

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
WASHINGTON MUTUAL, INC., et al.,¹) Case No. 08-12229-MFW
)
Debtors.) Jointly Administered
)

**COURIER SOLUTIONS, INC'S RESPONSE TO
DEBTORS' FIFTH OMNIBUS (SUBSTANTIVE) OBJECTION TO CLAIMS**

Courier Solutions, Inc. ("Courier Solutions" or "Creditor"), submits this Response to Debtors' Fifth Omnibus Objection to Claims. This response is supported by the Affidavit of Jason Loftis attached hereto as Exhibit "A" and Title 19 of the Revised Code of Washington attached hereto as Exhibit "B". Courier Solutions also incorporates by reference and adopts the argumentation and analysis, and evidentiary support, tendered by the following other creditors in opposition to objections identical to those now being urged by Debtors against Courier Solutions' claim: Response of Claimant/Creditor Compliance Coach, Inc., to Debtors' Fifth Omnibus (Substantive) Objection to Claims and Declaration in support thereof; Claimant Julie Morales Response to Debtors' Sixth Omnibus (Substantive) Objection to Claims and supporting evidence tendered therewith. Courier Solutions further adopts and incorporates by reference the arguments of the bondholders in connection with their Attachment to Amended Proof of Claim of Bank Bondholders filed on 3/31/2009, a copy of which is attached hereto as Exhibit "C" and incorporated by this reference.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).



Factual Background

Courier Solutions entered into a contract to perform courier services with Washington Mutual, a copy of which is attached hereto as Exhibit “D” and incorporated by this reference. The contract recited that it was with “Washington Mutual Bank...and its direct and indirect subsidiaries and Affiliates (hereafter referred to as “**WaMu**”).” Billings were to be mailed to “WMI Billing” and copies of notices were to be sent to General Counsel for Washington Mutual, Inc. “Affiliate” was defined to include both entities controlling and controlled by Washington Mutual Bank. Thus, under the express terms of the contract, Courier Solutions was contractually obligated to provide courier services to any and all of the affiliated Washington Mutual entities.

When Courier Solutions submitted its billings for services performed, it submitted the billings addressed to “WashingtonMutual” only. Loftis Affidavit.

The courier services under such contract were performed for a time by this Creditor, and then the work called for under such contract was diverted to other entities, namely CSA Delivery, Inc. d/b/a Courier Solutions of America, Inc., Action Courier & Logistics, LLC, North Texas Presort, Inc., or Houston Area Couriers, Inc. This Creditor is seeking an accounting of payments wrongfully made to such other entities, and recovery under its contract with Debtor, as well as all resulting contracts executed with such other entities, for courier services in Oakland, California, Texas, Georgia, Florida, and the Burbank California Mail Sort Center.

On September 26, 2008, Debtors filed petitions for relief under Chapter 11 of the United States Bankruptcy Code in this Court. Courier Solutions thereafter filed a timely proof of claim (Claim No. 2512). The amounts due to Creditor are not known in detail, but are estimated to be approximately \$942,000 per month, for a contract term of five years (60 months), for a total of

\$56,520,000.

On June 26, 2009, Debtors filed their Fifth Omnibus (Substantive) Objection to Claims which objects to Courier Solutions' claim based on the claim purportedly "relat[ing] to amounts owed pursuant to an agreement between the claimant and WMB." The substance of the objection is that the contract was not with any of the Debtors, and therefore they are not liable therefor.

Response to Objection

The Objection should be denied without prejudice. The Debtors' bald assertion that Courier Solutions' contract was with WMB rather than WMI is insufficient to overcome the prima facie validity of Courier Solutions' claim. *See* Fed. R. Bankr. P. 3001(f). In accordance with Rule 3001(f), a claim filed in conformity to the bankruptcy rules constitutes prima facie evidence of the validity and amount of the claim.

Assuming that Debtors contest liability under the contract, this question of liability is a fact-intensive determination that cannot be made based on a bare, perfunctory objection, unsupported by a shred of evidence. Looking at the contract itself, WMI was a contracting party. Page 1 of the contract states:

"This Contracted Courier Service Agreement is entered into as of the 1st day of February, 2006 by and between Washington Mutual Bank, a federal savings association, with offices located at 1201 Third Avenue, Seattle, Washington 98101 and its direct and indirect subsidiaries and **Affiliates** (hereinafter referred to as 'WaMu') and Courier Solutions" (Emphasis added.) (Exhibit D, ¶1.)

Attached to the Contract is a series of definitions:

"'Affiliate' means, with respect to either Party, any entity **controlling**, controlled by, or under common control with such party where 'control' means ownership of more than fifty percent (50%) of the shares entitled to vote for the election of directors or other managing authority." (Emphasis added.) (Exhibit D, ¶14.)

As WMI was the parent company of WMB, WMI is an Affiliate under the contract as a controlling entity.

Even if the Contract's definition was substituted for the definition found in the laws of Washington State, the state laws prescribed by the Contract's choice of law provision, the outcome is identical. (Exhibit D, ¶11.) Title 19 ("Business Regulations") of the Revised Code of Washington defines "affiliate" as:

"a person **controlling**, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions." (Emphasis added.) (Exhibit B, ¶1.)

Under either definition, Washington Mutual, Inc. is an "affiliate" of Washington Mutual Bank and therefore liable under the contract.

Further, upon information and belief, WMB's signatory, John Rostas, was employed not by WMB, but by **WMI** as a "Senior Vice President of Operational Excellence".² Given that Mr. Rostas was employed by WMI, any contention by the Debtors that Mr. Rostas lacked the authority to bind WMI to the contract would be frivolous and even if this argument is presented, the acceptance of the benefits of the Agreement by WMI estop the debtors from denying the signature's effectiveness.

As the contract was signed by a Vice President of WMI and bound WMI as an "affiliate" of WMB, WMI is liable for all debts under the contract. At the very least, this raises an issue of fact that cannot be dismissed by the Debtor in a no-evidence omnibus objection.

Further, even if, in the face of all evidence to the contrary, WMI was found to not be an affiliate of WMB under the contract, WMI is still liable for the debts of WMB under principles of

² Washington Mutual Press Release referring to John Rostas as an employee at the publicly traded Washington Mutual, Inc. attached as Exhibit "E".

EXHIBIT "A"

IN THE UNITED STATES BANKRUPTCY COURT
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WASHINGTON MUTUAL, INC., et al.,¹) Case No. 08-12229-MFW
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Debtors.) Jointly Administered
)

AFFIDAVIT OF JASON LOFTIS

Jason Loftis, being first placed upon oath, deposes and says the following.

1. "My name is Jason Loftis. I am over 21 years of age, and am legally competent to testify to all the facts stated herein. I have personal knowledge of the facts stated herein and they are all true and correct.

2. I am at the present time President and Secretary of Courier Solutions, Inc., and have been a shareholder and officer since the inception of Courier Solutions. Prior to July, 2008, I was Secretary/Treasurer of Courier Solutions. I was personally involved in the discussions among the shareholders, officers, and directors of Courier Solutions regarding the acceptance and performance of the Washington Mutual Contracted Courier Services Agreement.

3. I am furnishing this affidavit in support of the Response to Debtors' Fifth Omnibus Objection to Claims ("Response"). I have reviewed the Response and find all facts asserted to be honest and truthful.

4. At all times since its formation, the primary business of Courier Solutions has been

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal tax identification numbers are: (i) Washington Mutual, Inc. (3725) and (ii) WMI Investment Corp. (5395).

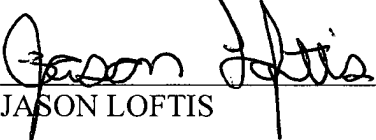
to provide package and mail delivery services (courier services).

5. On February 1, 2006, Courier Solutions entered into a contract for courier services with Washington Mutual, Inc., a copy of which is attached to the Response as Exhibit "C" and incorporated by this reference.

6. CSI performed its obligated duties under such contract until Washington Mutual diverted the work called for under the contract to other entities, namely CSA Delivery, Inc. d/b/a Courier Solutions of America, Inc., Action Courier & Logistics, LLC, North Texas Presort, Inc., or Houston Area Couriers, Inc.


7. While operating under the contract, all correspondence relating to the contract was sent to and from Seattle, Washington addressed to and from "WaMu". Invoices were submitted to "Washington Mutual," without distinction between Washington Mutual, Inc., or Washington Mutual Bank. At all times I believed we were providing courier services to the publicly traded Washington Mutual, Inc, not a subsidiary.

8. Further affiant saith not."



JASON LOFTIS

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 16th
day of July, 2009.

My Commission Expires:


11-14-12



NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT "B"

Rev. Code Wash. (ARCW) § 19.100.010

LEXSTAT WASH CODE 19.100.010

ANNOTATED REVISED CODE OF WASHINGTON
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** Statutes current through the 2009 legislation effective through 7/1/2009 **
*** Annotations current through May 5, 2009 ***

TITLE 19. BUSINESS REGULATIONS -- MISCELLANEOUS
CHAPTER 19.100. FRANCHISE INVESTMENT PROTECTION

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 19.100.010 (2009)

§ 19.100.010. Definitions

When used in this chapter, unless the context otherwise requires:

- (1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.
- (2) "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.
- (3) "Director" means the director of financial institutions.
- (4) "Franchise" means:
 - (a) An agreement, express or implied, oral or written, by which:
 - (i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
 - (ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and
 - (iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.
 - (b) The following shall not be construed as a franchise within the meaning of this chapter:
 - (i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;
 - (ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;
 - (iii) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.
- (5) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:
 - (a) Price specifications, special pricing systems or discount plans;
 - (b) Sales or display equipment or merchandising devices;
 - (c) Sales techniques;

Rev. Code Wash. (ARCW) § 19.100.010

- (d) Promotional or advertising materials or cooperative advertising;
- (e) Training regarding the promotion, operation, or management of the business; or
- (f) Operational, managerial, technical, or financial guidelines or assistance.

(6) "Bank credit card plan" means a credit card plan in which the issuer of credit cards is a national bank, state bank, trust company or any other banking institution subject to the supervision of the director of financial institutions of this state or any parent or subsidiary of such bank.

(7) "Franchisee" means a person to whom a franchise is offered or granted.

(8) "Franchisor" means a person who grants a franchise to another person.

(9) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of a franchise.

(10) "Subfranchisor" means a person to whom a subfranchise is granted.

(11) "Franchise broker" means a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees.

(12) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

(13) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(14) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(15) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(16) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

HISTORY: 1994 c 92 § 3; 1991 c 226 § 1; 1979 c 158 § 83; 1973 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s. c 252 § 1.

NOTES: EMERGENCY -- EFFECTIVE DATE -- 1972 EX.S. C 116: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on May 1, 1972." [1972 ex.s. c 116 § 17.]

JUDICIAL DECISIONS

ANALYSIS
Franchise

Franchise fee
Service stations

FRANCHISE.

Since the installation company had not demonstrated that it paid the hardware store a franchise fee, it was not a franchise as defined in this section. *Corporate Res., Inc. v. Eagle Hardware & Garden, Inc.*, 115 Wn. App. 343, 62 P.3d 544 (2003).

A company that delivered packages for a nationwide delivery service under a cartage contract was not a franchisee under this act because it did not offer, sell, or distribute transportation services to the customers who ship goods with the delivery service. *East Wind Express, Inc. v. Airborne Freight Corp.*, 95 Wn. App. 98, 974 P.2d 369, review denied, 138 Wn.2d 1023, 989 P.2d 1136 (1999).

The contractual relationship between the owner and operator of a self-service motor fuels station and convenience store did not constitute a franchise relationship within the meaning of this act because the operator failed to present sufficient evidence to establish that he and the motor fuel service station franchisor shared a "community interest" as required by the act. *Blanton v. Texaco Ref. & Mktg., Inc.*, 914 F.2d 188 (9th Cir. 1990).

Partnership agreement was a franchise agreement where defendant corporation gave plaintiff the right to use the corporation trademark. *Huebner v. Sales Promotion, Inc.*, 38 Wn. App. 66, 684 P.2d 752 (1984), review denied, 103 Wn.2d 1018, cert. denied, *Satterfield v. Huebner*, 474 U.S. 818, 106 S. Ct. 64, 88 L. Ed. 2d 52 (1985).

Court found that distributorship agreement was a franchise after concluding that the agreement gave plaintiffs a license to use defendant's trade name and logotype; that defendant's charges for locations, company advertising and training constituted a hidden franchise fee; and that the required "community interest" was evidenced by that part of the agreement which bound plaintiffs to purchase and the defendant to supply company products for one year, accordingly; since the distributorships were not registered, the defendant and its agents violated the prohibition against selling unregistered franchises. *Lobdell v. Sugar 'N Spice, Inc.*, 33 Wn. App. 881, 658 P.2d 1267, review denied, 99 Wn.2d 1016 (1983).

This chapter did not apply to jobber sales contract between oil company and private corporation where payments under contract were not a "franchise fee." *AMOCO v. Columbia Oil Co.*, 88 Wn.2d 835, 567 P.2d 637 (1977).

FRANCHISE FEE.

