

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

:
: **Objection Deadline: November 17, 2009 at 4:00 p.m. (ET)**
: **Hearing Date: November 24, 2009 at 2:00 p.m. (ET)**
:

**MOTION OF THE FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER FOR WASHINGTON MUTUAL BANK, FOR AN
ORDER MODIFYING THE AUTOMATIC STAY**

Pursuant to 11 U.S.C. § 362 and Local Bankruptcy Rule 4001-1, the Federal Deposit Insurance Corporation, in its capacity as receiver for Washington Mutual Bank (the “FDIC-Receiver”), respectfully submits this motion (the “Motion”) for an order modifying the automatic stay in the chapter 11 cases of the above-captioned debtors and debtors in possession (together, the “Debtors”), to the extent necessary, to permit the FDIC-Receiver to exercise its contractual right under the Purchase and Assumption Agreement dated as of September 25, 2008 among JPMC, the FDIC-Receiver and the FDIC in its corporate capacity (the “P&A Agreement”) to direct JPMorgan Chase Bank, N.A. (“JPMC”) to return to the FDIC-Receiver certain disputed deposit balances claimed by the Debtors to be property of Washington Mutual, Inc. (“WMI”). In support of the Motion, the FDIC-Receiver respectfully states:

PRELIMINARY STATEMENT

The context in which this Motion arises is well-known to the Court. The Debtors have sued the FDIC-Receiver in the United States District Court for the District of Columbia with

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.



respect to their disallowed claims against the receivership of Washington Mutual Bank (“WMB”), WMI’s former thrift subsidiary. The FDIC-Receiver, as successor by operation of law to WMB, has asserted substantial claims against WMI. In particular, the FDIC-Receiver has asserted a variety of counterclaims in the D.C. action. It also has filed a proof of claim in WMI’s bankruptcy case, subject to a reservation of its jurisdictional rights. JPMC also has asserted substantial claims against the Debtors. The FDIC-Receiver’s claims against the Debtors could and would form the basis for setoff under 11 U.S.C. § 553 against certain disputed deposit balances (the “Disputed Deposit Balances”) in five accounts currently being held by JPMC purportedly in the name of WMI.² The amount of the FDIC-Receiver’s claims against the Debtors far exceeds the balances held in those disputed accounts.

The Debtors have filed an adversary proceeding against JPMC seeking turnover of the deposit balances pursuant to section 542 of the Bankruptcy Code and have moved for summary judgment on that turnover claim before any discovery has been conducted. The FDIC-Receiver is a counterclaim-defendant in the Debtors’ turnover proceeding. Both JPMC and the FDIC-Receiver have opposed the Debtors’ summary judgment motion on a number of grounds.

The Bankruptcy Code expressly prohibits turnover if, among other things, the property at issue is subject to setoff rights. *See* 11 U.S.C. § 542(b). In their turnover action, the Debtors dispute that JPMC is permitted to setoff with respect to the Disputed Deposit Balances for various reasons. One of the Debtors’ arguments is that Schedule 3.5 of the P&A Agreement somehow stripped JPMC of any right to assert claims against the Debtors. To be clear, the Debtors’ interpretation of Schedule 3.5 is wrong, and the P&A Agreement does not have the

² The disputed deposit accounts are those with account numbers ending in 4234, 1206, 0667, 9626, and 9663, as specified in the Debtors’ complaint in the turnover action.

effect on JPMC's setoff rights with respect to the Disputed Deposit Balances that the Debtors have advocated. *See* Declaration of Robert C. Schoppe dated October 9, 2009. [D.I. 181]

In any event, the Disputed Deposit Balances are subject to the FDIC-Receiver's setoff rights under federal banking law and otherwise. The FDIC-Receiver therefore brings this motion to protect and preserve its setoff rights in the Disputed Deposit Balances until the litigation among the parties has concluded and the amount and extent of the FDIC-Receiver's claims against WMI and setoff rights have been determined. The motion seeks merely to preserve the status quo. In the absence of the relief requested, the FDIC-Receiver's setoff rights would be wrongfully abrogated as the result of the turnover order sought by the Debtors.

Section 9.5 of the P&A Agreement protects the FDIC-Receiver against the very tactic being pursued by the Debtors here. It provides the FDIC-Receiver with the right to direct JPMC, as assuming bank, "to withhold payment of all or any portion of any" deposit balance assumed under the P&A Agreement and to direct JPMC to "return all or any portion of such deposit balance to the Receiver" *See* Clarke Decl., Exh. A, § 9.5.³ Without conceding the applicability of the automatic stay here, the FDIC-Receiver seeks modification of the stay, to the extent required, to enable it to demand JPMC to return the Disputed Deposit Balances and to permit JPMC and other third parties to take such steps as shall be necessary to effectuate that return to the FDIC-Receiver. Once returned, the Disputed Deposit Balances will be an obligation of the FDIC-Receiver and the assets associated with those balances will be held in non-interest bearing segregated accounts at a Federal Home Loan Bank until the pending litigation among the parties has been resolved and the scope of the FDIC-Receiver's setoff rights has been determined.

³ Citations to "Clarke Decl." refer to the Declaration of John J. Clarke, Jr. dated November 3, 2009, which is attached hereto as Exhibit B.

The FDIC-Receiver has been consistent in its reservation of its rights under section 9.5 of the P&A Agreement. Indeed, in October 2008, the FDIC-Receiver filed a limited objection to the Debtors' motion to approve the original proposed stipulation with JPMC concerning the Disputed Deposit Balances, and other alleged deposit accounts, to protect its rights. [D.I. 104] It also expressly reserved its rights under section 9.5 in its counterclaims and amended counterclaims in the D.C. action and in its proof of claim in the WMI bankruptcy case.

The FDIC-Receiver has detailed billions of dollars in claims against the Debtors. All of these claims remain alive. It would offend basic principles of equity for the Debtors to use the automatic stay as a sword at this early stage of this multifaceted litigation to prevent the FDIC-Receiver from protecting its setoff rights against the Disputed Deposit Balances even while the turnover order the Debtors are seeking from this Court would obstruct or prevent the FDIC-Receiver from exercising setoff.

This Court is authorized to issue an order pursuant to Bankruptcy Code sections 362(d) and 105(a), and Bankruptcy Rule 4001, modifying the automatic stay for cause to effect a transfer of the Disputed Deposit Balances, and the FDIC-Receiver respectfully submits that it should do so. Under the circumstances, "cause" clearly exists to grant the requested relief.

JURISDICTION AND VENUE

1. Under 12 U.S.C. § 1821(j), "no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver." Section 1821(j) "effect[s] a sweeping ouster of courts' power to grant equitable remedies" that would frustrate the FDIC's exercise of its statutory powers as receiver or conservator. *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399 (D.C. Cir. 1995); *see Gross v. Bell Sav. Bank*, 974 F.2d 403, 408 (3d Cir. 1992) (reversing injunction directing RTC to release deposit funds that were withheld pursuant to 12 U.S.C. § 1822(d)). The FDIC-Receiver reserves all of its jurisdictional

arguments, under section 1821(j) or otherwise. *See also* 12 U.S.C. § 1821(d)(13)(D) (in connection with statutory provisions setting forth receivership claims process, providing that “no court shall have jurisdiction” over specified claims or actions).

2. Subject to the foregoing, subject matter jurisdiction for the Motion arises in this Court pursuant to 28 U.S.C. § 1334. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for the Motion is proper in this district under 28 U.S.C. § 1409.

BACKGROUND

A. The WMB Receivership and the FDIC-Receiver’s Claims

3. Until September 25, 2008, the debtor WMI was a thrift holding company, the principal thrift subsidiary of which was WMB. On September 25, 2008, WMB’s chartering authority, the Office of Thrift Supervision (the “OTS”), issued an order closing WMB and appointing the FDIC-Receiver as its receiver. By operation of law, the FDIC-Receiver succeeded to “all rights, titles, powers, and privileges of [WMB] and of any stockholder, member, accountholder, depositor, officer or director of [WMB] with respect to the institution and the assets of the institution.” 12 U.S.C. § 1821(d)(2)(A). Following its appointment, the FDIC-Receiver sold substantially all of WMB’s assets to JPMC Bank pursuant to the P&A Agreement. *See* Clarke Decl., Exh. A (P&A Agreement).

4. On September 26, 2008, the Debtors commenced their chapter 11 cases in this Court. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. On October 3, 2008, the Court entered an order authorizing the joint administration of the Debtors’ chapter 11 cases.

5. The FDIC-Receiver established December 30, 2008 as the bar date for filing claims against the WMB receivership. On that date, WMI filed a proof of claim with the FDIC-

Receiver asserting claims relating to a variety of WMB assets over which WMI asserted ownership. Among others, WMI asserted claims against the WMB receivership for the Disputed Deposit Balances that WMI claimed it had maintained with WMB or WMBfsb, which allegedly amounted to approximately \$4 billion. By letter dated January 23, 2009, the FDIC-Receiver disallowed all of the Debtors' claims. *See* 12 U.S.C. § 1821(d)(5)(D)(i).

6. On March 20, 2009, the Debtors filed a complaint against the FDIC-Receiver, and against the FDIC in its corporate capacity, in the United States District Court for the District of Columbia, seeking a judicial determination of WMI's disallowed receivership claims pursuant to 12 U.S.C. § 1821(d)(6)(A) and asserting a variety of other claims. *See Washington Mutual, Inc. v. F.D.I.C.*, No. 1:09-cv-0533 (RMC) (D.D.C.) (the "D.C. Action").

7. On June 11, 2009, the FDIC-Receiver filed its answer to Count I of the Debtors' complaint in the D.C. Action, which seeks a *de novo* judicial determination of the Debtors' disallowed receivership claims. The FDIC-Receiver also asserted counterclaims against the Debtors. Clarke Decl., Exh. B. On July 13, 2009, the FDIC-Receiver filed its first amended answer and counterclaims in the D.C. Action, in which it added JPMC as an additional counterclaim defendant.⁴ Clarke Decl., Exh. C. Separately, on March 30, 2009, the FDIC-Receiver filed a proof of claim in WMI's bankruptcy. Clarke Decl., Exh. D.⁵

8. In the proof of claim, the FDIC-Receiver expressly reserved the FDIC-Receiver's setoff rights against any of the Debtors' "interests that are subject to setoff under section 553 of the Bankruptcy Code," including expressly the Disputed Deposit Balances *Id.* ¶¶ 27, 52. In

⁴ The FDIC-Receiver moved to dismiss the Debtors' claims other than the count of their complaint seeking a judicial determination of their disallowed receivership claims. The motion also sought dismissal of the Debtors' fraudulent conveyance claim against the FDIC-Receiver, which had been included in WMI's receivership proof of claim but which fails to state a claim upon which relief can be granted under the governing pleading standards. The Debtors, in turn, have moved to dismiss the FDIC-Receiver's amended counterclaims. Argument on the motions is scheduled for November 4, 2009.

⁵ The proof of claim expressly reserved all of the FDIC-Receiver's jurisdictional defenses. *Id.* ¶ 49.

addition, the FDIC-Receiver expressly reserved its right under section 9.5 of the P&A Agreement with respect to the Disputed Deposit Balances. *Id.* ¶ 25.

9. The FDIC-Receiver's claims and counterclaims against the Debtors remain outstanding. Those claims include, among others: claims for tax-related assets owned by WMB in the amount of at least \$4,269,507,909.00 that are either held by WMI or may be received by WMI, in trust for WMB, from taxing authorities; claims for recovery of six series of trust securities issued by a WMB subsidiary, Washington Mutual Preferred Funding LLC, with a liquidation preference of \$4 billion which the Debtors are wrongfully withholding from WMB in violation of a capital maintenance commitment to its banking regulators; claims for intercompany amounts owed by WMI to WMB of approximately \$310,761,000; claims to the funds held in the disputed deposit accounts (including the Disputed Deposit Balances) to the extent such funds constituted WMB's property, including without limitation tax refunds of approximately \$235 million that were received by WMI as WMB's agent and are held in trust for WMB; unliquidated claims for WMI's failure to adequately maintain the capital of WMB, including to the extent that such capital inadequacy was masked by improper accounting for loan losses and other reserves that had the effect of overstating WMB's capital; claims for recovery of unlawful dividends and fraudulent transfers obtained by WMI from WMB including dividends of at least \$10.5 billion and at least \$922 million in fraudulently recharacterized accounting entries that the Debtors purport to include in the balances of the Disputed Deposit Accounts; unliquidated claims for WMB's share of litigation recoveries in pending actions against the United States of America; claims to proceeds under certain insurance policies under which WMB was a named insured; and various additional claims.

B. The Bankruptcy Court Proceedings

10. On March 24, 2009, JPMC commenced an adversary proceeding in this Court against the Debtors which also named the FDIC-Receiver as an additional defendant on an interpleader claim with respect to certain disputed deposit accounts it was holding putatively in the name of the Debtors, including the Disputed Deposit Balances. *See JPMorgan Chase Bank, N.A. v. Washington Mutual, Inc.*, Adv. Proc. No. 09-50551 (MFW) (Bankr. D. Del.) (the “JPMC Adversary Proceeding”). The Debtors filed their answer and counterclaims against JPMC in that proceeding on May 29, 2009.

11. On April 27, 2009, the Debtors commenced a second adversary proceeding against JPMC, seeking turnover pursuant to section 542 of the Bankruptcy Code of the balances in certain deposit accounts held by JPMC that the Debtors allege to be property of their estates. *See Washington Mutual, Inc. v. JPMorgan Chase Bank, N.A.*, Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.) (the “Turnover Proceeding”). The five accounts holding the Disputed Deposit Balances are among the accounts at issue in the Debtor’s turnover complaint.

12. On July 6, 2009, JPMC filed its answer and counterclaims in the Turnover Proceeding, which named the FDIC-Receiver as an additional counterclaim defendant with respect to an interpleader claim concerning the various disputed deposit accounts and a declaratory judgment claim concerning JPMC’s ownership of various other assets. *See* D.I. 66 (JPMC Answer and Counterclaims, ¶¶ 100-02, 111-15).⁶

13. On May 19, 2009, the Debtors filed their motion for summary judgment in the Turnover Proceeding, before any discovery had been conducted in any of the pending litigation.

⁶On June 1, 2009, the FDIC-Receiver moved to stay the JPMC Adversary Proceeding and moved to intervene for the purpose of making a similar motion in the Turnover Proceeding. JPMC made similar motions in both adversary proceedings. At a hearing on June 24, 2009, the Court stated that it would deny the motions to stay, and orders to that effect were entered on July 6, 2009. Both the FDIC-Receiver and JPMC filed timely appeals from those orders, which appeals are pending. The FDIC-Receiver reserves all of its jurisdictional arguments.

JPMC and the FDIC-Receiver both filed papers in opposition to that motion. Argument was heard by the Court on October 22, 2009.

14. In the summary judgment motion, the Debtors have argued that turnover of the Disputed Deposit Balances and the other account balances at issue in the Turnover Action is permissible even though, under the Bankruptcy Code, no turnover may be ordered of any debt owed to a debtor that is subject to offset under section 553 of the Bankruptcy Code “against a claim against the debtor.” See 11 U.S.C. § 542(b); *In re Bevill, Bresler & Schulman Asset Management Corp.*, 896 F.2d 54, 57 (3d Cir. 1990).

15. The Debtors contend that JPMC does not have setoff rights with respect to the Disputed Deposit Balances for a variety of reasons. The FDIC-Receiver does not agree with the Debtors’ assertions, but in any event, turnover of the Disputed Deposit Balances is not permissible under section 542(b) in light of the competing claims to those balances and the FDIC-Receiver’s setoff rights.

RELIEF REQUESTED

16. By this Motion, to the extent the Bankruptcy Court determines that the automatic stay pursuant to Bankruptcy Code section 362 applies, the FDIC-Receiver seeks an order pursuant to 11 U.S.C. §§ 362(d) modifying the automatic stay to permit the FDIC-Receiver to direct JPMC to return the Disputed Deposit Balances to the FDIC-Receiver and to permit JPMC and third parties to take such actions as may be necessary to effectuate the return of those deposit balances in accordance with section 9.5 of the P&A Agreement. Once returned, the Disputed Deposit Balances will be an obligation of the FDIC-Receiver and the cash and cash equivalents equal to those balances will be held in noninterest bearing segregated accounts at a Federal

Home Loan Bank until the pending litigation among the parties has been resolved and the scope of the FDIC-Receiver's setoff rights has been determined.

17. The relief requested is necessary to preserve the FDIC-Receiver's setoff rights under 12 U.S.C. 1822(d) and other applicable law until the parties' competing claims in all pending litigation have been resolved and the amount of FDIC-Receiver's liquidated claim against WMI has been determined. The FDIC-Receiver is not at this time seeking authorization to exercise any setoff rights it may have with respect to the Disputed Deposit Balances once in its possession (though it reserves its right to seek such relief at an appropriate future time). Rather, the FDIC-Receiver simply seeks to preserve the status quo until the parties' claims can be fully and finally adjudicated.

ARGUMENT

THE AUTOMATIC STAY SHOULD BE MODIFIED

18. The automatic stay should be modified to permit the FDIC-Receiver to direct JPMC to return the Disputed Deposit Balances pursuant to section 9.5 of the P&A Agreement and to permit JPMC and any third parties to take such actions as may be necessary to effectuate such return. No further relief is requested at this time.

19. Under section 362(d)(1) of the Bankruptcy Code, upon request of a party in interest and after notice and a hearing, the Court shall grant relief from the automatic stay "for cause, including lack of adequate protection of any interest in property of such party in interest." 11 U.S.C. § 362(d)(1). What constitutes "cause" is determined on the totality of the circumstances in a particular case. *See Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1998). In this case, "cause" exists to grant the relief requested to preserve the FDIC-Receiver's

setoff rights under applicable nonbankruptcy law until the parties' claims against one another have been resolved and the scope of those setoff rights thereby has been determined.⁷

A. The FDIC-Receiver Has Valid Setoff Rights.

20. “The right of setoff (also called ‘offset’) allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding the ‘absurdity of making A pay B when B owes A.’” *Citizens Bank of Md. v. Strumpf*, 516 U.S. 16, 18 (1995). The Bankruptcy Code does not disturb a creditor’s right to setoff if such right arose under non-bankruptcy law prior to the filing of a petition. *See* 11 U.S.C. § 553(a) (Bankruptcy Code “does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against the claim of such creditor that arose before the commencement of the case”).

21. In fact, “setoffs under section 553 “are generally favored . . . [although] not automatically permitted.” *In re Nuclear Imaging Sys. Inc.*, 260 B.R. 724, 738 (Bankr. E.D. Pa. 2000) (citing *Melamed v. Lake County Nat. Bank*, 727 F.2d 1399, 1404 (6th Cir. 1984)); *see Carlton Co. v. Jenkins (In re Jenkins)*, No. 03-60548, 2004 WL 768574, at *3 (Bankr. S.D. Ga. Mar. 30, 2004) (there is “practically a presumption in favor of allowing setoff” where such rights exist under applicable non-bankruptcy law) (citing *S.E.C. v. Elliott*, 953 F.2d 1560, 1572 (11th Cir. 1992)).

22. The FDIC-Receiver has setoff rights with respect to the Disputed Deposit Balances under applicable non-bankruptcy law. Section 9.5 of the P&A Agreement provides the

⁷ The preservation of the status quo through the relief requested will also allow the other significant issues of fact to be resolved that have raised in response to the Debtors’ motion for summary judgment in the Turnover Proceeding, including questions regarding whether the balances reflect actual liabilities or are in fact deposits and questions as to the source of the Disputed Deposit Balances and the extent to which such balances are owned by WMB. The FDIC-Receiver reserves its rights with respect to all of these issues, which are beyond the scope of the current motion for stay relief.

FDIC-Receiver the ability to direct the return of assumed deposit balances from the assuming bank under that agreement to protect those rights.

23. Under 12 U.S.C. § 1822(d), the FDIC-Receiver has a statutory right of setoff against any portion of a depositor's insured deposits with a failed bank to the extent required "to provide for the payment of any liability of [the] depositor to the" failed institution.⁸ *See Gross*, 974 F.2d at 408 (reversing district court order improperly directing RTC to release deposit balance that had been withheld pursuant to section 1822(d) and equivalent provision of purchase and assumption agreement); *Northern Trust Co. v. F.D.I.C.*, 619 F. Supp. 1340, 1342 (W.D. Okla. 1985). The Disputed Deposit Balances are subject to the FDIC-Receiver's setoff rights under section 1822(d).⁹

24. In addition, the FDIC-Receiver is entitled to setoff against the Disputed Deposit Balances as the successor, by operation of law, to WMB. *See* 12 U.S.C. § 1821(d)(2)(A). Under Washington law, WMB is entitled to a banker's right of setoff with respect to demand deposits as to which the depositor owes it a mutual debt, such as the Disputed Deposit Balances here. *See Sterling Sav. Bank v. Air Wis. Airlines Corp.*, 492 F. Supp. 2d 1256, 1260-61 (E.D. Wash. 2007); *Conner v. First Nat'l Bank of Sedro-Woodley*, 113 Wash. 662, 665, 194 P. 562, 563 (Wash. 1921); *Allied Sheet Metal Fabricators, Inc. v. Peoples Nat'l Bank of Wash.*, 10 Wash. App. 530,

⁸ Section 1822(d) provides:

The [FDIC] may withhold payment of such portion of the insured deposit of any depositor in a depository institution in default as may be required to provide for the payment of *any liability of such depositor to the depository institution in default or its receiver*, which is not offset against a claim due from such depository institution, *pending the determination and payment of such liability by such depositor or any other person liable therefor.*

12 U.S.C. § 1822(d) (emphasis added).

⁹ The standard maximum deposit insurance amount currently is \$250,000, 12 C.F.R. § 330.1(n), but that limit does not apply to "a depositor's funds in a noninterest-bearing transaction account maintained at a participating entity that is an insured depository institution . . ." 12 C.F.R. § 370.4(a). Debtors' submissions in the Turnover Action make it clear that the Disputed Deposit Balances, if they are deposits, fall within this definition.

537, 518 P.2d 734, 739 (Wash. App.), *petition for review denied*, 83 Wash. 2d 1013 (Wash. 1974). WMB confirmed this right in the standard terms of its business accounts. *See* Clarke Decl., Exh. E.

25. The FDIC-Receiver is entitled to protect these nonbankruptcy setoff rights, which section 553 of the Bankruptcy Code expressly preserves. *See* 11 U.S.C. § 553(a). Section 9.5 of the P&A Agreement provides the FDIC-Receiver the contractual right to do so to eliminate challenges to mutuality such as those raised by the Debtors in their Turnover Proceeding. *See Gross*, 974 F.2d at 403; *see also F.D.I.C. v. McAtee*, 1988 U.S. Dist. LEXIS 12267, at *5-*6 (D. Kan. Oct. 5, 1988). Under section 9.5, the FDIC-Receiver can direct JPMC, as assuming bank, “to withhold payment of all or any portion of any” deposit balance assumed under the P&A Agreement and to direct JPMC to “return all or any portion of such deposit balance to the Receiver” Clarke Decl., Exh. A, § 9.5.¹⁰

¹⁰ Section 9.5 of the P&A Agreement provides:

9.5 Withheld Payments. At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance assumed by the Assuming Bank pursuant to this Agreement does not constitute a “Deposit” (or otherwise, in its discretion, determine that it is in the best interest of the Receiver or the Corporation to withhold all or any portion of any deposit), and may direct the Assuming Bank to withhold payment of all or any portion of any such deposit balance. Upon such direction, the Assuming Bank agrees to hold such deposit and not make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, setoff, or otherwise. The Assuming Bank agrees to maintain the “withheld payment” status of any such deposit balance until directed in writing by the Receiver or the Corporation as to its disposition. At the direction of the Receiver or the Corporation, the Assuming Bank shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Assuming Bank shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Assuming Bank shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Assuming Bank shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Assuming Bank in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance the payment of which was withheld pursuant to this Section.

P&A Agreement, § 9.5.

26. At this time, the FDIC-Receiver does not seek authorization to exercise its setoff rights once the Disputed Deposit Balances have been returned to it by JPMC. Instead, the relief requested in this Motion would allow the FDIC-Receiver to recover possession of the Disputed Deposit Balances to preserve the status quo until the parties have had the opportunity to litigate their pending disputes through to final judgment. To the extent that the FDIC-Receiver prevails with respect to its claims against WMI, it will be entitled to setoff with respect to the Disputed Deposit Balances in accordance with section 553 of the Bankruptcy Code, however, and if required to do so it would seek additional stay relief to exercise its setoff rights at that time.

27. Under section 553, a creditor may “offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case . . . against a claim of such creditor against the debtor that arose before the commencement of the case” 11 U.S.C. § 553(a). 11 U.S.C. § 553 (a). Once the Disputed Deposit Balances are in the FDIC-Receiver’s possession, the criteria for setoff under section 553 will be satisfied.

28. The Supreme Court has recognized that a bank account “consists of nothing more or less than a promise to pay, from the bank to the depositor.” *Strumpf*, 516 U.S. at 21; *see also See Dollar Bank, FSB v. Tarbuck (In re Tarbuck)*, 304 B.R. 718, 721 (Bankr. W.D. Pa. 2004); *Allied Sheet Metal*, 10 Wash. App. at 537, 518 P.2d at 738 (“Although money on deposit in a bank is commonly considered to be the property of the depositor, the relationship in fact between him and the bank is that of debtor and creditor; the amount on deposit represents merely an indebtedness by the bank to the depositor.”) (quoting 10 Am. Jur. 2d Banks, § 339 (1963)). By operation of law, the FDIC-Receiver stands in the shoes of WMB as to WMI, its prepetition depositor. *See* 12 U.S.C. § 1821(d)(2)(A).

29. As the holder of Disputed Deposit Balances, the FDIC-Receiver will be a secured creditor to the extent of its ultimately allowed prepetition claims against WMI and to the extent of WMI's actual interest in those balances.¹¹ The FDIC-Receiver's claims include, among others, claims for over \$10 billion for unlawful prepetition dividends extracted by WMI from WMB; a fraudulent transfer claim of approximately \$922 million for recharacterized general ledger debt that WMI caused WMB to pay it out of the ordinary course of business in the days before WMB's regulatory closure, claims for approximately \$310 million for intercompany amounts owed by WMI to WMB; and other unliquidated claims.¹² These claims are against WMI, the putative "accountholder" with respect to the Disputed Deposit Accounts, obviously satisfying the mutuality requirement of section 553. See *In re Bevill, Bresler & Schulman Asset Mgmt. Corp.*, 896 F.2d 54, 59 (3d Cir. 1990); *Dollar Bank*, 304 B.R. at 721.¹³

30. Thus, to the extent the FDIC-Receiver ultimately establishes entitlement to recovery on its claims against WMI, or any portion thereof, the FDIC-Receiver will be entitled to setoff against as much as the entire amount of the Disputed Deposit Balances pursuant to section 553(a).

¹¹ The FDIC-Receiver does not seek stay relief to demand JPMC to return the disputed balance held in the account with account number ending in 4704, which according to the submissions in the Turnover Proceeding, purportedly is in the name of WMI Investment.

¹² Section 553 authorizes setoff even when, unlike here, a creditor's claim is unliquidated, unmatured or even contingent. See, e.g., *Braniff Airways v. Exxon Co.*, 814 F.2d 1030, 1035 (5th Cir. 1987). Once some definite liability has accrued, setoff is proper. *In re Glenn*, 207 B.R. 419 (Bankr. E.D. Pa. 1997); *In re Rozel Indus., Inc.*, 120 B.R. 944, 949 (Bankr. N.D. Ill. 1990). Further, the Debtors have not objected to the FDIC-Receiver's proof of claim and the claim is therefore prima facie valid and sufficient to establish a right to setoff. See, e.g., *Dollar Bank, FSB*, 304 B.R. at 724-25; *In re Elsinore Shore Assocs.*, 67 B.R. 926, 945 (Bankr. D.N.J. 1986).

¹³ In their Turnover Action, the Debtors have asserted that the FDIC-Receiver's rights under section 9.5 do not extend to the 4234 account, which they allege was transferred to WMB fsb in the hours before WMB was closed. To the contrary, the account statements for that account that were submitted by the Debtors in support of their summary judgment motion reflect that the 4234 account is held by "Washington Mutual Bank, FA," not Washington Mutual Bank fsb. See Clarke Decl., Exh. F. The Debtors have never argued that the FDIC-Receiver's rights under section 9.5 do not extend to accounts at WMB. At a minimum, there is a material question of fact as to whether such a transfer ever properly occurred or, if it did, whether it was undertaken with the intent to hinder, delay or defraud the FDIC-Receiver or WMB and is therefore subject to rescission or avoidance.

B. Cause Exists to Modify the Automatic Stay.

31. Cause exists to modify the automatic stay to permit the FDIC-Receiver to preserve its setoff rights by exercising its nonbankruptcy rights under section 9.5 of the P&A Agreement with respect to the Disputed Deposit Balances. Indeed, the Debtors should not be permitted to use the automatic stay as a sword to prevent the FDIC-Receiver from protecting its setoff rights even while at the same time the Debtors are seeking a turnover order from this Court with respect to the same balances. *Turner Broad. Sys., Inc. v. Sanyo Elec., Inc.*, 33 B.R. 996, 1000 (N.D. Ga. 1983) (“the [automatic] stay is not designed to be an offensive weapon – a sword – which would permit the debtor to benefit unilaterally” from its conduct); *see also Continental Air Lines, Inc. v. Hillblom (In re Continental Air Lines, Inc.)*, 61 B.R. 758, 762 (S.D. Tex. 1986); *In re Stienes*, 285 B.R. 360, 363 (Bankr. D.N.J. 2002) (denying debtor’s motion for turnover of tax refund and granting IRS motion for relief from stay to permit setoff).

32. “[T]he stay is not meant to be indefinite or absolute, and in appropriate instances, relief may be granted.” *Izzarelli v. Rexent Prods. Co. (In re Rexene Prods. Co.)*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citing *Wedgewood Inv. Fund Ltd. v. Wedgewood Realty Group Ltd. (In re Wedgewood)*, 878 F.2d 693, 697 (3d Cir. 1989)). Pursuant to section 362(d)(1) of the Bankruptcy Code, upon request of a party in interest and after notice and a hearing, the Court shall grant relief from the automatic stay “for cause, including lack of adequate protection of any interest in property of such party in interest.” 11 U.S.C. § 362(d)(1).

