

# EXHIBIT E

## SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT

### SECOND AMENDED AND RESTATED SETTLEMENT

AGREEMENT (the “*Agreement*”), dated as of February 7, 2011, by and among (a) Washington Mutual, Inc. (“*WMI*”) and WMI Investment Corp. (“*WMIIC*” and, collectively with WMI, the “*Debtors*”), (b) JPMorgan Chase Bank, N.A. (“*JPMC*” and, collectively with those of JPMC’s affiliates that have filed proofs of claim against the Debtors and the Debtors’ chapter 11 estates or that are Acquisition JPMC Entities, as defined below, the “*JPMC Entities*”), (c) Federal Deposit Insurance Corporation, in its capacity as receiver for Washington Mutual Bank (“*FDIC Receiver*”), (d) Federal Deposit Insurance Corporation, in its corporate capacity (“*FDIC Corporate*”), and (e) the official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “*Creditors’ Committee*”). The signatories hereto are referred to hereinafter collectively as the “*Parties*” or individually as a “*Party*”. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in Article I below.

### 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 FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB’s assets.

B. On or about September 25, 2008, the FDIC Receiver, FDIC Corporate and JPMC entered into that certain Purchase and Assumption Agreement, Whole Bank, dated September 25, 2008, as amended, modified or supplemented prior to the date hereof (the “*Purchase and Assumption Agreement*”). JPMC has asserted various claims for indemnity against each of the FDIC Receiver and FDIC Corporate arising from the Purchase and Assumption Agreement, including, but not limited to, (1) claims for indemnity for and against any and all potential losses, claims or liabilities arising from or related to the mortgage origination and sale/securitization activities of WMB and its affiliates, including, without limitation, liabilities associated with the Complaint filed in the litigation styled Deutsche Bank National Trust Co. v. FDIC, No. 09-cv-01656 (RMC), currently pending in the D.C. District Court, as defined below, and (2) other claims for indemnity under Section 12.1(a)(9) of the Purchase and Assumption Agreement.

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. On December 30, 2008, the Debtors filed with the FDIC Receiver a proof of claim against WMB’s receivership (the “*Receivership*” and, collectively with

Contribution Assets, the JPMC Claims, the FDIC Claim, the Purchase and Assumption Agreement, the Intercompany Claims, the Disputed Accounts and the WMI Accounts (including, without limitation, any rights of setoff, recoupment, banker's liens, or similar rights a Non-Creditors' Committee Releasor may have against funds in the Disputed Accounts and the WMI Accounts), any intercompany claims on the books of WMI or WMB related to the WaMu Pension Plan and the Lakeview Plan and claims related in any way to the Trust Preferred Securities (including, without limitation, the creation of the Trust Preferred Securities, the retention of the Trust Preferred Securities and the transfer of WMI's interest therein to JPMC), or any claim, act, fact, transaction, occurrence, statement or omission in connection with, or alleged or that could have been alleged in the Related Actions, including, without limitation, any such claim, demand, right, liability, or cause of action for indemnification, contribution, or any other basis in law or equity for damages, costs or fees incurred by the Non-Creditors' Committee Releasors arising directly or indirectly from or otherwise relating to the Actions (the "***Creditors' Committee Released Claims***"). Notwithstanding anything contained in this Section 3.5 or elsewhere to the contrary, (a) the foregoing is not intended to release, nor shall it have the effect of releasing, the Creditors' Committee Releasees from the performance of their obligations in accordance with this Agreement, the written agreements set forth on Schedule 3.5 hereto and entered into among any of the Creditors' Committee Releasees, on the one hand, and any of the Non-Creditors' Committee Releasors, on the other hand, during the period subsequent to the Petition Date and (b) each Non-Creditors' Committee Releasor shall retain the right to assert any and all Creditors' Committee Released Claims by way of setoff, contribution, contributory or comparative fault or in any other defensive manner in the event that such Non-Creditors' Committee Releasor or any other person or entity (but solely as a defense against the claims of such person or entity and not for purposes of obtaining an affirmative recovery) and such Creditors' Committee Released Claim shall be determined in connection with any such litigation as if the provisions of this Section 3.5 were not effective.