Summary judgment dismissal of plaintiffs' claim under Washington's Franchise Investment Protection Act, chapter 19.100 RCW, would not be reconsidered under *Fed. R. Civ. P. 59(e)* on the ground that plaintiffs had discovered fees they had paid that constituted "hidden" franchise fees that had not been considered when the court granted summary judgment in favor of a corporation based on a finding that plaintiffs failed to establish that they paid a franchise fee; plaintiffs failed to disclose any newly discovered evidence supporting their contention that they paid a franchise fee, and they failed to explain why the evidence they relied upon in their motions for reconsideration could not have been discovered earlier. *Atchley v. Pepperidge Farm, Inc.*, -- F. Supp. 2d -- (E.D. Wash. Sept. 7, 2006).

The profit margin on installation contracts is not a franchise fee, under this section, as the price differential represents the cost of negotiating and enforcing the contracts and the value of goodwill. *Corporate Res., Inc. v. Eagle Hardware & Garden, Inc.*, 115 Wn. App. 343, 62 P.3d 544 (2003).

Franchisor's argument that the markup he imposed on goods purchased by the franchisee was not an unfair or unreasonable price in violation of this act because the markup was actually a franchise fee or royalty was rejected. *Nelson v. National Fund Raising Consultants, Inc.*, 120 Wn.2d 382, 842 P.2d 473 (1992).

Trial court's conclusion that percentage leases between gas station franchisor and certain convenience store lessees operating in conjunction with franchised gas stations constituted franchise fees under this act was supported by substantial evidence. *Craig D. Corp. v. Atlantic-Richfield Co.*, 45 Wn. App. 563, 726 P.2d 66 (1986), review denied, 108 Wn.2d 1014 (1987).

Gasoline service station owners presented substantial evidence that their mandatory purchases from franchisor corporation of motor oil, tires, batteries, and accessories constituted a franchise fee. *Blanton v. Mobil Oil Corp.*, 721 F.2d 1207 (9th Cir. 1983), cert. denied, 471 U.S. 1007, 105 S. Ct. 1874, 85 L. Ed. 2d 166 (1985).

Fee paid by plaintiff to former company district manager for business records and good will was not a franchise fee since plaintiff, as an independent salesman for the company, was not a franchisee. *Laurence J. Gordon, Inc. v. Brandt, Inc.*, 554 F. Supp. 1144 (W.D. Wash. 1983).

This chapter did not apply to jobber sales contract between oil company and private corporation where payments under contract were not a "franchise fee." *AMOCO v. Columbia Oil Co.*, 88 Wn.2d 835, 567 P.2d 637 (1977).

Payment by jobber for fuel oils, tires and the like, for rental of sign and credit card imprinter was not a franchise fee under this section. *AMOCO v. Columbia Oil Co.*, 88 Wn.2d 835, 567 P.2d 637 (1977).

SERVICE STATIONS.

This act applies to service stations. *Craig D. Corp. v. Atlantic-Richfield Co.*, 45 Wn. App. 563, 726 P.2d 66 (1986), review denied, 108 Wn.2d 1014 (1987).

RESEARCH REFERENCES

ALR.

Vicarious liability of private franchisor. 81 ALR3d 764.

Validity, construction and effect of state franchising statute. 67 ALR3d 1299.

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES.

Automobile

-- dealers licenses: Chapter 46.70 RCW.

-- driver schools, licensing: Chapter 46.82 RCW.

-- repair: Chapter 46.71 RCW.

Banks and trust companies: Title 30 RCW.

Bringing in out-of-state persons to replace employees involved in labor dispute

-- Penalty: RCW 49.44.100.

Business and occupation tax: Chapter 82.04 RCW.

Business corporations and cooperative associations: Titles 23 and 23B RCW.

Cemeteries, morgues and human remains: Title 68 RCW.

Cities and towns, powers to regulate business: Title 35 RCW.

Coal mining: Title 78 RCW.

Common carriers: Title 81 RCW.

Consumer leases: Chapter 63.10 RCW.

Consumer loan act: Chapter 31.04 RCW.

Controlled substances, uniform act: Chapter 69.50 RCW.

Credit unions: Chapter 31.12 RCW.

Development credit corporations: Chapter 31.20 RCW.

Discrimination: Chapter 49.60 RCW.

Drugs, uniform controlled substances act: Chapter 69.50 RCW.

Drugs and cosmetics: Chapter 69.04 RCW.

Fish marketing act: Chapter 24.36 RCW.

Fishermen, commercial: Title 77 RCW.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Food processing, adulteration, misbranding, standards: Chapter 69.04 RCW.

Forests and forest products: Title 76 RCW.

Fruit: Title 15 RCW.

Gas and hazardous liquid pipelines: Chapter 81.88 RCW.

Hydraulic brake fluid, standards and specifications: RCW 46.37.365.

Livestock marketing and inspection: Chapter 16.57 RCW.

Massachusetts Trust Act: Chapter 23.90 RCW.

Measurement of goods, raw materials and agricultural products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Milk and milk products for animal food: Chapter 15.37 RCW.

Mines, mineral and petroleum: Title 78 RCW.

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

Mutual savings banks: Title 32 RCW.

Partnerships: Title 25 RCW.

Periodicals, postage, purchase by public agencies -- Manner of payment: RCW 42.24.035.

Pesticide applicators -- Surety bond: Chapter 17.21 RCW.

Pilotage act: Chapter 88.16 RCW.

Poisons, dispensing and sale: Chapter 69.40 RCW.

Professional service corporations: Chapter 18.100 RCW.

Public bodies may retain collection agencies to collect public debts -- Fees: RCW 19.16.500.

Public utilities: Title 80 RCW.

Rev. Code Wash. (ARCW) § 19.100.010

Railroads and other common carriers: Title 81 RCW.
Retail installment sales of goods and services: Chapter 63.14 RCW.
Sales of personal property: Title 62A RCW.
Savings and loan associations: Title 33 RCW.
Shoefitting devices, X-ray, etc., prohibited: *RCW 70.98.170*.
Transportation, public: Title 81 RCW.
Vehicle wreckers: Chapter 46.80 RCW.
Warehouses and grain elevators: Title 22 RCW.
Washington fresh fruit sales limitation act: Chapter 15.21 RCW.

NOTES APPLICABLE TO ENTIRE CHAPTER

REVISER'S NOTE: Powers, duties, and functions of the department of licensing relating to franchises were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See *RCW 43.320.011*.

CROSS REFERENCES.

Business opportunity fraud act: Chapter 19.110 RCW.

PREEMPTION BY FEDERAL LAW..

This chapter's one-year notice of nonrenewal requirement under *RCW 19.100.180(2)(i)* was preempted by the 90-day requirement in *15 U.S.C. § 2806(a)*, a conflicting provision of the *Petroleum Marketing Practices Act. Millett v. Union Oil Co., 24 F.3d 10 (9th Cir. 1994)*.

ALR.

Existence of fiduciary duty between franchisor and franchisee. *52 ALR5th 613*.

EXHIBIT "C"

Attachment to Amended Proof of Claim of Bank Bondholders
Washington Mutual, Inc.
Case No.: 08-12229 (MFW)

The Claimants

1. This Amended Proof of Claim is submitted by the entities specified below (collectively, the "Bank Bondholders"),¹ which currently hold, in the aggregate, approximately \$1.8 billion in principal amount outstanding of Senior Notes (the "Senior Notes") issued by Washington Mutual Bank, Henderson, Nevada, a federally chartered savings association (the "Bank" or "WMB"). The amount of the claims asserted in this Amended Proof of Claim (the "Bank Bondholder Claims") includes the full principal balance of the Senior Notes held or to be acquired by the Bank Bondholders, plus all unpaid interest and all other amounts due on the Senior Notes held by the Bank Bondholders, and any and all other amounts payable or recoverable by or from the debtor, Washington Mutual, Inc. (the "Debtor" or "WMI").² This Amended Proof of Claim is submitted pursuant to 11 U.S.C. § 501 and Rule 3001 of the Federal Rules of Bankruptcy Procedure. This Amended Proof of Claim amends and replaces Proof of Claim No. 3071.
2. Because the Bank Bondholders have suffered direct injury, the Bank Bondholders have standing to bring the Bank Bondholder Claims. Alternatively, the Bank Bondholders have standing to assert the Bank Bondholder Claims, derivatively, on behalf of the Bank. *See, e.g., Hindes v. FDIC*, 137 F.3d 148, 171 (3d Cir. 1998); *Branch v. FDIC*, 825 F. Supp. 384, 404-05 (D. Mass. 1993); *Suess v. United States*, 33 Fed. Cl. 89, 96-97 (Fed. Cl. 1995).

Background

3. WMI was a holding company that owned the Bank and, through the Bank, its subsidiary, Washington Mutual Bank fsb, Park City, Utah ("WMBfsb"). WMI was the Bank's

¹ The Bank Bondholders are Alma Fund Sicav P.L.C. In Respect Of Russell Sub-Fund; Anchorage Capital Master Offshore, Ltd.; Bank of Scotland plc; Cetus Capital, LLC; Corporate Debt Opportunities Fund, Ltd.; Fir Tree Capital Opportunity Master Fund, L.P.; Fir Tree Mortgage Opportunity Master Fund, L.P.; Fir Tree Value Master Fund, L.P.; HFR ED Select Fund IV Master Trust; Juggernaut Fund, L.P.; Lyxor/York Fund Limited; Marathon Credit Opportunity Master Fund, Ltd.; Marathon Credit Master Fund, Ltd.; Marathon Special Opportunity Master Fund, Ltd.; Permal York Ltd.; Quintessence Fund L.P.; QVT Fund LP; Silver Point Capital Fund, LP; Silver Point Capital Offshore Fund, Ltd.; The Governor and Company of the Bank of Ireland; The Värde Fund, L.P.; The Värde Fund VI-A, L.P.; The Värde Fund VII-B, L.P.; The Värde Fund VIII, L.P.; The Värde Fund IX, L.P.; The Värde Fund IX-A, L.P.; Värde Investment Partners (Offshore), Ltd.; Värde Investment Partners, L.P.; Windmill Master Fund LP; York Capital Management, L.P.; York Credit Opportunities Fund, L.P.; York Credit Opportunities Master Fund, L.P.; York Investment Master Fund, L.P.; York Select, L.P.; and York Select Master Fund, L.P.

These individual Bank Bondholders are together filing this Amended Proof of Claim as a matter of convenience and fee-sharing only. No Bank Bondholder acts for, or purports to represent or speak on behalf of, any other Bank Bondholder or any other holder of WMB Senior Notes.

² Based on information presently available to the Bank Bondholders, certain purported deposits and assets at issue may be claimed to be the property of either WMI or WMI Investment Corp. Accordingly, the Bank Bondholders have filed a proof of claim in the bankruptcy cases of both WMI and WMI Investment Corp. As set forth in the text of this Amended Proof of Claim, the Bank Bondholders do so without conceding that any such purported deposits or other assets, in fact, belong to either WMI Investment Corp. or WMI, rather than to WMB.

holding company for purposes of applicable laws and regulations governing such holding companies. WMI Investment Corp. is an affiliate of WMI and a debtor whose bankruptcy case is jointly administered under WMI's Bankruptcy Case Number.

4. On September 25, 2008, the Bank was closed by the Office of Thrift Supervision ("OTS"), and the Federal Deposit Insurance Corporation ("FDIC") was appointed as the receiver of the Bank.
5. Immediately after its appointment as Receiver, the FDIC sold substantially all of the assets of WMB, including the stock of WMBfsb, to JPMorgan Chase Bank ("JPM") pursuant to the Purchase and Assumption Agreement, dated as of September 25, 2008.
6. The following day, on September 26, 2008, the Debtor filed a petition for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. § 101, *et seq.*) (the "Bankruptcy Code"). This Amended Proof of Claim is submitted in Case Nos. 08-12229 (MFW) and 08-12228 (MFW), currently pending in the United States Bankruptcy Court of the District of Delaware.

The Bank Bondholder Claims

7. The Debtor is liable to the Bank Bondholders for the full principal balance of the Senior Notes held by such Bank Bondholders, together with all unpaid interest and all other amounts due thereon, and all other amounts payable or recoverable by or from the Debtor, including without limitation on the bases specified below. The Bank Bondholder Claims asserted in this Amended Proof of Claim are, subject to the caveats set forth in this paragraph and elsewhere in this Amended Proof of Claim, general unsecured claims. However, as a matter of structural seniority and under applicable law, the Bank Bondholders and other holders of the Senior Notes issued by the Bank are entitled to payment in full ahead of any payment on any and all senior or unsecured notes issued by the Debtor. In addition, while the Bank Bondholders dispute that the Debtor or its estate has any valid claims against the Bank Bondholders or the Bank (or its estate in receivership), to the extent any such claims are allowed, the Bank Bondholder Claims are secured by right of setoff under Sections 506(a) and 553 of the Bankruptcy Code. Moreover, to the extent that any of the claims asserted herein arise out of actions taken or benefits obtained by WMI and its bankruptcy estate post-petition, such as—by way of example only—through the post-petition filing by WMI of tax returns and the post-petition obtaining of tax refunds attributable to WMB's operations, activities, and losses, the claims asserted herein are entitled to administrative priority under Sections 503(b) and 507(a)(2) of the Bankruptcy Code. Finally, the assertion of creditor claims in this Amended Proof of Claim is wholly without prejudice to the right of the Bank receivership estate or the Bank Bondholders to assert that any or all cash or other property in the possession of WMI is, in fact, the property of the Bank and to recover such cash or other property.