33. “‘Cause’ is an intentionally broad and flexible concept which must be determined on a case-by-case basis and . . . [a] court may consider the policies reflected in the bankruptcy code, and the interests of the debtor, other creditors and any other interested parties.” *See In re Mu'min*, 374 B.R. 149, 164 (Bankr. E.D. Pa. 2007) (citing *In re Brown*, 311 B.R. 409, 412-13 (E.D. Pa. 2004)); *see also Rexene*, 141 B.R. at 576. Courts in this district consider: (i) the

hardship to the estate if relief is granted; (ii) the hardship to the movant if stay relief is not granted; and (ii) the underlying merits. *See, e.g., Rexene*, 141 B.R. at 576.

34. Application of each of those factors clearly supports the requested relief from the automatic stay here. WMI will not suffer any legitimate hardship if the FDIC-Receiver is allowed to exercise its rights under section 9.5 of the P&A Agreement. Even after such exercise, WMI will not be deprived of any right to recover the Disputed Deposit Balances that it now legitimately has, subject to setoff rights that every depositor understands it might face if it fails to satisfy mutual debts owed to its banker. On the other hand, the hardship to the FDIC-Receiver would be great if stay relief were not granted – the potential loss of its rights as a secured creditor of WMI for up to the full amount of the Disputed Deposit Balances – over \$4 billion – if turnover is ordered. Finally, as already discussed above, the FDIC-Receiver’s rights under section 9.5 of the P&A Agreement are clear, and the exercise of those rights with respect to the Disputed Deposit Balances is necessary to protect its legitimate setoff rights under nonbankruptcy law.

35. In addition, once a creditor has established a right of setoff, it has made a prima facie showing of “cause” for relief from the automatic stay under section 362(d)(1). *See In re Stienes*, 285 B.R. 360, 362 (Bankr. D.N.J. 2002) (modifying stay in light of IRS statutory setoff rights); *Nuclear Imaging Sys.*, 260 B.R. at 730; *see also In re Ealy*, 392 B.R. 408, 414 (Bankr. E.D. Ark. 2008); *In re Orlinski*, 140 B.R. 600, 603 (Bankr. S.D. Ga. 1991); *U.S. v. Gould*, 401 B.R. 415, 426 (9th Cir. B.A.P. 2009). Setoff is the right not to part with one’s own funds. *Strumpf*, 516 U.S. at 21. While a right of setoff is sometimes analogized to a security interest, a creditor holding a right of setoff is said to be “the best secured of creditors” because his

“security” is “his own justified refusal to pay[.]” *United States v. Munsey Trust Co.*, 332 U.S. 234, 240 (1947).

36. In the absence of a showing of adequate protection, the creditor is entitled to relief from the automatic stay to exercise setoff rights. *See In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984); *Blanton v. Prudential-Bache Sec. (In re Blanton)*, 105 B.R. 321, 337 (Bankr. E.D. Va. 1989). Adequate protection is a form of relief afforded to creditors whose interest is such that the passage of time or continuation of the debtor’s business could cause prejudice to the creditor. *See, e.g., In re Engle*, 93 B.R. 58, 61 (E.D. Pa. 1987). Adequate protection is provided as an alternative to relief from the automatic stay and, conversely, relief from the automatic stay is justified where there is a lack of adequate protection. In short, adequate protection compensates a creditor for forbearing on its right to seek relief from the stay. *Id.*; *see In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Grant Broad. of Philadelphia, Inc.*, 71 B.R. 376, 386 (Bankr. E.D. Pa.), *aff’d*, 75 B.R. 819 (E.D. Pa. 1987).

37. Here, there can be no argument that the FDIC-Receiver has not received adequate protection for its significant interests. To the contrary, the Debtors are seeking to destroy the FDIC-Receiver’s setoff rights, in contravention of the Bankruptcy Code, by seeking a turnover order from this Court with respect to the Disputed Deposit Balances. Sections 553 and 362(d) were intended to avoid precisely such an inequitable result. *See In re Edgins*, 36 B.R. 480, 484 (9th Cir. B.A.P. 1984).

38. Relief from the automatic stay therefore is necessary and appropriate. Any benefit from continuation of the automatic stay is far outweighed by the risk posed to the FDIC-Receiver if relief is not allowed. *See In re King*, No. 08-10892, 2008 Bankr. LEXIS 1983

(Bankr. N.D. Ga. May 29, 2008) (allowing modification of stay to permit setoff where turnover of funds could not be granted because it would destroy right to setoff). Indeed, modification of the stay to permit the FDIC-Receiver to exercise its section 9.5 rights would have no effect other than to preserve the status quo until the substantial disputes that exist among WMI, JPMC and the FDIC-Receiver have been resolved.

NOTICE

39. Notice of this Motion has been provided to: (a) counsel for the Debtors, Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Marcia L. Goldstein, Esq.); (b) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Joseph McMahon, Esq.); (c) counsel to the Official Committee of Unsecured Creditors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036 (Attn: Fred S. Hodara, Esq.; Scott L. Alberino, Esq.), Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Ave, NW, Washington, DC 20036-1564 (Attn: Scott L. Alberino, Esq.), Akin Gump Strauss Hauer & Feld LLP, 2029 Century Park E Ste 2400, Los Angeles, CA 90067-3012 (Attn: Peter J. Gurfein, Esq. and David P. Simonds, Esq.) and Pepper Hamilton LLP, Hercules Plaza Ste 5100, 1313 N Market St., Wilmington, DE 19801 (Attn: David B. Stratton, Esq. and Evelyn J. Meltzer, Esq.); and (d) all parties having filed requests for notices in the Debtors' chapter 11 cases. The FDIC-Receiver submits that such notice constitutes good and sufficient notice of this Motion and all proceedings to be held thereon, and that no other or further notice need be given..

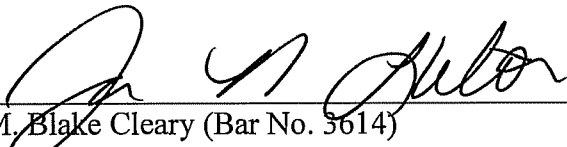
NO PRIOR REQUEST

40. No previous motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, the FDIC-Receiver respectfully requests that this Court enter an order substantially in the form attached hereto as Exhibit A: (i) modifying the automatic stay to permit the FDIC-Receiver to exercise its right under section 9.5 of the P&A Agreement to direct JPMC to return the Disputed Deposit Balances to the FDIC-Receiver; and (ii) granting the FDIC-Receiver such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
November 4, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Attorneys for the Federal Deposit Insurance
Corporation, as Receiver for Washington Mutual Bank

EXHIBIT A
(Proposed Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Re: Docket No. _____

**ORDER GRANTING MOTION OF THE
FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER FOR WASHINGTON MUTUAL BANK
FOR RELIEF FROM THE AUTOMATIC STAY**

The Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, (the “FDIC-Receiver”), having moved for an order pursuant to 11 U.S.C. § 362(d) modifying the automatic stay (the “Motion”) to permit the FDIC-Receiver to direct JPMorgan Chase Bank, National Association (“JPMC”) to return the disputed balances of five accounts (the “Disputed Deposit Balances”) that are held by JPMC putatively in the name of the debtor and debtor-in-possession Washington Mutual, Inc. (“WMI”) pursuant to section 9.5 of the Purchase and Assumption Agreement dated as of September 25, 2008 among, *inter alia*, the FDIC-Receiver and JPMC (the “P&A Agreement”); and a hearing to consider the Motion and all objections, if any, having been held on November 24, 2009 (the “Hearing”); and based on the Motion, all objection thereto and the record of the Hearing; and, upon due consideration, and good and sufficient cause appearing therefore; it is hereby;²

ORDERED that the Motion is granted; and it is further

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors’ principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED that, pursuant to 11 U.S.C. § 362(d), the automatic stay provided under 11 U.S.C. § 362 in this bankruptcy case is hereby modified (1) to permit the FDIC-Receiver to exercise its rights under section 9.5 of the P&A Agreement to direct JPMC to return the Disputed Deposit Balances to the FDIC-Receiver; and (2) to permit JPMC and any third parties to take such actions as shall be necessary to effectuate the return of the Disputed Deposit Balances to the FDIC-Receiver; and it is further

ORDERED that cash and cash equivalents equal to the Disputed Deposit Balances that are so returned by JPMC to the FDIC-Receiver shall be held in segregated, noninterest bearing accounts at a Federal Home Loan Bank pending entry of a final, nonappealable order of a Court of competent jurisdiction has been entered finally determining the respective rights of the FDIC-Receiver, JPMC and WMI with respect to the Disputed Deposit Balances, including without limitation any rights of setoff or recoupment; and it is further

ORDERED that, notwithstanding the return of the Disputed Deposit Balances to the FDIC-Receiver pursuant to the terms of this Order, nothing contained herein shall prejudice or otherwise limit the rights of the Debtors, JPMC or FDIC-Receiver to pursue claims with respect to the Disputed Deposit Balances in any court of competent jurisdiction;

ORDERED that this Court shall retain jurisdiction with respect to the enforcement of this Order, with all other objections to jurisdiction being preserved.

Dated: November _____, 2009

Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT B

(Declaration of John J. Clarke, Jr.)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	

DECLARATION OF JOHN J. CLARKE, JR.

Pursuant to 28 U.S.C. § 1746, JOHN J. CLARKE, JR., declares:

1. I am an attorney admitted to practice in the State of New York and various federal courts and am a partner of DLA Piper LLP (US), counsel for defendant the Federal Deposit Insurance Corporation, in its capacity as receiver (the "FDIC-Receiver") for Washington Mutual Bank ("WMB"). I have been admitted *pro hac vice* in this bankruptcy case. I submit this declaration to place before the Court several documents in connection with the FDIC-Receiver's motion for relief from the automatic stay. The statements herein are based on my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy, in the form maintained on the FDIC's public website, of the Purchase and Assumption Agreement dated as of September 25, 2008 among the FDIC-Receiver, the Federal Deposit Insurance Corporation and JPMorgan Chase Bank, National Association (the "P&A Agreement").

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

3. Attached hereto as Exhibit B is a true and correct copy of the FDIC-Receiver's Answer and Counterclaims in the form filed on June 11, 2009 in the action styled *Washington Mutual, Inc. v. F.D.I.C.*, No. 1:09-cv-0533 (RMC) (D.D.C.) (the "D.C. Action").

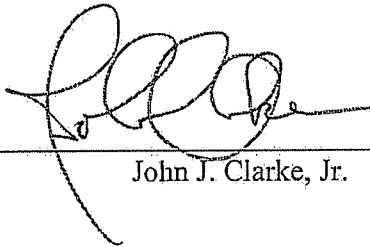
4. Attached hereto as Exhibit C is a true and correct copy of the FDIC-Receiver's First Amended Answer and Counterclaims in the form filed on July 13, 2009 in the D.C. Action.

5. Attached hereto as Exhibit D is a true and correct copy of the FDIC-Receiver's proof of claim filed on March 30, 2009 in this bankruptcy case.

6. Attached hereto as Exhibit E is a copy of the WaMu Business Account Disclosures, which previously was submitted by JPMC in connection with the Debtors' motion for summary judgment in the adversary proceeding styled *Washington Mutual, Inc. v. JPMorgan Chase Bank, N.A.*, Adv. Proc. No. 09-50934 (MFW) (Bankr. D. Del.) (appendix pages B133, *et seq.*) (the "Turnover Proceeding").

7. Attached hereto as Exhibit F are two pages excerpted from the appendix submitted by the Debtors in support of their motion for summary judgment in the Turnover Proceeding (pages A27 and A38) which were described by the affiant Doreen Logan as excerpts from account statements for the so-called "4234 Account."

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of November, 2009.



John J. Clarke, Jr.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

<i>In re</i>	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , ¹	:	Case No. 08-12229 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Objection Deadline: November 17, 2009 at 4:00 p.m. (ET)
	:	Hearing Date: November 24, 2009 at 2:00 p.m. (ET)

NOTICE OF MOTION

TO: (A) COUNSEL FOR THE DEBTORS; (B) THE OFFICE OF THE UNITED STATES TRUSTEE; (C) COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS; AND (D) ALL PARTIES HAVING FILED REQUESTS FOR NOTICES IN THE DEBTORS' CHAPTER 11 CASES

The Federal Deposit Insurance Corporation, in its capacity as receiver for Washington Mutual Bank (the "FDIC-Receiver") has filed the attached **Motion of the Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank, for an Order Modifying the Automatic Stay** (the "Motion").

Responses, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **November 17, 2009 at 4:00 p.m. (ET)** (the "Objection Deadline"). At the same time, you must serve a copy of your response upon the undersigned counsel.

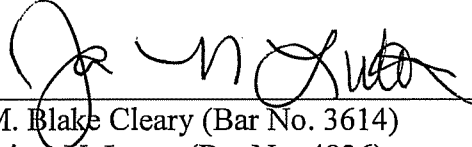
A HEARING ON THE RELIEF REQUESTED IN THE MOTION WILL BE HELD ON NOVEMBER 24, 2009 AT 2:00 P.M. (ET) BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM 4, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification numbers are: (a) Washington Mutual, Inc. (3725); and (b) WMI Investment Corp. (5395). The Debtors' principal offices are located at 1301 Second Avenue, Seattle, Washington 98101.

IF YOU FAIL TO RESPOND TO THE MOTION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

Dated: Wilmington, Delaware
November 4, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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Attorneys for the Federal Deposit Insurance
Corporation, as Receiver for Washington Mutual Bank

EXHIBIT A

PURCHASE AND ASSUMPTION AGREEMENT

WHOLE BANK

AMONG

**FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA**

FEDERAL DEPOSIT INSURANCE CORPORATION

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

DATED AS OF

SEPTEMBER 25, 2008

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PURCHASE AND ASSUMPTION AGREEMENT

WHOLE BANK

THIS AGREEMENT, made and entered into as of the 25th day of September, 2008, by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER of WASHINGTON MUTUAL BANK, HENDERSON, NEVADA** (the "Receiver"), **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, organized under the laws of the United States of America, and having its principal place of business in Seattle, Washington (the "Assuming Bank"), and the **FEDERAL DEPOSIT INSURANCE CORPORATION**, organized under the laws of the United States of America and having its principal office in Washington, D.C., acting in its corporate capacity (the "Corporation").

WITNESSETH:

WHEREAS, on Bank Closing, the Chartering Authority closed Washington Mutual Bank (the "Failed Bank") pursuant to applicable law and the Corporation was appointed Receiver thereof; and

WHEREAS, the Assuming Bank desires to purchase substantially all of the assets and assume all deposit and substantially all other liabilities of the Failed Bank on the terms and conditions set forth in this Agreement; and

WHEREAS, pursuant to 12 U.S.C. Section 1823(c)(2)(A), the Corporation may provide assistance to the Assuming Bank to facilitate the transactions contemplated by this Agreement, which assistance may include indemnification pursuant to Article XII; and

WHEREAS, the Board of Directors of the Corporation (the "Board") has determined to provide assistance to the Assuming Bank on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the Board has determined pursuant to 12 U.S.C. Section 1823(c)(4)(A) that such assistance is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in the Failed Bank and is the least costly to the deposit insurance fund of all possible methods for meeting such obligation.

NOW THEREFORE, in consideration of the mutual promises herein set forth and other valuable consideration, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Article I, or elsewhere in this Agreement. As used herein, words imparting the singular include the plural and vice versa.

"Accounting Records" means the general ledger and subsidiary ledgers and supporting schedules which support the general ledger balances.

"Acquired Subsidiaries" means Subsidiaries of the Failed Bank acquired pursuant to Section 3.1.

"Adversely Classified" means, with respect to any Loan or security, a Loan or security which has been designated in the most recent report of examination as "Substandard," "Doubtful" or "Loss" by the Failed Bank's appropriate Federal or State Chartering Authority or regulator.

"Affiliate" of any Person means any director, officer, or employee of that Person and any other Person (i) who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with, such Person, or (ii) who is an affiliate of such Person as the term "affiliate" is defined in Section 2 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.

"Agreement" means this Purchase and Assumption Agreement by and among the Assuming Bank, the Corporation and the Receiver, as amended or otherwise modified from time to time.

"Assets" means all assets of the Failed Bank purchased pursuant to Section 3.1. Assets owned by Subsidiaries of the Failed Bank are not "Assets" within the meaning of this definition.

"Assumed Deposits" means Deposits.

"Bank Closing" means the close of business of the Failed Bank on the date on which the Chartering Authority closed such institution.

"Bank Premises" means the banking houses, drive-in banking facilities, and teller facilities (staffed or automated) together with appurtenant parking, storage and service facilities and structures connecting remote facilities to banking houses, and land on which the foregoing are located, that are owned or leased by the Failed Bank and that are occupied by the Failed Bank as of Bank Closing.

"Bid Amount" has the meaning provided in Article VII.

"Book Value" means, with respect to any Asset and any Liability Assumed, the dollar amount thereof stated on the Accounting Records of the Failed Bank. The Book Value of any item shall be determined as of Bank Closing after adjustments made by the Assuming Bank for normal operational and timing differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary. The Book Value of a Subsidiary of the Failed Bank acquired by the Assuming Bank shall be determined from the investment in subsidiary and related accounts on the "bank only" (unconsolidated) balance sheet of the Failed Bank based on the equity method of accounting. Without limiting the generality of the foregoing, (i) the Book Value of a Liability Assumed shall include all accrued and unpaid interest thereon as of Bank Closing, and (ii) the Book Value of a Loan shall reflect adjustments for earned interest, or unearned interest (as it relates to the "rule of 78s" or add-on-interest loans, as applicable), if any, as of Bank Closing, adjustments for the portion of earned or unearned loan-related credit life and/or disability insurance premiums, if any, attributable to the Failed Bank as of Bank Closing, and adjustments for Failed Bank Advances, if any, in each case as determined for financial reporting purposes. The Book Value of an Asset shall not include any adjustment for loan premiums, discounts or any related deferred income or fees, or general or specific reserves on the Accounting Records of the Failed Bank.

"Business Day" means a day other than a Saturday, Sunday, Federal legal holiday or legal holiday under the laws of the State where the Failed Bank is located, or a day on which the principal office of the Corporation is closed.

"Chartering Authority" means (i) with respect to a national bank, the Office of the Comptroller of the Currency, (ii) with respect to a Federal savings association or savings bank, the Office of Thrift Supervision, (iii) with respect to a bank or savings institution chartered by a State, the agency of such State charged with primary responsibility for regulating and/or closing banks or savings institutions, as the case may be, (iv) the Corporation in accordance with 12 U.S.C. Section 1821(c), with regard to self appointment, or (v) the appropriate Federal banking agency in accordance with 12 U.S.C. 1821(c)(9).

"Commitment" means the unfunded portion of a line of credit or other commitment reflected on the books and records of the Failed Bank to make an extension of credit (or additional advances with respect to a Loan) that was legally binding on the Failed Bank as of Bank Closing, other than extensions of credit pursuant to the credit card business and overdraft protection plans of the Failed Bank, if any.

"Credit Documents" mean the agreements, instruments, certificates or other documents at any time evidencing or otherwise relating to, governing or executed in connection with or as security for, a Loan, including without limitation notes, bonds, loan agreements, letter of credit applications, lease financing contracts, banker's acceptances, drafts, interest protection agreements, currency exchange agreements, repurchase agreements, reverse repurchase agreements, guarantees, deeds of trust, mortgages, assignments, security agreements, pledges, subordination or priority agreements, lien priority agreements, undertakings, security instruments, certificates, documents, legal opinions, participation agreements and intercreditor agreements, and all amendments, modifications, renewals, extensions, rearrangements, and substitutions with respect to any of the foregoing.

"Credit File" means all Credit Documents and all other credit, collateral, or insurance documents in the possession or custody of the Assuming Bank, or any of its Subsidiaries or Affiliates, relating to an Asset or a Loan included in a Put Notice, or copies of any thereof.

"Data Processing Lease" means any lease or licensing agreement, binding on the Failed Bank as of Bank Closing, the subject of which is data processing equipment or computer hardware or software used in connection with data processing activities. A lease or licensing agreement for computer software used in connection with data processing activities shall constitute a Data Processing Lease regardless of whether such lease or licensing agreement also covers data processing equipment.

"Deposit" means a deposit as defined in 12 U.S.C. Section 1813(1), including without limitation, outstanding cashier's checks and other official checks and all uncollected items included in the depositors' balances and credited on the books and records of the Failed Bank; provided, that the term "Deposit" shall not include all or any portion of those deposit balances which, in the discretion of the Receiver or the Corporation, (i) may be required to satisfy it for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability of any depositor to the Failed Bank or the Receiver, including the liability of any depositor as a director or officer of the Failed Bank, whether or not the amount of the liability is or can be determined as of Bank Closing.

"Failed Bank Advances" means the total sums paid by the Failed Bank to (i) protect its lien position, (ii) pay ad valorem taxes and hazard insurance, and (iii) pay credit life insurance, accident and health insurance, and vendor's single interest insurance.

"Fixtures" means those leasehold improvements, additions, alterations and installations constituting all or a part of Bank Premises and which were acquired, added, built, installed or purchased at the expense of the Failed Bank, regardless of the holder of legal title thereto as of Bank Closing.

"Furniture and Equipment" means the furniture and equipment (other than leased data processing equipment, including hardware and software), leased or owned by the Failed Bank and reflected on the books of the Failed Bank as of Bank Closing, including without limitation automated teller machines, carpeting, furniture, office machinery (including personal computers), shelving, office supplies, telephone, surveillance and security systems, and artwork.

"Indemnitees" means, except as provided in paragraph (11) of Section 12.1(b), (i) the Assuming Bank, (ii) the Subsidiaries and Affiliates of the Assuming Bank other than any Subsidiaries or Affiliates of the Failed Bank that are or become Subsidiaries or Affiliates of the Assuming Bank, and (iii) the directors, officers, employees and agents of the Assuming Bank and its Subsidiaries and Affiliates who are not also present or former directors, officers, employees or agents of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank.

"Initial Payment" means the payment made pursuant to Article VII, the amount of which shall be either (i) if the Bid Amount is positive, the Bid Amount plus the Required Payment or (ii) if the Bid Amount is negative, the Required Payment minus the Bid Amount. The Initial Payment shall be payable by the Corporation to the Assuming Bank if the Initial Payment is a negative amount. The Initial Payment shall be payable by the Assuming Bank to the Corporation if the Initial Payment is positive.

"Legal Balance" means the amount of indebtedness legally owed by an Obligor with respect to a Loan, including principal and accrued and unpaid interest, late fees, attorneys' fees and expenses, taxes, insurance premiums, and similar charges, if any.

"Liabilities Assumed" has the meaning provided in Section 2.1.

"Lien" means any mortgage, lien, pledge, charge, assignment for security purposes, security interest, or encumbrance of any kind with respect to an Asset, including any conditional sale agreement or capital lease or other title retention agreement relating to such Asset.

"Loans" means all of the following owed to or held by the Failed Bank as of Bank Closing:

(i) loans (including loans which have been charged off the Accounting Records of the Failed Bank in whole or in part prior to Bank Closing), participation agreements, interests in participations, overdrafts of customers (including but not limited to overdrafts made pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account), revolving commercial lines of credit, home equity lines of credit, Commitments, United States and/or State-guaranteed student loans, and lease financing contracts;

(ii) all Liens, rights (including rights of set-off), remedies, powers, privileges, demands, claims, priorities, equities and benefits owned or held by, or accruing or to accrue to or for the benefit of, the holder of the obligations or instruments referred to in clause (i) above, including but not limited to those arising under or based upon Credit Documents, casualty insurance policies and binders, standby letters of credit, mortgagee title insurance policies and binders, payment bonds and performance bonds at any time and from time to time existing with respect to any of the obligations or instruments referred to in clause (i) above; and

(iii) all amendments, modifications, renewals, extensions, refinancings, and refundings of or for any of the foregoing;

provided, that there shall be excluded from the definition of "Loans" amounts owing under Qualified Financial Contracts.

"Obligor" means each Person liable for the full or partial payment or performance of any Loan, whether such Person is obligated directly, indirectly, primarily, secondarily, jointly, or severally.

"Other Real Estate" means all interests in real estate (other than Bank Premises and Fixtures), including but not limited to mineral rights, leasehold rights, condominium and cooperative interests, air rights and development rights that are owned by the Failed Bank.

"Payment Date" means the first Business Day after Bank Closing.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, excluding the Corporation.

"Primary Indemnitor" means any Person (other than the Assuming Bank or any of its Affiliates) who is obligated to indemnify or insure, or otherwise make payments (including payments on account of claims made against) to or on behalf of any Person in connection with the claims covered under Article XII, including without limitation any insurer issuing any directors and officers liability policy or any Person issuing a financial institution bond or banker's blanket bond.

"Proforma" means producing a balance sheet that reflects a reasonably accurate financial statement of the Failed Bank through the date of closing. The Proforma financial statements serve as a basis for the opening entries of both the Assuming Bank and the Receiver.

"Put Date" has the meaning provided in Section 3.4.

"Put Notice" has the meaning provided in Section 3.4.

"Qualified Financial Contract" means a qualified financial contract as defined in 12 U.S.C. Section 1821(e)(8)(D).

"Record" means any document, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) of the Failed Bank generated or maintained by the Failed Bank that is owned by or in the possession of the Receiver at Bank Closing.

"Related Liability" with respect to any Asset means any liability existing and reflected on the Accounting Records of the Failed Bank as of Bank Closing for (i) indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens on or affecting such Asset, (ii) ad valorem taxes applicable to such Asset, and (iii) any other obligation determined by the Receiver to be directly related to such Asset.

"Related Liability Amount" with respect to any Related Liability on the books of the Assuming Bank, means the amount of such Related Liability as stated on the Accounting Records of the Assuming Bank (as maintained in accordance with generally accepted accounting principles) as of the date as of which the Related Liability Amount is being determined. With respect to a liability that relates to more than one asset, the amount of such Related Liability shall be allocated among such assets for the purpose of determining the Related Liability Amount with

respect to any one of such assets. Such allocation shall be made by specific allocation, where determinable, and otherwise shall be pro rata based upon the dollar amount of such assets stated on the Accounting Records of the entity that owns such asset.

"Required Payment" means \$50,000,000.00.

"Repurchase Price" means with respect to any Asset or asset, which shall be determined by the Receiver, the lesser of (a) or (b):

(a) (i) in the event of a negative Bid Amount, the amount paid by the Assuming Bank, discounted by a percentage equal to the quotient produced by dividing the Assuming Bank's Bid Amount by the aggregate Book Value of the Risk Assets of the Failed Bank;

(ii) in the event of a negative Bid Amount, the amount resulting from (a)(i), above, or in the event of a positive Bid Amount, the amount paid by the Assuming Bank, (x) for a Loan, shall be decreased by any portion of the Loan classified "loss" and by one-half of any portion of the Loan classified "doubtful" as of the date of Bank Closing, and (y) for any Asset or asset, including a Loan, decreased by the amount of any money received with respect thereto since Bank Closing and, if the Asset is a Loan or other interest bearing or earning asset, the resulting amount shall then be increased or decreased, as the case may be, by interest or discount (whichever is applicable) accrued from and after Bank Closing at the lower of: (i) the contract rate with respect to such Asset, or (ii) the Settlement Interest Rate; net proceeds received by or due to the Assuming Bank from the sale of collateral, any forgiveness of debt, or otherwise shall be deemed money received by the Assuming Bank; or

(b) the dollar amount thereof stated on the Accounting Records of the Assuming Bank as of the date as of which the Repurchase Price is being determined, as maintained in accordance with generally accepted accounting principles, and, if the asset is a Loan, regardless of the Legal Balance thereof and adjusted in the same manner as the Book Value of a Failed Bank Loan would be adjusted hereunder.

Provided, however, (b), above, shall not be applicable and the Bid Amount shall be considered to have been positive for Loans repurchased pursuant to Section 3.4(a).

"Risk Assets" means (i) all Loans purchased hereunder, excluding (a) New Loans and (b) Loans to the extent secured by Assumed Deposits (and not included in (i)(a)), plus (ii) the Accrued Interest Receivable, Prepaid Expense, and Other Assets.

"Safe Deposit Boxes" means the safe deposit boxes of the Failed Bank, if any, including the removable safe deposit boxes and safe deposit stacks in the Failed Bank's vault(s), all rights and benefits (other than fees collected prior to Bank Closing) under rental agreements with respect to such safe deposit boxes, and all keys and combinations thereto.

"Settlement Date" means the first Business Day immediately prior to the day which is one hundred eighty (180) days after Bank Closing, or such other date prior thereto as

may be agreed upon by the Receiver and the Assuming Bank. The Receiver, in its discretion, may extend the Settlement Date.

"Settlement Interest Rate" means, for the first calendar quarter or portion thereof during which interest accrues, the rate determined by the Receiver to be equal to the equivalent coupon issue yield on twenty-six (26)-week United States Treasury Bills in effect as of Bank Closing as published in The Wall Street Journal; provided, that if no such equivalent coupon issue yield is available as of Bank Closing, the equivalent coupon issue yield for such Treasury Bills most recently published in The Wall Street Journal prior to Bank Closing shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Receiver to be equal to the equivalent coupon issue yield on such Treasury Bills in effect as of the first day of each succeeding calendar quarter during which interest accrues as published in The Wall Street Journal.

"Subsidiary" has the meaning set forth in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(w)(4), as amended.

ARTICLE II ASSUMPTION OF LIABILITIES

2.1 Liabilities Assumed by Assuming Bank. Subject to Sections 2.5 and 4.8, the Assuming Bank expressly assumes at Book Value (subject to adjustment pursuant to Article VIII) and agrees to pay, perform, and discharge, all of the liabilities of the Failed Bank which are reflected on the Books and Records of the Failed Bank as of Bank Closing, including the Assumed Deposits and all liabilities associated with any and all employee benefit plans, except as listed on the attached Schedule 2.1, and as otherwise provided in this Agreement (such liabilities referred to as "Liabilities Assumed"). Notwithstanding Section 4.8, the Assuming Bank specifically assumes all mortgage servicing rights and obligations of the Failed Bank.

