, and the Debtors shall take no action to disallow or to seek estimation of, the BKK Proofs of Claim. Additionally, neither DTSC, the BKK Group nor any individual member of the BKK Group shall file any additional claims or proofs of claim, whatsoever, in the Chapter 11 Cases against any of the Debtors (including secured, unsecured, administrative, priority or substantial contribution claims) relating to the Facility or the BKK Litigation. The BKK Group and DTSC agree that, notwithstanding any provisions in the Plan to the contrary, from and after the Effective Date, the Debtors shall not be required to maintain a reserve for the BKK Proofs of Claim nor shall they be required to make a distribution with respect thereto. Assuming approval of (a) an Order approving this settlement pursuant to Bankruptcy Rule 9019, in substantially the form attached hereto as Exhibit A, and (b) the Global Settlement Agreement and confirmation of the Plan, the liabilities of the WMI Entities for Response Costs Related to the BKK Facility, if any, shall be determined by the United States District Court for the Central District of California. Within five (5) business days of the Effective Date of this Agreement, the Debtors or the Reorganized Debtors, as the case may be, DTSC and the BKK Group shall submit to the Bankruptcy Court a stipulated order, substantially in the form of Exhibit B, hereto, providing that (i) the BKK Proofs of Claim shall be deemed withdrawn, without prejudice, but expressly subject to both an absolute bar on refileing such proofs of claim and this Section 1.3's bar on filing any additional proofs of claim, whatsoever in the Chapter 11 Cases, (ii) the withdrawal of the BKK Proofs of Claim shall be without prejudice to DTSC's and the BKK Group's rights arising from this Agreement, the Plan and the Confirmation Order, (iii) the automatic stay, if applicable, shall be lifted to the limited extent required to permit a determination of WMI's liability for Response Costs Related to the BKK Facility, including, without limitation, any derivative liability of WMI for the liabilities, if any, of WMI Rainier LLC, Ahmanson Developments Inc. and Oxford Investment Company, for Response Costs Related to the BKK Facility, by the United States District Court for the Central District of California and JPMC's liability, if any, resulting therefrom, as provided for in this Agreement and (iv) bankruptcy defenses, including, but not limited to, discharge, release, injunction, exculpation, and bar shall not be applicable or preclude the determination, nor the collection from JPMC of WMI's liability for Response Costs Related to the BKK Facility, if any, as described in subsection (iii) of this Section 1.3, it being the Parties' intention that the United States District Court for the Central District of California shall be the venue for all matters relating to the enforcement of this Agreement.

**Section 1.4. Certain Terms.** The Parties agree that, as used in Section 2.21 of the Global Settlement Agreement, or elsewhere in the Plan or Disclosure Statement and in this Agreement, the term “remediation or clean-up costs and expenses” shall mean “Response Costs” as specified in Sections 101 and 107 of CERCLA (42 U.S.C. §§ 9601 (23), (24) and (25), 9607), excluding, to the extent they might otherwise be included, natural resource damages, temporary evacuation and housing, emergency assistance and relocation expenses, provided further, that Response Costs does not include tort and tort related liabilities except to the extent that they are response costs under CERCLA, as limited by the exclusions set forth above in this paragraph 1.4. The term “Response Costs Related to the BKK Facility” means Response Costs (subject to the exclusions identified in this paragraph) arising from or relating to the Facility, including, without limitation, (i) the BKK Litigation, (ii) the Amended Consent Decree, dated March 6, 2006, entered in connection therewith, and (iii) that certain Amended and Restated Joint Defense, Privilege and Confidentiality Agreement, dated as of February 28, 2005, by and among the BKK Joint Defense Group, as defined therein. The Parties further agree that the references in Section 2.21 of the Global Settlement Agreement to excluding WMI Rainier LLC shall no longer apply but shall be addressed as set forth in Section 1.5 of this Agreement. The Parties agree that, as used in Section 2.21 of the Global Settlement Agreement, or elsewhere in the Plan or Disclosure Statement, the term “applicable and available insurance” shall have the same meaning as “Applicable and Recoverable Insurance,” which shall mean the amount of money that JPMC recovers under the BKK-Related Policies as indemnity payments (not including costs of defense) on behalf of WMI, WMB, WMI Rainier, or any other WMI related entities on account of their liability for Response Costs Related to the BKK Facility.