8. Corporate Veil Piercing, Alter Ego and Similar Principles.

Although the Senior Notes were issued by the Bank, the Debtor is liable for repayment of all amounts due on those instruments under principles of veil piercing, alter ego, mere instrumentality, domination, and the like. While these bankruptcy cases and the Bank's receivership proceeding are still in the early stages and the Bank Bondholders have not yet been able to take discovery, it is evident that WMI, a holding company, was the alter ego of the Bank, that the Bank was the mere instrumentality of WMI, and that WMI and the Bank shared a common identity. The Bank's corporate veil should be pierced, such that the Debtor is liable on the Senior Notes.

Based upon the documentation available to date to the Bank Bondholders, it is clear that WMI dominated not only the Bank's finances, but also its business practices, and defrauded the Bank and its creditors, including the Bank Bondholders. WMI was supposed to act as a "source of strength" for the Bank; it did not. Rather, WMI undercapitalized the Bank and siphoned billions of dollars from the Bank, while making repeated misstatements regarding the financial health of the Bank, thereby defrauding the creditors of the Bank, including the Bank Bondholders. WMI was the contract party for the Bank in many third-party contractual arrangements, and WMI operated a consolidated cash management system with the Bank, largely obliterating any distinction of financial activity, asset ownership, and liability responsibility. WMI's control over the Bank was so complete as to warrant piercing the corporate veil and allowing the Bank Bondholder Claims to run directly against WMI.

The following are just a few examples—taken without the benefit of any discovery—of WMI's domination of the Bank, the lack of any meaningful distinction between WMI and the Bank in their operations and finances, and the defrauding by WMI of the Bank and its creditors:

- WMI purports to have deposit accounts with WMB, yet published reports indicate that neither JPM nor WMI can locate any documentation establishing most of those accounts. (Motion of the Debtors Seeking Approval of Stipulation and Agreement Concerning Deposit Accounts at JPMorgan Chase Bank, N.A., Ex. A., Stipulation, Docket No. 74; FDIC's Statement, Response and Limited Objection, Docket No. 104, at ¶¶ 8-9).³
- There is confusion as to which entity did business with which vendor. (Oct. 30, 2008 Section 341 Meeting Tr. at 73-74). Indeed, at the Section 341 meeting in this case, one group of creditors indicated that it believed it was a creditor of the Bank but that group had been listed as a creditor of WMI on WMI's Schedules of Assets and Liabilities. (Oct. 30, 2008 Section 341 Meeting Tr. at 106). Although the vast majority of services provided by trade creditors were allegedly being provided to the Bank, generally trade creditors had contracts with WMI. (Jan. 8, 2009 Section 341 Mtg. Tr. at 94-95).

³ Unless otherwise indicated, all citations are to the docket of WMI's bankruptcy case, No. 08-12229.

- Payments were apparently made by WMI, WMB, or WMBfsb on behalf of another entity. In fact, according to WMI itself, its liabilities to its unsecured, nonpriority creditors are "largely derived" from the information provided by representatives of WMB and JPM. (Second Amended Schedule of Assets and Liabilities for WMI, Feb. 24, 2009, Docket No. 709, at 2-3, 6).
- The Bank and WMI filed consolidated tax returns. The tax relationship between the Bank and WMI has been characterized as "complicated" by the president of WMI and remained unresolved at the time of the Section 341 Meeting for WMI. (Jan. 8, 2009 Section 341 Mtg. Tr. at 99). WMI served as the accountant for the consolidated returns for WMI and the Bank. (Oct. 30, 2008 Section 341 Meeting Tr. at 52-53).
- Historically, WMI and the Bank were run together on the same information and accounting systems. JPM, which purchased most of the assets of WMB (but which did not purchase any claims of WMB against its shareholder, WMI), has stated that under the consolidated cash management system of WMI and its affiliates and subsidiaries, "external receipts and payments were accounted for on a consolidated basis and internal receipts or payments were done in whole or in part by book or journal entry as 'due to/from' accounts on the general ledger or other books of account." (JPM Complaint, *JPMorgan Chase Bank, Nat'l Ass'n v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551, at ¶ 37). Representatives from WMI have indicated that there had been "great difficult[y]" in separating out the organizations. (Oct. 30, 2008 Section 341 Meeting Tr. at 69).
- JPM has also stated that prior to WMB's receivership, "WMI and WMB had identical and overlapping directors and held joint meetings of the Boards of Directors of both entities on a combined basis, resulting in effect in a single Board of Directors with identical directors that met on the same topics at the same time and made decisions for both entities collectively." (JPM Complaint, *JPMorgan Chase Bank, Nat'l Ass'n v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551, at ¶ 36).
- Prior to the commencement of the Bank receivership, the Bank managed all payroll, including payroll for WMI's employees. (Oct. 30, 2008 Section 341 Mtg. Tr. at 102-03).
- The pension plan that covers the vast majority of Bank employees was sponsored by WMI, even though the vast majority of the affected employees were employed by the Bank. (Jan. 28, 2009 Section 341 Mtg. Tr. at 110).

9. Substantive Consolidation.

WMI's domination of WMB and its intertwining of WMB's assets and liabilities with its own appear so substantial as to warrant substantive consolidation, at least to the extent that the assets of the Debtor and its estate should be made available to satisfy the claims of the Bank's creditors, including the Bank Bondholders. Accordingly, the Bank Bondholders may assert a direct claim against the Debtor's bankruptcy estate.

Based upon the documentation presently available the Bank Bondholders, the Bank's and WMI's affairs, assets, and liabilities appear to be hopelessly intertwined, such that any segregation of those assets and liabilities would be arbitrary and harmful to all creditors. In addition to those facts set forth in paragraph 8 above, the following—again, all of which have been uncovered without any formal discovery—are indicative of WMI's entanglement of its own identity with that of the Bank:

- In a pleading recently filed with the Bankruptcy Court, JPM has made clear that “[e]ven after nearly four months of concerted effort, beyond the day-to-day banking operations, there has been little tangible progress in separating WMB from its former parent beyond identifying the larger issues between the parties.” (JPM Objection to Bar Date, Docket No. 578, at 2). WMI's President also has indicated that JPM still needs to clarify, to the extent possible, which assets are WMI's and which are WMB's. (Jan. 8, 2009 Section 341 Mtg. Tr. at 108-09).
- JPM has indicated that its effort to separate the Bank from WMI “has been even further complicated by the fact that the books and records of WMB, its parent companies and their respective predecessors in interest were largely maintained on a combined basis by the same personnel.” (JPM Objection to Bar Date, Docket No. 578, at 7).
- WMI's restructuring officer has confirmed that WMI continues to have a problem “in figuring out what belongs to the Bank and what belongs to the holding company.” (Jan. 8, 2009 Section 341 Mtg. Tr. at 86).

10. Fraudulent Transfer.

Before the Bank was forced into receivership, the Debtor caused the Bank to transfer billions of dollars in cash and other assets to the Debtor, an insider of the Bank. These transfers are avoidable and recoverable by or for the benefit of creditors of the Bank, including the Bank Bondholders, under applicable law, including without limitation the Uniform Fraudulent Transfer Act in effect in the state of Washington, Washington Revised Code § 19.40.051, *et seq.*, and/or in other jurisdictions. The transfers are avoidable because (a) they were made with actual intent to hinder, delay or defraud a creditor of the Bank, including without limitation the Bank Bondholder (Wash. Rev. Code § 19.40.041(a)(1)); (b) they were made for less than reasonably equivalent value when the Bank was engaged or about to engage in a business for which the remaining assets of the Bank were unreasonably small, and/or when the Bank intended to incur, or believed or reasonably should have believed it would incur, debts beyond its ability to pay as they came due, including without limitation the Senior Notes (Wash. Rev. Code § 19.40.041(a)(2)); and/or (c) they were made for less than reasonably equivalent value and the Bank was insolvent (or rendered insolvent) or were made to WMI, an insider of the Bank, for an antecedent debt at a time when WMI had reasonable cause to believe the Bank was insolvent (Wash. Rev. Code § 19.40.051). WMI caused these transfers—involving billions of dollars of Bank assets—to be made to itself. The transfers left the Bank unable to continue in business and led to its closure and placement into receivership, damaging all creditors of the Bank, including the Bank Bondholders.

There may also be claims to avoid such fraudulent transfers, and recover the transfers or their value from WMI, under the Federal Deposit Insurance Act, 12 U.S.C. § 1821(d)(17).

The Bank Bondholders have not had the opportunity to take discovery yet and, therefore, have not yet uncovered all the cash and other property WMI caused to be stripped from the Bank and fraudulently transferred to WMI. But, based on the limited information available to the Bank Bondholders to date, the transfers that may be avoided and recovered from WMI and its estate in bankruptcy include without limitation the following:

- **Upstreaming of Billions of Dollars in Purported Dividends.** Between the first quarter of 2006 and September 25, 2008, the date the Bank was forced into receivership, more than \$6 billion—net of any transfers during that period from WMI to the Bank—was transferred from the Bank to WMI, largely in the form of purported dividends.⁴ Indeed, between the first quarter of 2006 and the first half of 2007, the Bank raised approximately \$9.5 billion worth of capital through senior and subordinated debt offerings, including through the issuance of the Senior Notes held by the Bank Bondholders;⁵ WMI caused the Bank to transfer most of these proceeds to WMI as purported dividends.⁶ All such dividends, together with any other dividends transferred during at least the four-year period preceding the commencement of the Bank's receivership, may be avoided and recovered from WMI by or for the benefit of the Bank's creditors. The Bank Bondholders assert a claim for the amount of all such dividends.
- **Stripping of Billions of Dollars in Purported Deposits.** As of the fourth quarter of 2007, WMI reported having \$4.9 billion worth of deposits, the vast majority of which was at the Bank. (Washington Mutual Bank, Annual Report (Form 10-K), at 129 (March 21, 2008)). Yet, by the time of the receivership, WMI reported that it held only \$0.7 billion at the Bank, while it held approximately \$3.7 billion at WMBfsb. (Motion of the Debtors Seeking Approval of Stipulation and Agreement Concerning

⁴ See Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 12, 2006); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2006); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Nov. 14, 2006); Washington Mutual Bank, Annual Report (Form 10-K) (April 2, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 15, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Nov. 14, 2007); Washington Mutual Bank, Annual Report (Form 10-K) (March 21, 2008); Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 15, 2008); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2008).

⁵ See Washington Mutual Bank, Annual Report (Form 10-K), at 3 (April 2, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q), at 34 (Aug. 14, 2007).

⁶ See Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 12, 2006); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2006); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Nov. 14, 2006); Washington Mutual Bank, Annual Report (Form 10-K) (April 2, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 15, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Nov. 14, 2007); Washington Mutual Bank, Annual Report (Form 10-K) (March 21, 2008).

Deposit Accounts at JPMorgan Chase Bank, N.A., Docket No. 74, at ¶ 8). Thus, in the year prior to the commencement of the Bank receivership, WMI caused approximately \$4 billion to be withdrawn from the Bank and transferred to WMI (which then apparently re-deposited the funds at WMBfsb). To the extent that the funds so transferred genuinely represented deposits, the transfers of the funds from the Bank constituted transfers of funds of the Bank to an insider of the Bank (WMI, the Bank's parent) for antecedent debt when the Bank was insolvent and when WMI had reasonable cause to believe the Bank was insolvent. To the extent that the funds so transferred are instead properly treated as capital—given WMI's gross undercapitalization of the Bank, its failure to act as a source of strength for the Bank, (as it was required to do under applicable law and as it represented it would do), and the apparent lack of any documentation of any such deposits—the transfers constituted transfers of funds belonging to the Bank for less than reasonably equivalent value when the Bank was insolvent (or when it was rendered insolvent by the transfers), when the Bank was engaged or about to engage in a business for which the remaining assets of the Bank were unreasonably small, and/or when the Bank intended to incur, or believed or reasonably should have believed it would incur, debts beyond its ability to pay as they came due. In either event, the transfers are avoidable and recoverable from WMI by or for the benefit of the Banks' creditors. The Bank Bondholders assert a claim for the amount of all such purported deposits.