2.2 Interest on Deposit Liabilities. The Assuming Bank agrees that it will assume all deposit contracts as of Bank Closing, and it will accrue and pay interest on Deposit liabilities assumed pursuant to Section 2.1 at the same rate(s) and on the same terms as agreed to by the Failed Bank as existed as of Bank Closing. If such Deposit has been pledged to secure an obligation of the depositor or other party, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge.

2.3 Unclaimed Deposits. If, within eighteen (18) months after Bank Closing, any depositor of the Failed Bank does not claim or arrange to continue such depositor's Deposit assumed pursuant to Section 2.1 at the Assuming Bank, the Assuming Bank shall, within fifteen (15) Business Days after the end of such eighteen (18)-month period, (i) refund to the Corporation the full amount of each such Deposit (without reduction for service charges), (ii) provide to the Corporation an electronic schedule of all such refunded Deposits in such form as may be prescribed by the Corporation, and (iii) assign, transfer, convey and deliver to the Receiver all right, title and interest of the Assuming Bank in and to Records previously transferred to the Assuming Bank and other records generated or maintained by the Assuming Bank pertaining to such Deposits. During such eighteen (18)-month period, at the request of the

Corporation, the Assuming Bank promptly shall provide to the Corporation schedules of unclaimed deposits in such form as may be prescribed by the Corporation.

2.4 Omitted.

2.5 Borrower Claims. Notwithstanding anything to the contrary in this Agreement, any liability associated with borrower claims for payment of or liability to any borrower for monetary relief, or that provide for any other form of relief to any borrower, whether or not such liability is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, judicial or extra-judicial, secured or unsecured, whether asserted affirmatively or defensively, related in any way to any loan or commitment to lend made by the Failed Bank prior to failure, or to any loan made by a third party in connection with a loan which is or was held by the Failed Bank, or otherwise arising in connection with the Failed Bank's lending or loan purchase activities are specifically not assumed by the Assuming Bank.

**ARTICLE III
PURCHASE OF ASSETS**

3.1 Assets Purchased by Assuming Bank. Subject to Sections 3.5, 3.6 and 4.8, the Assuming Bank hereby purchases from the Receiver, and the Receiver hereby sells, assigns, transfers, conveys, and delivers to the Assuming Bank, all right, title, and interest of the Receiver in and to all of the assets (real, personal and mixed, wherever located and however acquired) including all subsidiaries, joint ventures, partnerships, and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated, of the Failed Bank whether or not reflected on the books of the Failed Bank as of Bank Closing. Assets are purchased hereunder by the Assuming Bank subject to all liabilities for indebtedness collateralized by Liens affecting such Assets to the extent provided in Section 2.1. The subsidiaries, joint ventures, partnerships, and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated being purchased by the Assuming Bank includes, but is not limited to, the entities listed on Schedule 3.1a. Notwithstanding Section 4.8, the Assuming Bank specifically purchases all mortgage servicing rights and obligations of the Failed Bank.

3.2 Asset Purchase Price.

(a) All Assets and assets of the Failed Bank subject to an option to purchase by the Assuming Bank shall be purchased for the amount, or the amount resulting from the method specified for determining the amount, as specified on Schedule 3.2, except as otherwise may be provided herein. Any Asset, asset of the Failed Bank subject to an option to purchase or other asset purchased for which no purchase price is specified on Schedule 3.2 or otherwise herein shall be purchased at its Book Value. Loans or other assets charged off the Accounting Records of the Failed Bank prior to the date of Bank Closing shall be purchased at a price of zero.

(b) The purchase price for securities (other than the capital stock of any Acquired Subsidiary) purchased under Section 3.1 by the Assuming Bank shall be the market value thereof as of Bank Closing, which market value shall be (i) the "Mid/Last", or "Trade" (as applicable), market price for each such security quoted at the close of the trading day effective on Bank Closing as published electronically by Bloomberg, L.P.; (ii) provided, that if such market price is not available for any such security, the Assuming Bank will submit a bid for each such security within three days of notification/bid request by the Receiver (unless a different time period is agreed to by the Assuming Bank and the Receiver) and the Receiver, in its sole discretion will accept or reject each such bid; and (iii) further provided in the absence of an acceptable bid from the Assuming Bank, each such security shall not pass to the Assuming Bank and shall be deemed to be an excluded asset hereunder.

(c) Qualified Financial Contracts shall be purchased at market value determined in accordance with the terms of Exhibit 3.2(c). Any costs associated with such valuation shall be shared equally by the Receiver and the Assuming Bank.

3.3 Manner of Conveyance; Limited Warranty; Nonrecourse; Etc. THE CONVEYANCE OF ALL ASSETS, INCLUDING REAL AND PERSONAL PROPERTY INTERESTS, PURCHASED BY THE ASSUMING BANK UNDER THIS AGREEMENT SHALL BE MADE, AS NECESSARY, BY RECEIVER'S DEED OR RECEIVER'S BILL OF SALE, "AS IS", "WHERE IS", WITHOUT RECOURSE AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, WITHOUT ANY WARRANTIES WHATSOEVER WITH RESPECT TO SUCH ASSETS, EXPRESS OR IMPLIED, WITH RESPECT TO TITLE, ENFORCEABILITY, COLLECTIBILITY, DOCUMENTATION OR FREEDOM FROM LIENS OR ENCUMBRANCES (IN WHOLE OR IN PART), OR ANY OTHER MATTERS.

3.4 Puts of Assets to the Receiver.

(a) Omitted.

(b) Puts Prior to the Settlement Date. During the period from Bank Closing to and including the Business Day immediately preceding the Settlement Date, the Assuming Bank shall be entitled to require the Receiver to purchase any Asset which the Assuming Bank can establish is evidenced by forged or stolen instruments as of Bank Closing. The Assuming Bank shall transfer all such Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Asset, as provided in Section 12.4.

(c) Notices to the Receiver. In the event that the Assuming Bank elects to require the Receiver to purchase one or more Assets, the Assuming Bank shall deliver to the Receiver a notice (a "Put Notice") which shall include:

(i) a list of all Assets that the Assuming Bank requires the Receiver to purchase;

- (ii) a list of all Related Liabilities with respect to the Assets identified pursuant to (i) above; and
- (iii) a statement of the estimated Repurchase Price of each Asset identified pursuant to (i) above as of the applicable Put Date.

Such notice shall be in the form prescribed by the Receiver or such other form to which the Receiver shall consent. As provided in Section 9.6, the Assuming Bank shall deliver to the Receiver such documents, Credit Files and such additional information relating to the subject matter of the Put Notice as the Receiver may request and shall provide to the Receiver full access to all other relevant books and records.

(d) **Purchase by Receiver.** The Receiver shall purchase Loans that are specified in the Put Notice and shall assume Related Liabilities with respect to such Loans, and the transfer of such Loans and Related Liabilities shall be effective as of a date determined by the Receiver which date shall not be later than thirty (30) days after receipt by the Receiver of the Credit Files with respect to such Loans (the "Put Date").

(e) **Purchase Price and Payment Date.** Each Loan purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the Repurchase Price of such Loan less the Related Liability Amount applicable to such Loan, in each case determined as of the applicable Put Date. If the difference between such Repurchase Price and such Related Liability Amount is positive, then the Receiver shall pay to the Assuming Bank the amount of such difference; if the difference between such amounts is negative, then the Assuming Bank shall pay to the Receiver the amount of such difference. The Assuming Bank or the Receiver, as the case may be, shall pay the purchase price determined pursuant to this Section 3.4(e) not later than the twentieth (20th) Business Day following the applicable Put Date, together with interest on such amount at the Settlement Interest Rate for the period from and including such Put Date to and including the day preceding the date upon which payment is made.

(f) **Servicing.** The Assuming Bank shall administer and manage any Asset subject to purchase by the Receiver in accordance with usual and prudent banking standards and business practices until such time as such Asset is purchased by the Receiver.

(g) **Reversals.** In the event that the Receiver purchases an Asset (and assumes the Related Liability) that it is not required to purchase pursuant to this Section 3.4, the Assuming Bank shall repurchase such Asset (and assume such Related Liability) from the Receiver at a price computed so as to achieve the same economic result as would apply if the Receiver had never purchased such Asset pursuant to this Section 3.4.

3.5 Assets Not Purchased by Assuming Bank. The Assuming Bank does not purchase, acquire or assume, or (except as otherwise expressly provided in this Agreement) obtain an option to purchase, acquire or assume under this Agreement the assets or Assets listed on the attached Schedule 3.5.

3.6 Assets Essential to Receiver.

(a) The Receiver may refuse to sell to the Assuming Bank, or the Assuming Bank agrees, at the request of the Receiver set forth in a written notice to the Assuming Bank, to assign, transfer, convey, and deliver to the Receiver all of the Assuming Bank's right, title and interest in and to, any Asset or asset essential to the Receiver as determined by the Receiver in its discretion (together with all Credit Documents evidencing or pertaining thereto), which may include any Asset or asset that the Receiver determines to be:

- (i) made to an officer, director, or other Person engaging in the affairs of the Failed Bank, its Subsidiaries or Affiliates or any related entities of any of the foregoing;
- (ii) the subject of any investigation relating to any claim with respect to any item described in Section 3.5(a) or (b), or the subject of, or potentially the subject of, any legal proceedings;
- (iii) made to a Person who is an Obligor on a loan owned by the Receiver or the Corporation in its corporate capacity or its capacity as receiver of any institution;
- (iv) secured by collateral which also secures any asset owned by the Receiver;
or
- (v) related to any asset of the Failed Bank not purchased by the Assuming Bank under this Article III or any liability of the Failed Bank not assumed by the Assuming Bank under Article II.

(b) Each such Asset or asset purchased by the Receiver shall be purchased at a price equal to the Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Asset or asset, in each case determined as of the date of the notice provided by the Receiver pursuant to Section 3.6(a). The Receiver shall pay the Assuming Bank not later than the twentieth (20th) Business Day following receipt of related Credit Documents and Credit Files together with interest on such amount at the Settlement Interest Rate for the period from and including the date of receipt of such documents to and including the day preceding the day on which payment is made. The Assuming Bank agrees to administer and manage each such Asset or asset in accordance with usual and prudent banking standards and business practices until each such Asset or asset is purchased by the Receiver. All transfers with respect to Asset or assets under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Bank shall transfer all such Asset or assets and Related Liabilities to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Asset or asset, as provided in Section 12.4.

ARTICLE IV

ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS

The Assuming Bank agrees with the Receiver and the Corporation as follows:

4.1 Continuation of Banking Business. The Assuming Bank agrees to provide full service banking in the trade area of the Failed Bank commencing on the first banking business day (including a Saturday) after Bank Closing. At the option of the Assuming Bank, such banking services may be provided at any or all of the Bank Premises, or at other premises within such trade area.

4.2 Agreement with Respect to Debit and Credit Card Business. The Assuming Bank agrees to honor and perform, from and after Bank Closing, all duties and obligations with respect to the Failed Bank's debit and credit card business, and/or processing related to debit and credit cards, if any, and assumes all outstanding extensions of credit with respect thereto.

4.3 Agreement with Respect to Safe Deposit Business. The Assuming Bank assumes and agrees to discharge, from and after Bank Closing, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to all Safe Deposit Boxes, if any, of the Failed Bank and to maintain all of the necessary facilities for the use of such boxes by the renters thereof during the period for which such boxes have been rented and the rent therefor paid to the Failed Bank, subject to the provisions of the rental agreements between the Failed Bank and the respective renters of such boxes; provided, that the Assuming Bank may relocate the Safe Deposit Boxes of the Failed Bank to any office of the Assuming Bank located in the trade area of the Failed Bank. Fees related to the safe deposit business collected prior to Bank Closing shall be for the benefit of the Receiver and fees collected after Bank Closing shall be for the benefit of the Assuming Bank.

4.4 Agreement with Respect to Safekeeping Business. The Receiver transfers, conveys and delivers to the Assuming Bank and the Assuming Bank accepts all securities and other items, if any, held by the Failed Bank in safekeeping for its customers as of Bank Closing. The Assuming Bank assumes and agrees to honor and discharge, from and after Bank Closing, the duties and obligations of the Failed Bank with respect to such securities and items held in safekeeping. The Assuming Bank shall be entitled to all rights and benefits heretofore accrued or hereafter accruing with respect thereto; provided, that, fees related to the safe keeping business collected prior to Bank Closing shall be for the benefit of the Receiver and fees collected after Bank Closing shall be for the benefit of the Assuming Bank. The Assuming Bank shall provide to the Receiver written verification of all assets held by the Failed Bank for safekeeping within sixty (60) days after Bank Closing.

4.5 Agreement with Respect to Trust Business.

(a) The Assuming Bank shall, without further transfer, substitution, act or deed, to the full extent permitted by law, succeed to the rights, obligations, properties, assets, investments, deposits, agreements, and trusts of the Failed Bank under trusts, executorships, administrations, guardianships, and agencies, and other fiduciary or representative capacities, all to the same extent as though the Assuming Bank had assumed the same from the Failed Bank prior to Bank

Closing; provided, that any liability based on the misfeasance, malfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business is not assumed hereunder.

(b) The Assuming Bank shall, to the full extent permitted by law, succeed to, and be entitled to take and execute, the appointment to all executorships, trusteeships, guardianships and other fiduciary or representative capacities to which the Failed Bank is or may be named in wills, whenever probated, or to which the Failed Bank is or may be named or appointed by any other instrument.

(c) In the event additional proceedings of any kind are necessary to accomplish the transfer of such trust business, the Assuming Bank agrees that, at its own expense, it will take whatever action is necessary to accomplish such transfer. The Receiver agrees to use reasonable efforts to assist the Assuming Bank in accomplishing such transfer.

(d) The Assuming Bank shall provide to the Receiver written verification of the assets held in connection with the Failed Bank's trust business within sixty (60) days after Bank Closing.

4.6 Agreement with Respect to Bank Premises.

(a) **Option to Lease.** The Receiver hereby grants to the Assuming Bank an exclusive option for the period of ninety (90) days commencing the day after Bank Closing to cause the Receiver to assign to the Assuming Bank any or all leases for leased Bank Premises, if any, which have been continuously occupied by the Assuming Bank from Bank Closing to the date it elects to accept an assignment of the leases with respect thereto to the extent such leases can be assigned; provided, that the exercise of this option with respect to any lease must be as to all premises or other property subject to the lease. If an assignment cannot be made of any such leases, the Receiver may, in its discretion, enter into subleases with the Assuming Bank containing the same terms and conditions provided under such existing leases for such leased Bank Premises or other property. The Assuming Bank shall give notice to the Receiver within the option period of its election to accept or not to accept an assignment of any or all leases (or enter into subleases or new leases in lieu thereof). The Assuming Bank agrees to assume all leases assigned (or enter into subleases in lieu thereof) pursuant to this Section 4.6.

(b) **Facilitation.** The Receiver agrees to facilitate the assumption, assignment or sublease of leases or the negotiation of new leases by the Assuming Bank; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation, make payments to the Assuming Bank or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation or commit to any other obligations to third parties.

(c) **Occupancy.** The Assuming Bank shall give the Receiver fifteen (15) days' prior written notice of its intention to vacate prior to vacating any leased Bank Premises with respect to which the Assuming Bank has not exercised the option provided in Section 4.6(a). Any such notice shall be deemed to terminate the Assuming Bank's option with respect to such leased Bank Premises.

(d) **Occupancy Costs.**

(i) The Assuming Bank agrees, during the period of any occupancy by it of leased Bank Premises, to pay to the Receiver, or to appropriate third parties at the direction of the Receiver, all operating costs with respect thereto and to comply with all relevant terms of applicable leases entered into by the Failed Bank, including without limitation the timely payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

(ii) The Assuming Bank agrees during the period of occupancy by it of leased Bank Premises to pay to the Receiver rent for the use of all leased Furniture and Equipment and all owned or leased Fixtures located on such Bank Premises for the period of such occupancy. Rent for such property owned by the Failed Bank shall be the market rental value thereof, as determined by the Receiver within sixty (60) days after Bank Closing. Rent for such leased property shall be an amount equal to any and all rent and other amounts which the Receiver incurs or accrues as an obligation or is obligated to pay for such period of occupancy pursuant to all leases and contracts with respect to such property. If the Assuming Bank purchases any owned Fixtures in accordance with Section 4.6(f), the amount of any rents paid by the Assuming Bank with respect thereto shall be applied as an offset against the purchase price thereof.

(e) **Certain Requirements as to Furniture, Equipment and Fixtures.** If the Assuming Bank accepts an assignment of the lease (or enters into a sublease or a new lease in lieu thereof) for leased Bank Premises, or if the Assuming Bank does not exercise such option but within twelve (12) months following Bank Closing obtains the right to occupy such premises (whether by assignment, lease, sublease, purchase or otherwise), other than in accordance with Section 4.6(a), the Assuming Bank shall (i) accept an assignment or a sublease of the leases or negotiate new leases for all Furniture and Equipment and Fixtures leased by the Failed Bank and located thereon, and (ii) if applicable, accept an assignment or a sublease of any ground lease or negotiate a new ground lease with respect to any land on which such Bank Premises are located; provided, that the Receiver shall not have disposed of such Furniture and Equipment and Fixtures or repudiated the leases specified in clause (i) or (ii).

(f) **Vacating Premises.** If the Assuming Bank elects not to accept an assignment of the lease or sublease any leased Bank Premises, the notice of such election in accordance with Section 4.6(a) shall specify the date upon which the Assuming Bank's occupancy of such leased Bank Premises shall terminate, which date shall not be later than the date which is one hundred eighty (180) days after Bank Closing. Upon vacating such premises, the Assuming Bank shall relinquish and release to the Receiver such premises and the Fixtures located thereon in the same condition as at Bank Closing, normal wear and tear excepted. By failing to provide notice of its intention to vacate such premises prior to the expiration of the option period specified in Section 4.6(a), or by occupying such premises after the one hundred eighty (180)-day period specified above in this paragraph, the Assuming Bank shall, at the Receiver's option, (x) be deemed to have assumed all leases, obligations and liabilities with respect to such premises (including any ground lease with respect to the land on which premises are located), and leased Furniture and Equipment and leased Fixtures located thereon in accordance with this Section 4.6 (unless the

Receiver previously repudiated any such lease), and (y) be required to purchase all Fixtures owned by the Failed Bank and located on such premises as of Bank Closing.

(g) Omitted.

4.7 Agreement with Respect to Leased Data Processing Equipment

(a) The Receiver hereby grants to the Assuming Bank an exclusive option for the period of ninety (90) days commencing the day after Bank Closing to accept an assignment from the Receiver of any or all Data Processing Leases to the extent that such Data Processing Leases can be assigned.

(b) The Assuming Bank shall (i) give written notice to the Receiver within the option period specified in Section 4.7(a) of its intent to accept an assignment or sublease of any or all Data Processing Leases and promptly accept an assignment or sublease of such Data Processing Leases, and (ii) give written notice to the appropriate lessor(s) that it has accepted an assignment or sublease of any such Data Processing Leases.

(c) The Receiver agrees to facilitate the assignment or sublease of Data Processing Leases or the negotiation of new leases or license agreements by the Assuming Bank; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation or make payments to the Assuming Bank or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation.

(d) The Assuming Bank agrees, during its period of use of any property subject to a Data Processing Lease, to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of the applicable Data Processing Leases entered into by the Failed Bank, including without limitation the timely payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

(e) The Assuming Bank shall, not later than fifty (50) days after giving the notice provided in Section 4.7(b), (i) relinquish and release to the Receiver all property subject to the relevant Data Processing Lease, in the same condition as at Bank Closing, normal wear and tear excepted, or (ii) accept an assignment or a sublease thereof or negotiate a new lease or license agreement under this Section 4.7.

4.8 Agreement with Respect to Certain Existing Agreements.

With respect to agreements existing as of Bank Closing which provide for the rendering of services by or to the Failed Bank, within one hundred twenty (120) days after Bank Closing, the Assuming Bank shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreement. Except as may be otherwise provided in this Article IV, the Assuming Bank agrees to comply with the terms of each such agreement for a period commencing on the day after Bank Closing and ending on: (i) in the case of an agreement that provides for the rendering of services by the Failed Bank, the date which is ninety (90) days after Bank Closing, and (ii) in the case of an agreement that provides for the rendering of services to

the Failed Bank, the date which is thirty (30) days after the Assuming Bank has given notice to the Receiver of its election not to assume such agreement; provided, that the Receiver can reasonably make such service agreements available to the Assuming Bank. The Assuming Bank shall be deemed by the Receiver to have assumed agreements for which no notification is timely given. The Receiver agrees to assign, transfer, convey, and deliver to the Assuming Bank all right, title and interest of the Receiver, if any, in and to agreements the Assuming Bank assumes hereunder. In the event the Assuming Bank elects not to accept an assignment of any lease (or sublease) or negotiate a new lease for leased Bank Premises under Section 4.6 and does not otherwise occupy such premises, the provisions of this Section 4.8 shall not apply to service agreements related to such premises. The Assuming Bank agrees, during the period it has the use or benefit of any such agreement, promptly to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of such agreement. This paragraph shall not apply with respect to deposit contracts which are expressly assumed by the Assuming Bank under Section 2.2 of this Agreement.

4.9 Informational Tax Reporting. The Assuming Bank agrees to perform all obligations of the Failed Bank with respect to Federal and State income tax informational reporting related to (i) the Assets and the Liabilities Assumed, (ii) deposit accounts that were closed and loans that were paid off or collateral obtained with respect thereto prior to Bank Closing, (iii) miscellaneous payments made to vendors of the Failed Bank, and (iv) any other asset or liability of the Failed Bank, including, without limitation, loans not purchased and Deposits not assumed by the Assuming Bank, as may be required by the Receiver.

Under a private letter ruling (PLR) issued to the FDIC in January of 1988, the Internal Revenue Service will allow the Assuming Bank to report for the Failed Bank transactions under its own TIN for the entire year 2008; there is no need to dual-report for different payors in pre- v. post-closing date periods.

The Assuming Bank agrees to prepare on behalf of the Receiver all required Federal and State compliance and income/franchise tax returns for the Failed Bank and acquired subsidiary entities as of Bank Closing. The returns will be provided to the Receiver within the statutorily required filing timeframe.

4.10 Insurance. The Assuming Bank agrees to obtain insurance coverage effective from and after Bank Closing, including public liability, fire and extended coverage insurance acceptable to the Receiver with respect to leased Bank Premises that it occupies, and all leased Furniture and Equipment and Fixtures and leased data processing equipment (including hardware and software) located thereon, in the event such insurance coverage is not already in force and effect with respect to the Assuming Bank as the insured as of Bank Closing. All such insurance shall, where appropriate (as determined by the Receiver), name the Receiver as an additional insured.

4.11 Office Space for Receiver and Corporation. For the period commencing on the day following Bank Closing and ending on the one hundred eightieth (180th) day thereafter, the Assuming Bank agrees to provide to the Receiver and the Corporation, without charge, adequate

and suitable office space (including parking facilities and vault space), furniture, equipment (including photocopying and telecopying machines) and utilities (including local telephone service and a dedicated broadband or T-1 internet service) at the Bank Premises occupied by the Assuming Bank for their use in the discharge of their respective functions with respect to the Failed Bank. In the event the Receiver and the Corporation determine that the space provided is inadequate or unsuitable, the Receiver and the Corporation may relocate to other quarters having adequate and suitable space and the costs of relocation and any rental and utility costs for the balance of the period of occupancy by the Receiver and the Corporation shall be borne by the Assuming Bank.

4.12 Omitted.

4.13 Omitted.

ARTICLE V DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK

5.1 Payment of Checks, Drafts and Orders. Subject to Section 9.5, the Assuming Bank agrees to pay all properly drawn checks, drafts and withdrawal orders of depositors of the Failed Bank presented for payment, whether drawn on the check or draft forms provided by the Failed Bank or by the Assuming Bank, to the extent that the Deposit balances to the credit of the respective makers or drawers assumed by the Assuming Bank under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to the Deposit balances due and owing to the depositors of the Failed Bank assumed by the Assuming Bank under this Agreement.

5.2 Certain Agreements Related to Deposits. Subject to Section 2.2, the Assuming Bank agrees to honor the terms and conditions of any written escrow or mortgage servicing agreement or other similar agreement relating to a Deposit liability assumed by the Assuming Bank pursuant to this Agreement.

5.3 Notice to Depositors.

(a) Within thirty (30) days after Bank Closing, the Assuming Bank shall give (i) notice to depositors of the Failed Bank of its assumption of the Deposit liabilities of the Failed Bank, and (ii) any notice required under Section 2.2, by mailing to each such depositor a notice with respect to such assumption and by advertising in a newspaper of general circulation in the county or counties in which the Failed Bank was located. The Assuming Bank agrees that it will obtain prior approval of all such notices and advertisements from counsel for the Receiver and that such notices and advertisements shall not be mailed or published until such approval is received.

(b) The Assuming Bank shall give notice by mail to depositors of the Failed Bank concerning the procedures to claim their deposits, which notice shall be provided to the

Assuming Bank by the Receiver or the Corporation. Such notice shall be included with the notice to depositors to be mailed by the Assuming Bank pursuant to Section 5.3(a).

(c) If the Assuming Bank proposes to charge fees different from those charged by the Failed Bank before it establishes new deposit account relationships with the depositors of the Failed Bank, the Assuming Bank shall give notice by mail of such changed fees to such depositors.

ARTICLE VI RECORDS

6.1 Transfer of Records.

(a) In accordance with Section 3.1, the Receiver assigns, transfers, conveys and delivers to the Assuming Bank the following Records pertaining to the Deposit liabilities of the Failed Bank assumed by the Assuming Bank under this Agreement, except as provided in Section 6.4:

- (i) signature cards, orders, contracts between the Failed Bank and its depositors and Records of similar character;
- (ii) passbooks of depositors held by the Failed Bank, deposit slips, cancelled checks and withdrawal orders representing charges to accounts of depositors;

and the following Records pertaining to the Assets:

- (iii) records of deposit balances carried with other banks, bankers or trust companies;
- (iv) Loan and collateral records and Credit Files and other documents;
- (v) deeds, mortgages, abstracts, surveys, and other instruments or records of title pertaining to real estate or real estate mortgages;
- (vi) signature cards, agreements and records pertaining to Safe Deposit Boxes, if any; and
- (vii) records pertaining to the credit card business, trust business or safekeeping business of the Failed Bank, if any.

(b) The Receiver, at its option, may assign and transfer to the Assuming Bank by a single blanket assignment or otherwise, as soon as practicable after Bank Closing, any other Records not assigned and transferred to the Assuming Bank as provided in this Agreement, including but not limited to loan disbursement checks, general ledger tickets, official bank checks, proof transactions (including proof tapes) and paid out loan files.

6.2 Delivery of Assigned Records. The Receiver shall deliver to the Assuming Bank all Records described in (i) Section 6.1(a) as soon as practicable on or after the date of this Agreement, and (ii) Section 6.1(b) as soon as practicable after making any assignment described therein.

6.3 Preservation of Records. The Assuming Bank agrees that it will preserve and maintain for the joint benefit of the Receiver, the Corporation and the Assuming Bank, all Records of which it has custody for such period as either the Receiver or the Corporation in its discretion may require, until directed otherwise, in writing, by the Receiver or Corporation. The Assuming Bank shall have the primary responsibility to respond to subpoenas, discovery requests, and other similar official inquiries with respect to the Records of which it has custody.

6.4 Access to Records; Copies. The Assuming Bank agrees to permit the Receiver and the Corporation access to all Records of which the Assuming Bank has custody, and to use, inspect, make extracts from or request copies of any such Records in the manner and to the extent requested, and to duplicate, in the discretion of the Receiver or the Corporation, any Record in the form of microfilm or microfiche pertaining to Deposit account relationships; provided, that in the event that the Failed Bank maintained one or more duplicate copies of such microfilm or microfiche Records, the Assuming Bank hereby assigns, transfers, and conveys to the Corporation one such duplicate copy of each such Record without cost to the Corporation, and agrees to deliver to the Corporation all Records assigned and transferred to the Corporation under this Article VI as soon as practicable on or after the date of this Agreement. The party requesting a copy of any Record shall bear the cost (based on standard accepted industry charges to the extent applicable, as determined by the Receiver) for providing such duplicate Records. A copy of each Record requested shall be provided as soon as practicable by the party having custody thereof.

ARTICLE VII BID; INITIAL PAYMENT

The Assuming Bank has submitted to the Receiver a positive bid of \$1,888,000,000.00 for the Assets purchased and Liabilities Assumed hereunder (the "Bid Amount"). On the Payment Date, the Assuming Bank will pay to the Corporation, or the Corporation will pay to the Assuming Bank, as the case may be, the Initial Payment, together with interest on such amount (if the Payment Date is not the day following the day of Bank Closing) from and including the day following Bank Closing to and including the day preceding the Payment Date at the Settlement Interest Rate.

ARTICLE VIII PROFORMA

The Assuming Bank, as soon as practical after Bank Closing, in accordance with the best information then available, shall provide to the Receiver a Proforma Statement of Condition indicating all assets and liabilities of the Failed Bank as shown on the Failed Bank's books and records as of Bank Closing and reflecting which assets and liabilities are passing to the Assuming Bank and which assets and liabilities are to be retained by the Receiver. In addition, the Assuming Bank is to provide to the Receiver, in a standard data request as defined by the Receiver, an electronic database of all loans, deposits, and subsidiaries and other business combinations owned by the Failed Bank as of Bank Closing. See Schedule 3.1a.

ARTICLE IX CONTINUING COOPERATION

9.1 General Matters. The parties hereto agree that they will, in good faith and with their best efforts, cooperate with each other to carry out the transactions contemplated by this Agreement and to effect the purposes hereof.

9.2 Additional Title Documents. The Receiver, the Corporation and the Assuming Bank each agree, at any time, and from time to time, upon the request of any party hereto, to execute and deliver such additional instruments and documents of conveyance as shall be reasonably necessary to vest in the appropriate party its full legal or equitable title in and to the property transferred pursuant to this Agreement or to be transferred in accordance herewith. The Assuming Bank shall prepare such instruments and documents of conveyance (in form and substance satisfactory to the Receiver) as shall be necessary to vest title to the Assets in the Assuming Bank. The Assuming Bank shall be responsible for recording such instruments and documents of conveyance at its own expense.