**Section 1.5.** Notwithstanding the terms set forth in Section 2.21 of the Global Settlement Agreement, the Parties agree as follows:

(i) JPMC shall pay or fund the payment of any and all liability of the WMI Entities for Response Costs Related to the BKK Facility in excess of Applicable and Recoverable Insurance; provided, however, that with respect to the liability of WMI Rainier LLC (including its alleged corporate predecessors in interest such as Ahmanson Developments Inc. and Oxford Investment Company) for Response Costs Related to the Facility, JPMC’s liability shall be limited to one million four hundred ninety thousand dollars (\$1,490,000.00) in excess of any Applicable and Recoverable Insurance allocable to WMI Rainier (the “*Rainier Limit*”); and provided, further, that, in the event it is determined, by a final non-appealable order, that the Debtors are, or either of them is, derivatively liable, whether as the alter ego or otherwise, for the Response Costs Related to the BKK Facility of WMI Rainier or its predecessors Ahmanson Development, Inc. or Oxford Investment Corp., the liability of JPMC shall not be limited by the Rainier Limit, but JPMC shall only be obligated to pay or fund the derivative liabilities of WMI for Response Costs Relating to the BKK Facility in excess of Applicable and Recoverable Insurance;

(ii) subject to the liability limitations contained in, and any payments made pursuant to, subsection (i) above, including the Rainier Limit, JPMC shall indemnify and hold harmless the WMI Entities for their liability for Response Costs Related to the BKK Facility to the extent that such liabilities are not included in the Applicable and

Recoverable Insurance and defend the WMI Entities with regard to their liabilities for Response Costs Related to the BKK Facility to the extent that the WMI Entities are not otherwise defended under the BKK-Related Policies; provided, however, that, with respect to WMI Rainier or its predecessors Ahmanson Development, Inc. or Oxford Investment Corp, and subject to subsection (i) above, JPMC's indemnification and defense obligations shall be limited to one million four hundred ninety thousand dollars (\$1,490,000.00), including any costs of defending WMI Rainier or its predecessors Ahmanson Development, Inc. or Oxford Investment Corp, paid by JPMC; and

(iii) the WMI Entities agree (1) that JPMC has sole discretion to retain counsel of its choice to defend any claims or suits pursuant to its obligations under this Agreement, (2) that JPMC may retain common counsel to defend both it and the WMI Entities, and (3) to waive any actual or potential conflicts of interest in order to permit JPMC to use common counsel. As of the Effective Date, the WMI Entities shall assign for themselves and their successors in interest to JPMC all claims for contribution, equitable indemnity and cost recovery that they have or may have in the future related to liability for Response Costs Related to the BKK Facility.

**Section 1.6. Payment to JPMC.** On the Effective Date, WMI shall pay on behalf of WMI Rainier to JPMC the sum of one million four hundred ninety thousand dollars (\$1,490,000.000) through a reduction of the amounts JPMC is obligated to pay or transfer to Debtors on the Effective Date in accordance with Section 2.1 of the Global Settlement Agreement. Debtors' compliance or noncompliance with the foregoing provision shall not affect the rights of the BKK Claimants or JPMC's obligations to the BKK Claimants under this Agreement.

**Section 1.7. Limited Reservation of Rights.** Notwithstanding any provision in the Plan, the Confirmation Order, or this Agreement to the contrary, DTSC and the BKK Group agree not to assert, nor shall they ever collect with respect to, any claims against the WMI Entities and their Related Persons (which for, purposes of this sentence only, does not include former WMB, FDIC Receiver, or JPMC), including, without limitation, WMI Rainier or its predecessors Ahmanson Development, Inc., or Oxford Investment Corp, relating to the Facility other than for recovery of Response Costs Related to the BKK Facility. DTSC and the BKK Group further agree that the rights of DTSC and the BKK Group to pursue JPMC and its Related Persons (but not including FDIC, and not including WMB except to the extent JPMC is responsible for any WMB liability under this Agreement or the Purchase and Assumption Agreement) for matters related to the Facility, shall be limited to, and DTSC and the BKK Group hereby release and waive any claims other than, the following: (a) for liabilities relating to the BKK Facility, if any, assumed by JPMC pursuant to the Purchase and Assumption Agreement with FDIC, (b) to enforce JPMC's obligations to pay and fund, in a timely manner, liabilities for Response Costs Related to the BKK Facility as set forth in this Agreement and (c) to enforce the terms of this Agreement. DTSC and the BKK Group and JPMC agree to negotiate in good faith to attempt to settle the liabilities for Response Costs related to the BKK Facility as expeditiously as possible. DTSC and the BKK Group further agree not to assert any claims against the BKK Related Policies except in the event that JPMC fails to fulfill its obligations under this Agreement.