11. Improper Claim to Purported Deposits.

According to WMI's own reports, approximately \$4 billion that was supposedly on deposit at WMB was subsequently transferred to WMBfsb by WMI. (Motion of the Debtors Seeking Approval of Stipulation and Agreement Concerning Deposit Accounts at JPMorgan Chase Bank, N.A., Docket No. 74, at ¶ 8). However, JPM "has not discovered any pre-petition deposit account agreements, signature cards or other documentation" evidencing that the funds in question belonged to WMI and were, in fact, held on deposit. (JPM Complaint, *JPMorgan Chase Bank, Nat'l Ass'n v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551, at ¶ 100; see *id.* at ¶ 95). Even the Debtor has admitted that a "fog of uncertainty" surrounds the purported deposits. (Motion of the Debtors Seeking Approval of Stipulation and Agreement Concerning Deposit Accounts at JPMorgan Chase Bank, N.A., Docket No. 74, at ¶ 17). Moreover, as discussed in paragraph 12 below, it appears that WMI undercapitalized WMB. Consequently, the purported deposits are properly viewed, or should be treated, as capital contributions for which WMB and WMB's receivership estate have sole ownership. To the extent that WMI purports to have exercised or will exercise control or dominion over these funds, it is liable under the law of conversion and similar doctrines. The Bank Bondholders assert a claim for the amount of all such purported deposits.

12. Undercapitalization of, Failure to Support, and Looting of the Bank.

WMI was a holding company. Under applicable law, it was obligated to maintain and guarantee the appropriate capital levels of the Bank pursuant to applicable capital and liquidity requirements including, but not limited to, the statutory and regulatory provisions set forth in 12 U.S.C. § 1831o, 12 U.S.C. § 1464(s) and 12 C.F.R. § 225.4. In

addition, WMI was obligated to maintain appropriate capital and liquidity levels under enforceable and implied capital maintenance agreements, and internal procedures adopted by WMI for the benefit of the Bank. Indeed, WMI publicly represented that "we always manage ourselves at the holding company to the same kind of standards as if we were a [Federal Reserve] regulated bank holding company." (Statement by Kerry Killinger, CEO, Q3 2006 Washington Mutual Earnings Conference Call, Oct. 18, 2006). As further evidence that it purported to manage itself to the same standards as bank holding companies, WMI also publicly disclosed certain capital ratios that would have otherwise remained non-public, explaining that: "The Parent [WMI] is not required by the OTS to report its capital ratios, and as the Parent is not a bank holding company it is not required by the Federal Reserve Board to report its capital ratios. Nevertheless, capital ratios are integral to the Company's capital management process and the provision of such metrics facilitate peer comparison with Federal Reserve Board-regulated bank holding companies." (Washington Mutual Inc., Annual Report (Form 10-K), at 72 (Feb. 29, 2008)). Under the Federal Reserve's Regulation Y, such a bank holding company must "serve as a source of financial and managerial strength to its subsidiary banks and shall not conduct its operations in an unsafe or unsound manner." 12 C.F.R. § 225.4(a)(1).

WMI did nothing of the kind. It inadequately capitalized WMB and looted the Bank. As described in paragraphs 10 and 11 above, it stripped billions of dollars in purported deposits—which should have been, and properly are viewed as, capital contributions—from the Bank in the year prior to the commencement of the receivership. And, as also discussed in paragraph 10, in the period starting in the first quarter of 2006 continuing through the commencement of the receivership, WMI, on a net basis, took some \$6 billion out of the Bank in purported dividends. In short, WMI moved billions of dollars from the Bank that, instead, should have remained at WMB to strengthen its capital base and provide liquidity, as required by law and as WMI represented would occur. Indeed, these transfers, directed by WMI, from the Bank occurred at times during which WMI and its management were assuring public investors, including the Bank Bondholders, that the depositor base at the Bank was stable and that the Bank had access to nearly \$50 billion of liquidity, all despite the hidden reality that the Bank's financial condition was severely deteriorating.

Moreover, it appears that WMB's capital and liquidity levels may have been of significant concern to the OTS, as evidenced by a number of supervisory and enforcement measures the OTS took.⁷ Based on the information available to them, the Bank Bondholders understand that the OTS issued an overall composite CAMELS downgrade to WMB on February 27, 2008. Also, on or about June 30, 2008, the OTS initiated discussions with WMB and WMI about a Memorandum of Understanding; on September 7, 2008, the OTS, WMI and WMB entered into such a Memorandum of Understanding. On September 18, 2009, the OTS issued an overall CAMELS rating downgrade for WMB. While the rationale for the downgrade in CAMELS ratings and the substance of the Memoranda of Understanding are not public, such actions against institutions like WMB and WMI are often taken to address an insured depository institution's inability to maintain proper levels of capital and liquidity, and holding

⁷ OTS Fact Sheet, dated September 25, 2008, available at <http://files.ots.treas.gov/730021.pdf>.

companies are often required to agree to support the institution's efforts to maintain the specified capital levels.

WMI is liable to the Bank Bondholders for all damages caused by its failure to adequately capitalize and to maintain the strength of the Bank, and its looting of the Bank, including all principal, interest and other amounts owed on the Senior Notes. The Bank Bondholders assert a claim for all such damages. To the extent that WMI failed to meet its commitments to maintain WMB's capital and liquidity levels in accordance with relevant statutory and regulatory provisions and OTS enforcement agreements, this claim is or may be entitled to priority claim status under Section 507(a)(9) of the Bankruptcy Code.

There may also be additional claims against the Debtor based on violations of Sections 23A and Section 23B of the Federal Reserve Act ("Sections 23A and 23B"), 12 U.S.C. §§ 371c, 371c-1, and the statute's implementing Regulation W, 12 C.F.R. Part 223. Sections 23A and 23B are in place to ensure that an insured institution and its affiliates, including its holding company, do not engage in transactions that are not on terms and conditions that are consistent with safe and sound banking practices. Transactions between WMB and WMI would have been subject to the general restrictions set forth in Sections 23A and 23B by operation of OTS regulations at 12 C.F.R. § 536.41(b). To the extent that WMI engaged, and caused WMB to engage, in transactions with each other in violation of any of these provisions, WMI is liable for all losses, damages, or other amounts relating thereto. The Bank Bondholders assert a claim for all such losses, damages and other amounts.

13. Misrepresentations and Material Omissions.

The Bank issued the Senior Notes starting in the first quarter of 2006 and continuing through the first half of 2007. During this time period, and continuing thereafter, WMI made material false and misleading statements, or omitted material facts necessary in order to make the statements made not misleading, regarding the Bank, its operations, and its financial condition. WMI and its officers and employees repeatedly misrepresented that the Bank was doing well financially and that its credit and loan underwriting policies and operations were conservative and minimized risk to investors, including holders of Senior Notes. As WMI knew at the time, those statements were false and misleading. WMI knowingly failed to disclose the true facts. In connection with their purchase of the Senior Notes, the Bank Bondholders (and the market for the Senior Notes) relied on these misrepresentations and material omissions. As a result, the Debtor is liable to the Bank Bondholders for all resulting damages, including without limitation all unpaid principal, interest and other amounts due under the Senior Notes, under the federal securities laws and/or other applicable law.

Based on the information currently available to the Bank Bondholders—all of which has been obtained without the benefit of discovery—the following presents a non-exhaustive list of examples of the misstatements and material omissions made by WMI which caused injury to the Bank Bondholders:

- "As [Kerry Killinger, CEO] said, most of our businesses are doing extremely well despite the difficult interest rate environment." (Statement by Tom Casey, EVP and CFO, Q2 2006 Washington Mutual Inc. Earnings Conference Call, July 19, 2006).
- "On the credit front, we're in very good shape . . . If anything, I can be accused of being too conservative. And perhaps we could have maximized our profitability even more by taking on more credit risk through this period of very benign credit. But we want to stay ahead of the curve, be a little more conservative." (Statement by Kerry Killinger, CEO, at the Goldman Sachs Financial Services CEO Conference, December 13, 2006).
- Washington Mutual's loan portfolio represents "strong underwriting," "conservative lending standards," "rigorous credit standards," and "a disciplined credit culture." (Statements by multiple WMI officers at WMI's annual Investor Day conference, September 6 & 7, 2006).
- Question from Merrill Lynch: "Is there a long-term guidance that we should be thinking about where tangible equity can go for the parent?" Response: "I think what we are finding is as we move more towards a Basel II international capital standard we will certainly take that into consideration and, frankly, we always manage ourselves at the holding company to the same kind of standards as if we were a [Federal Reserve] regulated bank holding company." (Statement by Kerry Killinger, CEO, Q3 2006 Washington Mutual Inc. Earnings Conference Call, Oct. 18, 2006).
- In discussing dividends: "[T]he primary factor with our regulators is the maintaining appropriate levels of capital and of course continuing to operate in a safe and sound manner. All those indications are positive from a regulatory capital standpoint. We are in excellent shape. Again, I think, as you think about dividends, again, it is a whole combination of liquidity, the capital that we have, and as I implied there, relative to regulatory guidelines we are in excellent shape, as well as the earnings outlook for the company." (Statement by Kerry Killinger, CEO, Q3 2007 Washington Mutual Inc. Earnings Conference Call, Oct. 17, 2007).
- "My comments today will focus on four key areas . . . Third, solid operating revenues and substantial capital cushion above our targeted tangible capital ratio of 5.5% and disciplined expense management across all of our businesses are expected to provide us the financial flexibility to manage through this period of expected elevated credit costs. Fourth, we have sufficient liquidity to fund our business operations." (Statement by Tom Casey, EVP and CFO, Q4 2007 Washington Mutual Inc. Earnings Conference Call, Jan. 17, 2008).
- "We continue to maintain a strong liquidity position in addition to strong tangible capital ratio of 6.67%. At year end we had \$3.7 billion of capital in excess of our targeted tangible equity to tangible asset capital ratio of 5.5%. In addition, we exceeded all the well capitalized banking ratios by a meaningful margin. Our funding comes in large part from retail deposits generated in our stores from our core

customers. We have \$144 billion in retail deposits, which account for 49% of our total funding. The remaining wholesale funding is diversified with staggered maturity profile. At year end we had approximately \$69 billion in available excess liquidity." (Statement by Tom Casey, EVP and CFO, Q4 2007 Washington Mutual Inc. Earnings Conference Call, Jan. 17, 2008).

- "Effective capital management goes hand in hand with maintaining strong liquidity position. We have maintained a very strong liquidity position throughout this period of market stress and we further enhanced that position this past quarter. Retail deposits now comprise 53% of our funding, up from 49% at year end. We have a diversified wholesale funding strategy with staggered maturities and have approximately \$50 billion in excess liquidity. Finally, we fund all our business through our banking operations and do not rely on commercial paper. With this issue of common stock liquidity at the holding company is very solid." (Statement by Tom Casey, CFO, Q1 2008 Washington Mutual Inc. Earnings Conference Call, April 15, 2008).
- "I want to begin my remarks today by emphasizing to all of you, that in the face of the unprecedented housing and mortgage market conditions we are experiencing, we are continuing to execute on a comprehensive plan, designed to ensure that have strong capital and liquidity and appropriately sized expense base and a growing profitable retail franchise." (Statement by Kerry Killinger, CEO, Q2 2008 Washington Mutual Inc. Earnings Conference Call, July 22, 2008).
- "[I]t is important to note that our capital position remains significantly in excess of 5.5% targeted level. It's after tangible equity to tangible asset ratio, at the end of the second quarter increased to 7.79% from 6.4% at the end of the first quarter. This is \$7 billion above our targeted level. From a regulatory capital perspective our tier 1 risk based ration remained strong at 8.44%, which is 244 basis points above well capitalized. In addition, we continue to focus on maintaining strong levels of liquidity. We ended the second quarter with over \$40 billion of readily available liquidity." (Statement by Kerry Killinger, CEO, Q2 2008 Washington Mutual Inc. Earnings Conference Call, July 22, 2008).
- "Now, there seems to be a great deal of speculation whether WaMu will need to raise capital. Let me answer that by walking you through the details of how we expect to manage through this difficult credit environment. First, we currently have substantial capital, plus loan loss reserves sufficient to handle the upper end of our current loss expectation and second, our ongoing pretax and preprovision income, and balance sheet reduction will provide additional cushion for future credit losses. . . . So given our current strong capital, existing reserve through loan losses, ongoing operating earnings and planned balance sheet shrinkage, we are in a strong position to work our way through this difficult credit cycle without the need for additional capital." (Statement by Tom Casey, CFO, Q2 2008 Washington Mutual Inc. Earnings Conference Call, July 22, 2008).

- Question: “[Y]our capital ratios at the subsidiary thrift didn’t increase the way the company’s did[.] I was wondering if you were planning to increase those?”
Response: “[W]ith regard to down streaming capital to the bank we continue to monitor that. We did move some down to the bank level as part of the equity rate and we will continue to evaluate that. We will probably put some additional capital down to the bank this quarter. We are maintaining good liquidity at the holding company through 2010 through 2011.” (Statement by Tom Casey, CFO, Q2 2008 Washington Mutual Inc. Earnings Conference Call, July 22, 2008).