9.3 Claims and Suits.

(a) The Receiver shall have the right, in its discretion, to (i) defend or settle any claim or suit against the Assuming Bank with respect to which the Receiver has indemnified the Assuming Bank in the same manner and to the same extent as provided in Article XII, and (ii) defend or settle any claim or suit against the Assuming Bank with respect to any Liability Assumed, which claim or suit may result in a loss to the Receiver arising out of or related to this Agreement, or which existed against the Failed Bank on or before Bank Closing. The exercise by the Receiver of any rights under this Section 9.3(a) shall not release the Assuming Bank with respect to any of its obligations under this Agreement.

(b) In the event any action at law or in equity shall be instituted by any Person against the Receiver and the Corporation as codefendants with respect to any asset of the Failed Bank retained or acquired pursuant to this Agreement by the Receiver, the Receiver agrees, at the request of the Corporation, to join with the Corporation in a petition to remove the action to the United States District Court for the proper district. The Receiver agrees to institute, with or without joinder of the Corporation as coplaintiff, any action with respect to any such retained or acquired asset or any matter connected therewith whenever notice requiring such action shall be given by the Corporation to the Receiver.

9.4 Payment of Deposits. In the event any depositor does not accept the obligation of the Assuming Bank to pay any Deposit liability of the Failed Bank assumed by the Assuming Bank pursuant to this Agreement and asserts a claim against the Receiver for all or any portion of any such Deposit liability, the Assuming Bank agrees on demand to provide to the Receiver funds sufficient to pay such claim in an amount not in excess of the Deposit liability reflected on the books of the Assuming Bank at the time such claim is made. Upon payment by the Assuming Bank to the Receiver of such amount, the Assuming Bank shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Deposit liability paid to the Receiver.

9.5 Withheld Payments. At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance assumed by the Assuming Bank pursuant to this Agreement does not constitute a "Deposit" (or otherwise, in its discretion, determine that it is the best interest of the Receiver or Corporation to withhold all or any portion of any deposit), and may direct the Assuming Bank to withhold payment of all or any portion of any such deposit balance. Upon such direction, the Assuming Bank agrees to hold such deposit and not to make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. The Assuming Bank agrees to maintain the "withheld payment" status of any such deposit balance until directed in writing by the Receiver or the Corporation as to its disposition. At the direction of the Receiver or the Corporation, the Assuming Bank shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Assuming Bank shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Assuming Bank shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Assuming Bank shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Assuming Bank in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance the payment of which was withheld pursuant to this Section.

9.6 Proceedings with Respect to Certain Assets and Liabilities.

(a) In connection with any investigation, proceeding or other matter with respect to any asset or liability of the Failed Bank retained by the Receiver, or any asset of the Failed Bank acquired by the Receiver pursuant to this Agreement, the Assuming Bank shall cooperate to the extent reasonably required by the Receiver.

(b) In addition to its obligations under Section 6.4, the Assuming Bank shall provide representatives of the Receiver access at reasonable times and locations without other limitation or qualification to (i) its directors, officers, employees and agents and those of the Subsidiaries acquired by the Assuming Bank, and (ii) its books and records, the books and records of such Subsidiaries and all Credit Files, and copies thereof. Copies of books, records and Credit Files

shall be provided by the Assuming Bank as requested by the Receiver and the costs of duplication thereof shall be borne by the Receiver.

(c) Not later than ten (10) days after the Put Notice pursuant to Section 3.4 or the date of the notice of transfer of any Loan by the Assuming Bank to the Receiver pursuant to Section 3.6, the Assuming Bank shall deliver to the Receiver such documents with respect to such Loan as the Receiver may request, including without limitation the following: (i) all related Credit Documents (other than certificates, notices and other ancillary documents), (ii) a certificate setting forth the principal amount on the date of the transfer and the amount of interest, fees and other charges then accrued and unpaid thereon, and any restrictions on transfer to which any such Loan is subject, and (iii) all Credit Files, and all documents, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) maintained by, owned by, or in the possession of the Assuming Bank or any Affiliate of the Assuming Bank relating to the transferred Loan.

9.7 Information. The Assuming Bank promptly shall provide to the Corporation such other information, including financial statements and computations, relating to the performance of the provisions of this Agreement as the Corporation or the Receiver may request from time to time, and, at the request of the Receiver, make available employees of the Failed Bank employed or retained by the Assuming Bank to assist in preparation of the pro forma statement pursuant to Section 8.1.

ARTICLE X CONDITION PRECEDENT

The obligations of the parties to this Agreement are subject to the Receiver and the Corporation having received at or before Bank Closing evidence reasonably satisfactory to each of any necessary approval, waiver, or other action by any governmental authority, the board of directors of the Assuming Bank, or other third party, with respect to this Agreement and the transactions contemplated hereby, the closing of the Failed Bank and the appointment of the Receiver, the chartering of the Assuming Bank, and any agreements, documents, matters or proceedings contemplated hereby or thereby.

ARTICLE XI REPRESENTATIONS AND WARRANTIES OF THE ASSUMING BANK

The Assuming Bank represents and warrants to the Corporation and the Receiver as follows:

(a) **Corporate Existence and Authority.** The Assuming Bank (i) is duly organized, validly existing and in good standing under the laws of its Chartering Authority and has full power and authority to own and operate its properties and to conduct its business as now conducted by it, and (ii) has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Assuming Bank has taken all necessary corporate

action to authorize the execution, delivery and performance of this Agreement and the performance of the transactions contemplated hereby.

(b) **Third Party Consents**. No governmental authority or other third party consents (including but not limited to approvals, licenses, registrations or declarations) are required in connection with the execution, delivery or performance by the Assuming Bank of this Agreement, other than such consents as have been duly obtained and are in full force and effect.

(c) **Execution and Enforceability**. This Agreement has been duly executed and delivered by the Assuming Bank and when this Agreement has been duly authorized, executed and delivered by the Corporation and the Receiver, this Agreement will constitute the legal, valid and binding obligation of the Assuming Bank, enforceable in accordance with its terms.

(d) **Compliance with Law**.

(i) Neither the Assuming Bank nor any of its Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Assuming Bank or any of its Subsidiaries or any assets of any such Person, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Assuming Bank or of any of its Subsidiaries, or the ownership of the properties of the Assuming Bank or any of its Subsidiaries, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of the Assuming Bank or the ability of the Assuming Bank to perform, satisfy or observe any obligation or condition under this Agreement.

(ii) Neither the execution and delivery nor the performance by the Assuming Bank of this Agreement will result in any violation by the Assuming Bank of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.

e) **Representations Remain True**. The Assuming Bank represents and warrants that it has executed and delivered to the Corporation a Purchaser Eligibility Certification and Confidentiality Agreement and that all information provided and representations made by or on behalf of the Assuming Bank in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the Purchaser Eligibility Certification and Confidentiality Agreement (which are affirmed and ratified hereby) are and remain true and correct in all material respects and do not fail to state any fact required to make the information contained therein not misleading.

ARTICLE XII INDEMNIFICATION

12.1 Indemnification of Indemnitees. From and after Bank Closing and subject to the limitations set forth in this Section and Section 12.6 and compliance by the Indemnitees with Section 12.2, the Receiver agrees to indemnify and hold harmless the Indemnitees against any and all costs, losses, liabilities, expenses (including attorneys' fees) incurred prior to the assumption of defense by the Receiver pursuant to paragraph (d) of Section 12.2, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with claims against any Indemnitee (1) based on liabilities of the Failed Bank that are not assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank for which indemnification is provided hereunder in (a) of this Section 12.1 or (2) described in Section 12.1(a) below subject in each case to certain exclusions as provided in (b) of this Section 12.1:

(a)

(1) claims based on the rights of any shareholder or former shareholder as such of (x) the Failed Bank, or (y) any Subsidiary or Affiliate of the Failed Bank;

(2) claims based on the rights of any creditor as such of the Failed Bank, or any creditor as such of any director, officer, employee or agent of the Failed Bank or any Affiliate of the Failed Bank, with respect to any indebtedness or other obligation of the Failed Bank or any Affiliate of the Failed Bank arising prior to Bank Closing;

(3) claims based on the rights of any present or former director, officer, employee or agent as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank;

(4) claims based on any action or inaction prior to Bank Closing of the Failed Bank, its directors, officers, employees or agents as such, or any Subsidiary or Affiliate of the Failed Bank, or the directors, officers, employees or agents as such of such Subsidiary or Affiliate;

(5) claims based on any malfeasance, misfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business of the Failed Bank, if any;

(6) claims based on any failure or alleged failure (not in violation of law) by the Assuming Bank to continue to perform any service or activity previously performed by the Failed Bank which the Assuming Bank is not required to perform pursuant to this Agreement or which arise under any contract to which the Failed Bank was a party which the Assuming Bank elected not to assume in accordance with this Agreement and which neither the Assuming Bank nor any Subsidiary or Affiliate of the Assuming Bank has assumed subsequent to the execution hereof;

(7) claims arising from any action or inaction of any Indemnitee, including for purposes of this Section 12.1(a)(7) the former officers or employees of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank that is taken upon the specific written direction of the Corporation or the Receiver, other than any action or inaction taken in a manner constituting bad faith, gross negligence or willful misconduct; and

(8) claims based on the rights of any depositor of the Failed Bank whose deposit has been accorded "withheld payment" status and/or returned to the Receiver or Corporation in accordance with Section 9.5 and/or has become an "unclaimed deposit" or has been returned to the Corporation or the Receiver in accordance with Section 2.3;

(9) claims asserted by, or derivatively by any shareholder on behalf of, the Failed Bank's parent company based on the process of bidding, negotiation, execution and consummation of the transactions contemplated by this Agreement, provided that (x) the amount of the indemnification paid or payable pursuant to this clause (9) shall not exceed \$500,000,000, and (y) the indemnification provided by this clause (9) shall cover only those claims specifically enumerated in the FDIC's approval of the transactions contemplated by this Agreement.

(b) provided, that, with respect to this Agreement, except for paragraphs (7), (8) and (9) of Section 12.1(a), no indemnification will be provided under this Agreement for any:

(1) judgment or fine against, or any amount paid in settlement (without the written approval of the Receiver) by, any Indemnitee in connection with any action that seeks damages against any Indemnitee (a "counterclaim") arising with respect to any Asset and based on any action or inaction of either the Failed Bank, its directors, officers, employees or agents as such prior to Bank Closing, unless any such judgment, fine or amount paid in settlement exceeds the greater of (i) the Repurchase Price of such Asset, or (ii) the monetary recovery sought on such Asset by the Assuming Bank in the cause of action from which the counterclaim arises; and in such event the Receiver will provide indemnification only in the amount of such excess; and no indemnification will be provided for any costs or expenses other than any costs or expenses (including attorneys' fees) which, in the determination of the Receiver, have been actually and reasonably incurred by such Indemnitee in connection with the defense of any such counterclaim; and it is expressly agreed that the Receiver reserves the right to intervene, in its discretion, on its behalf and/or on behalf of the Receiver, in the defense of any such counterclaim;

(2) claims with respect to any liability or obligation of the Failed Bank that is expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;

(3) claims with respect to any liability of the Failed Bank to any present or former employee as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank, which liability is expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;

(4) claims based on the failure of any Indemnitee to seek recovery of damages from the Receiver for any claims based upon any action or inaction of the Failed Bank, its directors, officers, employees or agents as fiduciary, agent or custodian prior to Bank Closing;

(5) claims based on any violation or alleged violation by any Indemnitee of the antitrust, branching, banking or bank holding company or securities laws of the United States of America or any State thereof;

(6) claims based on the rights of any present or former creditor, customer, or supplier as such of the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;

(7) claims based on the rights of any present or former shareholder as such of the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank regardless of whether any such present or former shareholder is also a present or former shareholder of the Failed Bank;

(8) claims, if the Receiver determines that the effect of providing such indemnification would be to (i) expand or alter the provisions of any warranty or disclaimer thereof provided in Section 3.3 or any other provision of this Agreement, or (ii) create any warranty not expressly provided under this Agreement;

(9) claims which could have been enforced against any Indemnitee had the Assuming Bank not entered into this Agreement;

(10) claims based on any liability for taxes or fees assessed with respect to the consummation of the transactions contemplated by this Agreement, including without limitation any subsequent transfer of any Assets or Liabilities Assumed to any Subsidiary or Affiliate of the Assuming Bank;

(11) except as expressly provided in this Article XII, claims based on any action or inaction of any Indemnitee, and nothing in this Agreement shall be construed to provide indemnification for (i) the Failed Bank, (ii) any Subsidiary or Affiliate of the Failed Bank, or (iii) any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates; provided, that the Receiver, in its discretion, may provide indemnification hereunder for any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates who is also or becomes a director, officer, employee or agent of the Assuming Bank or its Subsidiaries or Affiliates;

(12) claims or actions which constitute a breach by the Assuming Bank of the representations and warranties contained in Article XI;

(13) claims arising out of or relating to the condition of or generated by an Asset arising from or relating to the presence, storage or release of any hazardous or toxic substance, or any pollutant or contaminant, or condition of such Asset which violate any applicable Federal, State or local law or regulation concerning environmental protection;

(14) claims based on, related to or arising from any asset, including a loan, acquired or liability assumed by the Assuming Bank, other than pursuant to this Agreement; and

(15) claims based on, related to or arising from any liability specifically not assumed by the Assuming Bank pursuant to Section 2.5 of this Agreement.

12.2 Conditions Precedent to Indemnification. It shall be a condition precedent to the obligation of the Receiver to indemnify any Person pursuant to this Article XII that such

Person shall, with respect to any claim made or threatened against such Person for which such Person is or may be entitled to indemnification hereunder:

(a) give written notice to the Regional Counsel (Litigation Branch) of the Corporation in the manner and at the address provided in Section 13.7 of such claim as soon as practicable after such claim is made or threatened; provided, that notice must be given on or before the date which is six (6) years from the date of this Agreement;

(b) provide to the Receiver such information and cooperation with respect to such claim as the Receiver may reasonably require;

(c) cooperate and take all steps, as the Receiver may reasonably require, to preserve and protect any defense to such claim;

(d) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Receiver the right, which the Receiver may exercise in its sole discretion, to conduct the investigation, control the defense and effect settlement of such claim, including without limitation the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim, all of which shall be at the expense of the Receiver; provided, that the Receiver shall have notified the Person claiming indemnification in writing that such claim is a claim with respect to which the Person claiming indemnification is entitled to indemnification under this Article XII;

(e) not incur any costs or expenses in connection with any response or suit with respect to such claim, unless such costs or expenses were incurred upon the written direction of the Receiver; provided, that the Receiver shall not be obligated to reimburse the amount of any such costs or expenses unless such costs or expenses were incurred upon the written direction of the Receiver;

(f) not release or settle such claim or make any payment or admission with respect thereto, unless the Receiver consents in writing thereto, which consent shall not be unreasonably withheld; provided, that the Receiver shall not be obligated to reimburse the amount of any such settlement or payment unless such settlement or payment was effected upon the written direction of the Receiver; and

(g) take reasonable action as the Receiver may request in writing as necessary to preserve, protect or enforce the rights of the indemnified Person against any Primary Indemnitor.

12.3 No Additional Warranty. Nothing in this Article XII shall be construed or deemed to (i) expand or otherwise alter any warranty or disclaimer thereof provided under Section 3.3 or any other provision of this Agreement with respect to, among other matters, the title, value, collectibility, genuineness, enforceability or condition of any (x) Asset, or (y) asset of the Failed Bank purchased by the Assuming Bank subsequent to the execution of this Agreement by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank, or (ii) create any warranty not expressly provided under this Agreement with respect thereto.

12.4 Indemnification of Receiver and Corporation. From and after Bank Closing, the Assuming Bank agrees to indemnify and hold harmless the Corporation and the Receiver and their respective directors, officers, employees and agents from and against any and all costs, losses, liabilities, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any of the following:

(a) claims based on any and all liabilities or obligations of the Failed Bank assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank, whether or not any such liabilities subsequently are sold and/or transferred, other than any claim based upon any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a); and

(b) claims based on any act or omission of any Indemnitee (including but not limited to claims of any Person claiming any right or title by or through the Assuming Bank with respect to Assets transferred to the Receiver pursuant to Section 3.4 or 3.6), other than any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a).

12.5 Obligations Supplemental. The obligations of the Receiver, and the Corporation as guarantor in accordance with Section 12.7, to provide indemnification under this Article XII are to supplement any amount payable by any Primary Indemnitor to the Person indemnified under this Article XII. Consistent with that intent, the Receiver agrees only to make payments pursuant to such indemnification to the extent not payable by a Primary Indemnitor. If the aggregate amount of payments by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, and all Primary Indemnitors with respect to any item of indemnification under this Article XII exceeds the amount payable with respect to such item, such Person being indemnified shall notify the Receiver thereof and, upon the request of the Receiver, shall promptly pay to the Receiver, or the Corporation as appropriate, the amount of the Receiver's (or Corporation's) payments to the extent of such excess.

12.6 Criminal Claims. Notwithstanding any provision of this Article XII to the contrary, in the event that any Person being indemnified under this Article XII shall become involved in any criminal action, suit or proceeding, whether judicial, administrative or investigative, the Receiver shall have no obligation hereunder to indemnify such Person for liability with respect to any criminal act or to the extent any costs or expenses are attributable to the defense against the allegation of any criminal act, unless (i) the Person is successful on the merits or otherwise in the defense against any such action, suit or proceeding, or (ii) such action, suit or proceeding is terminated without the imposition of liability on such Person.

12.7 Limited Guaranty of the Corporation. The Corporation hereby guarantees performance of the Receiver's obligation to indemnify the Assuming Bank as set forth in this Article XII. It is a condition to the Corporation's obligation hereunder that the Assuming Bank shall comply in all respects with the applicable provisions of this Article XII. The Corporation shall be liable hereunder only for such amounts, if any, as the Receiver is obligated to pay under the terms of this Article XII but shall fail to pay. Except as otherwise provided above in this Section 12.7, nothing in this Article XII is intended or shall be construed to create any liability or obligation on the part of the Corporation, the United States of America or any department or

agency thereof under or with respect to this Article XII, or any provision hereof, it being the intention of the parties hereto that the obligations undertaken by the Receiver under this Article XII are the sole and exclusive responsibility of the Receiver and no other Person or entity.

12.8 Subrogation. Upon payment by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, to any Indemnitee for any claims indemnified by the Receiver under this Article XII, the Receiver, or the Corporation as appropriate, shall become subrogated to all rights of the Indemnitee against any other Person to the extent of such payment.

ARTICLE XIII MISCELLANEOUS

13.1 Entire Agreement. This Agreement embodies the entire agreement of the parties hereto in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties.

13.2 Headings. The headings and subheadings of the Table of Contents, Articles and Sections contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

13.3 Counterparts. This Agreement may be executed in any number of counterparts and by the duly authorized representative of a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

13.4 GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE FAILED BANK IS LOCATED.

13.5 Successors. All terms and conditions of this Agreement shall be binding on the successors and assigns of the Receiver, the Corporation and the Assuming Bank. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the Receiver, the Corporation and the Assuming Bank any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Receiver, the Corporation and the Assuming Bank and for the benefit of no other Person.

13.6 Modification; Assignment. No amendment or other modification, rescission, release, or assignment of any part of this Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto.

13.7 Notice. Any notice, request, demand, consent, approval or other communication to any party hereto shall be effective when received and shall be given in writing, and delivered in person against receipt therefore, or sent by certified mail, postage prepaid, courier service, telex or facsimile transmission to such party (with copies as indicated below) at its address set forth below or at such other address as it shall hereafter furnish in writing to the other parties. All such notices and other communications shall be deemed given on the date received by the addressee.

Assuming Bank

JPMorgan Chase Bank, National Association
270 Park Avenue
New York, New York 10017

Attention: Brian A. Bessey

with a copy to: Stephen M. Cutler

Receiver and Corporation

Federal Deposit Insurance Corporation,
Receiver of Washington Mutual Bank, Henderson, Nevada
1601 Bryan St., Suite 1700
Dallas, Texas 75201

Attention: Deputy Director (DRR-Field Operations Branch)

with copy to: Regional Counsel (Litigation Branch)

and with respect to notice under Article XII:

Federal Deposit Insurance Corporation
Receiver of Washington Mutual Bank, Henderson, Nevada
1601 Bryan St., Suite 1700
Dallas, Texas 75201
Attention: Regional Counsel (Litigation Branch)

13.8 Manner of Payment. All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided, that in the event the Receiver or the Corporation is obligated to make any payment hereunder in the amount of \$25,000.00 or less, such payment may be made by check.

13.9 Costs, Fees and Expenses. Except as otherwise specifically provided herein, each party hereto agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including without limitation any fees and disbursements to its accountants and counsel; provided, that the Assuming Bank shall pay all fees, costs and expenses (other than attorneys' fees incurred by the Receiver) incurred in connection with the transfer to it of any Assets or Liabilities Assumed hereunder or in accordance herewith.

13.10 Waiver. Each of the Receiver, the Corporation and the Assuming Bank may waive its respective rights, powers or privileges under this Agreement; provided, that such waiver shall be in writing; and further provided, that no failure or delay on the part of the Receiver, the Corporation or the Assuming Bank to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege by the Receiver, the Corporation, or the Assuming Bank under this Agreement, nor will any such waiver operate or be construed as a future waiver of such right, power or privilege under this Agreement.

13.11 Severability. If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

13.12 Term of Agreement. This Agreement shall continue in full force and effect until the sixth (6th) anniversary of Bank Closing; provided, that the provisions of Section 6.3 and 6.4 shall survive the expiration of the term of this Agreement. Provided, however, the receivership of the Failed Bank may be terminated prior to the expiration of the term of this Agreement; in such event, the guaranty of the Corporation, as provided in and in accordance with the provisions of Section 12.7 shall be in effect for the remainder of the term. Expiration of the term of this Agreement shall not affect any claim or liability of any party with respect to any (i) amount which is owing at the time of such expiration, regardless of when such amount becomes payable, and (ii) breach of this Agreement occurring prior to such expiration, regardless of when such breach is discovered.

13.13 Survival of Covenants, Etc. The covenants, representations, and warranties in this Agreement shall survive the execution of this Agreement and the consummation of the transactions contemplated hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF: WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA**

BY: _____

NAME: Mitchell L. Glassman
TITLE: Director

Attest:

FEDERAL DEPOSIT INSURANCE CORPORATION

BY: _____

NAME: Mitchell L. Glassman
TITLE: Director

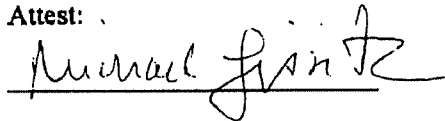
Attest:

**JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION**

BY:  _____

NAME: Brian A. Bessey
TITLE: Senior Vice President

Attest:

 _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION,
RECEIVER OF: WASHINGTON MUTUAL BANK,
HENDERSON, NEVADA**

BY: Mitchell L. Glassman

NAME: Mitchell L. Glassman
TITLE: Director

Attest:

David Gen

FEDERAL DEPOSIT INSURANCE CORPORATION

BY: Mitchell L. Glassman

NAME: Mitchell L. Glassman
TITLE: Director

Attest:

David Gen

**JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION**

BY: _____

NAME: Brian A. Bessey
TITLE: Senior Vice President

Attest:

SCHEDULE 2.1 - Certain Liabilities Not Assumed

1. Preferred stock and litigation pending against the Failed Bank related to liabilities retained by the receiver.
2. Subordinated debt.
3. Senior debt.
4. All employee benefit plans sponsored by the holding company of the Failed Bank except the tax-qualified pension and 401(k) plans and employee medical plan.
5. All management, employment, change-in-control, severance, unfunded deferred compensation and individual consulting agreements or plans (i) between the Failed Bank and its employees or (ii) maintained by the Failed Bank on behalf of its employees.

SCHEDULE 3.2 - Purchase Price of Assets

(a)	cash and receivables from depository institutions, including cash items in the process of collection, plus interest thereon:	Book Value
(b)	securities (exclusive of the capital stock of Acquired Subsidiaries), plus interest thereon:	Market Value
(c)	federal funds sold and repurchase agreements, if any, including interest thereon:	Book Value
(d)	Loans:	Book Value
(e)	Other Real Estate:	Book Value
(f)	credit card business, if any, including all outstanding extensions of credit:	Book Value
(g)	Safe Deposit Boxes and related business, safekeeping business and trust business, if any:	Book Value
(h)	Records and other documents:	Book Value
(i)	capital stock of any Acquired Subsidiaries:	Book Value
(j)	amounts owed to the Failed Bank by any Acquired Subsidiary:	Book Value
(k)	assets securing Deposits of public money, to the extent not otherwise purchased hereunder:	Book Value
(l)	Overdrafts of customers:	Book Value

- | | | |
|-----|--|--------------|
| (m) | rights, if any, with respect to Qualified Financial Contracts. | Market Value |
| (n) | rights of the Failed Bank to provide mortgage servicing for others and to have mortgage servicing provided to the Failed Bank by others and related contracts. | Book Value |
| (o) | Bank Premises: | Book Value |
| (p) | Furniture and Equipment: | Book Value |
| (q) | Fixtures: | Book Value |

SCHEDULE 3.5 - Certain Assets Not Purchased

(1) Any Financial Institution Bonds, Banker's Blanket Bonds, surety bonds (except Court bonds required for retained litigation risk), Directors and Officers insurance, Professional Liability insurance, or related premium refund, unearned premium derived from cancellation, or any proceeds payable with respect to any of the foregoing. This shall exclude Commercial General Liability, International Liability, Commercial Automobile, Worker's Compensation, Employer's Liability, Umbrella and Excess Liability, Property, Mortgage Impairment and Mortgage Errors & Omissions, Lender-placed coverage, Private Mortgage Insurance, Boiler & Machinery, Terrorism, Mail, Storage Tank Liability, Marine Liability, Vessel Hull and Vessel Pollution (if marine assets are acquired), Aircraft Liability (if aircraft assets are acquired) insurance policies, proceeds and collateral related to, held or issued with respect to or in connection with any Asset (including Bank staff) acquired by the Assuming Bank under this Agreement, which such policies, proceeds and collateral are acquired Assets.

(2) any interest, right, action, claim, or judgment against (i) any officer, director, employee, accountant, attorney, or any other Person employed or retained by the Failed Bank or any Subsidiary of the Failed Bank on or prior to Bank Closing arising out of any act or omission of such Person in such capacity, (ii) any underwriter of financial institution bonds, banker's blanket bonds or any other insurance policy of the Failed Bank, (iii) any shareholder or holding company of the Failed Bank, or (iv) any other Person whose action or inaction may be related to any loss (exclusive of any loss resulting from such Person's failure to pay on a Loan made by the Failed Bank) incurred by the Failed Bank; provided, that for the purposes hereof, the acts, omissions or other events giving rise to any such claim shall have occurred on or before Bank Closing, regardless of when any such claim is discovered and regardless of whether any such claim is made with respect to a financial institution bond, banker's blanket bond, or any other insurance policy of the Failed Bank in force as of Bank Closing;

(3) leased Bank Premises and leased Furniture and Equipment and Fixtures and data processing equipment (including hardware and software) located on leased or owned Bank Premises, if any; provided, that the Assuming Bank does obtain an option under Section 4.6, Section 4.7 or Section 4.8, as the case may be, with respect thereto; and

(4) any criminal/restitution orders issued in favor of the Failed Bank;

**EXHIBIT 3.2(c) -- VALUATION OF CERTAIN
QUALIFIED FINANCIAL CONTRACTS**

A. Scope

Interest Rate Contracts - All interest rate swaps, forward rate agreements, interest rate futures, caps, collars and floors, whether purchased or written.

Option Contracts - All put and call option contracts, whether purchased or written, on marketable securities, financial futures, foreign currencies, foreign exchange or foreign exchange futures contracts.

Foreign Exchange Contracts - All contracts for future purchase or sale of foreign currencies, foreign currency or cross currency swap contracts, or foreign exchange futures contracts.

B. Exclusions

All financial contracts used to hedge assets and liabilities that are acquired by the Assuming Bank but are not subject to adjustment from Book Value.

C. Adjustment

The difference between the Book Value and market value as of Bank Closing.

D. Methodology

1. The price at which the Assuming Bank sells or disposes of Qualified Financial Contracts will be deemed to be the fair market value of such contracts, if such sale or disposition occurs at prevailing market rates within a predefined timetable as agreed upon by the Assuming Bank and the Receiver.
2. In valuing all other Qualified Financial Contracts, the following principles will apply:
 - (i) All known cash flows under swaps or forward exchange contracts shall be present valued to the swap zero coupon interest rate curve.
 - (ii) All valuations shall employ prices and interest rates based on the actual frequency of rate reset or payment.
 - (iii) Each tranche of amortizing contracts shall be separately valued. The total value of such amortizing contract shall be the sum of the values of its component tranches.

- (iv) For regularly traded contracts, valuations shall be at the midpoint of the bid and ask prices quoted by customary sources (e.g., The Wall Street Journal, Telerate, Reuters or other similar source) or regularly traded exchanges.

- (v) For all other Qualified Financial Contracts where published market quotes are unavailable, the adjusted price shall be the average of the bid and ask price quotes from three (3) securities dealers acceptable to the Receiver and Assuming Bank as of Bank Closing. If quotes from securities dealers cannot be obtained, an appraiser acceptable to the Receiver and the Assuming Bank will perform a valuation based on modeling, correlation analysis, interpolation or other techniques, as appropriate.

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WASHINGTON MUTUAL, INC. and
WMI INVESTMENT CORP.

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its capacity as receiver of
Washington Mutual Bank, and FEDERAL
DEPOSIT INSURANCE CORPORATION, in
its corporate capacity,

Defendants.

Case No. 1:09-cv-0533 (RMC)

**ANSWER AND COUNTERCLAIMS OF DEFENDANT
FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER FOR WASHINGTON MUTUAL BANK**

Defendant, the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank (the "FDIC-Receiver"), for its Answer and Counterclaims, alleges upon knowledge as to itself and its own actions and upon information and belief as to all others, as follows:

ANSWER

Except as otherwise expressly admitted, the FDIC-Receiver denies each and every allegation in plaintiffs' complaint in this action (the "Complaint"), including without limitation any allegations contained in its prayer, headings and subheadings. In many instances, plaintiffs purport to assert claims in the body of their allegations without specifying, except in the most generalized manner, the basis or alleged amount of such purported claims, including many alleged "claims" that appear to be inchoate, contingent, hypothetical, speculative or otherwise remote or inactionable. The FDIC-Receiver objects to, and denies liability with respect to, all of such claims, unless otherwise expressly stated herein. In accordance with Federal Rule of Civil

Procedure 8(b)(5), to the extent the FDIC-Receiver denies knowledge or information sufficient to form a belief as to the truth of an allegation, that allegation is deemed to be denied. This answer is based upon the FDIC-Receiver's investigation to date, and the FDIC-Receiver expressly reserves the right to amend this answer to the full extent provided for under applicable law.