**Section 3.6. Relief for Indemnification and Contribution Claims.**

Without in any way limiting the scope of Section 3.1 hereof, each of the FDIC Parties further agrees that, from and after the Effective Date, if (a) any claim or cause of action is commenced, asserted, continued or pursued by, on behalf of, or for the benefit of any of the FDIC Parties against any Person, including, without limitation, any Excluded Party, for claims or causes of action relating to the period prior to the Effective Date, (b) a judgment or settlement is obtained in connection therewith requiring payment by such Person to any of the FDIC Parties or otherwise (the "***FDIC Judgment or Settlement***"), and (c) as a direct or indirect result thereof, any Person seeks and successfully obtains, by way of judgment, award, settlement (with consent of the FDIC Parties, which consent shall not be unreasonably withheld) or otherwise, directly or indirectly, any contribution or indemnity from any of the WMI Releasees based upon, arising from, or related to the FDIC Judgment or Settlement, then, such FDIC Party shall not execute on, collect on, obtain a lien based upon, or otherwise perfect or use in any manner any FDIC Judgment or Settlement unless the FDIC Party first reduces the FDIC Judgment or Settlement amount or otherwise structures such FDIC Judgment or Settlement, by agreement or

otherwise, such that none of the WMI Releasees shall be required to make any payment on such contribution or indemnification or, directly or indirectly, any payment of any portion of the FDIC Judgment or Settlement that exceeds amounts paid or to be paid from available insurance coverage, including, without limitation, any insurance under the Tower Insurance Programs. The specific action or inaction taken by any of the FDIC Parties as may be required by this Section 3.6 shall be at the discretion of such FDIC Parties so long as such action or inaction, as the case may be, shall be effective to relieve all of the WMI Releasees of such contribution or indemnification claims in a manner consistent with this Section 3.6. Nothing contained in this Section 3.6 shall (x) require any FDIC Party to pay or otherwise be responsible for any attorneys' fees or other costs of litigation incurred by any WMI Releasee, all such fees and costs being the sole responsibility and obligation of the WMI Releasee, (y) to the extent that the FDIC Parties comply with the provisions of this Section 3.6, require any of the FDIC Parties to indemnify, reimburse or pay any loss or obligation of any WMI Releasees, the Excluded Parties or any other Person, and (z) be construed to relieve any of the Debtors' insurers, including, without limitation, any insurers in the Tower Insurance Programs, of any of their obligations under their insurance policies or applicable law.

Section 3.7. Bar Order. Except as otherwise agreed to by the Parties, the effectiveness of the compromise and settlement set forth herein is conditioned upon, among other things, the Bankruptcy Court entering the Confirmation Order, each of which shall, inter alia, provide that each and every Person who is not a Releasor hereunder, and receiving a distribution pursuant to the Plan, is permanently enjoined, barred and restrained from instituting, prosecuting, pursuing or litigating in any manner any and all claims, demands, rights, liabilities, or causes of action of any and every kind, character or nature whatsoever, in law or in equity, known or unknown (including Unknown Claims), whether asserted or unasserted, against any of the WMI Releasees, the JPMC Releasees, the FDIC Releasees, or the Creditors' Committee Releasees that are Released Claims or otherwise are based upon, related to, or arise out of or in connection with the Debtors' Claims, the JPMC Claims, the FDIC Claim, the Purchase and Assumption Agreement (other than any rights, claims or defenses the JPMC Entities or the FDIC Parties may have pursuant to the Purchase and Assumption Agreement), confirmation and consummation of the Plan, the negotiation and consummation of this Agreement or any claim, act, fact, transaction, occurrence, statement or omission in connection with or alleged or that could have been alleged in the Related Actions or other similar proceedings, including, without limitation, any such claim, demand, right, liability, or cause of action for indemnification, contribution, or any other basis in law or equity for damages, costs or fees incurred arising directly or indirectly from or otherwise relating to the Related Actions, either directly or indirectly by any Person for the direct or indirect benefit of any WMI Releasee arising from or related to the claims, acts, facts, transactions, occurrences, statements or omissions that are, could have been or may be alleged in the Related Actions or any other action brought or that might be brought by, through, on behalf of, or for the benefit of the WMI Releasees or any of them (whether arising under federal, state or foreign law, and regardless of where asserted).