14. Conditional Exchange of REIT Trust Preferred Securities.

On March 7, 2006, WMI and affiliates closed the sale of a number of classes of trust preferred securities. Upon information and belief, at least some of these issues were so-called “REIT preferred” securities, where assets of the Bank were transferred to a special purpose entity (“SPE”). The SPE in turn issued preferred securities to investors, the proceeds of which (the “Bank Proceeds”) were supposed to be used to compensate the Bank for the assets transferred. The Bank Bondholders have obtained to date only limited information about the transactions involving the REIT preferred securities and reserve all rights to supplement, amend and modify this Amended Proof of Claim to assert additional claims relating to those transactions. Based on the information available to date, the Bank Bondholders assert the following claims:

- It appears that WMI caused the Bank to upstream some or all of the Bank Proceeds to WMI as purported dividends.⁸ Any such transfer may be avoided and recovered from WMI, under fraudulent transfer or other law, by or on behalf of the Bank’s creditors. The Bank Bondholders assert a claim for all such amounts.
- Moreover, upon the occurrence of an “Exchange Event,”⁹ and if the OTS so directed, each of the relevant trust preferred securities were to be automatically exchanged for depository shares of WMI preferred stock. On September 25, 2008, the same day that the OTS closed the Bank and the FDIC was appointed receiver, the OTS concluded that an Exchange Event had occurred and directed the conditional exchange. As a result of the conditional exchange, the assets held in the SPE traveled with the trust preferred securities to WMI, were exchanged into WMI preferred stock, and should have been contributed—after the sale to JPM had been completed—down to the Bank from WMI. To the extent they have not been, and/or to the extent that any assets of

⁸ See Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 12, 2006); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2006); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Nov. 14, 2006); Washington Mutual Bank, Annual Report (Form 10-K) (April 2, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (May 15, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Aug. 14, 2007); Washington Mutual Bank, Quarterly Report (Form 10-Q) (Nov. 14, 2007); Washington Mutual Bank, Annual Report (Form 10-K) (March 21, 2008).

⁹ Based on publicly available documents that discuss the offering and sale of the relevant trust preferred securities, an “Exchange Event” was defined to mean (a) the Bank becoming “undercapitalized” under the OTS’ prompt corrective action regulations; (b) the Bank being placed into conservatorship or receivership; or (c) the OTS, in its sole discretion, directing such exchange in anticipation of the Bank becoming “undercapitalized” in the near term or taking supervisory action that limits the payment of dividends, as applicable, by the Bank, and in connection therewith, directing such an exchange. See Washington Mutual Inc., Current Report (Form 8-K) (March 7, 2006).

the Bank were obtained by the Debtor in connection with the conditional exchange, the Bank Bondholders assert a claim therefor, and for all related amounts and damages. (WMI Monthly Operating Report, Feb. 2, 2009, at note 1).

15. Tax Refunds and Losses.

WMI and WMB filed consolidated tax returns. The Bank was, by far, WMI's principal operating subsidiary. It generated massive losses, in large measure because of WMI's looting from, mismanagement of, and failure adequately to capitalize and act as a source of strength for, the Bank. These losses generated tax benefits. To the extent those benefits were not transferred by the FDIC to JPM, they are the sole property of and must inure to the benefit of the Bank and its creditors, including the Bank Bondholders, not WMI. Yet, public reports have indicated that WMI intends to assert that it is entitled to a multi-billion dollar tax refund. The Bank Bondholders assert a claim with respect to any and all such tax refunds and benefits that are attributable to WMB's operations, losses, and ultimate sale to JPM. This claim covers any such refunds and benefits arising out of both any already-filed tax returns, and any tax returns to be filed by WMI in the future. The assertion of such a claim is without prejudice to the right of the Bank and its receivership estate to demand the turn-over of any and all such benefits, and all proceeds resulting therefrom, as the property of the Bank which must be held in trust for its creditors.

All Federal and State tax refunds or other benefits that are attributable to WMB's operations, losses and ultimate sale are due and owing to the Bank and its creditors only, not to WMI. A tax refund resulting from offsetting losses of one member of a consolidated filing group against the income of that same member in a prior or subsequent year should inure to the benefit of that member, in this case the Bank. Allowing WMI to retain any refunds arising from a subsidiary's losses simply because the parent and subsidiary chose, for convenience, the procedural device of filing a consolidated return to facilitate their income tax reporting would unjustly enrich the parent, would be contrary to applicable tax law, and would also be a breach of WMI's contractual and fiduciary duties to the Bank.

Provisions in the August 31, 1999 Tax Sharing Agreement entered into by WMI and the Bank, the Bank Holding Company Supervision Manual, and relevant caselaw support the conclusion that the Bank, and not WMI, should retain any tax assets that were not transferred to JPM. Such tax assets are attributable solely to the income and loss of the Bank, and not WMI, and any refunds belong entirely to the Bank.

Accordingly, to the extent that any such refunds are not turned over to the Bank's receivership estate, the Bank Bondholders assert a claim in an amount equal to any and all such refunds and benefits.

16. Mismanagement, and Breach of Fiduciary and Other Duties.

At all relevant times, the Bank was a wholly-owned subsidiary of WMI. The officers and directors of WMI set the policies for, and directed the operations of, WMB. WMI

dominated the Bank. WMI's officers and directors mismanaged WMB, and looted it, causing it to suffer billions of dollars in losses and requiring the OTS to put the Bank into receivership. WMI and its officers and directors owed fiduciary duties, of care and loyalty, to WMB and its creditors, as WMB became insolvent and/or in the zone of insolvency. WMI and its officers and directors breached those duties. WMI is liable directly to WMB's creditors, including the Bank Bondholders, as well as to the Bank receivership estate, for those breaches (and for those of its officers and directors under principals of respondeat superior, agency and the like). The Bank Bondholders assert a claim for all resulting damages, including without limitation all principal, interest and other amounts owing under the Senior Notes to the Bank Bondholders.

17. Claim for Goodwill Litigation Awards.

Based on the limited information available to the Bank Bondholders to date, it appears that WMB was the successor in interest to American Savings Bank, F.A. ("American Savings") and to Anchor Savings Bank, FSB ("Anchor Savings"). American Savings and Anchor Savings were plaintiffs in two separate actions brought against the United States by thrifts and thrift holding companies alleging that the government breached certain supervisory merger contracts following the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (*See Am. Savings Bank v. United States*, Case No. 92-872 (Fed. Cl.); *Anchor Savings Bank, FSB v. United States*, Case No. 95-03C (Fed. Cl.); together, the "Goodwill Litigation"). The plaintiffs successfully alleged injury arising out of FIRREA's new capital mandates which prohibited thrifts from counting supervisory goodwill created in merger transactions towards these capital requirements. A partial judgment was entered in favor of the plaintiffs in *American Savings Bank v. United States* matter, and the court directed the Government to pay WMI \$55,028,000. (Dec. 19, 2008 Order, *Am. Savings Bank v. United States*, Case No. 92-872 (Fed. Cl.)). A determination of damages on remaining claims is still pending in that matter. Similarly, the Government has been ordered to pay \$356,454,911 to the plaintiff in the *Anchor Savings Bank, FSB v. United States* matter. (July 16, 2008 Order, *Anchor Savings Bank, FSB v. United States*, Case No. 95-03C (Fed. Cl.)).

Because WMB appears to have been the successor entity to American Savings and Anchor Savings, the judgments from these two actions are the rightful property of WMB, not WMI. Alternatively, to the extent such assets were not sold to JPM, the WMB receivership estate and its creditors would have a claim against WMI's bankruptcy estate for the judgments in the Goodwill Litigation. The Bank Bondholders assert a claim with respect to any and all awards arising out of the Goodwill Litigation.

18. Additional Claims.

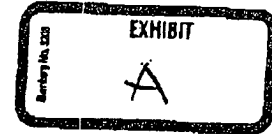
The Bank Bondholders also assert any and all additional or different claims that may be asserted by other holders of the Senior Notes. Any Proofs of Claim submitted by any such other holders are incorporated herein by reference.

Reservation of Rights

19. WMB and its creditors may have additional claims for undetermined amounts based on rights of indemnity or contribution relating to pending securities class actions and other claims to which WMB is or may be a named defendant. In addition, WMB may have rights with respect to insurance policies (and claims against WMI with respect to any such policies) under which WMB and/or WMI are insureds or additional insureds, including without limitation any such policies covering claims against directors, officers, professionals and others who acted for or provided services for WMB or WMI. The Bank Bondholders reserve all such claims and rights.
20. The Bank Bondholders reserve all rights to establish the validity, priority and amount of, and to amend, modify or supplement, this Amended Proof of Claim including, but not limited to, by asserting additional amounts and claims, and to produce all documentary and testimonial evidence and memoranda of law in support thereof in any future proceeding as may be deemed necessary or appropriate.
21. This Amended Proof of Claim shall not be deemed a consent by the Bank Bondholders to having any matters heard by the Bankruptcy Court. Nor shall the Bank Bondholders' submission of this Amended Proof of Claim waive any right of the Bank Bondholders to have final orders in non-core matters entered only after *de novo* review by a U.S. District Judge, any right to have the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal, or any other rights, claims, actions, defenses, setoffs or recoupments to which the Bank Bondholders are or may be entitled under any agreements, in law or equity, all of which rights, claims, actions, defenses, setoffs and recoupments are expressly reserved.
22. This Amended Proof of Claim is not intended to be, and shall not be construed as: (a) an election of remedies; (b) waiver of any right to the determination or any issue or matter by a jury; (c) a waiver of any defaults; or (d) a waiver or limitation of any rights at law or equity, remedies, claims or interests of the Bank Bondholders.
23. Copies of various documents in support of this Amended Proof of Claim are not attached hereto because they are voluminous and the nature of and the relevant provisions are described herein. Further, a significant portion of such documents should be in the possession of WMI and/or are matters of public record.

EXHIBIT "D"

CONTRACTED COURIER SERVICE AGREEMENT



This Contracted Courier Service Agreement (this "Agreement") is entered into as of the 1st day of February, 2006 (the "Effective Date") by and between Washington Mutual Bank, a federal savings association, with offices located at 1201 Third Avenue, Seattle, Washington 98101 and its direct and indirect subsidiaries and Affiliates (hereinafter referred to as "WaMu") and Courier Solutions of America, a Texas corporation with principal place of business at Tower Executive Suites 16225 Park Ten Place Dr Suite 22., Houston, TX 77084 (hereinafter referred to as "Supplier"). WaMu and Supplier may be referred to individually as a "Party" and collectively as "the Parties."

Whereas, Supplier acknowledges that WaMu is a major banking and financial services vendor and a national leader in the delivery of leading-edge solutions to support the WaMu's financial services offerings:

Whereas, Supplier considers WaMu a strategic customer and wishes to create a strategic vendor relationship with WaMu:

Whereas, Supplier desires to provide certain contracted courier services for WaMu in the state(s) of California, Florida, Georgia and Texas, and Supplier has extensive experience providing such services to large organizations:

Whereas, WaMu desires to engage Supplier to provide such services for WaMu; and

Whereas, WaMu and Supplier desire to enter into this Agreement to set forth the terms and conditions pursuant to which Supplier will provide services to WaMu.

1. Services.

1.1 Scope. This Agreement sets forth the terms and conditions controlling Supplier's provision of, and WaMu's purchase from Supplier of, Services ordered by WaMu during the period commencing on the Effective Date and continuing for the term of this Agreement. WaMu may purchase and Supplier shall provide the Services as described in Exhibit C, at the prices specified, and in accordance with the Service Levels and Key Performance Indicators described in Exhibit B and C. Capitalized terms used herein are defined on Exhibit A or throughout this Agreement.

1.2 Changes. No alteration, amendment, modification or change in any of the terms, or conditions of the Services will be effective without the prior written consent of WaMu's authorized representative. If any such change causes an increase or decrease in the cost of or the time required for performance of the Services, an equitable adjustment shall be made in the fees. Any claim by Supplier for adjustment under this clause shall be deemed waived unless it is requested in writing within ten (10) business days from receipt by Supplier of WaMu's request for change.

1.3 Force Majeure. Notwithstanding any other provision of this Agreement, neither party to the Agreement shall be deemed in default or breach of this Agreement for any delay or failure in performance hereunder solely due to acts of God, labor disputes, court order, riots, compliance with any governmental act, regulation or request, war, or terrorism (collectively "Force Majeure"). If Supplier is unable to perform the Services WaMu due to the occurrence of any one of the above-cited events, WaMu shall have the right, upon notice to Supplier, to terminate the affected Services with no obligation to pay for such Services and without penalty of any kind. The parties shall promptly resume performance hereunder after the Force Majeure event has passed.

2 Prices/Fees.

2.1 Pricing. In consideration of Supplier providing the Services under this Agreement, WaMu will pay to Supplier the Fees as set forth in Exhibit B (Pricing). Except as expressly set forth in this Agreement, there will be no charges or Fees payable by WaMu in respect of Supplier's performance of its obligations pursuant to this Agreement. There will be no adjustments to the Fees except as set forth in Exhibit B (Pricing). Except as expressly set forth in Exhibit B (Pricing), all costs and expenses relating to the Services are included in the Fees and will not be charged to or reimbursed by WaMu. To the extent that this Agreement specifically identifies pass-through expenses to be paid by WaMu, such expenses will be passed through by Supplier with no mark-up. Supplier warrants that the terms and prices of the Services purchased hereunder will be as favorable as and will not exceed those charged by Supplier to any other customers purchasing the same Services in like or smaller quantities. If at any time prior to completion of performance of Services hereunder, Supplier sells or offers to sell to a third party services substantially of the same type as set forth herein at lower prices or on terms more favorable than those stated in this Agreement, or both, Supplier agrees that from that time forward the prices and terms herein shall be automatically adjusted to equal the lowest prices and most favorable terms at which Supplier is selling or offering to sell such Services. In the event WaMu becomes entitled to lower prices but has made payment in excess of the lower prices, Supplier shall promptly refund the difference between the prices paid and the adjusted price.