Section 1.8. Insurance Shortfall. To the extent that the Applicable and Recoverable Insurance under the BKK-Related Policies is insufficient to cover the liabilities of the WMI Entities and WMB for Response Costs Related to the BKK Facility, in determining JPMC's obligations under this Agreement or Section 2.21 of the Global Settlement Agreement, the BKK-Related Policy proceeds shall be applied first to the liabilities of WMI for such Response Costs, if any, then to the BKK-related liabilities of WMB for which JPMC may be responsible under this Agreement or the Purchase and Assumption Agreement, if any, and thereafter to the liabilities of WMI Rainier for such Response Costs, if any; provided, however, that, in the event of such a shortfall, the policy proceeds applied to WMI Rainier's liability shall be no less than twenty percent (20%) of the proceeds of the BKK-Related Policies pursuant to which WMI Rainier, or, its corporate predecessors in interest, including but not limited to Oxford Investment Corporation, were insureds, but no more than the amount for which WMI Rainier is adjudicated liable. The amount allocable to WMI Rainier under this provision is referred to in this Agreement as the "Applicable and Recoverable Insurance Allocable to WMI Rainier LLC."

Section 1.9. Dedication of Policies. JPMC agrees that in the event there is a judgment against any of the WMI Entities which JPMC is obligated under this Agreement to pay or fund in excess of Applicable and Available Insurance, and JPMC has not collected that insurance from the BKK Related Carriers within forty two (42) months of such judgment, JPMC will promptly pay the judgment and seek recovery of such amounts from the BKK Related Carriers. JPMC agrees that all amounts paid to JPMC for indemnity under the BKK-Related Policies with respect to Response Costs for the Facility will be applied to satisfy JPMC's obligations to the BKK Claimants under this Agreement.

Section 1.10. WMI Rainier. With respect to WMI Rainier, DTSC and the BKK Group agree 1) not to challenge or otherwise attempt to avoid or invalidate any transaction, transfer or conveyance made or to be made pursuant to this Agreement or pursuant to the Plan, from Debtors or JPMC to WMI Rainier and 2) not to challenge any other transaction, made or to be made pursuant to this Agreement or pursuant to the Plan, between WMI Rainier, on the one hand, and the Debtors or JPMC, on the other hand.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representation and Warranties of JPMC. JPMC hereby represents and warrants for itself, and on behalf of the other JPMC Entities, that: (a) it 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) it has 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) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; and (d) it, or one of its affiliated JPMC Entities, directly or indirectly, has the power and authority to bind each other JPMC Entity to the terms of this Agreement or otherwise has been duly authorized by such other JPMC Entity to execute and deliver this Agreement on its behalf.

**Section 2.2. Representation and Warranties of Certain of the WMI Entities.** On behalf of themselves and the WMI Entities, including WMI Ranier, WMI, and WMIIC each hereby represent and warrant that: (a) it is duly organized and validly existing under the laws of the jurisdiction of 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) it has 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 organization documents or any material agreement specifically applicable to it; (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; and (d) it, or one of its affiliated WMI Entities that is signatory hereto, directly or indirectly, and subject to the entry of the confirmation order, has the power and authority to bind each Debtor, Reorganized Debtor and other WMI Entity to the terms of this Agreement or otherwise has been duly authorized by such Debtor, Reorganized Debtor and other WMI Entity to execute and deliver this Agreement on its behalf.

**Section 2.3. Representations and Warranties of DTSC.** DTSC hereby represents and warrants for itself that: (a) it 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 regulatory activities in which it is engaged, to execute this Agreement and to consummate the transactions contemplated hereby; (b) it has 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) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; and (d) it directly or indirectly, has the power and authority to bind itself to the terms of this Agreement or otherwise has been duly authorized to execute and deliver this Agreement on its behalf.