PARTIES¹

1. Admits the allegations of paragraph 1 of the Complaint.
2. Admits the first sentence of paragraph 2 of the Complaint. The second and third sentences of paragraph 2 are characterizations of the Complaint and definitions of terms that do not require a response.
3. Admits the allegations of paragraph 3 of the Complaint.
4. Admits the allegations of paragraph 4 of the Complaint.

JURISDICTION AND VENUE

5. Admits that this Court has subject matter jurisdiction over this action under 12 U.S.C. §§ 1819(b)(2)(A) and 1821(d)(6). No response is required as to the remainder of paragraph 5, but to the extent any response is required those allegations are denied.
6. Admits that venue is proper in this District pursuant to 12 U.S.C. § 1821(d)(6)(A) and denies the remaining allegations of paragraph 6 of the Complaint.

BACKGROUND

7. Admits the allegations of paragraph 7 of the Complaint except refers to Office of Thrift Supervision ("OTS") order number 2008-36 for its contents.

¹ The headings of the Complaint are used in this Answer strictly for the Court's convenience. The FDIC-Receiver does not admit any of plaintiffs' allegations by such use.

8. Refers for its contents to the Purchase and Assumption Agreement, Whole Bank, among the FDIC-Receiver, Federal Deposit Insurance Corporation (“FDIC-Corporate”) and JPMorgan Chase Bank, National Association (“JPMC”) (the “P&A Agreement”) and denies any remaining allegations of paragraph 8 of the Complaint.

9. Admits the allegations in the first sentence of paragraph 9 of the Complaint. The second sentence of paragraph 9 states a legal conclusion as to which no response is required.

THE PROOF OF CLAIM

10. Admits the allegations of the first sentence of paragraph 10 of the Complaint. Denies the remaining allegations of paragraph 10, except refers for its contents to the receivership proof of claim (the “WMI Proof of Claim”) that was filed with the FDIC-Receiver by Washington Mutual, Inc. (“WMI”).

11. Admits that plaintiffs have purported to reserve certain rights as alleged in paragraph 11 of the Complaint and reserves all of the FDIC-Receiver’s defenses with respect thereto.

12. No response is required to the allegations of paragraph 12 of the Complaint, but to the extent any response is required those allegations are denied.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint, except the FDIC-Receiver denies the allegations in the first sentence of that paragraph and, as to the allegations in the last sentence of paragraph 13, refers to the WMI Proof of Claim for its contents.

A. Intercompany Loans

14. Denies knowledge or information sufficient to form a belief as to truth of the allegations of paragraph 14 of the Complaint.

15. Denies the allegations of paragraph 15 of the Complaint.

B. Intercompany Receivables

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint.

19. Denies the allegations of paragraph 19 of the Complaint.

C. Taxes

20. Denies the allegations of paragraph 20 of the Complaint, except the FDIC-Receiver refers for its contents to the Tax Sharing Agreement dated as of August 31, 1999 by and among WMI, Washington Mutual Bank fsb (“WMBfsb”), Washington Mutual Bank, New American Capital, Inc. and Aristar Inc. (the “Tax Sharing Agreement”).

21. Denies the allegations of paragraph 21 of the Complaint.

22. Denies the allegations of paragraph 22 of the Complaint.

23. Denies the allegations of paragraph 23 of the Complaint, except admits upon information and belief that certain foreign, state, local or foreign tax audits may be currently ongoing with respect to the filings by the consolidated tax group that included WMB for which WMI served as fiduciary prior to the FDIC-Receiver’s appointment on September 25, 2008.

24. No response is required to the allegations of paragraph 24 of the Complaint, but to the extent any response is required those allegations are denied.

D. Capital Contribution Claims

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Complaint, except admits upon information and belief that WMI made \$6.5 billion of capital contributions to WMB in the amounts and on the dates specified in that paragraph.

26. Denies the allegations of paragraph 26 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of that paragraph.

27. Denies the allegations of paragraph 27 of the Complaint.

28. Admits that WMI purports to assert the claims described in paragraph 28 of the Complaint and denies that such claims have merit.

E. Trust Preferred Securities Claims

29. Upon information and belief, admits the allegations of paragraph 29 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of that paragraph.

30. Upon information and belief, admits the allegations of paragraph 30 of the Complaint.

31. Upon information and belief, admits the allegations of paragraph 31, except refers for their contents to the various agreements and correspondence governing the terms of the trust preferred securities and the notice provided by the OTS.

32. Upon information and belief, admits the allegations of paragraph 32 of the Complaint, except refers for its contents to the Assignment Agreement between WMB as assignee and WMI as assignor effective as of September 25, 2008 (the "Assignment

Agreement"), and asserts that to the extent WMI at any time had possession of the trust preferred securities it held such assets in trust for WMB or, in the alternative, held at most bare legal title without an equitable interest. *See* 11 U.S.C. § 541(d). The FDIC-Receiver reserves all of its rights with respect to any and all defenses to enforceability that WMI might assert.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 33 of the Complaint. Denies the remaining allegations of paragraph 33 of the Complaint.

34. Denies the allegations of paragraph 34 of the Complaint.

35. Denies the allegations of paragraph 35 of the Complaint.

F. Preference Claims

36. Denies knowledge sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Complaint, including Exhibit 1 and footnote 2 that are incorporated therein. With respect to plaintiffs' purported reservation of rights, the FDIC-Receiver reserves all of its defenses.

37. Paragraph 37 states legal conclusions as to which no response is required, but to the extent any response is required the allegations are denied.

38. Denies the allegations of paragraph 38 of the Complaint.

39. Denies the allegations of paragraph 39 of the Complaint.

40. Denies the allegations of paragraph 40 of the Complaint.

G. Vendor Contract Claims

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Complaint.

H. Subrogation Claims

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Complaint.

44. Denies the allegations of paragraph 44 of the Complaint.

I. Allegedly Improper Asset Sales

45. Denies the allegations of paragraph 45 of the Complaint.

46. Denies the allegations of paragraph 46 of the Complaint and reserves all of the FDIC-Receiver's rights with respect thereto.

J. Deposit Claim

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint.

48. As to the first sentence of paragraph 48 of the Complaint, refers to the P&A Agreement for its contents. As to the second sentence of paragraph 48, admits that JPMC acquired the stock of WMBfsb pursuant to the P&A Agreement and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of that sentence.

49. Denies the allegations of paragraph 49 of the Complaint, except admits that the FDIC-Receiver has certain rights under the P&A Agreement or otherwise with respect to purported deposit balances assumed under that agreement and the FDIC-Receiver reserves all of its rights with respect to the purported deposit balances alleged by plaintiffs.

50. Denies the allegations of paragraph 50 of the Complaint.

K. Administrative Claims

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 of the Complaint.

L. Employee/Employer Related Costs and Insurance Claims

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Complaint, except to the extent any response is required, denies the allegations of the third sentence of paragraph 52.

53. Denies the allegations of paragraph 53 of the Complaint except admits upon information and belief that prior to the receivership WMI sponsored certain deferred compensation plans.

54. Denies the allegations of paragraph 54 of the Complaint.

55. No response is required to paragraph 55 of the Complaint, but to the extent any response is required the allegations of paragraph 55 are denied. The FDIC-Receiver reserves all of its rights to oppose any such claims.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint.

57. Denies the allegations of paragraph 57 of the Complaint.

M. Indemnification Claims

58. Denies knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph 58 of the Complaint, except refers to WMI's bylaws for their contents. Denies the last sentence of paragraph 58 of the Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 59 of the Complaint. Denies the last sentence of paragraph 59 of the Complaint.

N. Other Claims

60. Denies the allegations of paragraph 60 of the Complaint.

61. Denies the allegations of paragraph 61 of the Complaint.

THE FDIC'S DENIAL OF PLAINTIFFS' PROOF OF CLAIM

62. Admits the allegations of paragraph 62 of the Complaint.

63. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

64. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

65. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

66. Denies the allegations of paragraph 66 of the Complaint.

67. Denies the allegations of paragraph 67 of the Complaint.

68. Admits the allegations of paragraph 68 of the Complaint.

69. Admits the allegations of paragraph 69 of the Complaint.

70. Paragraph 70 of the Complaint states a legal conclusion as to which no response is required.

71. Denies the allegations of paragraph 71 of the Complaint.

72. Paragraph 72 of the Complaint states a legal conclusion as to which no response is required.

73. Denies the allegations of paragraph 73 of the Complaint.

74. Paragraph 74 of the Complaint states a legal conclusion as to which no response is required.

75. Paragraph 75 of the Complaint states a legal conclusion as to which no response is required.

76. Denies the allegations of paragraph 76 of the Complaint except refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

77. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents. Denies knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations concerning why they filed this action.

CLAIMS FOR RELIEF

Count I

78. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 77 of the Complaint as if restated fully herein.

79. Paragraph 79 of the Complaint states a legal conclusion as to which to response is required.

80. Denies the allegations of paragraph 80 of the Complaint.

Count II

81. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 80 of the Complaint as if restated fully herein.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of the Complaint, except refers for their contents to the OTS press release and accompanying fact sheet.

83. Denies the allegations of paragraph 83 of the Complaint except refers for its contents to the OTS fact sheet.

84. Admits that the FDIC-Receiver does not anticipate that subordinated debt holders of WMB will receive any recovery on their claims. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 84 of the Complaint.

85. Denies the allegations of paragraph 85 and avers that after its appointment by the OTS as receiver for WMB, the FDIC-Receiver entered into the P&A Agreement with JPMC in accordance with the requirements of the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder. *See* 12 U.S.C. § 1823(c)(4); 12 C.F.R. § 360.1. Under the P&A Agreement, JPMC assumed substantially all of the liabilities of WMB, including all deposit liabilities, and paid the FDIC-Receiver additional consideration of \$1,888,000,000.00. *See* P&A Agreement, Art. VII. As the FDIC's chairman Sheila Bair stated in the press release announcing the transaction, "WaMu's balance sheet and the payment paid by JPMorgan Chase allowed a transaction in which neither the uninsured depositors nor the insurance fund absorbed any losses."

86. Denies the allegations of paragraph 86 of the Complaint.

87. Denies the allegations of paragraph 87 of the Complaint.

88. Paragraph 88 states a legal conclusion as to which no response is required.

89. Denies the allegations of paragraph 89 of the Complaint.

90. Denies the allegations of paragraph 90 of the Complaint and refers to 12 U.S.C. § 1821(i) for its contents.

Count III

91. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 90 of the Complaint as if restated fully herein.

92. Denies the allegations of paragraph 92 of the Complaint.

Count IV

93. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 92 of the Complaint as if restated fully herein.

94. Denies the allegations of paragraph 94 of the Complaint.

95. Denies the allegations of paragraph 95 of the Complaint.

Count V

96. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 95 of the Complaint as if restated fully herein.

97. Denies the allegations of paragraph 97 of the Complaint.

PLAINTIFFS' PRAYER FOR RELIEF

98. Denies the allegations of the Prayer for Relief and every subparagraph thereof.

DEMAND FOR JURY TRIAL

99. No response is required to plaintiffs' jury trial demand. The FDIC-Receiver reserves all of its rights and arguments with respect to such demand.

DEFENSES

The FDIC-Receiver states the following defenses without assuming the burden of proof as to any issue for which the burden is placed on another party. The FDIC-Receiver lacks knowledge or information sufficient to form a belief as to whether it has other, as yet unstated, defenses. The FDIC-Receiver reserves the right to assert, and hereby gives notice that it intends

to rely upon, any other defense that may become available or appear during discovery or otherwise and reserves the right to amend its Answer to assert any such defense. The FDIC-Receiver incorporates into this Answer and asserts any defense asserted in this action by any other party to the extent such defense is applicable to the FDIC-Receiver.

First Defense

This Court lacks subject matter jurisdiction over some or all of the claims asserted in the Complaint.

Second Defense

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

Third Defense

Plaintiffs lack standing to assert some or all of their claims.

Fourth Defense

Plaintiffs fail to satisfy the requirements for entry of a declaratory judgment under Federal Rule of Civil Procedure 57 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

Fifth Defense

Plaintiffs claims are barred under 12 U.S.C. § 1821(j) to the extent they seek to restrain or affect the exercise of powers or functions of the FDIC-Receiver.

Sixth Defense

To the extent not raised in their receivership proof of claim, plaintiffs' claims are barred under 12 U.S.C. § 1821(d).

Seventh Defense

Plaintiffs' claims are barred, in applicable part, by 12 U.S.C. § 1821(d)(13)(D).

Eighth Defense

Plaintiffs' claims are barred, in applicable part, by 12 U.S.C. § 1821(d)(5)(E).

Ninth Defense

Plaintiffs' claims are barred, in applicable part, by 11 U.S.C. § 365(o).

Tenth Defense

Plaintiffs' claims are barred, in applicable part, by 12 U.S.C. § 1828(u).

Eleventh Defense

Plaintiffs received reasonably equivalent value in exchange for any transfers made by or on behalf of WMB. In the alternative, WMB provided plaintiffs fair consideration in good faith in exchange for such transfers.

Twelfth Defense

Plaintiffs' claims are barred, in applicable part, under 12 U.S.C. § 1823(e) or the statute of frauds.

Thirteenth Defense

Plaintiffs' claims are barred, in applicable part, under the Federal Tort Claims Act.

Fourteenth Defense

Plaintiffs' claims are barred, in whole or in part, by estoppel.

Fifteenth Defense

Plaintiffs' claims are barred, in whole or in part, by waiver.

Sixteenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

Seventeenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Eighteenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of *in pari delicto*.

Nineteenth Defense

Plaintiffs' claims are barred, in whole or in part, by WMI's participation in, approval of or ratification of the conduct upon which the claims are based.

Twentieth Defense

Plaintiffs have suffered no legally cognizable damages caused by any conduct of the FDIC-Receiver.

Twenty-first Defense

The acts or omissions of the FDIC-Receiver did not proximately cause any of plaintiffs alleged damages or harm.

Twenty-second Defense

Plaintiffs' claims are barred, in whole or in part, by payment.

Twenty-third Defense

Plaintiffs' claims are barred, in applicable part, under the Internal Revenue Code and the rules, regulations, rulings and opinions promulgated thereunder.

Twenty-fourth Defense

Plaintiffs' claims are barred, in part, by the applicable statute of limitations.

COUNTERCLAIMS

Pursuant to Federal Rules of Civil Procedure 13 and 57, the FDIC-Receiver brings the following counterclaims (the "Counterclaims") against plaintiffs WMI and WMI Investment Corp. The FDIC-Receiver reserves the right to further amend, revise or supplement these Counterclaims in any respect and to file additional claims and requests for payment.

Without limiting the foregoing, the FDIC-Receiver reserves the right to amend these Counterclaims or assert additional counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, claims for indemnification, contribution, subrogation or reimbursement from plaintiffs, or any of them, for any claims of third parties that may be asserted against the FDIC-Receiver or payments made by or on behalf of the FDIC-Receiver for which plaintiffs are responsible.

PARTIES

1. The Federal Deposit Insurance Corporation (the "FDIC") is an independent agency of the United States government with its headquarters located in this District. The FDIC acts in two legally distinct capacities when it acts (1) as insurer or regulator of depository institutions generally and (2) as the appointed receiver of specific failed depository institutions. *See Washington Bancorp. v. F.D.I.C. (In re Washington Bancorp.)*, C.A. No. 95-1340, 1996 WL 148533, at *11-12 (D.D.C. Mar. 19, 1996). These Counterclaims are asserted solely by the FDIC-Receiver. Counterclaim plaintiff the FDIC-Receiver was appointed receiver of WMB on September 25, 2008, by order of the OTS.

2. Counterclaim defendant WMI is a thrift holding company incorporated under the laws of Washington with its principal place of business in Seattle, Washington.

3. Counterclaim defendant WMI Investment Corp. is a subsidiary of WMI that is incorporated under the laws of Delaware with its principal place of business in Seattle, Washington.

4. On September 26, 2008, WMI and WMI Investment Corp. filed voluntary petitions under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. Those bankruptcy cases are pending.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over these Counterclaims under 12 U.S.C. § 1819(b)(2)(A).

6. Venue is proper in this District under 12 U.S.C. § 1821(d)(6)(A).

FACTUAL ALLEGATIONS

7. Pursuant to 12 U.S.C. § 1821(d)(2), the FDIC-Receiver succeeds by operation of law to the rights, titles, powers, and privileges, including legal claims, of WMB, and of any stockholder, member, accountholder, depositor, officer or director of WMB. In its capacity as receiver, the FDIC acts to protect insured depositors and creditors of failed depository institutions. The claims set forth herein arise, in part, out of WMI's actions by and through its agents to direct WMB for the benefit of WMI and at the expense of WMB.

8. Following its appointment, the FDIC-Receiver sold substantially all of the assets of WMB to JPMC pursuant to the P&A Agreement. Certain of the Counterclaims asserted herein may relate to assets that have been sold to JPMC under the P&A Agreement. Nothing herein should be construed as reflecting the FDIC-Receiver's interpretation of the P&A Agreement, including without limitation the assets or rights related to claims that may have been sold, or that JPMC may claim to have been sold, pursuant to the P&A Agreement.

9. The FDIC-Receiver established December 30, 2008 as the bar date for filing claims against the WMB receivership. On that date, WMI and certain of its subsidiaries filed a proof of claim with the FDIC-Receiver. By letter dated January 23, 2009, the FDIC-Receiver timely disallowed all of these receivership claims for a variety of reasons. On March 20, 2009, the plaintiffs WMI and WMI Investment Corp. filed their complaint in this action.

10. In plaintiffs' bankruptcy cases, the Bankruptcy Court established March 31, 2009 as the bar date for filing proofs of claim against the plaintiffs' bankruptcy estates. On March 30, 2009, the FDIC-Receiver timely filed a bankruptcy proof of claim (the "FDIC-Receiver Proof of Claim") to protect its rights and to eliminate any suggestion of waiver. In the FDIC-Receiver Proof of Claim, the FDIC-Receiver "expressly reserve[d] all rights to assert the preemption of the Bankruptcy Court's jurisdiction and the exclusive jurisdiction provided under title 12" over the matters asserted. *See* FDIC-Receiver Proof of Claim, ¶ 50.

Count I
(Taxes – Declaratory Relief)

11. The FDIC-Receiver repeats the allegations of paragraphs 1 through 10 of these Counterclaims as if fully restated herein.

12. Under applicable law, all federal and state tax related refunds that have been received by WMI since the commencement of its chapter 11 case, or that may be paid in the future based on consolidated tax returns, are due and owing in substantial part to WMB, and not 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 inures to the benefit of that member, in this instance, WMB. Similarly, to the extent WMI is in possession of funds that were obtained from WMB, whether prepetition or postpetition, for the purpose of satisfying tax liabilities of the consolidated group, those funds are the property of WMB and not of WMI.

13. Based on the FDIC-Receiver's investigation to date, the tax refunds, intercompany tax payments or tax overpayments to which WMB is entitled to payment from tax authorities, or from WMI to the extent that payments of such amounts have been or will be made to it, amount to no less than \$4,269,507,909.00, as summarized in the following table.

<u>Category</u>	<u>Amount (all years)</u>
Federal Tax Litigation Items	\$228,830,412
State Claims for Litig. Items	\$29,081,702
Federal Audit Cycle Items	\$670,255,737
State Claims for Fed. Audits	\$275,242,708
Federal Overpayments	\$40,000,000
State Overpayments	\$89,867,260
Federal Loss Carryback Claims	\$1,906,654,329
State Loss Carryback Claims	\$2,464,064
Miscellaneous	\$173,825,241
Federal Refunds Held by WMI	\$241,798,079
State Refunds Held by WMI	\$94,668,862
Amounts Due from WMI to WMB for Intercompany Taxes	\$516,819,516

14. An actual and ripe case or controversy exists with respect to the ownership of these tax related assets. In their Complaint in this action and elsewhere, plaintiffs erroneously purport to assert ownership of these assets.

15. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, the FDIC-Receiver requests that this Court enter a declaratory judgment that any such amounts received by WMI, or that are in WMI's possession, are or will be held in trust for WMB and are not WMI's property as a matter of law.

Count II
(Recovery of Tax Related Assets)

16. The FDIC-Receiver repeats the allegations of paragraphs 1 through 15 of these Counterclaims as if fully restated herein.

17. WMB is the rightful owner of the tax-related assets that are described in paragraphs 12 and 13 above. The FDIC-Receiver succeeded to WMB's rights to those assets by operation of law.

18. The FDIC-Receiver demands judgment against WMI for any and all tax-related funds that are rightfully the property of WMB and that are in WMI's possession or that are received by WMI prior to entry of judgment, together with pre-judgment interest thereon at the applicable lawful rate.

Count III
(Trust Preferred Securities – Declaratory Relief)

19. The FDIC-Receiver repeats the allegations of paragraphs 1 through 18 of these Counterclaims as if fully restated herein.

20. In or around February 2006, Washington Mutual Preferred Funding LLC ("WMPF"), a Delaware limited liability company, was formed as an indirect subsidiary of WMB to facilitate core capital financing transactions for WMB through the issuance of "trust" preferred securities to investors by certain special purpose entities ("SPEs"). WMPF's assets were limited to direct or indirect interests in mortgages or mortgage-related assets, cash and other permitted assets. These assets were held in certain Delaware statutory trusts. WMPF issued preferred securities, which were held by and were the sole asset of the SPEs and which were senior in priority to the common stock in WMPF, which was held indirectly by WMB.

21. The following series of trust preferred securities were issued by SPE subsidiaries of WMPF using this structure. Plaintiffs have asserted that these series of trust preferred securities have a liquidation preference of approximately \$4 billion.

- a. Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Noncumulative Preferred Securities, Series A-1;
- b. Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Noncumulative Preferred Securities, Series A-2;
- c. Washington Mutual Preferred Funding Trust (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- d. Washington Mutual Preferred Funding Trust II (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- e. Washington Mutual Preferred Funding Trust III (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- f. Washington Mutual Preferred Funding Trust IV (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities.

22. The following series of WMPF preferred securities were issued in connection with the offerings of the trust preferred securities and were designed to include mirror-image terms for the purpose of funding payments to investors in the trust preferred securities:

- a. Washington Mutual Preferred Funding LLC 7.25% Perpetual Noncumulative Preferred Securities, Series 2006-A;
- b. Washington Mutual Preferred Funding LLC 7.25% Perpetual Noncumulative Preferred Securities, Series 2006-B;
- c. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2006-C;
- d. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2007-A;
- e. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2007-B.

23. The trust preferred securities were sold to investors subject to a “conditional exchange” feature under which the trust preferred securities would be exchanged into shares of

preferred stock of WMI (or depositary shares relating thereto) if certain regulatory events occurred.

24. As a condition to authorizing WMI to treat the trust preferred securities as core capital of WMI's principal thrift subsidiary, WMB, the OTS required WMI to provide a written commitment to the OTS that if there was a "conditional exchange," any resulting interest that WMI obtained in the trust preferred securities or, indirectly, in the WMPF preferred securities that funded those securities, would be contributed to WMB. WMI provided that commitment to the OTS in a letter dated February 23, 2006.

25. On September 25, 2008, WMI entered into an Assignment Agreement with WMB (the "Assignment Agreement"). Under the Assignment Agreement, and effective upon its execution, WMI transferred to WMB, without recourse, all of its right, title and interest in and to all of the trust preferred securities, the WMPF preferred securities and the SPE subsidiaries of WMPF.

26. Also on September 25, 2008, the OTS notified WMI that an "exchange event" occurred, triggering the "conditional exchange" feature of the trust preferred securities. Thereafter, a "conditional exchange" occurred automatically on September 26, 2008, at 8 a.m. Eastern time, when WMI issued a press release announcing the exchange event.

27. An actual and ripe case and controversy exists with respect to the trust preferred securities. The trust preferred securities and related rights and assets are owned by WMB. Nevertheless, in this action and elsewhere, plaintiffs seek to rescind WMI's assignment, without recourse, of all of its right, title and interest with respect to the trust preferred securities or in the alternative to improperly recover the liquidation preference associated with the trust preferred securities.

28. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, counterclaim plaintiff FDIC-Receiver requests that this Court enter a declaratory judgment to the following effect:

- a. The trust preferred securities are owned by WMB. WMI never owned the trust preferred securities; alternatively, any right, title or interest in the trust preferred securities ever held by WMI (or by any of its affiliates or subsidiaries other than WMB) was validly and effectively transferred to WMB pursuant to the Assignment Agreement; and
- b. Pursuant to 11 U.S.C. § 365(o), WMI was deemed to have assumed and was required to cure any defects under the February 23, 2006 capital maintenance commitment and the Assignment Agreement as a condition to filing its petition under chapter 11 of the Bankruptcy Code. As a result of such cure, any defect in the transfer of ownership of the trust preferred securities has been cured and all of WMI's right, title and interest to the trust preferred securities and other assets that are the subject of the February 23, 2006 capital maintenance commitment and of the Assignment Agreement have been validly transferred to WMB without recourse.

29. In the alternative, the FDIC-Receiver requests that this Court enter a declaratory judgment that the FDIC-Receiver or JPMC, as its assignee, may record the transfer of ownership of the trust preferred securities in the ownership registers of the SPE subsidiaries of WMPF and that such action will not affect the property of the plaintiffs' bankruptcy estates and therefore is not subject to the automatic stay provided under section 362(a) of the Bankruptcy Code.

Count IV
(Trust Preferred Securities)

30. The FDIC-Receiver repeats the allegations of paragraphs 1 through 29 of these Counterclaims as if fully restated herein.

31. In the alternative, the FDIC-Receiver seeks judgment directing WMI to turnover to the FDIC-Receiver, without recourse, all of the trust preferred securities and any right, title or interest that plaintiffs may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF, because any such interests are held by WMI in trust for WMB.

32. In the alternative, the FDIC-Receiver asserts a claim against WMI for the full value of the trust preferred securities or for payment of the full amount of any liquidation preference accompanying such trust preferred securities, together with the value of any right, title or interest that plaintiffs may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF, and prejudgment interest accrued thereon at the applicable lawful rate.

Count V
(Intercompany Amounts)

33. The FDIC-Receiver repeats the allegations of paragraphs 1 through 32 of these Counterclaims as if fully restated herein.

34. In asserting claims against the FDIC-Receiver for certain intercompany notes and other intercompany amounts, plaintiffs have not taken into account amounts that are due and payable by those entities under the system of intercompany settlement of accounts that was in place prior to the receivership. While reserving all of its defenses to plaintiffs' intercompany claims, the FDIC-Receiver also is entitled to payment of amounts owed to WMB by plaintiffs and their non-debtor subsidiaries with respect to such claims.

35. Based on the investigation to date and subject to amendment based on further investigation, the FDIC-Receiver asserts claims against plaintiffs for intercompany amounts in

the aggregate amount of \$310,761,288.47. Of this total, \$273,616,108 reflects a general ledger entry in WMB's favor relating to the change in accounting for pension contributions in excess of pension expenses prior to the implementation of Statement of Financial Accounting Standards No. 158. The other intercompany amounts owed to the FDIC-Receiver as successor to WMB are:

<u>Obligor/Description</u>	<u>Amount</u>
Ahmanson Obligation Corp. (general ledger account 49328)	\$6,676.78
Washington Mutual Inc. (Payroll) (general ledger account 28462)	\$17,369,814.37
Washington Mutual 1031 Exchange (Payroll) (general ledger account 28497)	\$37,024.10
Ahmanson Residential Development (general ledger account 28058)	\$214.50
Sutter Bay Corp. (general ledger account 28088)	\$56.12
Washington Mutual Finance Group LLC (general ledger account 28108)	\$49,754.56
Washington Mutual 1031 Exchange (general ledger account 28040)	\$55,508.19
Washington Mutual Inc. (general ledger account 28162)	\$17,829.35
Washington Mutual Inc. (Clearing Account) (general ledger account 28162)	\$3,239,907.00
Washington Mutual Inc. (Sept. Mgmt Fees) (general ledger account 28162)	\$14,530,007.97
Washington Mutual Inc. (Stock Option Amort.) (general ledger account 28162)	\$28,557.64
Washington Mutual Inc. (Rent for Admin. Bldg.) (general ledger account 28162)	\$58,652.00
Washington Mutual Inc. (Clearing Account) (general ledger account 49896)	\$1,751,137.89

36. The FDIC-Receiver requests the entry of judgment in its favor for such amounts, together with prejudgment interest accrued thereon at the applicable lawful rate.

Count VI
(Deposit Accounts)

37. The FDIC-Receiver repeats the allegations of paragraphs 1 through 36 of these Counterclaims as if fully restated herein.

38. Plaintiffs have asserted that as of the petition date, they and certain of WMI's non-debtor subsidiaries had funds on deposit with WMB in the approximate amount of \$707,000,000 and that WMI had funds on deposit with WMBfsb of approximately \$3.67 billion. Plaintiffs' assertion that WMI deposit balances of \$3.67 billion are held at WMBfsb, rather than at WMB, appears to be contradicted by certain of the documents that plaintiffs rely on for this assertion. Without conceding that the funds at issue are in fact deposits, the funds are collectively referred to herein as the "Deposit Funds."

39. Based on the various court filings by WMI and JPMC, there is a significant fact issue as to whether the Deposit Funds include commingled funds that are the property of WMB. Without limiting the foregoing, since the petition date \$234,687,816 has been received in the disputed accounts as payment of tax refunds that are, in whole or substantial part, the property of WMB, for the reasons previously discussed. It appears that additional funds that are WMB's property as tax-related assets also are or may be included among the Deposit Funds.

40. In addition, JPMC has alleged that the September 2008 transfer of approximately \$3.67 billion from one account to a different account was a mere "book entry" that was not accompanied by the transfer of assets. This allegation, and the apparently contradictory documents relating to the alleged transfer and the account to which the funds were transferred,

raise questions about the assets and liabilities assumed by JPMC pursuant to the P&A Agreement with respect to the disputed accounts and the funds contained therein.