2.2 Records and Audit. For any Services purchased under this Agreement, Supplier shall maintain complete and accurate books and records of the amounts charged to WaMu in connection with such items. Supplier shall retain such records for three (3) years after delivery of such items and shall make such records available to WaMu or its third party auditor, during normal business hours upon reasonable advance written notice. If any audit under this Section determines that Supplier has overcharged WaMu (including, without limitation, with respect to pricing requirements set forth in any written agreement between the parties), WaMu shall notify Supplier of the amount of such overcharge and Supplier shall promptly pay such amount to WaMu. If the overcharge on the invoice(s) exceeds five percent (5%) of the total amount charged to WaMu by Supplier for the services purchased under the Agreement, then Supplier shall reimburse WaMu for the reasonable cost of such audit.

2.3 Expanding Scope. WaMu may at any time request a quotation for services not included in the price matrix in Exhibit B, in which case Supplier shall submit to WaMu a proposal including pricing terms and delivery commitments for such services. All quotations shall be valid for 90 (ninety) days. Upon acceptance by WaMu, such quotation shall be incorporated into this Agreement, supplementing Exhibit B.

2.4 Professional Services. In the event that WaMu desires Supplier to provide professional services other than those incidental to performing the Services ("Professional Services"), the parties will enter into one or more SOWs in the form attached hereto as Exhibit J. WaMu shall not be obligated to pay for any such Professional Services except pursuant to an SOW agreed to and executed by WaMu.

2.5 Expense Reimbursement. In the event that WaMu retains Supplier to provide Professional Services pursuant to Section 3.4 only, WaMu shall reimburse Supplier for actual expenses incurred for travel and lodging to perform the Professional Services. Out of town travel expenses that are pre-approved in writing and are reasonable and necessary shall be reimbursed at actual cost without markup. In no event will WaMu pay for travel time. Airfares must be at coach rates, although Supplier may choose to upgrade at its own expense. Where practical, airfares shall be

booked at least seven (7) days in advance. Daily meal allowance is \$35 per day per Supplier personnel providing Professional Services hereunder. Ground transportation will be reimbursed at actual cost, not to exceed \$40. Unless otherwise agreed in writing, hotels shall be reserved using WaMu's designated hotels where discounts have been negotiated.

2.6 Cost Avoidance. Supplier will make best efforts to offer the lowest possible pricing without compromising quality requirements and without deviating from agreed-upon timelines. Supplier shall, in good faith, recommend to WaMu processes, programs, or alternative products that may increase efficiency or increase productivity or otherwise result in savings. Supplier will provide a quarterly report of cost savings/avoidance efforts representative of purchases made on behalf of WaMu.

2.7 Taxes. WaMu shall pay or reimburse Supplier for any sales taxes imposed upon Supplier in connection with this Agreement, except where the particular transaction is tax-exempt as determined by reference to any exemption certificate provided by WaMu. Supplier is solely responsible for paying or otherwise discharging any taxes imposed upon Supplier based upon Supplier's income or assets or employment obligations and WaMu shall have no liability therefore. Unless otherwise agreed in writing, Supplier warrants that the price quoted for the Products or Services includes all federal, state and local sales and use taxes, ad valorem taxes, tariffs, duties, or other charges, whether domestic or foreign, imposed on the Services and payable by WaMu hereunder. Supplier shall timely pay all taxes to the appropriate authorities and properly file all applicable tax returns. Supplier agrees to defend, hold harmless, indemnify and reimburse WaMu for and from any such taxes (including penalties and interest) that WaMu may be required to pay over and above the amount of taxes or charges included in the purchase price for the Services.

3 Invoices.

3.1 Consolidated Billing. Supplier will generate a single monthly invoice for all Services delivered during the previous billing cycle. The consolidated invoice will be submitted to the WaMu contact identified in Section 11.2, as may be updated from time to time.

3.2 Form of Invoices. All invoices must include sufficient information and/or documentation to enable WaMu to reasonably ascertain and substantiate the appropriateness of the charges, including: description of the Services. **TERMS AND CONDITIONS CONTAINED ON SUPPLIER'S INVOICE SHALL NOT BE EFFECTIVE.**

3.3 Payment terms. Payment is due forty-five (45) days from the date of the invoice. Invoices are payable in U.S. dollars. If WaMu disputes in good faith the amount of the invoice, WaMu agrees to pay the entire undisputed amount. No interest, service charges, or finance charges shall be assessed to WaMu or accrue on WaMu's account unless agreed to in a writing signed by an authorized representative of WaMu. If required by WaMu, Supplier will accept bank-issued procurement cards or other electronic forms of payment.

3.4 Invoice Submission. Supplier must submit all invoices to WaMu within three (3) months after the date the Services covered by the invoice were provided to WaMu. WaMu will not pay and will not be responsible for any invoices submitted after the expiration of this date.

4 Supplier's Representations and Warranties.

4.1 Time is of the Essence. Time is of the essence in connection with Supplier's performance of the Services.

4.2 Requisite Authority. Supplier has the necessary authority to enter into this Agreement and is not subject to any agreement or other constraint that would prohibit or restrict Company's right or ability to enter into, or carry out, its obligations hereunder.

4.3 Compliance with Laws. Supplier represents that it has and will continue during the performance of the Services to comply with the provisions of all federal, state and local laws and regulations from which liability may accrue to WaMu from any violation thereof, including, without limitation, compliance with the Fair Labor Standards Act of 1938; Section 202 of Executive Order No. 11246 of September 24, 1965 (Equal Opportunity Clause); 41 CFR & 1-12 1304-1 (Employment of the Handicapped Clause), and any existing or future amendments to any of these laws or regulations. Supplier agrees that it will continue to comply with and be subject to all of the terms and conditions imposed by statutes and regulations, including the foregoing, during the Supplier's performance under this Agreement.

4.4 No Infringement. Excluding any content provided by WaMu, neither the Services nor any other deliverables, nor any part, product or software sold, distributed, licensed or supplied by WaMu in connection with the Services or other deliverables, do or will infringe any patent, copyright, trademark or other proprietary right or misappropriate a trade secret of any third party.

4.5 No Litigation. There is no litigation or proceeding whatsoever, actual or threatened, against Supplier, or breach, default, or alleged breach or default of any agreement, order, or award binding upon it, in each case, which would materially affect Supplier's ability to perform any of its obligations under this Agreement.

4.6 Performance. Supplier shall perform all Services in a professional and workmanlike manner with high quality and in accordance with Exhibit C (Scope of Services).

5 Confidentiality/No Publicity.

5.1 Definition. "Confidential Information" of a party means all confidential or proprietary information, including without limitation, all information not generally known to the public, the terms of this Agreement and, with respect to WaMu, WaMu Data, as defined in Section 5.4 below. Without limiting the foregoing, Confidential Information shall include all such information provided to each party by the other party both before and after the date of this Agreement.

5.2 Use and Disclosure. All Confidential Information relating to a party shall be held in confidence by the other party to the same extent and with at least the same degree of care as such party protects its own confidential or proprietary information of like kind and import, but in no event using less than a reasonable degree of care. Neither party shall disclose, duplicate, publish, release, transfer or otherwise make available Confidential Information of the other party in any form to, or for the use or benefit of, any person or entity without the other party's consent. Each party shall, however, be permitted to disclose relevant aspects of the other party's Confidential Information to its officers, agents, subcontractors and employees to the extent that such disclosure is reasonably necessary for the performance of its duties and obligations under this Agreement and such disclosure is not prohibited by the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 et seq.), as it may be amended from time to time (the "GLB Act"), the regulations promulgated thereunder or other applicable law. Each party shall establish commercially reasonable controls to ensure the confidentiality of the Confidential Information and to ensure that the Confidential Information is not disclosed contrary to the provisions of this Agreement, the GLB Act or any other applicable privacy laws and regulations. Without limiting the foregoing, each party shall implement such physical and other security measures as are necessary to (i) ensure the security and confidentiality of the

Confidential Information (ii) protect against any threats or hazards to the security and integrity of the Confidential Information and (iii) protect against any unauthorized access to or use of the Confidential Information. The parties shall, at a minimum establish and maintain such data security program as is necessary to meet the objectives of the Interagency Guidelines Establishing Standards for Safeguarding WaMu Information as set forth in the Code of Federal Regulations at 12 C.F.R. Parts 30, 208, 211, 225, 263, 308, 364, 568 and 570. To the extent that a party hereto delegates any duties and responsibilities under this Agreement to an agent or other subcontractor in accordance with the terms hereof, such party ensures that such agents and subcontractor will adhere to the same requirements with which such party is required to comply under this Agreement. Each party shall have the right, during regular office hours and upon reasonable notice, to audit the other party to ensure compliance with the terms of the GLB Act and other privacy laws and regulations.

5.3 Exceptions. The obligations in Section 5.2 above shall not restrict any disclosure by either party pursuant to any applicable law, or by order of any court or government agency (provided that the disclosing party shall give prompt notice to the non-disclosing party of such order) and shall not apply with respect to information which: (i) is developed by the other party without violating the disclosing party's proprietary rights; (ii) is or becomes publicly known (other than through unauthorized disclosure); (iii) is disclosed to, or learned by, the recipient from a third party free of any obligation of confidentiality; and (iv) is already known by such party without an obligation of confidentiality other than pursuant to this Agreement or any confidentiality agreements entered into before the Effective Date between WaMu and Supplier. If the GLB Act, the regulations promulgated thereunder or other applicable law now or hereafter in effect imposes a higher standard of confidentiality to the Confidential Information, such standard shall prevail over the provisions of this Section 5.

5.4 WaMu Data. "WaMu Data" shall mean all data and information that is submitted, directly or indirectly, to Supplier by WaMu or obtained or learned by Supplier in connection with the Services provided by Supplier under this Agreement and any SOW, including without limitation information relating to WaMu's customers, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, trademarks, service marks, logos, trade dress, copyrightable subject matter and other proprietary information. All WaMu Data is and shall remain the property of WaMu and shall be protected as described in this Section 5.

5.5 Return of Materials. Upon request and upon termination of this Agreement for any reason, Supplier shall return any and all records or copies of records relating to WaMu or its business, including without limitation, Confidential Information, except for Confidential Information of WaMu that is rightfully contained in Supplier's work papers, provided Supplier maintains the confidentiality of such Confidential Information as required herein.

5.6 No License. Nothing in this Agreement shall be interpreted as granting a license to Supplier to use any Confidential Information for any purpose other than those stated herein, or as granting rights to Supplier under any patent, copyright, trademark, service mark, logo, trade dress or any Proprietary Product.

5.7 No Publicity. Neither party shall use the other party's name or mark in any advertising, written sales promotion, press releases and/or other publicity matters without the other party's written consent. Supplier acknowledges that WaMu has a no publicity policy regarding its vendor relationships.

6 Remedies and Indemnification.

All remedies shall be cumulative and may be exercised concurrently, or separately (which shall not be deemed to constitute an election of any one remedy to the exclusion of any other). In addition to any other remedy provided for herein, the following shall be available.

6.1 Injunctive Relief. Each Party acknowledges that WaMu would be substantially or irreparably harmed, and would have no adequate remedy at law in the event of a breach of Section 5. Accordingly, Supplier consents to the entry of a temporary restraining order, injunction or other similar order or action of any judicial authority, in addition to any other remedy available at law or in equity, to enforce such sections, without WaMu being required to post a bond.

6.2 Setoff. In the event that either Party fails to timely pay any liability to the other Party, including any liability under any agreement to indemnify, then the other Party shall have the right to set off such amounts against amounts otherwise due. In particular, WaMu may adjust payments made for any overpayments by deducting from subsequent payments due.

6.3 General Indemnification. Supplier shall indemnify, defend and hold harmless WaMu and its officers, employees, agents, and servants from and against any damages, liabilities, losses, costs and expenses (including attorney fees incurred in a bankruptcy or any other proceeding, at trial and on appeal, or which were expended to obtain performance by Supplier of its indemnification obligations hereunder) arising from any claim or allegation brought by a third party, whether or not such claim or action is frivolous: (a) arising out of the presence of the Supplier, or equipment, or tools used by WaMu or Supplier in the performance of this Agreement on WaMu's property; (b) arising out of the acts, errors, omissions, or negligence of Supplier (including its employees, agents, contractors, subcontractors and consultants) while on WaMu's property, regardless of whether the loss, damage, or injury resulting from same occurs after the Supplier has left such property; (c) arising out of Supplier's non-performance; (d) alleging the nonpayment by Supplier of any monies due and owing a third party with whom Supplier has contracted at any time; (e) alleging bodily injury (including death) arising out of the provision of Services; (f) arising out of Supplier's breach of the confidentiality obligations in Section 5; or (g) arising out of a claim for WaMu wages or benefits by Supplier or its employees, personnel, agents or Suppliers.