**Section 2.4. Representations and Warranties of the BKK Group.** The BKK Group, Atlantic Richfield Corporation, THUMS Long Beach Company, Shell Exploration & Production Company, Shell Oil Company, and Bayer CropScience Inc.,

hereby represent and warrant that: (a) the BKK Group is an unincorporated association, and that the individual members identified in this Section 2.4 are corporations, duly organized, validly existing and in good standing to the extent required 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 execute this Agreement on behalf of itself and its members and to consummate the transactions contemplated hereby; (b) the BKK Group has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, this Agreement binds each of its members, 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 by each such member and (ii) is not in contravention of its organizational documents or any agreements specifically applicable to it, if any; (c) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; and (d) it has the power and authority to bind itself and each of its members to the terms of this Agreement or otherwise has been authorized and execute and deliver this.

### **ARTICLE III MISCELLANEOUS**

Section 3.1. Amendments. This Agreement may not be modified, amended or supplemented except by a written agreement executed by each Party.

Section 3.2. No Admission of Liability. The execution of this Agreement is not intended to be, nor shall it be construed as, an admission or evidence in any pending or subsequent suit, action, proceeding or dispute of any liability, wrongdoing, or obligation whatsoever (including as to the merits of any claim or defense) by any Party to any other Party or any other Person with respect to any of the matters addressed in this Agreement.

Section 3.3. Good Faith Negotiations. The Parties recognize and acknowledge that each of the Parties hereto is represented by counsel, and such Party received independent legal advice with respect to the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted at arm's length; this Agreement is made and executed by and of each Party's own free will; that each knows all of the relevant facts and his or its rights in connection therewith, and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any party to this Agreement.

Section 3.4. 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 Parties (which for purposes of this Agreement include WMI Rainier and JPMC's Related Persons) hereto, and their respective successors and assigns, any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof. For the avoidance of doubt, for purposes of this Agreement, each

of the members of the BKK Group as identified on the attached Exhibit C are deemed "Parties" hereto.

Section 3.5. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to any principles of conflicts of law and applicable federal law.

Section 3.6. Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party hereto because of the authorship of any provision of this Agreement.

Section 3.7. Headings. The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and are not part of this Agreement and do not in any way limit or modify the terms or provisions of this Agreement and shall not affect the interpretation hereof.

Section 3.8. Binding Agreement Successors and Assigns; Joint and Several Obligations. This Agreement shall be binding only upon the execution and delivery of this Agreement by the Parties listed on the signature pages hereto. This Agreement is intended to, and shall be deemed to, bind and inure to the benefit of the Parties and their respective successors, assigns, administrators, constituents and representatives. The agreements, representations, covenants and obligations of the Parties under this Agreement are several only and not joint in any respect and none shall be responsible for the performance or breach of this Agreement by another.

Section 3.9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

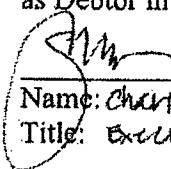
Section 3.10. Condition to Effectiveness. The Parties understand and agree that the effectiveness of this Agreement is conditioned upon (i) the approval by the Bankruptcy Court of this Agreement in a final, non-appealable order as set forth in Exhibit A, which the Debtors and JPMC will seek on an expedited basis, and (ii) the approval by the Bankruptcy Court of the Plan and Global Settlement Agreement and the entry of a confirmation order consistent with this Agreement, and (iii) the approval by the Court of the Stipulated Order attached as Exhibit B. The provisions of this Agreement shall be null and void if any of those conditions are not met. The "Effective Date" of this Agreement shall be the date upon which both conditions (i) and (ii) set forth in this Section 3.10 have been met. Debtors agree to seek support for this Agreement from all parties to the Global Settlement Agreement and to move for Bankruptcy Court approval of this Agreement in connection with the confirmation hearing, and DTSC and the BKK Group agree to support approval, of this Agreement. Pending such approval by the

Bankruptcy Court, the Parties shall take no actions inconsistent with the terms of this Agreement

Section 3.11. Release Carve Out. Except to the extent that claims have been limited or released as set forth in Section 1.7 of this Agreement, the Parties understand and agree that, nothing in the Plan, the Global Settlement Agreement or Confirmation Order shall release or exculpate any non-Debtor Entity or its Related Persons from any liability related to the Facility or to enjoin or bar the assertion of any claim or cause of action relating to the Facility against any non-Debtor Entity or its Related Persons, and in this regard Debtors shall cause to be included in the proposed Plan Confirmation Order the same BKK-related carve-out of the third party releases in Section 43.6 of the Plan (as modified by this Agreement) (the "BKK Release Carve-Out"). The Parties further understand and agree that the ballot cast by any BKK Claimant rejecting the Plan but not "opting out" of the Plan Releases, shall not be deemed a consent to the Plan Releases notwithstanding Section 43.10 of the Plan.