41. The FDIC-Receiver demands judgment from plaintiffs in the amount of the Deposit Funds that are the property of WMB, in an amount to be proven at trial.

Count VII
(Capital Maintenance Obligations)

42. The FDIC-Receiver repeats the allegations of paragraphs 1 through 41 of these Counterclaims as if fully restated herein.

43. As a thrift holding company, prior to the WMB receivership, WMI had statutory and regulatory obligations to maintain and guarantee the appropriate capital levels of WMB pursuant to applicable capital and liquidity requirements.

44. Events since the closing of WMB have raised questions about whether WMI, WMB or their directors or officers were accounting and reserving for anticipated losses appropriately, thereby resulting in an overstatement of WMB's capital.

45. WMI's failure to sufficiently maintain the appropriate capitalization of WMB damaged WMB in an unliquidated amount. The FDIC-Receiver demands judgment against WMI for such damages in an amount to be proven at trial.

Count VIII
(Unlawful Dividends)

46. The FDIC-Receiver repeats the allegations of paragraphs 1 through 45 of these Counterclaims as if fully restated herein.

47. The FDIC-Receiver may avoid and recover fraudulent transfers within five years before the receivership. The FDIC-Receiver's rights in this regard are superior to any rights of a trustee or any other party (other than any party which is a federal agency) under title 11.

48. In addition, to the extent the FDIC-Receiver's claims relate to unlawful dividends paid, or other unlawful distributions made by WMB to its stockholders, or, as successor by merger to New American Capital, Inc. ("NACI"), by NACI to its stockholders, the FDIC-Receiver may recover such amounts under applicable state law.

49. Plaintiffs have asserted claims for recovery of various allegedly fraudulent transfers against the FDIC-Receiver in the amount of at least \$10.5 billion. In support of those claims, plaintiffs have alleged, *inter alia*, that "WMI or WMB may have been insolvent at the time" of the challenged transfers and that if "WMB was insolvent, had unreasonably small capital, and/or was unable to pay its own debt obligations as they matured, WMI did not receive any value in exchange" for certain transfers.

50. If WMB or NACI was insolvent during some or all of the period within five years prior to the FDIC-Receiver's appointment on September 25, 2008, then the FDIC-Receiver may have claims for actual or constructive fraudulent transfers against WMI as the initial transferee, the institution-affiliated party, the person for whose benefit a transfer was made, or from any immediate or mediate transferee of any such initial transferee, for transfers of at least \$15,041,000,000 in the form of cash dividends between September 2003 and September 2008. Of these dividends, \$7.2 billion were distributed to WMI in 2006 and \$5.49 billion were distributed to WMI in 2007.

51. The FDIC-Receiver demands judgment against WMI for such unlawful transfers in an amount to be proven at trial.

Count IX
(Goodwill Litigation)

52. The FDIC-Receiver repeats the allegations of paragraphs 1 through 51 of these Counterclaims as if fully restated herein.

53. WMB is or was a plaintiff or the successor in interest to a plaintiff in certain litigation prior to the receivership or, if it was not a named plaintiff, was the real party in interest in such litigation being prosecuted by WMI. Without limiting the foregoing, this litigation includes American Savings Bank FA v. United States, No. 92-872C (Fed. Court of Claims), Anchor Savings Bank FSB v. United States, No. 95-39C (Federal Court of Claims) and Washington Mutual Inc. v. Internal Revenue Service (W.D. Wash.).²

54. The FDIC-Receiver succeeded to WMB's interests in such litigation and is the rightful recipient of any recoveries therein. To the extent that WMI has received or may in the future receive any proceeds from such litigation that are the rightful property of WMB, any such payments are held in trust for WMB.

55. The FDIC-Receiver demands judgment for all such amounts held by WMI in an amount to be proven at trial.

Count X
(Insurance Proceeds)

56. The FDIC-Receiver repeats the allegations of paragraphs 1 through 55 of these Counterclaims as if fully restated herein.

57. Prior to the receivership, WMI and/or WMB purchased insurance for which WMB was, at least in part, a named insured or an intended beneficiary. Such insurance includes, without limitation: the 2007/2008 Lloyd's of London Washington Mutual Financial Institution Blended Program, Policy No. 509/QA015407 and various policies of excess insurance relating thereto (the "2007/08 Blended Tower"); the 2008/09 Aon Financial Institutions Bond, Electronic

² The last of these cases was listed without a docket number in WMI's statement of financial affairs dated December 19, 2008, filed in its bankruptcy case. The action was not listed in the subsequent version of WMI's statement of financial affairs. Upon information and belief, the action concerns tax issues relating to Winstar claims.

and Computer Crime, Bankers Professional Liability, Employment Practices Liability and Fiduciary Liability Policy, Policy No. B0823FD0806211 and various policies of excess insurance relating thereto (the “2008/09 Blended Tower”); and the 2008/2009 XL Specialty Insurance Company Management Liability and Company Reimbursement Insurance Policy, Policy No. ELU104380-08 and National Union Policy No. 463-3347 (the “D&O Policies”).

58. To the extent that covered loss within the meaning of the relevant insurance policies has been suffered by WMB, the FDIC-Receiver is entitled to all proceeds paid under applicable insurance coverage for such loss.

59. To the extent that proofs of loss with respect to WMB have been or may be filed with respect to such matters with the relevant insurer, the FDIC-Receiver is the rightful recipient of such insurance payments. This includes, without limitation, proofs of loss submitted to the insurers under the 2007/08 Blended Tower on or about July 18, 2008 (C.I.P. Mortgage Company), September 17, 2008 (Encino, California), September 18, 2008 (Campbell Pruneyard, California) and October 3, 2008 (Newport Beach, California).

60. To the extent such amounts have been paid, or are paid in the future, to WMI, those funds are held in trust for the FDIC-Receiver as the rightful recipient thereof.

61. The FDIC-Receiver demands judgment from WMI for all such amounts, together with prejudgment interest at the applicable lawful rate.

PRAYER FOR RELIEF

WHEREFORE, the FDIC-Receiver respectfully requests that the Court enter judgment dismissing with prejudice all of plaintiffs' claims against the FDIC-Receiver and granting all of the FDIC-Receiver's Counterclaims against the plaintiffs, together with interest, costs and attorneys' fees, and granting the FDIC-Receiver such other and further relief as the Court may deem just and proper.

Dated: Washington, D.C.
June 11, 2009

Respectfully submitted,

/s/ David Clarke, Jr.

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as Receiver for Washington Mutual Bank

CERTIFICATE OF SERVICE

The undersigned attorney for the FDIC-Receiver certifies that on this 11th day of June 2009, he caused a copy of the foregoing document to be filed via ECF which will cause electronic notice of its filing to be served on all parties who have appeared in this action.

/s/ John J. Clarke, Jr.

John J. Clarke, Jr.

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WASHINGTON MUTUAL, INC. and
WMI INVESTMENT CORP.

Plaintiffs and Counterclaim
Defendants,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate capacity,

Defendant,

- and -

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its capacity as receiver of
Washington Mutual Bank,

Defendant and
Counterclaim Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Counterclaim Defendant.

Case No. 1:09-cv-0533 (RMC)

**FIRST AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANT
FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER**

Pursuant to Federal Rules of Civil Procedure 13(h) and 15(a)(1)(A), defendant the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank (the "FDIC-Receiver"), submits its First Amended Answer and Counterclaims with respect to plaintiffs' complaint in this action (the "Complaint"). The FDIC-Receiver's allegations are based upon knowledge as to itself and its own actions and upon information and belief as to all others.

ANSWER

Unless otherwise expressly admitted, the FDIC-Receiver denies each and every allegation in the Complaint, including without limitation any allegations contained in its prayer, headings and subheadings. In many instances, plaintiffs purport to assert claims in the body of their allegations without specifying, except in the most generalized manner, the basis or alleged amount of such purported claims, including many alleged “claims” that appear to be inchoate, contingent, hypothetical, speculative or otherwise remote or inactionable. The FDIC-Receiver objects to, and denies liability with respect to, all of such claims, unless otherwise expressly stated herein. In accordance with Federal Rule of Civil Procedure 8(b)(5), to the extent the FDIC-Receiver denies knowledge or information sufficient to form a belief as to the truth of an allegation, that allegation is deemed to be denied. This answer is based upon the FDIC-Receiver’s investigation to date, and the FDIC-Receiver expressly reserves the right to amend this answer to the full extent provided for under applicable law.

PARTIES¹

1. Admits the allegations of paragraph 1 of the Complaint.
2. Admits the first sentence of paragraph 2 of the Complaint. The second and third sentences of paragraph 2 are characterizations of the Complaint and definitions of terms that do not require a response.
3. Admits the allegations of paragraph 3 of the Complaint.
4. Admits the allegations of paragraph 4 of the Complaint.

¹ The headings of the Complaint are used in this Answer strictly for the Court’s convenience. The FDIC-Receiver does not admit any of plaintiffs’ allegations by such use.

JURISDICTION AND VENUE

5. Admits that this Court has subject matter jurisdiction under 12 U.S.C. §§ 1819(b)(2)(A) and 1821(d)(6). No response is required as to the remainder of paragraph 5, but to the extent any response is required those allegations are denied.

6. Admits that venue is proper in this District pursuant to 12 U.S.C. § 1821(d)(6)(A) and denies the remaining allegations of paragraph 6 of the Complaint.

BACKGROUND

7. Admits the allegations of paragraph 7 of the Complaint except refers to Office of Thrift Supervision (“OTS”) order number 2008-36 for its contents.

8. Refers for its contents to the Purchase and Assumption Agreement, Whole Bank, among the FDIC-Receiver, Federal Deposit Insurance Corporation (“FDIC-Corporate”) and JPMorgan Chase Bank, National Association (“JPMC”) (the “P&A Agreement”) and denies any remaining allegations of paragraph 8 of the Complaint.

9. Admits the allegations in the first sentence of paragraph 9 of the Complaint. The second sentence of paragraph 9 states a legal conclusion as to which no response is required.

THE PROOF OF CLAIM

10. Admits the allegations of the first sentence of paragraph 10 of the Complaint. Denies the remaining allegations of paragraph 10, except refers for its contents to the receivership proof of claim (the “WMI Proof of Claim”) that was filed with the FDIC-Receiver by Washington Mutual, Inc. (“WMI”).

11. Admits that plaintiffs have purported to reserve certain rights as alleged in paragraph 11 of the Complaint and reserves all of the FDIC-Receiver’s defenses with respect thereto.

12. No response is required to the allegations of paragraph 12 of the Complaint, but to the extent any response is required those allegations are denied.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the Complaint, except the FDIC-Receiver denies the allegations in the first sentence of that paragraph and, as to the allegations in the last sentence of paragraph 13, refers to the WMI Proof of Claim for its contents.

A. Intercompany Loans

14. Denies knowledge or information sufficient to form a belief as to truth of the allegations of paragraph 14 of the Complaint.

15. Denies the allegations of paragraph 15 of the Complaint.

B. Intercompany Receivables

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint.

19. Denies the allegations of paragraph 19 of the Complaint.

C. Taxes

20. Denies the allegations of paragraph 20 of the Complaint, except the FDIC-Receiver refers for its contents to the Tax Sharing Agreement dated as of August 31, 1999 by and among WMI, Washington Mutual Bank fsb (“WMBfsb”), Washington Mutual Bank, New American Capital, Inc. and Aristar Inc. (the “Tax Sharing Agreement”).

21. Denies the allegations of paragraph 21 of the Complaint.

22. Denies the allegations of paragraph 22 of the Complaint.

23. Denies the allegations of paragraph 23 of the Complaint, except admits upon information and belief that certain foreign, state, local or foreign tax audits may be currently ongoing with respect to the filings by the consolidated tax group that included WMB for which WMI served as fiduciary prior to the FDIC-Receiver's appointment on September 25, 2008.

24. No response is required to the allegations of paragraph 24 of the Complaint, but to the extent any response is required those allegations are denied.

D. Capital Contribution Claims

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the Complaint, except admits upon information and belief that WMI made \$6.5 billion of capital contributions to WMB in the amounts and on the dates specified in that paragraph.

26. Denies the allegations of paragraph 26 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of that paragraph.

27. Denies the allegations of paragraph 27 of the Complaint.

28. Admits that WMI purports to assert the claims described in paragraph 28 of the Complaint and denies that such claims have merit.

E. Trust Preferred Securities Claims

29. Upon information and belief, admits the allegations of paragraph 29 of the Complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations of the last sentence of that paragraph.

30. Upon information and belief, admits the allegations of paragraph 30 of the Complaint.

31. Upon information and belief, admits the allegations of paragraph 31, except refers for their contents to the various agreements and correspondence governing the terms of the trust preferred securities and the notice provided by the OTS.

32. Upon information and belief, admits the allegations of paragraph 32 of the Complaint, except refers for its contents to the Assignment Agreement between WMB as assignee and WMI as assignor effective as of September 25, 2008 (the "Assignment Agreement"), and asserts that to the extent WMI at any time had possession of the trust preferred securities it held such assets in trust for WMB or, in the alternative, held at most bare legal title without an equitable interest. *See* 11 U.S.C. § 541(d). The FDIC-Receiver reserves all of its rights with respect to any and all defenses to enforceability that WMI might assert.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 33 of the Complaint. Denies the remaining allegations of paragraph 33 of the Complaint.

34. Denies the allegations of paragraph 34 of the Complaint.

35. Denies the allegations of paragraph 35 of the Complaint.

F. Preference Claims

36. Denies knowledge sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Complaint, including Exhibit 1 and footnote 2 that are incorporated therein. With respect to plaintiffs' purported reservation of rights, the FDIC-Receiver reserves all of its defenses.

37. Paragraph 37 states legal conclusions as to which no response is required, but to the extent any response is required the allegations are denied.

38. Denies the allegations of paragraph 38 of the Complaint.

39. Denies the allegations of paragraph 39 of the Complaint.

40. Denies the allegations of paragraph 40 of the Complaint.

G. Vendor Contract Claims

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 of the Complaint.

H. Subrogation Claims

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42 of the Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 of the Complaint.

44. Denies the allegations of paragraph 44 of the Complaint.

I. Allegedly Improper Asset Sales

45. Denies the allegations of paragraph 45 of the Complaint.

46. Denies the allegations of paragraph 46 of the Complaint and reserves all of the FDIC-Receiver's rights with respect thereto.

J. Deposit Claim

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint.

48. As to the first sentence of paragraph 48 of the Complaint, refers to the P&A Agreement for its contents. As to the second sentence of paragraph 48, admits that JPMC

acquired the stock of WMBfsb pursuant to the P&A Agreement and denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of that sentence.

49. Denies the allegations of paragraph 49 of the Complaint, except admits that the FDIC-Receiver has certain rights under the P&A Agreement or otherwise with respect to purported deposit balances assumed under that agreement and the FDIC-Receiver reserves all of its rights with respect to the purported deposit balances alleged by plaintiffs.

50. Denies the allegations of paragraph 50 of the Complaint.

K. Administrative Claims

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51 of the Complaint.

L. Employee/Employer Related Costs and Insurance Claims

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52 of the Complaint, except to the extent any response is required, denies the allegations of the third sentence of paragraph 52.

53. Denies the allegations of paragraph 53 of the Complaint except admits upon information and belief that prior to the receivership WMI sponsored certain deferred compensation plans.

54. Denies the allegations of paragraph 54 of the Complaint.

55. No response is required to paragraph 55 of the Complaint, but to the extent any response is required the allegations of paragraph 55 are denied. The FDIC-Receiver reserves all of its rights to oppose any such claims.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint.

57. Denies the allegations of paragraph 57 of the Complaint.

M. Indemnification Claims

58. Denies knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph 58 of the Complaint, except refers to WMI's bylaws for their contents. Denies the last sentence of paragraph 58 of the Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 59 of the Complaint. Denies the last sentence of paragraph 59 of the Complaint.

N. Other Claims

60. Denies the allegations of paragraph 60 of the Complaint.

61. Denies the allegations of paragraph 61 of the Complaint.

THE FDIC'S DENIAL OF PLAINTIFFS' PROOF OF CLAIM

62. Admits the allegations of paragraph 62 of the Complaint.

63. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

64. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

65. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.

66. Denies the allegations of paragraph 66 of the Complaint.

67. Denies the allegations of paragraph 67 of the Complaint.

68. Admits the allegations of paragraph 68 of the Complaint.
69. Admits the allegations of paragraph 69 of the Complaint.
70. Paragraph 70 of the Complaint states a legal conclusion as to which no response is required.
71. Denies the allegations of paragraph 71 of the Complaint.
72. Paragraph 72 of the Complaint states a legal conclusion as to which no response is required.
73. Denies the allegations of paragraph 73 of the Complaint.
74. Paragraph 74 of the Complaint states a legal conclusion as to which no response is required.
75. Paragraph 75 of the Complaint states a legal conclusion as to which no response is required.
76. Denies the allegations of paragraph 76 of the Complaint except refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents.
77. Refers to the FDIC-Receiver's letter to WMI dated January 23, 2009 for its contents. Denies knowledge or information sufficient to form a belief as to the truth of plaintiffs' allegations concerning why they filed this action.

CLAIMS FOR RELIEF

Count I

78. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 77 of the Complaint as if restated fully herein.
79. Paragraph 79 of the Complaint states a legal conclusion as to which to response is required.

80. Denies the allegations of paragraph 80 of the Complaint.

Count II

81. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 80 of the Complaint as if restated fully herein.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82 of the Complaint, except refers for their contents to the OTS press release and accompanying fact sheet.

83. Denies the allegations of paragraph 83 of the Complaint except refers for its contents to the OTS fact sheet.

84. Admits that the FDIC-Receiver does not anticipate that subordinated debt holders of WMB will receive any recovery on their claims. Denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 84 of the Complaint.

85. Denies the allegations of paragraph 85 and avers that after its appointment by the OTS as receiver for WMB, the FDIC-Receiver entered into the P&A Agreement with JPMC in accordance with the requirements of the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder. *See* 12 U.S.C. § 1823(c)(4); 12 C.F.R. § 360.1. Under the P&A Agreement, JPMC assumed substantially all of the liabilities of WMB, including all deposit liabilities, and paid the FDIC-Receiver additional consideration of \$1,888,000,000.00. *See* P&A Agreement, Art. VII. As the FDIC's chairman Sheila Bair stated in the press release announcing the transaction, "WaMu's balance sheet and the payment paid by JPMorgan Chase allowed a transaction in which neither the uninsured depositors nor the insurance fund absorbed any losses."

86. Denies the allegations of paragraph 86 of the Complaint.

87. Denies the allegations of paragraph 87 of the Complaint.

88. Paragraph 88 states a legal conclusion as to which no response is required.

89. Denies the allegations of paragraph 89 of the Complaint.

90. Denies the allegations of paragraph 90 of the Complaint and refers to 12 U.S.C.

§ 1821(i) for its contents.

Count III

91. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 90 of the Complaint as if restated fully herein.

92. Denies the allegations of paragraph 92 of the Complaint.

Count IV

93. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 92 of the Complaint as if restated fully herein.

94. Denies the allegations of paragraph 94 of the Complaint.

95. Denies the allegations of paragraph 95 of the Complaint.

Count V

96. Repeats and realleges the FDIC-Receiver's responses to paragraphs 1 through 95 of the Complaint as if restated fully herein.

97. Denies the allegations of paragraph 97 of the Complaint.

PLAINTIFFS' PRAYER FOR RELIEF

98. Denies the allegations of the Prayer for Relief and every subparagraph thereof.

DEMAND FOR JURY TRIAL

99. No response is required to plaintiffs' jury trial demand. The FDIC-Receiver reserves all of its rights and arguments with respect to such demand.

DEFENSES

The FDIC-Receiver states the following defenses without assuming the burden of proof as to any issue for which the burden is placed on another party. The FDIC-Receiver lacks knowledge or information sufficient to form a belief as to whether it has other, as yet unstated, defenses. The FDIC-Receiver reserves the right to assert, and hereby gives notice that it intends to rely upon, any other defense that may become available or appear during discovery or otherwise and reserves the right to amend its Answer to assert any such defense. The FDIC-Receiver incorporates into this Answer and asserts any defense asserted in this action by any other party to the extent such defense is applicable to the FDIC-Receiver.

First Defense

This Court lacks subject matter jurisdiction over some or all of the claims asserted in the Complaint.

Second Defense

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

Third Defense

Plaintiffs lack standing to assert some or all of their claims.

Fourth Defense

Plaintiffs fail to satisfy the requirements for entry of a declaratory judgment under Federal Rule of Civil Procedure 57 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

Fifth Defense

Plaintiffs claims are barred under 12 U.S.C. § 1821(j) to the extent they seek to restrain or affect the exercise of powers or functions of the FDIC-Receiver.

Sixth Defense

To the extent not raised in their receivership proof of claim, plaintiffs' claims are barred under 12 U.S.C. § 1821(d).

Seventh Defense

Plaintiffs' claims are barred, in applicable part, by 12 U.S.C. § 1821(d)(13)(D).

Eighth Defense

Plaintiffs' claims are barred, in applicable part, by 12 U.S.C. § 1821(d)(5)(E).

Ninth Defense

Plaintiffs' claims are barred, in applicable part, by 11 U.S.C. § 365(o).

Tenth Defense

Plaintiffs' claims are barred, in applicable part, by 12 U.S.C. § 1828(u).

Eleventh Defense

Plaintiffs received reasonably equivalent value in exchange for any transfers made by or on behalf of WMB. In the alternative, WMB provided plaintiffs fair consideration in good faith in exchange for such transfers.

Twelfth Defense

Plaintiffs' claims are barred, in applicable part, under 12 U.S.C. § 1821(d)(17) and/or other applicable law governing fraudulent transfers.

Thirteenth Defense

Plaintiffs' claims are barred, in applicable part, under 12 U.S.C. § 1823(e) or the statute of frauds.

Fourteenth Defense

Plaintiffs' claims are barred, in applicable part, under the Federal Tort Claims Act.

Fifteenth Defense

Plaintiffs' claims are barred, in whole or in part, by estoppel.

Sixteenth Defense

Plaintiffs' claims are barred, in whole or in part, by waiver.

Seventeenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

Eighteenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

Nineteenth Defense

Plaintiffs' claims are barred, in whole or in part, by the doctrine of *in pari delicto*.

Twentieth Defense

Plaintiffs' claims are barred, in whole or in part, by WMI's participation in, approval of or ratification of the conduct upon which the claims are based.

Twenty-first Defense

Plaintiffs have suffered no legally cognizable damages caused by any conduct of the FDIC-Receiver.

Twenty-second Defense

The acts or omissions of the FDIC-Receiver did not proximately cause any of plaintiffs alleged damages or harm.

Twenty-third Defense

Plaintiffs' claims are barred, in whole or in part, by payment.

Twenty-fourth Defense

Plaintiffs' claims are barred, in applicable part, under the Internal Revenue Code and the rules, regulations, rulings and opinions promulgated thereunder.

Twenty-fifth Defense

Plaintiffs' claims are barred, in part, by the applicable statute of limitations.

COUNTERCLAIMS

Pursuant to Federal Rules of Civil Procedure 13 and 57, the FDIC-Receiver brings the following counterclaims (the "Counterclaims") against plaintiffs WMI and WMI Investment Corp and pursuant to Federal Rules of Civil Procedure 13(h) against counterclaim defendant JPMorgan Chase Bank, N.A. The FDIC-Receiver reserves the right to further amend, revise or supplement these Counterclaims in any respect and to file additional claims and requests for payment.

Without limiting the foregoing, the FDIC-Receiver reserves the right to amend these Counterclaims or assert additional counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, claims for indemnification, contribution, subrogation or reimbursement from plaintiffs, or any of them, for any claims of third parties that may be asserted against the FDIC-Receiver or payments made by or on behalf of the FDIC-Receiver for which plaintiffs are responsible.

PARTIES

1. The Federal Deposit Insurance Corporation (the "FDIC") is an independent agency of the United States government with its headquarters located in this District. The FDIC acts in two legally distinct capacities when it acts (1) as insurer or regulator of depository institutions generally and (2) as the appointed receiver of specific failed depository institutions.

See Washington Bancorp. v. F.D.I.C. (In re Washington Bancorp.), C.A. No. 95-1340, 1996 WL 148533, at *11-12 (D.D.C. Mar. 19, 1996). These Counterclaims are asserted solely by the FDIC-Receiver. Counterclaim plaintiff the FDIC-Receiver was appointed receiver of WMB on September 25, 2008, by order of the OTS.

2. Counterclaim defendant WMI is a thrift holding company incorporated under the laws of Washington with its principal place of business in Seattle, Washington.

3. Counterclaim defendant WMI Investment Corp. is a subsidiary of WMI that is incorporated under the laws of Delaware with its principal place of business in Seattle, Washington.

4. On September 26, 2008, WMI and WMI Investment Corp. filed voluntary petitions under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware. Those bankruptcy cases are pending.

5. Counterclaim defendant JPMorgan Chase Bank, N.A. ("JPMC") is a national banking association organized under the laws of the United States with its principal place of business in Columbus, Ohio. JPMC is subject to service of process. Joinder of JPMC as a counterclaim defendant will not deprive the court of subject matter jurisdiction. JPMC is in possession of, or claims an interest in, certain of the assets that are the subject of the FDIC-Receiver's Counterclaims. In JPMC's absence, this Court cannot accord complete relief among the existing parties with respect to certain of those Counterclaims or, in the alternative, JPMC is so situated that disposing of certain of the Counterclaims in JPMC's absence may as a practical matter impair or impede JPMC's ability to protect its interest or leave the FDIC-Receiver subject to a substantial risk of incurring inconsistent obligations because of JPMC's claimed interest.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over these Counterclaims under 12 U.S.C. § 1819(b)(2)(A) and 28 U.S.C. § 1367(a).

7. Venue is proper in this District under 12 U.S.C. § 1821(d)(6)(A).

FACTUAL ALLEGATIONS

8. Pursuant to 12 U.S.C. § 1821(d)(2), the FDIC-Receiver succeeds by operation of law to the rights, titles, powers, and privileges, including legal claims, of WMB, and of any stockholder, member, accountholder, depositor, officer or director of WMB. In its capacity as receiver, the FDIC acts to protect insured depositors and creditors of failed depository institutions. The claims set forth herein arise, in part, out of WMI's actions by and through its agents to direct WMB for the benefit of WMI and at the expense of WMB.

9. Following its appointment, the FDIC-Receiver sold substantially all of the assets of WMB to JPMC pursuant to the P&A Agreement. Certain of the Counterclaims asserted herein may relate to assets that have been sold to JPMC under the P&A Agreement. Nothing herein should be construed as reflecting the FDIC-Receiver's interpretation of the P&A Agreement, including without limitation the assets or rights related to claims that may have been sold, or that JPMC may claim to have been sold, pursuant to the P&A Agreement.

10. The FDIC-Receiver established December 30, 2008 as the bar date for filing claims against the WMB receivership. On that date, WMI and certain of its subsidiaries filed a proof of claim with the FDIC-Receiver. By letter dated January 23, 2009, the FDIC-Receiver timely disallowed all of these receivership claims. On March 20, 2009, the plaintiffs WMI and WMI Investment Corp. filed their complaint in this action.

11. In plaintiffs' bankruptcy cases, the Bankruptcy Court established March 31, 2009 as the bar date for filing proofs of claim against the plaintiffs' bankruptcy estates. On March 30, 2009, after plaintiffs had commenced this action against it in this Court, the FDIC-Receiver timely filed a bankruptcy proof of claim (the "FDIC-Receiver Proof of Claim") to protect its rights and to eliminate any suggestion of waiver. In the FDIC-Receiver Proof of Claim, the FDIC-Receiver expressly reserved its right to have the issues addressed in this Court and "expressly reserve[d] all rights to assert the preemption of the Bankruptcy Court's jurisdiction and the exclusive jurisdiction provided under title 12" over the matters asserted. *See* FDIC-Receiver Proof of Claim, ¶¶ 49, 50.

Count I
(Taxes – Declaratory Relief)

12. The FDIC-Receiver repeats the allegations of paragraphs 1 through 11 of these Counterclaims as if fully restated herein.

13. Under applicable law, all federal and state tax related refunds that have been received by WMI since the commencement of its chapter 11 case, or that may be paid in the future based on consolidated tax returns, are due and owing in substantial part to WMB, and not 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 inures to the benefit of that member, in this instance, WMB. Similarly, to the extent WMI is in possession of funds that were obtained from WMB, whether prepetition or postpetition, for the purpose of satisfying tax liabilities of the consolidated group, those funds are the property of WMB and not of WMI.

14. Based on the FDIC-Receiver's investigation to date, the tax refunds, intercompany tax payments or tax overpayments to which WMB is entitled to payment from tax

authorities, or from WMI to the extent that payments of such amounts have been or will be made to it, amount to no less than \$4,269,507,909.00, as summarized in the following table.

<u>Category</u>	<u>Amount (all years)</u>
Federal Tax Litigation Items	\$228,830,412
State Claims for Litig. Items	\$29,081,702
Federal Audit Cycle Items	\$670,255,737
State Claims for Fed. Audits	\$275,242,708
Federal Overpayments	\$40,000,000
State Overpayments	\$89,867,260
Federal Loss Carryback Claims	\$1,906,654,329
State Loss Carryback Claims	\$2,464,064
Miscellaneous	\$173,825,241
Federal Refunds Held by WMI	\$241,798,079
State Refunds Held by WMI	\$94,668,862
Amounts Due from WMI to WMB for Intercompany Taxes	\$516,819,516

15. An actual and ripe case or controversy exists with respect to the ownership of these tax related assets. In their Complaint in this action and elsewhere, plaintiffs erroneously purport to assert ownership of these assets.

16. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, the FDIC-Receiver requests that this Court enter a declaratory judgment that any such amounts received by WMI, or that are in WMI's possession, are or will be held in trust for WMB and are not WMI's property as a matter of law.

17. JPMC claims an interest in the tax related assets as the purchaser of substantially all of the assets of WMB under the P&A Agreement. Accordingly, the FDIC-Receiver names JPMC as an additional counterclaim defendant with respect to this Count.

Count II
(Recovery of Tax Related Assets)

18. The FDIC-Receiver repeats the allegations of paragraphs 1 through 17 of these Counterclaims as if fully restated herein.