6.4 Intellectual Property Indemnification. Supplier agrees to indemnify, defend and hold harmless WaMu and its officers, employees, agents and servants from and against any damages, liabilities, losses, costs and expenses (including attorney fees incurred in a bankruptcy or any other proceeding, at trial and on appeal, or which were expended to obtain performance by Supplier of its indemnification obligations hereunder) arising from any claim or allegation that the Services infringe a patent, copyright, trademark or other proprietary right, or misappropriate a trade secret, of a third party. If any Services, in whole or in part, constitute or may constitute infringement or misappropriation of a third party's rights, and/or if WaMu's use thereof is or may be enjoined, Supplier, in addition to its indemnification obligations hereunder, shall promptly either (i) secure for WaMu rights to continue using such infringing Services, or (ii) re-perform or replace such Services with comparable non-infringing Services, or (iii) modify the Services so that they become non-infringing. In the event Supplier is unable to procure one of the aforementioned remedies, Supplier shall, in addition to its indemnification obligations hereunder, promptly refund to WaMu all amounts paid to Supplier under this Agreement.

6.5 Obligations. WaMu agrees to give Supplier prompt written notice of any claim subject to indemnification; provided that WaMu's failure to promptly notify Supplier shall not affect Supplier's obligations hereunder except to the extent that WaMu's delay prejudices Supplier. Supplier shall have the right to defend against any such claim with counsel of its own choosing and to

settle such claim as Supplier deems appropriate, provided that Supplier will not enter into any settlement that adversely affects WaMu's rights without WaMu's prior written consent. WaMu agrees to reasonably cooperate with Supplier in the defense and settlement of any such claim, at Supplier's expense.

6.6 Limitation of Liability. In no event will WaMu (including WaMu's Affiliates, subsidiaries, other related legal entities, officers, directors, employees or representatives) be liable to Supplier for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.

7 Term/Termination.

7.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue for three (3) years from the Effective Date, unless earlier terminated pursuant to this Section 7. If Services under an applicable SOW extend beyond the initial three (3) year term, this Agreement shall continue with respect to such SOW until the satisfactory completion of the Services hereunder. If the parties mutually agree in writing, this Agreement may be renewed and extended for additional three (3) year terms after expiration of the initial term or then current term.

7.2 Termination. WaMu may terminate all or any part of this Agreement at any time or times without cause by written notice to Supplier. Either party may terminate this Agreement on thirty (30) days' notice in the event of material breach by the other party, provided that the breaching party shall within such time have an opportunity to cure. Supplier shall be liable for damages suffered by WaMu resulting from Supplier's material breach of this Agreement. For purposes of this Section 7.2, material breach shall include an aggregate of non-material breaches or Service Level defaults where the cumulative effect of such breaches or defaults is material. Supplier shall not be entitled to, and hereby waives any claim for, any other costs or damages as a result of termination of this Agreement, including, without limitation, lost profits.

7.3 Effect of Termination. If Company receives notice of termination of this Agreement, or applicable SOW, Company shall cease providing the Services under this Agreement, or applicable SOW, in an orderly manner in accordance with WaMu's reasonable instructions.

7.4 Rights and Obligations upon Termination. Upon termination of this Agreement, each Party shall promptly return to the other Party all Confidential Information of the other Party then in its possession, custody or control.

7.5 Survival. The rights and obligations of the Parties pursuant to Sections [2.2, 2.8, 5, 6, 7, 8, 9.2, and 11], and any other provision of this Agreement to the extent that provision creates an indemnity obligation, or provides for rights or remedies after termination, shall survive the termination of this Agreement.

7.6 Termination Due to Adverse Financial Condition.

7.6.1 If either party makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary, or has filed against it an involuntary, petition for bankruptcy or reorganization, is adjudicated a bankrupt or insolvent, or applies for or consents to the appointment of a receiver for it or its property, the other party may terminate this Agreement by written notice. Such termination shall not relieve either party from any obligation accrued hereunder up to the date of receipt of notice of termination.

7.6.2 Throughout the term of this Agreement, Supplier shall provide to WaMu a copy of its financial statements including balance sheet, income statement, and cash flow statement (prepared by an external accountant, if available, and otherwise, by Supplier) within forty-five (45) days following the close of each calendar quarter for the first three calendar quarters, and one hundred twenty (120) days following the close of the calendar year (i.e., May 15, August 15, November 14 and April 30). Each such copy shall be certified by the Chief Executive Officer or the Chief Financial Officer of Supplier as (i) having been prepared in the ordinary course of business; and (ii) being accurate and complete in all material respects. Supplier shall further exercise its best efforts to provide WaMu promptly with any other information or documents relating to Supplier's financial condition, as requested by WaMu. Any deterioration in Supplier's operating cash flow, as measured on a quarterly basis, shall trigger a discussion between the parties to examine the reason for such deterioration. Upon reasonable determination that continued deterioration is likely to occur, WaMu may terminate this Agreement ninety (90) days after written notice to Supplier.

8 Insurance.

8.1 Coverage Requirements. During the term of this Agreement, and for three (3) years thereafter, Supplier shall maintain the following insurance coverage's with insurance carriers with an A.M. Best rating of at least A-VII, or such other insurance carriers approved in writing by WaMu: (i) all insurance coverage's required by federal, state or local law, including without limitation, statutory worker's compensation insurance and employers' liability insurance (and such employers' liability insurance shall provide a limit of at least \$500,000 for each person); (ii) comprehensive or commercial general liability insurance (which shall provide for a minimum combined bodily injury and property damage coverage limits of \$10,000,000 per occurrence); (iii) comprehensive automobile liability covering all vehicles that Supplier owns, hires or leases in an amount not less than \$1,000,000; (iv) a comprehensive crime policy with a limit of \$10,000,000 that shall include employee dishonesty and fidelity coverage for all Supplier employees, officers and agents, and "on premises" loss (loss inside the premises) and "in-transit" loss (loss outside the premises); and (v) professional liability (also known as errors and omissions) insurance with combined single limits of not less than \$10,000,000. Supplier shall submit proof of insurance, which may include entire policy, both on the 1st of January of each year and upon request from WaMu.

8.2 Additional Requirements. All Supplier insurance shall include a primary and non-contributing endorsement. Supplier shall cause insurers to name WaMu as an "additional insured" for the coverage's required in Section 8.1 (ii) and (iii) and as a "loss payee" for the coverage required in Section 8(iv). Prior to commencing any Services under this Agreement, Supplier shall provide certificate(s) of insurance evidencing the coverage's described in Section 8.1 above. Such certificates shall include a provision requiring the insurance carrier to provide directly to WaMu thirty (30) days' advance written notice before any termination, change or cancellation takes effect for policies evidenced on the certificate, regardless of whether such termination, change or cancellation is initiated by Supplier or insurance carrier (please note, however, that the following language is NOT acceptable: "Insurance carrier will endeavor to provide advance notice of cancellation or termination and failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives"). The insurance carrier shall waive, and Supplier hereby waives, all rights of recovery or subrogation against WaMu which might arise with regard to damage or loss which is insured against under any WaMu policies in force at the time of the damage or loss. The insurance requirements and coverage's set forth in this Section shall not limit Supplier's liability to WaMu or third parties under this Agreement.

9 Personnel.

9.1 No Agency. WaMu and Supplier are contractors independent of one another. Neither Supplier, nor any employee, contractor, agent, or representative of Supplier, is authorized to represent WaMu or its Affiliates in an agency capacity, bind any WaMu entity to any contract, make any representations on behalf of such entity, or otherwise act on WaMu's behalf.

9.2 Compensation of Employees. Supplier shall at its own expense timely pay its employees or withhold: (a) all compensation, wages, salaries, and mandatory benefits; (b) all applicable federal, state, and local income taxes, payroll taxes, FICA, Medicare, unemployment insurance, and any other taxes, premiums, or assessments; and (c) statutory workers compensation insurance as provided in Section 8. Supplier shall assure that any subcontractors comply with the foregoing obligations. Supplier agrees to defend, indemnify, and hold harmless WaMu and its Affiliates for the foregoing obligations and any liabilities (including penalties and interest) that WaMu or its Affiliates may be required to pay in connection with claims asserted by or on behalf of the employees of Supplier and its subcontractors.

9.3 WaMu's Premises. The employees, contractors, and other personnel of either Party, upon entering the site or facility of the other Party, shall be subject at all times to the other Party's rules and regulations regarding safety and security. The employer or principal of visiting personnel shall be solely responsible for the conduct of the personnel while present on the other Party's property. Without limiting the foregoing, Supplier and its personnel shall be obligated to comply with "Working with WaMu for Contract Staff" attached hereto as Exhibit E and "Supplier Code of Conduct" attached hereto as Exhibit F.

9.4 Notice of Labor Disputes. Whenever an actual or potential labor dispute is delaying or threatens to delay any timely performance of this Purchase Order, Supplier shall immediately give notice thereof to WaMu. Such notice shall include all relevant information with respect to such dispute.

9.5 Supplier Diversity. WaMu is committed to Supplier Diversity by providing opportunities for women, minority, and disabled business enterprises ("WDBEs") to participate in its purchasing and contracting activities on a competitive bidding basis. While it is not a requirement to subcontract any portion of work, subcontracting with WDBEs is an integral component of WaMu's overall Supplier Diversity Commitment. WaMu expects its vendors to partner with WaMu in meeting its Supplier Diversity Commitment by subcontracting with WDBEs to the maximum extent feasible. Supplier shall submit a WDBE Subcontracting Plan and Report in accordance with the Supplier Diversity Statement, Instructions and the Subcontracting Plan and Report set forth in Exhibit G entitled "Supplier Diversity Requirements".

10 Account Management/Reporting.

10.1 Account Management/Supplier's Personnel. Supplier shall provide experienced and qualified personnel to perform services and provide support regarding this Agreement. Upon request from WaMu, Supplier will remove certain personnel from supporting WaMu's account. Supplier shall promptly respond to such requests. WaMu shall not be obligated to compensate Supplier for any fees, if applicable, of such replaced personnel or training of new such replacement personnel.

10.2 Reporting. On a quarterly basis or such other periodic basis as dictated by WaMu, Supplier shall develop, maintain and deliver certain reports in an agreed upon format at no additional

cost to WaMu. Such reports are further defined in Scope of Services and Service Levels set forth in Exhibit C.

10.3 Locking Mechanism or Code. Supplier shall not include or incorporate in its Product any mechanism or software code that requires WaMu to use special keys to use, maintain, report or fix such Product if such keys are only available from Supplier or Supplier's third party.

11 Miscellaneous

11.1 Subcontractors. Supplier will be responsible for the acts and omissions of Supplier and its employees as well as only those agents and subcontractors employed or contracted by Supplier who are directly involved in the support of the Services to WaMu. Supplier shall not use any subcontractors who work directly on WaMu's behalf supporting the Services performed under this Agreement without WaMu's express prior written consent. In addition, Supplier shall agree to and sign, and cause all of its on-site personnel (whether employees or contractors or other representatives) to agree to and sign the Working for WaMu (for Contract Staff) Agreement attached hereto and incorporated herein as Exhibit E.

11.2 Assignment. Supplier shall not assign, transfer, or subcontract this Agreement or all or any portion of the Services or delegate any of its duties hereunder without WaMu's express, prior written consent. Any assignment in contravention of this provision shall be null and void. This Agreement shall be binding on all assignees and successors in interest.

11.3 Modification. This Agreement may be modified only by written instrument signed by an authorized representative of the Party against which enforcement is sought, which makes reference to the specific section it purports to amend. Any Supplier standard form which purports to govern acquisition of Products or Services ordered pursuant to this Agreement shall be ineffective to modify this Agreement and shall not be binding upon either Party to the extent it is inconsistent with this Agreement.

11.4 Notices. Every notice required or contemplated by this Agreement shall be in writing. Notices shall be deemed received (i) when delivered personally; or (ii) when sent by confirmed facsimile (followed by the actual document in air mail/air courier); or (iii) one Business Day after deposit with a commercial express courier specifying next day delivery (or, for international courier packages, two (2) Business Days after deposit with a commercial express courier specifying two-day delivery) with written verification of receipt. All notices will be sent to the addresses set forth on Page 1 or to such other address as may be designated by written notice, and other communications hereunder shall be deemed to have been duly given if delivered personally to such party or if mailed by registered or certified mail by private courier addressed as follows:

WMI Billing:

Washington Mutual, Inc.
Attn: Jennifer Medvidick
17875 Von Karman Ave Suite 310
Mail stop: IRA31.0G
Irvine, CA 92614

With a copy as follows for notices of breach and termination only:

Washington Mutual, Inc.
Attn: General Counsel
1201 Third Avenue, WMT 1706
Seattle, WA 98101
Fax: 206-377-6244

If to Supplier:

Courier Solutions of America
Attn: Woodrow Clayton
16225 Park Ten Place Dr. suite 22.
Houston, TX 77084

Such addresses may be changed by notice given by one party to the other pursuant to this Section 11.4 or by other form of notice agreed to by the parties.

11.5 Governing Law; Jurisdiction. This Agreement shall in all respects be governed by and construed exclusively in accordance with the laws of the State of Washington, without regard to the principles of conflicts of law.