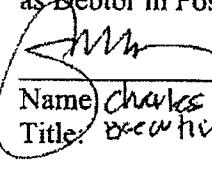
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

WASHINGTON MUTUAL, INC.,  
as Debtor in Possession

By: 

Name: Charles Edward Smith  
Title: Executive Vice President

WMI INVESTMENT CORP.,  
as Debtor in Possession

By: 

Name: Charles Edward Smith  
Title: Executive Vice President

JPMORGAN CHASE BANK, N.A.

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Section 3.11. Release Carve Out. Except to the extent that claims have been limited or released as set forth in Section 1.7 of this Agreement, the Parties understand and agree that, nothing in the Plan, the Global Settlement Agreement or Confirmation Order shall release or exculpate any non-Debtor Entity or its Related Persons from any liability related to the Facility or to enjoin or bar the assertion of any claim or cause of action relating to the Facility against any non-Debtor Entity or its Related Persons, and in this regard Debtors shall cause to be included in the proposed Plan Confirmation Order the same BKK-related carve-out of the third party releases in Section 43.6 of the Plan (as modified by this Agreement) (the "BKK Release Carve-Out"). The Parties further understand and agree that the ballot cast by any BKK Claimant rejecting the Plan but not "opting out" of the Plan Releases, shall not be deemed a consent to the Plan Releases notwithstanding Section 43.10 of the Plan.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

WASHINGTON MUTUAL, INC.,  
as Debtor in Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WMI INVESTMENT CORP.,  
as Debtor in Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JPMORGAN CHASE BANK, N.A.

By: *Lawrence N. Chanen*  
Name: LAWRENCE N. CHANEN  
Title: *SVP and Associate general  
Counsel*

Final. December 5, 2010

CALIFORNIA DEPARTMENT OF  
TOXIC SUBSTANCES CONTROL

By: Stephen Black  
Name:  
Title: *Acting Deputy Director*

BKK JOINT DEFENSE GROUP, on behalf  
of itself and each individual member  
thereof

By: \_\_\_\_\_  
Name:  
Title:

Atlantic Richfield Corporation,

By: \_\_\_\_\_  
Name:  
Title:

THUMS Long Beach Company,

By: \_\_\_\_\_  
Name:  
Title:

Shell Exploration & Production Company,

By: \_\_\_\_\_  
Name:  
Title:

Shell Oil Company,

By: \_\_\_\_\_  
Name:  
Title:

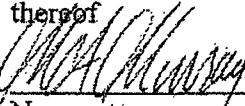
CALIFORNIA DEPARTMENT OF  
TOXIC SUBSTANCES CONTROL

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

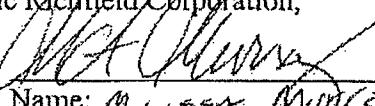
BKK JOINT DEFENSE GROUP, on behalf  
of itself and each individual member  
thereof

By: 

Name: MELISSA MURRAY

Title: Counsel

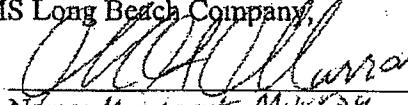
Atlantic Richfield Corporation,

By: 

Name: MELISSA MURRAY

Title: Counsel

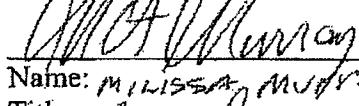
THUMS Long Beach Company,

By: 

Name: MELISSA MURRAY

Title: Counsel

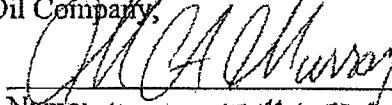
Shell Exploration & Production Company,

By: 

Name: MELISSA MURRAY

Title: Counsel

Shell Oil Company,

By: 

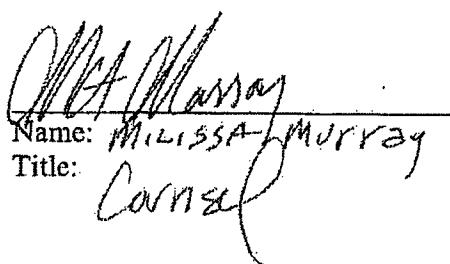
Name: MELISSA MURRAY

Title: Counsel

Final. December 5, 2010

Stauffer Management Company LLC, agent  
for Bayer CropScience Inc.,

By:

  
Name: Melissa Murray  
Title: Conseil