19. WMB is the rightful owner of the tax-related assets that are described in paragraphs 12 and 13 above. The FDIC-Receiver succeeded to WMB's rights to those assets by operation of law.

20. The FDIC-Receiver demands judgment against WMI for any and all tax-related funds that are rightfully the property of WMB and that are in WMI's possession or that are received by WMI prior to entry of judgment, together with pre-judgment interest thereon at the applicable lawful rate.

Count III
(Trust Preferred Securities – Declaratory Relief)

21. The FDIC-Receiver repeats the allegations of paragraphs 1 through 20 of these Counterclaims as if fully restated herein.

22. In or around February 2006, Washington Mutual Preferred Funding LLC ("WMPF"), a Delaware limited liability company, was formed as an indirect subsidiary of WMB to facilitate core capital financing transactions for WMB through the issuance of "trust" preferred securities to investors by certain special purpose entities ("SPEs"). WMPF's assets were limited to direct or indirect interests in mortgages or mortgage-related assets, cash and other permitted assets. These assets were held in certain Delaware statutory trusts. WMPF

issued preferred securities, which were held by and were the sole asset of the SPEs and which were senior in priority to the common stock in WMPF, which was held indirectly by WMB.

23. The following series of trust preferred securities were issued by SPE subsidiaries of WMPF using this structure. Plaintiffs have asserted that these series of trust preferred securities have a liquidation preference of approximately \$4 billion.

- a. Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Noncumulative Preferred Securities, Series A-1;
- b. Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Noncumulative Preferred Securities, Series A-2;
- c. Washington Mutual Preferred Funding Trust (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- d. Washington Mutual Preferred Funding Trust II (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- e. Washington Mutual Preferred Funding Trust III (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- f. Washington Mutual Preferred Funding Trust IV (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities.

24. The following series of WMPF preferred securities were issued in connection with the offerings of the trust preferred securities and were designed to include mirror-image terms for the purpose of funding payments to investors in the trust preferred securities:

- a. Washington Mutual Preferred Funding LLC 7.25% Perpetual Noncumulative Preferred Securities, Series 2006-A;
- b. Washington Mutual Preferred Funding LLC 7.25% Perpetual Noncumulative Preferred Securities, Series 2006-B;
- c. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2006-C;
- d. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2007-A;
- e. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2007-B.

25. The trust preferred securities were sold to investors subject to a “conditional exchange” feature under which the trust preferred securities would be exchanged into shares of preferred stock of WMI (or depositary shares relating thereto) if certain regulatory events occurred.

26. As a condition to authorizing WMI to treat the trust preferred securities as core capital of WMI’s principal thrift subsidiary, WMB, the OTS required WMI to provide a written commitment to the OTS that if there was a “conditional exchange,” any resulting interest that WMI obtained in the trust preferred securities or, indirectly, in the WMPF preferred securities that funded those securities, would be contributed to WMB. WMI provided that commitment to the OTS in a letter dated February 23, 2006.

27. On September 25, 2008, WMI entered into an Assignment Agreement with WMB (the “Assignment Agreement”). Under the Assignment Agreement, and effective upon its execution, WMI transferred to WMB, without recourse, all of its right, title and interest in and to all of the trust preferred securities, the WMPF preferred securities and the SPE subsidiaries of WMPF.

28. Also on September 25, 2008, the OTS notified WMI that an “exchange event” occurred, triggering the “conditional exchange” feature of the trust preferred securities. Thereafter, a “conditional exchange” occurred automatically on September 26, 2008, at 8 a.m. Eastern time, when WMI issued a press release announcing the exchange event.

29. An actual and ripe case and controversy exists with respect to the trust preferred securities. The trust preferred securities and related rights and assets are owned by WMB. Nevertheless, in this action and elsewhere, plaintiffs seek to rescind WMI’s assignment, without recourse, of all of its right, title and interest with respect to the trust preferred securities or in the

alternative to improperly recover the liquidation preference associated with the trust preferred securities.

30. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, counterclaim plaintiff FDIC-Receiver requests that this Court enter a declaratory judgment to the following effect:

- a. The trust preferred securities are owned by WMB. WMI never owned the trust preferred securities; alternatively, any right, title or interest in the trust preferred securities ever held by WMI (or by any of its affiliates or subsidiaries other than WMB) was validly and effectively transferred to WMB pursuant to the Assignment Agreement; and
- b. Pursuant to 11 U.S.C. § 365(o), WMI was deemed to have assumed and was required to cure any defects under the February 23, 2006 capital maintenance commitment and the Assignment Agreement as a condition to filing its petition under chapter 11 of the Bankruptcy Code. As a result of such cure, any defect in the transfer of ownership of the trust preferred securities has been cured and all of WMI's right, title and interest to the trust preferred securities and other assets that are the subject of the February 23, 2006 capital maintenance commitment and of the Assignment Agreement have been validly transferred to WMB without recourse.

31. In the alternative, the FDIC-Receiver requests that this Court enter a declaratory judgment that the FDIC-Receiver or JPMC, as its assignee, may record the transfer of ownership of the trust preferred securities in the ownership registers of the SPE subsidiaries of WMPF and

that such action will not affect the property of the plaintiffs' bankruptcy estates and therefore is not subject to the automatic stay provided under section 362(a) of the Bankruptcy Code.

32. JPMC claims an interest in the trust preferred securities as the purchaser of substantially all of the assets of WMB under the P&A Agreement. Accordingly, the FDIC-Receiver names JPMC as an additional counterclaim defendant with respect to this Count.

Count IV
(Trust Preferred Securities)

33. The FDIC-Receiver repeats the allegations of paragraphs 1 through 32 of these Counterclaims as if fully restated herein.

34. In the alternative, the FDIC-Receiver seeks judgment directing WMI to turnover to the FDIC-Receiver, without recourse, all of the trust preferred securities and any right, title or interest that plaintiffs may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF, because any such interests are held by WMI in trust for WMB.

35. In the alternative, the FDIC-Receiver asserts a claim against WMI for the full value of the trust preferred securities or for payment of the full amount of any liquidation preference accompanying such trust preferred securities, together with the value of any right, title or interest that plaintiffs may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF, and prejudgment interest accrued thereon at the applicable lawful rate.

Count V
(Intercompany Amounts)

36. The FDIC-Receiver repeats the allegations of paragraphs 1 through 35 of these Counterclaims as if fully restated herein.

37. In asserting claims against the FDIC-Receiver for certain intercompany notes and other intercompany amounts, plaintiffs have not taken into account amounts that are due and payable by those entities under the system of intercompany settlement of accounts that was in

place prior to the receivership. While reserving all of its defenses to plaintiffs' intercompany claims, the FDIC-Receiver also is entitled to payment of amounts owed to WMB by plaintiffs and their non-debtor subsidiaries with respect to such claims.

38. Based on the investigation to date and subject to amendment based on further investigation, the FDIC-Receiver asserts claims against plaintiffs for intercompany amounts in the aggregate amount of \$310,761,288.47. Of this total, \$273,616,108 reflects a general ledger entry in WMB's favor relating to the change in accounting for pension contributions in excess of pension expenses prior to the implementation of Statement of Financial Accounting Standards No. 158. The other intercompany amounts owed to the FDIC-Receiver as successor to WMB are:

<u>Obligor/Description</u>	<u>Amount</u>
Ahmanson Obligation Corp. (general ledger account 49328)	\$6,676.78
Washington Mutual Inc. (Payroll) (general ledger account 28462)	\$17,369,814.37
Washington Mutual 1031 Exchange (Payroll) (general ledger account 28497)	\$37,024.10
Ahmanson Residential Development (general ledger account 28058)	\$214.50
Sutter Bay Corp. (general ledger account 28088)	\$56.12
Washington Mutual Finance Group LLC (general ledger account 28108)	\$49,754.56
Washington Mutual 1031 Exchange (general ledger account 28040)	\$55,508.19
Washington Mutual Inc. (general ledger account 28162)	\$17,829.35
Washington Mutual Inc. (Clearing Account) (general ledger account 28162)	\$3,239,907.00
Washington Mutual Inc. (Sept. Mgmt Fees) (general ledger account 28162)	\$14,530,007.97

<u>Obligor/Description</u>	<u>Amount</u>
Washington Mutual Inc. (Stock Option Amort.) (general ledger account 28162)	\$28,557.64
Washington Mutual Inc. (Rent for Admin. Bldg.) (general ledger account 28162)	\$58,652.00
Washington Mutual Inc. (Clearing Account) (general ledger account 49896)	\$1,751,137.89

39. The FDIC-Receiver requests the entry of judgment in its favor for such amounts, together with prejudgment interest accrued thereon at the applicable lawful rate.

Count VI
(Deposit Accounts)

40. The FDIC-Receiver repeats the allegations of paragraphs 1 through 39 of these Counterclaims as if fully restated herein.

41. Plaintiffs have asserted that as of the petition date, they and certain of WMI's non-debtor subsidiaries had funds on deposit with WMB in the approximate amount of \$707,000,000 and that WMI had funds on deposit with WMBfsb of approximately \$3.67 billion. Plaintiffs' assertion that WMI deposit balances of \$3.67 billion are held at WMBfsb, rather than at WMB, appears to be contradicted by certain of the documents that plaintiffs rely on for this assertion. Without conceding that the funds at issue are in fact deposits, the funds are collectively referred to herein as the "Deposit Funds."

42. Based on the various court filings by WMI and JPMC, there is a significant fact issue as to whether the Deposit Funds include commingled funds that are the property of WMB. Without limiting the foregoing, since the petition date \$234,687,816 has been received in the disputed accounts as payment of tax refunds that are, in whole or substantial part, the property of WMB, for the reasons previously discussed. It appears that additional funds that are WMB's property as tax-related assets also are or may be included among the Deposit Funds.

43. In addition, JPMC has alleged that the September 2008 transfer of approximately \$3.67 billion from one account to a different account was a mere “book entry” that was not accompanied by the transfer of assets. This allegation, and the apparently contradictory documents relating to the alleged transfer and the account to which the funds were transferred, raise questions about the assets and liabilities assumed by JPMC pursuant to the P&A Agreement with respect to the disputed accounts and the funds contained therein.

44. Further, JPMC has alleged that in the weeks leading up to the WMB receivership nearly a billion dollars were transformed from an unsecured general ledger debt that was not supported by good funds or collateral, and that had accumulated over several years, into purported demand deposit funds. This accounting maneuver reflects a substantial portion of the \$3.67 billion in funds that WMI claims to have transferred to WMBfsb and that makes up the majority of the Deposit Funds.

45. Upon information and belief, WMI transferred or attempted to transfer the Deposit Funds from WMB to WMBfsb in anticipation of the possibility that WMB would be closed by bank regulators. A current WMI employee has provided an affidavit in another litigation stating that (i) the attempt to transfer over \$3 billion was initiated on September 18, 2008, only days before the OTS order closing WMB and at a time when WMB was in the midst of a deposit outflow that would eventually total \$16.7 billion over a ten-day period, (ii) the transfer was intended to be for the “maximum amount” possible, and (iii) the intent of WMI’s management in directing the action was “to transfer WMI’s bank account to the more well-capitalized bank within the consolidated group.”

46. According to JPMC’s allegations, the attempted \$3.67 billion transfer of funds from WMB to WMBfsb did not involve the movement of any funds. Instead, WMI caused

various accounting entries to be made in connection with the purported transfer of funds to reflect an immediate loan of the entire amount back to WMB from WMBfsb. In the event of a future order closing WMB but not the “more well-capitalized” WMBfsb, WMI would assert that it was entitled to immediate possession of the \$3.67 billion, rather than requiring WMI to submit to the receivership claims process and the possibility of a reduced recovery in accordance with recoveries by other receivership creditors. At the same time, through the accounting entries, WMI purported to establish a \$3.67 billion debt owed by WMB to its subsidiary, WMBfsb, when in fact some of the funds that were purportedly transferred from and then supposedly loaned back to WMB may have been WMB’s property to begin with.

47. Upon information and belief, the purpose for the attempted movement of the Deposit Funds to WMBfsb was an attempt to improve WMI’s position against the FDIC and WMB’s other creditors in anticipation of a possible WMB receivership. These also were the reasons for the reclassification of nearly one billion dollars in funds from other general ledger accounts into the purported deposit accounts in the weeks leading up to the receivership. These actions were undertaken with the intent to hinder, delay or defraud WMB, the FDIC or other federal banking agencies in the event that WMB was closed and the FDIC was appointed its receiver.

48. The FDIC-Receiver demands judgment pursuant to 12 U.S.C. § 1821(d)(17) or other applicable law unwinding the fraudulent transfers described above and, separately, awarding to the FDIC-Receiver the amount of the Deposit Funds that are the property of WMB in an amount to be proven at trial.

49. JPMC claims an interest in the dispute concerning the Deposit Funds as the purchaser of substantially all of the assets of WMB under the P&A Agreement. In addition,

JPMC assumed the disputed deposit accounts pursuant to the P&A Agreement and holds the funds that are at issue in the disputes regarding the Deposit Funds. Accordingly, the FDIC-Receiver names JPMC as an additional counterclaim defendant with respect to this Count.

Count VII
(Capital Maintenance Obligations)

50. The FDIC-Receiver repeats the allegations of paragraphs 1 through 49 of these Counterclaims as if fully restated herein.

51. As a thrift holding company, prior to the WMB receivership, WMI had statutory and regulatory obligations to maintain and guarantee the appropriate capital levels of WMB pursuant to applicable capital and liquidity requirements.

52. Events since the closing of WMB have raised questions about whether WMI, WMB or their directors or officers were accounting and reserving for anticipated losses appropriately, thereby resulting in an overstatement of WMB's capital.

53. WMI's failure to sufficiently maintain the appropriate capitalization of WMB damaged WMB in an unliquidated amount. The FDIC-Receiver demands judgment against WMI for such damages in an amount to be proven at trial.

Count VIII
(Unlawful Dividends)

54. The FDIC-Receiver repeats the allegations of paragraphs 1 through 53 of these Counterclaims as if fully restated herein.

55. The FDIC-Receiver may avoid and recover fraudulent transfers within five years before the receivership. The FDIC-Receiver's rights in this regard are superior to any rights of a trustee or any other party (other than any party which is a federal agency) under title 11.

56. In addition, to the extent the FDIC-Receiver's claims relate to unlawful dividends paid, or other unlawful distributions made by WMB to its stockholders, or, as

successor by merger to New American Capital, Inc. (“NACI”), by NACI to its stockholders, the FDIC-Receiver may recover such amounts under applicable state law.

57. Plaintiffs have asserted claims for recovery of various allegedly fraudulent transfers against the FDIC-Receiver in the amount of at least \$10.5 billion. In support of those claims, plaintiffs have alleged, *inter alia*, that “WMI or WMB may have been insolvent at the time” of the challenged transfers and that if “WMB was insolvent, had unreasonably small capital, and/or was unable to pay its own debt obligations as they matured, WMI did not receive any value in exchange” for certain transfers.

58. If WMB or NACI was insolvent during some or all of the period within five years prior to the FDIC-Receiver’s appointment on September 25, 2008, then the FDIC-Receiver may have claims for actual or constructive fraudulent transfers against WMI as the initial transferee, the institution-affiliated party, the person for whose benefit a transfer was made, or from any immediate or mediate transferee of any such initial transferee, for transfers of at least \$15,041,000,000 in the form of cash dividends between September 2003 and September 2008. Of these dividends, \$7.2 billion were distributed to WMI in 2006 and \$5.49 billion were distributed to WMI in 2007.

59. The FDIC-Receiver demands judgment against WMI for such unlawful transfers in an amount to be proven at trial.

Count IX
(Goodwill Litigation)

60. The FDIC-Receiver repeats the allegations of paragraphs 1 through 59 of these Counterclaims as if fully restated herein.

61. WMB is or was a plaintiff or the successor in interest to a plaintiff in certain litigation prior to the receivership or, if it was not a named plaintiff, was the real party in interest

in such litigation being prosecuted by WMI. Without limiting the foregoing, this litigation includes American Savings Bank FA v. United States, No. 92-872C (Fed. Court of Claims), Anchor Savings Bank FSB v. United States, No. 95-39C (Federal Court of Claims) and Washington Mutual Inc. v. Internal Revenue Service (W.D. Wash.).²

62. The FDIC-Receiver succeeded to WMB's interests in such litigation and is the rightful recipient of any recoveries therein. To the extent that WMI has received or may in the future receive any proceeds from such litigation that are the rightful property of WMB, any such payments are held in trust for WMB.

63. The FDIC-Receiver demands judgment for all such amounts held by WMI in an amount to be proven at trial.

Count X
(Insurance Proceeds)

64. The FDIC-Receiver repeats the allegations of paragraphs 1 through 63 of these Counterclaims as if fully restated herein.

65. Prior to the receivership, WMI and/or WMB purchased insurance for which WMB was, at least in part, a named insured or an intended beneficiary. Such insurance includes, without limitation: the 2007/2008 Lloyd's of London Washington Mutual Financial Institution Blended Program, Policy No. 509/QA015407 and various policies of excess insurance relating thereto (the "2007/08 Blended Tower"); the 2008/09 Aon Financial Institutions Bond, Electronic and Computer Crime, Bankers Professional Liability, Employment Practices Liability and Fiduciary Liability Policy, Policy No. B0823FD0806211 and various policies of excess

² The last of these cases was listed without a docket number in WMI's statement of financial affairs dated December 19, 2008, filed in its bankruptcy case. The action was not listed in the subsequent version of WMI's statement of financial affairs. Upon information and belief, the action concerns tax issues relating to Winstar claims.

insurance relating thereto (the "2008/09 Blended Tower"); and the 2008/2009 XL Specialty Insurance Company Management Liability and Company Reimbursement Insurance Policy, Policy No. ELU104380-08 and National Union Policy No. 463-3347 (the "D&O Policies").

66. To the extent that covered loss within the meaning of the relevant insurance policies has been suffered by WMB, the FDIC-Receiver is entitled to all proceeds paid under applicable insurance coverage for such loss.

67. To the extent that proofs of loss with respect to WMB have been or may be filed with respect to such matters with the relevant insurer, the FDIC-Receiver is the rightful recipient of such insurance payments. This includes, without limitation, proofs of loss submitted to the insurers under the 2007/08 Blended Tower on or about July 18, 2008 (C.I.P. Mortgage Company), September 17, 2008 (Encino, California), September 18, 2008 (Campbell Pruneyard, California) and October 3, 2008 (Newport Beach, California).

68. To the extent such amounts have been paid, or are paid in the future, to WMI, those funds are held in trust for the FDIC-Receiver as the rightful recipient thereof.

69. The FDIC-Receiver demands judgment from WMI for all such amounts, together with prejudgment interest at the applicable lawful rate.

PRAYER FOR RELIEF

WHEREFORE, the FDIC-Receiver respectfully requests that the Court enter judgment dismissing with prejudice all of plaintiffs' claims against the FDIC-Receiver and granting all of the FDIC-Receiver's Counterclaims in favor of the FDIC-Receiver, together with interest, costs and attorneys' fees, and granting the FDIC-Receiver such other and further relief as the Court may deem just and proper.

Dated: Washington, D.C.
July 13, 2009

Respectfully submitted,

/s/ David Clarke, Jr.

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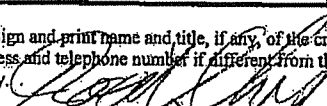
CERTIFICATE OF SERVICE

The undersigned attorney for the FDIC-Receiver certifies that on this 13th day of July 2009, she caused a copy of the foregoing document to be filed via ECF which will cause electronic notice of its filing to be served on all parties who have appeared in this action.

/s/ Deana L. Cairo

Deana L. Cairo

EXHIBIT D

UNITED STATES BANKRUPTCY COURT District of Delaware		PROOF OF CLAIM
Name of Debtor: Washington Mutual, Inc.		Case Number: 08-12229 (Jointly Administered)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Federal Deposit Insurance Corporation		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known)
Name and address where notices should be sent: DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020-1104, Attn: Thomas R. Callahan		
Telephone number: (212) 335-4500		Filed on: _____
Name and address where payment should be sent (if different from above): Federal Deposit Insurance Corporation, 1601 Bryant Street, Dallas, Texas 75201, Attn: Robert C. Schoppe, Receiver in Charge		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
Telephone number: _____		
1. Amount of Claim as of Date Case Filed: <u>SEE ATTACHED</u>		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property, or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input checked="" type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(9). Amount entitled to priority: <u>SEE ATTACHED</u>
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: <u>SEE ATTACHED</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: _____		
Date: 03/26/2009	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 	
Robert C. Schoppe - Federal Deposit Insurance Corporation, 1601 Bryant Street, Dallas, Texas 75201		RECEIVED MAR 30 2009 KURTZMAN CARSON CONSULTANTS

COPY

Addendum to Proof of Claim
The Federal Deposit Insurance Corporation, as
Receiver for Washington Mutual Bank, Henderson, Nevada

A. Introduction

1. This proof of claim is submitted pursuant to 11 U.S.C. § 501 and Bankruptcy Rule 3001 by the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank, Henderson, Nevada (the “FDIC-Receiver”). The FDIC-Receiver was appointed receiver of Washington Mutual Bank (“WMB”) by the Office of Thrift Supervision (the “OTS”) on September 25, 2008, by order number 2008-36. On September 26, 2008, WMI and Washington Mutual Investment Corp. (together, the “Debtors”) commenced these voluntary cases under chapter 11 of the Bankruptcy Code.

2. Pursuant to 12 U.S.C. § 1821(d)(2), the FDIC-Receiver succeeds by operation of law to the rights, titles, powers, and privileges, including legal claims, of WMB, and of any stockholder, member, accountholder, depositor, officer or director of WMB. The FDIC-Receiver is entitled to a superpriority with respect to the portion of its claims relating to the avoidance and recovery of fraudulent transfers that are subject to 12 U.S.C. § 1821(d)(17). In addition, some of the FDIC-Receiver’s claims are entitled to administrative priority under 11 U.S.C. § 507, including priority under 11 U.S.C. § 507(a)(9) for commitments to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution.

3. In its capacity as receiver, the Federal Deposit Insurance Corporation acts to protect insured depositors and creditors of failed depository institutions. The claims set forth herein arise, in part, out of WMI’s actions by and through its agents to direct WMB for the benefit of WMI and at the expense of WMB. In addition to the specific bases for the FDIC-Receiver’s claims discussed below, the Debtors are liable to WMB under various theories including, without limitation, subrogation, unjust enrichment and quasi contract, because WMB

provided money, goods or valuable services to or on behalf of the Debtors for which WMB is entitled to be repaid.

4. Immediately after its appointment, the FDIC-Receiver sold substantially all of the assets of WMB, including the stock of WMB's thrift subsidiary, Washington Mutual Bank fsb ("WMBfsb"), to JPMorgan Chase Bank, N.A. ("JPMC") pursuant to a Purchase and Assumption Agreement Whole Bank dated as of September 25, 2008 (the "P&A Agreement").¹ Certain of the claims asserted herein may have been sold to JPMC under the P&A Agreement and, to that extent, are asserted by the FDIC-Receiver in accordance with the P&A Agreement. Nothing in this proof of claim (i) alters in any respect the terms of the P&A Agreement or the schedules or exhibits thereto or (ii) should be construed as reflecting the FDIC-Receiver's interpretation of the P&A Agreement, including without limitation the assets or rights related to claims that may have been sold, or that JPMC may claim to have been sold, pursuant to the P&A Agreement.

B. Tax-Related Claims

5. The FDIC-Receiver asserts claims arising from consolidated tax returns filed by WMI on behalf of, among others, WMB. All federal and state tax related refunds that have been paid to WMI already or that may be paid in the future based on consolidated tax returns, are due and owing in substantial part to WMB, and not 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 inures to the benefit of that member, in this instance, WMB.

6. Any such amounts received by WMI are or will be held in trust for WMB and are not property of the Debtors' estate as a matter of law. To the extent the Debtors have received any such tax refunds, or might receive any such refunds in the future, the funds should be turned

¹ Publicly available at <http://www.fdic.gov/about/freedom/popular.html>.

over immediately to the FDIC-Receiver. The FDIC-Receiver reserves all rights relating to its claim for turnover of such assets.

7. Without limiting the foregoing, based on investigation to date the FDIC-Receiver believes that the tax refunds or tax overpayments to which WMB is entitled from tax authorities, or from the Debtors to the extent that payments of such amounts have been or will be made to the Debtors, amount to no less than \$4,269,507,909.00, as summarized in the following table.

<u>Category</u>	<u>Amount (all years)</u>
Federal Tax Litigation Items	\$228,830,412
State Claims for Litig. Items	\$29,081,702
Federal Audit Cycle Items	\$670,255,737
State Claims for Fed. Audits	\$275,242,708
Federal Overpayments	\$40,000,000
State Overpayments	\$89,867,260
Federal Loss Carryback Claims	\$1,906,654,329
State Loss Carryback Claims	\$2,464,064
Miscellaneous	\$173,825,241
Federal Refunds Held by WMI	\$241,798,079
State Refunds Held by WMI	\$94,668,862
Amounts Due from WMI to WMB for Intercompany Taxes	\$516,819,516

8. WMI and other members of the consolidated group were parties to a Tax Sharing Agreement dated as of August 31, 1999 (the "Tax Sharing Agreement"). The provisions of the Tax Sharing Agreement do not alter WMB's entitlement to the tax refunds. To the extent that the Debtors assert that the Tax Sharing Agreement somehow empowers them to withhold tax

refunds that are WMB's property, the Tax Sharing Agreement would constitute an unsafe and unsound banking practice. Further, pursuant to the Internal Revenue Code, regulations promulgated thereunder, and state tax laws, as applicable, WMB has an independent right to pursue, contest, compromise, or settle any tax related adjustment or deficiency relating to WMB. To the extent that WMI attempts to interpose the Tax Sharing Agreement to prevent the FDIC-Receiver, or JPMC in accordance with the provisions of the P&A Agreement, from exercising such rights on behalf of WMB or WMBfsb, such an interpretation of the Tax Sharing Agreement would be burdensome to the receivership. The FDIC-Receiver reserves its right to repudiate the Tax Sharing Agreement pursuant to 12 U.S.C. § 1821(e) for these and any other reasons that it deems appropriate in its sole discretion as provided for under that statute.

9. The FDIC-Receiver specifically reserves the right to litigate, prosecute, dispute, contest, compromise or settle any purported right of set off or offset claimed by the Debtors relating to tax refunds in the proper venue under title 12 of the United States Code. Such claims and defenses are not subject to the jurisdiction of the Bankruptcy Court but are, rather, independent property rights and claims that are subject to the exclusive jurisdiction provided for under title 12.

C. Trust Preferred Securities

10. In February 2006, Washington Mutual Preferred Funding LLC ("WMPF"), a Delaware limited liability company, was formed as an indirect subsidiary of WMB to facilitate core capital financing transactions for WMB through the issuance of "trust" preferred securities to investors by certain special purpose entities ("SPEs"). WMPF's assets were limited to direct or indirect interests in mortgages or mortgage-related assets, cash and other permitted assets. These assets were held in certain Delaware statutory trusts. WMPF issued preferred securities,

which were held by and were the sole asset of the SPEs and which were senior in priority to the common stock in WMPF, which was held indirectly by WMB.

11. The following series of trust preferred securities were issued by SPE subsidiaries of WMPF using this structure. The Debtors have asserted that these series of trust preferred securities have a liquidation preference of approximately \$4 billion.

- a. Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Noncumulative Preferred Securities, Series A-1;
- b. Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Noncumulative Preferred Securities, Series A-2;
- c. Washington Mutual Preferred Funding Trust (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- d. Washington Mutual Preferred Funding Trust II (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- e. Washington Mutual Preferred Funding Trust III (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities;
- f. Washington Mutual Preferred Funding Trust IV (Delaware) Fixed-to-Floating Rated Perpetual Noncumulative Trust Securities.

12. The following series of WMPF preferred securities were issued in connection with the offerings of the trust preferred securities and were designed to include mirror-image terms for the purpose of funding payments to investors in the trust preferred securities:

- a. Washington Mutual Preferred Funding LLC 7.25% Perpetual Noncumulative Preferred Securities, Series 2006-A;
- b. Washington Mutual Preferred Funding LLC 7.25% Perpetual Noncumulative Preferred Securities, Series 2006-B;
- c. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2006-C;
- d. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2007-A;
- e. Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Noncumulative Preferred Securities, Series 2007-B.

13. The trust preferred securities were sold to investors subject to a “conditional exchange” feature under which the trust preferred securities would be exchanged into shares of preferred stock of WMI (or depository shares relating thereto) if certain regulatory events occurred. As a condition to authorizing WMI to treat the trust preferred securities as core capital of WMI’s principal thrift subsidiary, WMB, the OTS required WMI to provide a written commitment to the OTS that if there was a “conditional exchange,” any resulting interest that WMI obtained in the trust preferred securities or, indirectly, in the WMPF preferred securities that funded those securities, would be contributed to WMB. WMI provided that commitment to the OTS in a letter dated February 23, 2006. A copy of the commitment letter is attached as Exhibit 1.

14. On September 25, 2008, WMI entered into an Assignment Agreement with WMB (the “Assignment Agreement”). A copy of the Assignment Agreement is attached as Exhibit 2. Under the Assignment Agreement, and effective upon its execution, WMI transferred to WMB, without recourse, all of its right, title and interest in and to all of the trust preferred securities, the WMPF preferred securities and the SPE subsidiaries of WMPF.

15. Also on September 25, 2008, the OTS notified WMI that an “exchange event” occurred, triggering the “conditional exchange” feature of the trust preferred securities. Thereafter, a “conditional exchange” occurred automatically on September 26, 2008, at 8 a.m. Eastern time, when WMI issued a press release announcing the exchange event.

16. Pursuant to 11 U.S.C. § 365(o), WMI was deemed to have assumed and was required to cure any defects under the February 23, 2006 capital maintenance commitment and the Assignment Agreement as a condition to filing its petition under chapter 11 of the Bankruptcy Code. The FDIC-Receiver demands that the Debtors immediately take all steps, or

authorize third parties to take such steps, that may be necessary to complete the transfer of the trust preferred securities, and any right, title or interest that the Debtors may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF, to JPMC as purchaser of the trust preferred securities and related assets from the FDIC-Receiver under the P&A Agreement. The FDIC-Receiver reserves all of its rights in the event that WMI fails to take such immediate actions, including without limitation seeking the conversion of WMI's chapter 11 case to a liquidation under chapter 7 of the Bankruptcy Code.