11.6 WAIVER OF RIGHT TO JURY TRIAL. SUPPLIER, AS A CONDITION TO TRANSACTING BUSINESS WITH WaMu, HEREBY WAIVES AND RELINQUISHES ANY RIGHT TO A JURY TRIAL IT MAY NOW OR HEREAFTER HAVE IN ANY DISPUTE ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER.

11.7 Entire Agreement. The Exhibits attached hereto, along with any Orders the Parties may execute subject to this Agreement, are hereby incorporated into and form a part of this Agreement. This Agreement constitutes the entire agreement between WaMu and Supplier with respect to the subject matter of this Agreement, superseding all drafts, all prior or contemporaneous agreements, and all promises or representations, written or oral.

11.8 Third Party Beneficiaries. This Agreement inures to the benefit of WaMu's Affiliates, subsidiaries, and successors-in-interest, all of which shall have the right to place Orders and receive Services under the same terms and conditions as WaMu; submission of an Order referring to this Agreement shall constitute a binding agreement by such Affiliate.

11.9 Waiver. The nonenforcement of any provision of this Agreement, or failure to insist on strict compliance with any of the terms, covenants or conditions hereof, shall not be deemed a waiver of any right granted under this Agreement; nor shall any waiver of any right granted hereunder on one occasion be deemed a waiver at any other time.

11.10 Severability. In the event that any clause of this Agreement is found by a court validly asserting jurisdiction to be unenforceable, that clause will be considered void to the extent it is contrary to the applicable law, but such a finding shall not affect the validity of any other clause of the Agreement, and the rest of the Agreement shall remain in full force and effect.

11.11 Captions. The section captions in this Agreement are for convenience of reference only, and shall not affect the interpretation of the body of the contract.

11.12 Execution by Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

11.13 Order of Precedence. To the extent the terms and conditions of this Agreement conflict with the terms and conditions of an applicable SOW or other Exhibit or Schedule, the terms and conditions of this Agreement shall control.

11.14 Reconstruction. In the event that any Bank Documents tendered to Supplier by WaMu for shipment are damaged or lost while under the care and custody of Supplier, the limits of liability for reconstruction shall be a maximum of \$10.00 per item, or \$200,000 per occurrence, whichever is lesser.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Washington Mutual Bank

Courier Solutions of America

By: 
(signature)

By: 
(signature)

Printed Name: John Rostas

Printed Name: Woodrow Clayton

Title: Div. Exec.

Title: 

Date: 3-14-06

Date: 1/14/06

List of Exhibits

Exhibit A	Definitions
Exhibit B	Pricing
Exhibit C	Scope of Services and Service Levels
Exhibit C-1	Initial List of Locations
Exhibit D	Service Levels And Performance Credits
Exhibit E	Working For Wamu (For Contract Staff)
Exhibit F	Supplier Code of Conduct
Exhibit G	Supplier Diversity Requirements
Exhibit H	Commitment For Disaster Recovery Requirements
Exhibit I	Escalation Procedures
Exhibit J	Form of SOW

Exhibit A

Definitions

This Definitions page is incorporated into the Agreement to which it is attached. Terms which are capitalized in this Agreement (including the Exhibits to this Agreement) shall be defined as set forth in the Agreement, or as follows:

"Affiliate" means, with respect to either Party, any entity controlling, controlled by, or under common control with, such Party, where "control" means ownership of more than fifty percent (50%) of the shares entitled to vote for the election of directors or other managing authority.

"Business Days" means Monday through Friday, excluding legal holidays recognized in the United States.

"Services" means any Services rendered by Supplier to WaMu pursuant to this Agreement, including but not limited to (i) customer service and support, program management, and reporting services and, if applicable, Professional Services as set forth in *Exhibit C*.

"Bank Document" means any item transported by Supplier on behalf of WaMu.

"Regular Services" means scheduled daily pick-ups and deliveries which are made to/from WaMu Financial Service Centers.

"Ancillary Services" These are scheduled daily pick-ups and deliveries which are made to/from locations other than WaMu Financial Centers.

"Special Services" These are non-scheduled pick-ups and deliveries made upon request of the WaMu Account Representative and are services conducted outside of Regular Services.

Exhibit B

Pricing

Fees

- A. Regular Services and Ancillary Services. Fees for scheduled Services, including Regular Services and Ancillary Services, will be agreed upon by the Parties and paid by WaMu one month in advance, as described below. Prior to the beginning of the month, WaMu will provide Supplier with requested routes (or changes, additions or deletions to existing agreed upon routes) for each Financial Center or other WaMu location for the following month. Supplier will promptly quote WaMu the Fees for such routes. The Fees paid by WaMu will be inclusive of all shipping, handling, inside delivery or other charges.
- B. Special Services. Fees for unscheduled pick-ups and deliveries (Special Services) shall be agreed upon by the Parties in advance. Supplier shall not proceed with or be reimbursed for any Special Services that have not been authorized in advance by the WaMu Account Representative.
- C. Price Adjustments. Prices shall remain fixed for the entire term of this Agreement, excluding Fuel Surcharges as set forth in this Exhibit B. Thereafter, pricing of Services may be increased once each year in an amount not to exceed [75% of] the percentage increase during the previous twelve (12) months in the U.S. Bureau of Labor Statistics National Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, (1982-1984=100), "All Items".
- D. Minimum Order Requirements. It is understood and agreed that there shall be no minimum threshold amount for any Services purchased by WaMu.
- E. Fee Quote Example. Quotes for Fees shall be provided to WaMu in the following format or as otherwise reasonable requested by WaMu.

(Example Price Quote Sheet)

Region	Master	FC #	Ch. Charge	Day Fee	Fuel Fee	Saturday Fee	Monthly Total	Name
CA20	00003555	0003535	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	VMFS
CA21	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	ECC - Chatsworth ca 1/40
CA22	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	ECC - Chatsworth ca 2/3
CA23	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	Accl Services-ATM-Back Office
CA24	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	Bank by Mail - Central Operation
CA25	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	Transaction Services/CIS
CA26	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	Retirement Plans - Chatworth
CA27	0388FCCA	0000388	\$ 8.72	n/a	\$ 12.42	\$ 26.92	\$ 557.63	LA QUINTA

F. Fuel Surcharge.

Any and all fuel surcharges shall be determined by, and will not exceed the index below. Information for determining the change in fuel prices shall be obtained by the U.S. Department of Energy - Energy Information Administration (www.eia.doe.gov). At the site, go to By Fuel, Petroleum, Gasoline, Retail Prices, West Coast. We will use "West Coast, Regular" as our index under the "Average" column.

Weekly changes in fuel prices shall be averaged for the weeks available one month prior to the services invoiced. Example: An invoice submitted December 15th for January 1st - 31st services. Weeks available between December 1st - 15th shall be averaged to determine any change in fuel prices.

At the start of the Effective Date, both WaMu and Supplier agree that the fuel base price shall be \$2.40 per gallon. Supplier acknowledges that a 20% rise in fuel prices shall be the maximum for which compensation will be provided by WaMu. WaMu acknowledges that no adjustments shall be considered below 0%.

<u>Assumed Change in Fuel Prices</u>	<u>Average price per Gallon</u>	<u>Transportation line Items only Amount of Increase</u>
19%	\$3.10	3.9%
18%	\$3.05	3.7%
17%	\$3.00	3.6%
16%	\$2.95	3.4%
15%	\$2.90	3.3%
14%	\$2.86	3.1%
13%	\$2.82	3.0%
12%	\$2.78	2.8%
11%	\$2.74	2.7%
10%	\$2.70	2.5%
9%	\$2.66	2.4%
8%	\$2.62	2.2%
7%	\$2.59	2.1%
6%	\$2.56	1.9%
5%	\$2.53	1.7%
4%	\$2.52	1.6%
3%	\$2.49	1.4%
2%	\$2.46	1.3%
1%	\$2.43	1.1%
0%	\$2.40	0.0%

Note: Pricing above using a base price of \$2.40 per gallon as of December 2005.

Exhibit CScope of Services and Service LevelsI. Scope of ServicesCourier Services



1. Regular Services. These are scheduled daily pick-ups and deliveries which are made to/from WaMu Financial Centers. Supplier shall provide pick-up and delivery of specified shipments in delivery bags or envelopes provided by WaMu (Gray, Blue, Red, or other colors designated by the WaMu Account Representative). Pick-up and delivery shall be performed per WaMu policies and procedures which shall be provided to Supplier by the WaMu Account Representative.
2. Ancillary Services. These are scheduled daily pick-ups and deliveries which are made to/from locations other than WaMu Financial Centers.
3. Special Services. These are non-scheduled pick-ups and deliveries made upon request of the WaMu Account Representative.

General

1. List of Locations. WaMu Account Representative shall provide complete routing information for each shipment. The initial list of WaMu locations is set forth in Exhibit C-1. WaMu shall have the right to change, add or delete locations, pick-ups and deliveries on not less than twenty four (24) hours prior notice.
2. Schedule Problems or Delays. The nature of the services described herein dictates that time is of the essence. Supplier shall immediately inform the WaMu Account Representative of any problems that occur under all circumstances, including courier related, airline related, or miscellaneous circumstances. Any shipment that will not meet the deadline for a delivery, as well as any lost items, must be immediately reported to the WaMu Account Representative. If a problem is discovered after WaMu normal business hours, WaMu should be immediately made aware of the problem via pager per the escalation procedures as provided by WaMu and the WaMu Account Representative should be notified by 8:15 am Pacific time the following morning.
3. Key Control Procedures. Supplier shall maintain strict key control procedures with regard to keys for WaMu Financial Centers. Procedures must be reviewed with all new hire employees of Supplier.
4. Driver Standards.
 - a. Each driver shall be screened to ensure a valid driver's license, issued by the state in which service occurs, and vehicle insurance.
 - b. Each driver shall carry a photo identification card which indicates his or her employment by Supplier.
 - c. Drivers must be at least 18 years of age.
 - d. Driver shall never perform his or her duties while under the influence of alcohol or other substance that impairs his or her abilities.
 - e. Drivers shall not have committed serious vehicle code violations (reckless driving; driving under the influence, etc.) in any state during the prior 36 months.

- f. Drivers shall obey all traffic laws and speed limits at all times.
 - g. A driver shall be disqualified from performing Services any time her or her driver's license is suspended or revoked, or if the driver is convicted of a felony vehicle code violation, or if the driver is cited for a felony vehicle code violation which results in subsequent bail forfeiture by the driver.
5. False Alarm Occurrences. In the event of a false alarm at any WaMu Financial Center or other WaMu location which is caused by an employee of Supplier, the following steps shall be taken by Supplier.
- a. Upon the first occurrence of causing a false alarm at any Financial Center, Supplier shall review the operational procedures for arming alarms and securing doors with the employee, prepare a written report to WaMu, and provide reimbursement to WaMu of any false alarm charges which may be imposed by the alarm monitoring company and/or local law enforcement agency.
 - b. Upon the second occurrence of causing a false alarm at any Financial Center, Supplier shall remove the employee from any further duties with respect to providing Services to WaMu, prepare a written report to WaMu, and provide reimbursement to WaMu of any false alarm charges which may be imposed by the alarm monitoring company and/or local law enforcement agency.
6. Leaving Financial Service Center Unlocked.
- a. Upon the first occurrence of leaving a Financial Center unlocked, Supplier shall review with the employee the operational procedures for securing doors; and prepare a written report to WaMu.
 - b. Upon the second occurrence of leaving a Financial Center unlocked, Supplier shall remove the employee from any further duties with respect to providing Services to WaMu; and prepare a written report to WaMu.

EXHIBIT "E"

 Print Page Close Window

Washington Mutual Hires John Rostas as Senior Vice President of Operational Excellence

SEATTLE, Oct 9, 2002 (BUSINESS WIRE) -- Washington Mutual (NYSE:WM) has hired John Rostas as senior vice president of operational excellence.

Rostas is charged with helping the company evaluate its business processes and creating strategies to improve efficiencies.

Rostas comes to WaMu from United Technologies, a division of Carrier Corp., Farmington, Conn., where he was the vice president of quality. Prior to Carrier Corp., Rostas served in several divisions at General Electric, including Aerospace and Appliances. His background includes engineering, operations and program management roles.

"As Washington Mutual grows in scale, we have an opportunity to become an even more efficient company," said Steve Freimuth, senior executive vice president for Corporate Services. "John's experience and background will help us achieve this goal, benefiting our customers, shareholders and employees."

Rostas graduated from Syracuse University with a bachelor's degree in Mechanical and Aerospace Engineering. He is based in Seattle.

With a history dating back to 1889, Washington Mutual is a national financial services company that provides a diversified line of products and services to consumers and small- to mid-sized businesses. At June 30, 2002, Washington Mutual and its subsidiaries had consolidated assets of \$261.28 billion. Washington Mutual currently operates more than 2,500 consumer banking, mortgage lending, commercial banking, consumer finance and financial services offices throughout the nation. Washington Mutual's press releases are available at www.wamu.com.

CONTACT: Washington Mutual
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URL: <http://www.businesswire.com>
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