17. In the alternative, and without waiving or limiting the foregoing, the FDIC-Receiver reserves its rights to effect the transfer of ownership of the trust preferred securities in the ownership registers of the SPE subsidiaries of WMPF as an action that does not affect the property of the debtors' estates and therefore is not subject to the automatic stay provided under section 362(a) of the Bankruptcy Code.

18. In the alternative, and without waiving or limiting the foregoing, the FDIC-Receiver demands that the Debtors turnover to JPMC, without recourse, all of the trust preferred securities and any right, title or interest that the Debtors may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF, because any such interests are held by the Debtors in trust for WMB.

19. In the alternative, and without waiving or limiting the foregoing, the FDIC-Receiver asserts an administrative claim under 11 U.S.C. § 507(a)(9) for the full value of the trust preferred securities or for payment of the full amount of any liquidation preference accompanying such trust preferred securities, together with the value of any right, title or interest that the Debtors may claim in or to the WMPF preferred securities or the SPE subsidiaries of WMPF.

20. The FDIC-Receiver specifically reserves the right to litigate, prosecute, dispute, contest, compromise or settle any purported rights with respect to the trust preferred securities, the WMPF preferred securities and the SPE subsidiaries of WMPF in the proper venue under title 12 of the United States Code.

D. Intercompany Amounts

21. In asserting claims against the FDIC-Receiver for certain intercompany notes and other intercompany amounts, the Debtors have not taken into account amounts that are due and payable by those entities under the system of intercompany settlement of accounts that was in place prior to the receivership. While reserving all of its rights to dispute the Debtors' intercompany claims in the appropriate forum, the FDIC-Receiver also is entitled to payment of amounts owed by the Debtors and their non-debtor subsidiaries with respect to such claims, or in the alternative, to set-off such amounts owed to the FDIC-Receiver against amounts claimed by WMI pursuant to section 553 of the Bankruptcy Code.

22. Based on the investigation to date and subject to amendment based on further investigations, the FDIC-Receiver asserts claims against the Debtors and their non-debtor subsidiaries for intercompany amounts in the aggregate amount of \$310,761,288.47. Of this total, \$273,616,108 reflects a general ledger entry in WMB's favor relating to the change in accounting for pension contributions in excess of pension expenses prior to the implementation of Statement of Financial Accounting Standards No. 158. The other intercompany amounts owed by the Debtors or their non-debtor subsidiaries are:

<u>Obligor/Description</u>	<u>Amount</u>
Ahmanson Obligation Corp. (general ledger account 49328)	\$6,676.78
Washington Mutual Inc. (Payroll) (general ledger account 28462)	\$17,369,814.37

<u>Obligor/Description</u>	<u>Amount</u>
Washington Mutual 1031 Exchange (Payroll) (general ledger account 28497)	\$37,024.10
Ahmanson Residential Development (general ledger account 28058)	\$214.50
Sutter Bay Corp. (general ledger account 28088)	\$56.12
Washington Mutual Finance Group LLC (general ledger account 28108)	\$49,754.56
Washington Mutual 1031 Exchange (general ledger account 28040)	\$55,508.19
Washington Mutual Inc. (general ledger account 28162)	\$17,829.35
Washington Mutual Inc. (Clearing Account) (general ledger account 28162)	\$3,239,907.00
Washington Mutual Inc. (Sept. Mgmt Fees) (general ledger account 28162)	\$14,530,007.97
Washington Mutual Inc. (Stock Option Amort.) (general ledger account 28162)	\$28,557.64
Washington Mutual Inc. (Rent for Admin. Bldg.) (general ledger account 28162)	\$58,652.00
Washington Mutual Inc. (Clearing Account) (general ledger account 49896)	\$1,751,137.89

E. Deposit Accounts

23. The Debtors have asserted that as of the petition date, the Debtors and certain of WMI's non-debtor subsidiaries had funds on deposit with WMB in the approximate amount of \$707,000,000 and that WMI had funds on deposit with WMBfsb of \$3,668,000,000. Since the petition date an additional \$234,687,816 has been received in these accounts as payment of tax refunds that are, in all or substantial part, the property of WMB, for the reasons discussed above. Without conceding that the funds at issue are in fact deposits, the funds are collectively referred to herein as the "Deposit Funds."

24. Based on public filings by JPMC and the Debtors, there appear to be significant doubts as to whether satisfactory account documentation exists with respect to some or all of the funds at issue. Pending further investigation, the FDIC-Receiver therefore reserves all of its rights under 12 U.S.C. § 1823(e) and under 12 U.S.C. § 1821(d)(9) to defeat any claim asserted by the Debtors with respect to the Deposit Funds.

25. Separately, the FDIC-Receiver expressly reserves all of its rights with respect to the Deposit Funds under section 9.5 of the P&A Agreement, under which the FDIC-Receiver may, in its discretion, determine that all or any portion of any deposit balance assumed by JPMC pursuant to the P&A Agreement does not constitute a "Deposit" or otherwise, in its discretion, determine that it is in the best interest of the FDIC-Receiver or Corporation to withhold all or any portion of any deposit, and may direct JPMC to withhold all or any portion of any such deposit balance.

26. The FDIC-Receiver further asserts that to the extent any of the Deposit Accounts is subject to a security interest and lien in favor of WMB, the FDIC-Receiver is entitled to enforce the terms thereof with respect to funds in such an account. Upon information and belief, WMI entered into at least one specific security agreement with WMB with respect to funds in account number 177-8911206.

27. Separately, and in the alternative, the FDIC-Receiver reserves all of its rights of setoff under 11 U.S.C. § 553, 12 U.S.C. § 1821(d) or federal or state law with respect to the Deposit Funds.

28. The FDIC-Receiver specifically reserves the right to litigate, prosecute, dispute, contest, compromise or settle any purported rights with respect to the Deposit Funds in the proper venue under title 12 of the United States Code.

F. Capital Maintenance Obligations

29. The FDIC-Receiver's claims arise in part from WMI's obligation to maintain and guarantee the appropriate capital levels of WMB 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 regulations promulgated thereunder.

30. Events since the closing of WMB have raised questions about whether WMI, WMB or their directors or officers were accounting and reserving for anticipated losses appropriately, thereby resulting in an overstatement of WMB's capital. The FDIC-Receiver has only recently begun its investigation into these facts, but it notes that in connection with its acquisition of WMB, JPMC announced that it would write down approximately \$31 billion of WMB's loan portfolio based on JPMC's assessment of remaining credit losses in that portfolio. Only months earlier, WMI's chief financial officer had predicted substantially lower write-downs by WMB for non-performing assets of between \$12 billion and \$19 billion over the next several years.

31. WMI's failure to sufficiently maintain the appropriate capitalization of WMB damaged WMB in an unliquidated amount. The capital maintenance claims may be subject to priority under 11 U.S.C. § 507(a)(9), if applicable.

G. Fraudulent Transfers/Dividends

32. Although its investigation only recently has commenced, the FDIC-Receiver may avoid and recover fraudulent transfers within five years before the receivership under federal and state law. See 12 U.S.C. § 1821(d)(17); R.C.W. §§ 19.40.011, et seq.; 6 Del. C. §§ 1301, et seq. The FDIC-Receiver reserves all rights to recover property transferred, or the value of such property from the initial transferee, the institution-affiliated party, or the person for whose

benefit the transfer was made, or from any immediate or mediate transferee of any such initial transferee. The FDIC-Receiver's rights under section 1821(d)(17) are superior to any rights of a trustee or any other party (other than any party which is a federal agency) under title 11 or the Debtors in these bankruptcy cases. See 12 U.S.C. § 1821(d)(17).

33. Similarly, to the extent the FDIC-Receiver's claims relate to unlawful dividends paid, or other unlawful distributions made by WMB to its stockholders, or, as successor by merger to New American Capital, Inc. ("NACI"), by NACI to its stockholders, the FDIC-Receiver reserves the right to recover such amounts as provided for under the Washington Business Corporation Act, title 23B of the Revised Code of Washington, or in the case of NACI under the Delaware General Corporation Law, 8 Del C. §§ 101, et seq.

34. The Debtors have asserted claims for recovery of various allegedly fraudulent transfers against the FDIC-Receiver in the amount of at least \$10.5 billion. In support of those claims, the Debtors have alleged, inter alia, that "WMI or WMB may have been insolvent at the time" of the challenged transfers and that if "WMB was insolvent, had unreasonably small capital, and/or was unable to pay its own debt obligations as they matured, WMI did not receive any value in exchange" for certain transfers.

35. If WMB or NACI was insolvent during some or all of the period within five years prior to the FDIC-Receiver's appointment on September 25, 2008, then the FDIC-Receiver may have claims for actual or constructive fraudulent transfers against WMI as the initial transferee, the institution-affiliated party, the person for whose benefit a transfer was made, or from any immediate or mediate transferee of any such initial transferee, for transfers of at least \$15,041,000,000 in the form of cash dividends between September 2003 and September 2008.

Of these dividends, \$7.2 billion were distributed to WMI in 2006 and \$5.49 billion were distributed to WMI in 2007.²

H. Litigation

36. WMB is or was a plaintiff or the successor in interest to a plaintiff in certain litigation prior to the receivership or, if it was not a named plaintiff, was the real party in interest in such litigation being prosecuted by WMI. Without limiting the foregoing, this litigation includes American Savings Bank FA v. United States, No. 92-872C (Fed. Court of Claims), Anchor Savings Bank FSB v. United States, No. 95-39C (Federal Court of Claims) and Washington Mutual Inc. v. Internal Revenue Service (W.D. Wash.).³

37. The FDIC-Receiver succeeded to WMB's interests in such litigation and is the rightful recipient of any recoveries therein. To the extent that WMI has received or may in the future receive any proceeds from such litigation, any such payments are held in trust for WMB and are not property of the Debtors' estate. The FDIC-Receiver demands the turnover of all such amounts by the Debtors or the right to receive such payments directly from the defendant(s). In the alternative, the FDIC-Receiver asserts a claim for any and all recoveries in such litigation.

² WMB paid dividends on its common and preferred stock of as much as \$17.1 billion during the five year period. During that time, WMB's stock was held by NACI, a wholly-owned subsidiary of WMI that, upon information and belief, WMI dominated and controlled. WMB succeeded by merger to assets and liabilities of NACI as the result of a reorganization that WMI caused to occur in late 2007. The FDIC-Receiver is continuing its investigation into whether the NACI reorganization itself resulted in fraudulent transfers as to which WMI is liable to the FDIC-Receiver and reserves the right to supplement this claim to provide additional detail with respect to such claims.

³ The last of these cases was listed in the Debtors' statement of financial affairs dated December 19, 2008 without a docket number. It was not listed in the subsequent version of the Debtors' statement of financial affairs. Upon information and belief, the action concerns tax issues relating to Winstar claims.

I. Insurance Proceeds

38. Prior to the receivership, WMI and/or WMB purchased insurance for which WMB was, at least in part, a named insured or an intended beneficiary. Such insurance includes, without limitation: the 2007/2008 Lloyd's of London Washington Mutual Financial Institution Blended Program, Policy No. 509/QA015407 and various policies of excess insurance relating thereto (the "2007/08 Blended Tower"); the 2008/09 Aon Financial Institutions Bond, Electronic and Computer Crime, Bankers Professional Liability, Employment Practices Liability and Fiduciary Liability Policy, Policy No. B0823FD0806211 and various policies of excess insurance relating thereto (the "2008/09 Blended Tower"); and the 2008/2009 XL Specialty Insurance Company Management Liability and Company Reimbursement Insurance Policy, Policy No. ELU104380-08 and National Union Policy No. 463-3347 (the "D&O Policies").

39. To the extent that covered loss within the meaning of the relevant insurance policies has been suffered by WMB, the FDIC-Receiver is entitled to all proceeds paid under applicable insurance coverage for such loss. Without limiting the foregoing, the FDIC-Receiver claims any proceeds under the applicable insurance policies for insured wrongful acts that caused harm in any respect to WMB.

40. To the extent that proofs of loss have been or may be filed with respect to such matters with the relevant insurer, the FDIC-Receiver hereby claims any payments in respect of such loss, which are not property of the Debtors' estate and, to the extent paid to the Debtors, are held in trust for the FDIC-Receiver as the rightful recipient thereof. This includes, without limitation, proofs of loss submitted to the insurers under the 2007/08 Blended Tower on or about July 18, 2008 (C.I.P. Mortgage Company), September 17, 2008 (Encino, California), September 18, 2008 (Campbell Pruneyard, California) and October 3, 2008 (Newport Beach,

California). The amount of loss claimed and other details are known to the Debtors; those details are omitted from this proof of claim for reasons of confidentiality.

41. The FDIC-Receiver reserves the right to tender to the insurers any insured matter that has been or may be asserted against the receivership notwithstanding any claim that proceeds under such insurance policies are, in whole or in part, property of the Debtors' estate.

42. The FDIC-Receiver also has succeeded to rights, claims and causes of action by WMB against directors, officers, and professionals and others who provided services to WMB. The FDIC-Receiver reserves all of its rights and remedies in and to any insurance policies potentially covering the FDIC-Receiver's claims against such persons and entities including policies pursuant to which the Debtors or WMB are insureds or additional insureds.

J. Other Matters Subject to the P&A Agreement

43. The FDIC-Receiver asserts a protective unliquidated claim for matters as to which (i) JPMC may assert a claim against the Debtors as the successor in interest to WMB and the FDIC-Receiver under the P&A Agreement and (ii) the Debtors may object to such a claim due to JPMC's lack of standing.

44. Without limiting the foregoing, the matters as to which the FDIC-Receiver asserts this protective claim include:

- a. Claims relating to employee or retiree benefit plans, trusts or insurance policies, including Rabbi trusts, BOLI/COLI policies and retirement or welfare plans, to the extent such plans, trusts or policies are or should be the property or responsibility of WMB;
- b. Claims relating to litigation proceeds as to which (i) JPMC claims an entitlement as successor to WMB and (ii) the FDIC-Receiver agrees that

JPMC has succeeded to WMB's interests under the terms of the P&A Agreement;

- c. Claims relating to WMB assets as to which (i) JPMC claims an entitlement as successor to WMB and (ii) the FDIC-Receiver agrees that JPMC has succeeded to WMB's interests under the terms of the P&A Agreement.

K. Other Unliquidated Claims

45. The FDIC-Receiver has or may have claims based upon breaches of fiduciary duties owed by the directors and officers of WMI to WMB and the liability of WMI in connection therewith. Such directors and officers may have failed to meet their lawful obligations and act in the best interests of WMB including, but not limited to, directing and/or authorizing the various upstream dividend and other avoidable transfers, failing to adequately maintain WMB's capital or liquidity, failing to establish or maintain adequate internal controls, failing to engage in suitable risk management, implementing substandard practices for loan underwriting and asset purchases and sales for WMB and otherwise taking or omitting to take actions that would serve WMB's interests.

46. Further, according to the Debtors, before the petition date approximately sixty WMB employees were officers of WMI. All of WMB's directors also were directors of WMI, and the boards of directors of WMB and WMI regularly met in joint session. To the extent that such officers or directors (or any other persons as to whom WMI owes a duty of indemnification or advancement) assert claims against the FDIC-Receiver for indemnification or advancement, the FDIC-Receiver asserts a claim for reimbursement of such amounts against WMI.

47. The FDIC-Receiver also asserts an unliquidated claim for indemnity or contribution to the extent that WMB is entitled to assert such claims against WMI with respect to any pending or future litigation in which WMB or the FDIC-Receiver is or may be a named defendant.

48. To the extent any governmental authority obtains or enters an order directing restitution for the criminal or otherwise wrongful acts of the officers or directors of WMB, such orders are for the benefit of the FDIC-Receiver as successor to WMB. If WMI receives any payment in respect of such an order, it shall hold such amounts in trust for WMB, and the FDIC-Receiver demands that such funds be turned over to the receivership estate.

L. Reservation of Rights

49. Neither this proof of claim nor any subsequent appearance, pleading, claim, document, suit, motion nor any other writing or conduct, shall constitute a waiver by the FDIC-Receiver of any: (a) right of the FDIC-Receiver to assert a defense of sovereign immunity; (b) right to have any and all final orders entered only after appropriate administrative procedures and/or de novo review by a United States district court; (c) right to elect a trial by jury in any matters so triable; (d) right to have the reference of this matter withdrawn by the United States district court in any matter or proceeding subject to mandatory or discretionary withdrawal; or (e) other rights, claims, actions, defenses, setoffs, recoupments or other matters to which the FDIC-Receiver is entitled under any agreements, at law or in equity or under the United States Constitution. All of the above rights are expressly reserved and preserved without exception and with no purpose of conceding jurisdiction in any way by this filing or by any other participation in this matter. The FDIC-Receiver expressly reserves all rights to assert the preemption of the Bankruptcy Court's jurisdiction and the exclusive jurisdiction provided under title 12.

50. The identification or enumeration of the FDIC-Receiver's rights and remedies set forth in this proof of claim is not intended to be exhaustive. In addition, the FDIC-Receiver's investigation and review of the books and records of WMB is ongoing, and the FDIC-Receiver and its professional advisers have not yet had a sufficient opportunity to evaluate and determine all claims that the FDIC-Receiver may have against the Debtors. The FDIC-Receiver reserves the right to further amend, revise or supplement this proof of claim in any respect, and to file such additional claims and requests for payment. Without limiting the foregoing, the FDIC-Receiver reserves the right to assert specific claims or counterclaims for as-yet unliquidated, unmatured or contingent claims currently known or unknown, including without limitation, claims for indemnification, contribution, subrogation or reimbursement from the Debtors for any claims of third parties that may be asserted against the FDIC-Receiver or payments made by or on behalf of the FDIC-Receiver for which the Debtors are responsible.

51. The FDIC-Receiver further reserves the right to amend or supplement this proof of claim, including, without limitation, to: cure a defect in the original claim, correct the claim amount or priority status, include additional supporting documents, describe the claim in greater detail, or add additional claims presently unknown to the FDIC-Receiver that, if known, could have affected this claim or resulted in the assertion of additional damages. In addition, nothing herein shall be deemed to waive or otherwise affect the rights of any other person, including without limitation, JPMC, to make claims similar to or parallel with this claim.

52. The FDIC-Receiver reserves all rights to setoff against the Debtors any interests that are subject to setoff under section 553 of the Bankruptcy Code. Accordingly, the FDIC-Receiver asserts and reserves all of its rights, if any, to setoff any sums due to the Debtors against sums due the FDIC-Receiver from the Debtors or their non-debtor subsidiaries.

53. Nothing in this proof of claim describing or in any way relating to property in which the Debtors now or hereafter may assert an interest shall be construed or deemed in any way as evidence that such assets are property of the estate or an admission that the Debtors have any rights in such property. This claim is submitted to assert and preserve the rights of the FDIC-Receiver in the Debtors' pending bankruptcy cases, and neither the submission of this proof of claim nor any provision in it shall be construed or deemed as evidence that FDIC-Receiver has waived or intends to waive any rights or claims afforded it under applicable law. Without limiting the foregoing, the FDIC-Receiver reserves any rights at law or equity that it has or may have against any other entity, person or persons, including without limitation the insiders, directors or officers of the Debtors, of WMB or of their affiliated entities, or any of their insurers or indemnitors.

54. This 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 FDIC-Receiver.

55. Copies of various documents in support of this proof of claim are not attached because of the size of such documents and because the relevant provisions are described herein. In addition, many if not all of those documents are in the Debtors' possession or are matters of public record.

M. Notices

56. All notices and requests for documents to the FDIC-Receiver relating to this proof of claim shall be served upon:

Tom Reeves
Counsel - Legal Division
Federal Deposit Insurance Company
Room VS-D-7608
3501 Fairfax Drive
Arlington, VA 22226-3500
treeves@fdic.gov

Thomas R. Califano
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 335-4500
thomas.califano@dlapiper.com

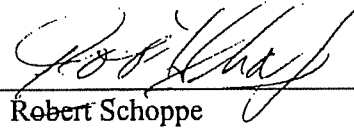
57. The claims herein include (1) claims to funds that may be held by third parties, (2) claims to funds that are held by the Debtors or subject to express or equitable trust, (3) general unsecured claims, and (4) administrative and priority claims. Based on the state of the records currently available to the FDIC-Receiver, on the fact that many records were not available to the FDIC-Receiver at the time of preparation and filing of this proof of claim, and on information derived from various records reviewed, it is possible that certain assets which the Debtors assert to own in their schedules or otherwise, may in fact be owned by the FDIC-Receiver, and may not be property of the Debtors' estate. The FDIC-Receiver is investigating the circumstances as thoroughly and expeditiously as possible. The FDIC-Receiver hereby asserts its claim to such assets and will submit more specific claims as soon as information is made available in order to evaluate, ascertain and determine specific ownership interests.

[INTENTIONALLY LEFT BLANK]

Dated: March 26, 2009

FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for Washington Mutual Bank, Henderson,
Nevada

By: _____



Robert Schoppe
Receiver-in-Charge

EXHIBIT 1

CONFIDENTIAL TREATMENT REQUESTED

Washington Mutual

John F. Robinson
Executive Vice President
Corporate Risk Management

February 23, 2006

Darrel Dochow
Deputy Regional Director, West Region
Office of Thrift Supervision
101 Stewart Street, Suite 1010
Seattle, WA 98101-1048

Re: Washington Mutual Bank (Docket Number: 08551) – Request for
confirmation of capital treatment of two classes of preferred stock.

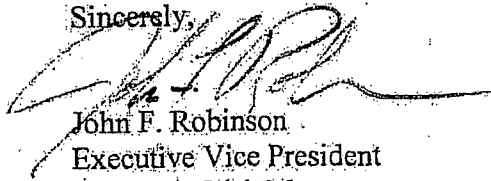
Dear Mr. Dochow:

On behalf of Washington Mutual, Inc. (“WMI”), I am writing with reference to the notice filed January 30, 2006 by Washington Mutual Bank (“WMB”) to establish a new subsidiary, Washington Mutual Preferred Funding LLC (“WMPF”), for the purpose of issuing two classes of preferred securities to be eligible for inclusion in core capital of WMB (the “Notice”). You provided notice of the non-objection of the Office of Thrift Supervision (“OTS”) to the establishment of WMPF by your letter dated February 9, 2006.

As you are aware, in the Notice WMB requested the OTS confirm that the sale of the Cayman Co. Preferred Securities and the Delaware Issuer Securities (as defined in the Notice) to outside investors constitutes the sale of the LLC Preferred Securities (as defined in the Notice) to outside investors and that the LLC Preferred Securities qualify for inclusion in core capital of WMB. In connection with that request, WMI hereby undertakes that if, as a result of a Supervisory Event (as defined in the Notice), WMI exchanges its Holding Company Shares (as defined in the Notice) for Cayman Co. Preferred Securities and the Delaware Issuer Securities, or if WMI subsequent to such exchange acquires the LLC Preferred Securities, WMI will contribute to WMB the Cayman Co. Preferred Securities and the Delaware Issuer Securities or, as appropriate, the LLC Preferred Securities.

If you have any questions regarding this letter, please call Robert Monheit at (212) 326-6104 or me at (206) 490-6100.

Sincerely,


John F. Robinson
Executive Vice President
Corporate Risk Management

1201 Third Avenue
WMT 1601
Seattle, WA 98101
phone 206.490.6100
fax 206.377.5318

EXHIBIT 2

ASSIGNMENT AGREEMENT

between

**WASHINGTON MUTUAL BANK,
as Assignee**

and

**WASHINGTON MUTUAL, INC.,
as Assignor**

Effective as of September 25, 2008

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (as amended, modified or supplemented from time to time after the date hereof, the "Agreement") is effective as of September 25, 2008, and is made by and between WASHINGTON MUTUAL BANK, a federally-chartered savings association, as Assignee (the "Assignee"), and WASHINGTON MUTUAL, INC., a Washington corporation, as Assignor (the "Assignor").

RECITALS

(A) Assignor wishes to assign to Assignee certain securities, and Assignee wishes to accept such assignment, which Securities shall be assigned upon the execution of this Agreement.

AGREEMENT

In consideration of the premises and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignee and Assignor agree as follows:

ARTICLE I

DEFINITIONS: GENERAL INTERPRETIVE PRINCIPLES

Section 1.01. Definitions.

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

Agreement: This Assignment Agreement, including all exhibits hereto, and all amendments hereof and supplements hereto.

Certificate: Any instrument constituting evidence of ownership of a Security.

Effective Date: September 25, 2008.

Code: The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder and rulings issued thereunder. Section references to the Code are to the Code, as in effect as the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefore.

Assignment: The assignment to Assignee by Assignor of Securities pursuant to this Agreement.

Delivery: Is deemed to occur as of September 25, 2008.

WMB/WMI Master Securities
Assignment Agreement

Person: Any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

Assignee: Washington Mutual Bank, a federally-chartered savings association, and its successors and assigns.

Securities: The securities listed in Exhibit A that are the subject of this Agreement. The term "Securities" includes, without limitation, such securities, any Certificates corresponding to such securities, and all other rights, benefits, proceeds and obligations of the owner of such securities arising from or in connection with such securities, whether now owned or hereafter acquired.

Assignor: Washington Mutual, Inc., a Washington corporation, and its successors and assigns.

Section 1.02. General Interpretive Principles.

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;
- b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;
- c) references herein to "Articles," "Sections," "Subsections," "Paragraphs," and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of this Agreement;
- d) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions;
- e) the words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular provision; and
- f) the term "include" or "including" shall mean without limitation by reason of enumeration.

ARTICLE II

ASSIGNMENT OF SECURITIES

Section 2.01. Assignment of Securities.

With respect to the Securities listed on Exhibit A attached hereto, Assignor hereby contributes, transfers, assigns, sets over and conveys to Assignee, without recourse, but subject to the terms of this Agreement, all of Assignor's right, title and interest, whether now owned or hereafter acquired, in and to the Securities.

Upon execution and delivery of this Agreement by Assignor and Assignee, all rights and benefits arising out of the Securities which come into the possession of Assignor, including but not limited to funds which may be received by Assignor on or in connection with the Securities, and the ownership of all records and documents with respect to the Securities which are prepared by or which come into the possession of Assignor, shall immediately vest in Assignee.

Assignee acknowledges that the assignment by Assignor to Assignee under this Agreement are intended to qualify as tax-free transactions under Section 351 of the Code.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01. Mutual Representations and Warranties. Each party hereby represents and warrants to the other that it has all requisite power and authority to enter into and perform its obligations under this Agreement.

It is understood and agreed that the representations and warranties set forth in this Article V shall survive delivery of the respective Securities to the Assignee, and shall continue throughout the term of this Agreement.

ARTICLE IV

COSTS

Section 4.01. Costs.

Each party shall bear its own costs and expenses. All other costs and expenses incurred in connection with the transfer and delivery of the Securities, including without limitation recording and filing fees, shall be paid by Assignee.

Each remittance or distribution made pursuant to this Agreement shall be made in the manner agreed to by the parties. To the extent that the amount of a remittance or distribution made pursuant to this Agreement is greater than the amount that was supposed to be made, each party agrees to give prompt written notice thereof to the other party after discovery thereof, including the amount of such remittance or distribution that was paid in error, and to refund such overpayment immediately.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.01. Amendment.

This Agreement may be amended from time to time only by written agreement signed by Assignor and Assignee.

Section 5.02. Governing Law.

This Agreement shall be construed in accordance with the internal laws of the State of Washington, except to the extent preempted by federal law and without reference to the choice of law doctrine of such state, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

Section 5.03. Notices.

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered or certified mail, postage prepaid, to (a) in the case of Assignor,

Washington Mutual, Inc.
1301 Second Avenue, WMC 1411
Seattle, Washington 98101
Attention: Corporate Secretary

or such other address as may hereafter be furnished by Assignor to Assignee in writing;
and

b) in the case of Assignee,

Washington Mutual Bank
1301 Second Avenue, WMC 1411
Seattle, Washington 98101
Attention: Corporate Secretary

or such other address as may hereafter be furnished by Assignee to Assignor in writing.

Section 5.04. Merger; Severability of Provisions.

This Agreement, and the documents and instruments referred to herein, constitute the entire agreement of and is the final and complete expression of the parties relating to the subject matter of this Agreement, and supersedes all prior or contemporaneous negotiations and agreements, whether oral or written, relating to the subject matter hereof.

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held invalid for any reason whatsoever, then such covenants,

agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement. If the invalidity of any part, provision, representation or warranty of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, the parties shall negotiate in good faith to develop a structure the economic effect of which is nearly as possible the same as the economic effect of this Agreement without regard to such inability.

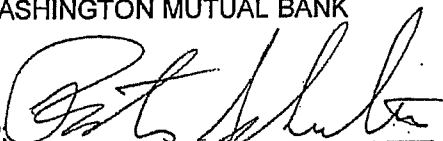
Section 5.05. Execution; Successors and Assigns.

This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same agreement. This Agreement shall inure to the benefit of and be binding upon Assignor and Assignee and their respective successors and assigns.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers on the dates shown below, to be effective as of the effective date first set forth above.

WASHINGTON MUTUAL BANK

By: 

Name: Patricia Schwitz
Title: Senior Vice President

WASHINGTON MUTUAL, INC.

By: 

Name: Todd Baker
Title: Executive Vice President

EXHIBIT A
SECURITIES

- (i) Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Non-cumulative Preferred Securities, Series A-1
- (ii) Washington Mutual Preferred (Cayman) I Ltd. 7.25% Perpetual Non-cumulative Preferred Securities, Series A-2
- (iii) Washington Mutual Preferred Funding Trust Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities
- (iv) Washington Mutual Preferred Funding Trust II Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities
- (v) Washington Mutual Preferred Funding Trust III Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities
- (vi) Washington Mutual Preferred Funding Trust IV Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities
- (vii) Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2006-A
- (viii) Washington Mutual Preferred Funding LLC 7.25% Perpetual Non-cumulative Preferred Securities, Series 2006-B
- (ix) Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2006-C
- (x) Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2007-A
- (xi) Washington Mutual Preferred Funding LLC Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2007-B
- (xii) Any and all right, title and interest of the Washington Mutual, Inc. in and to Washington Mutual Preferred (Cayman) I Ltd. ("WaMu Cayman"), Washington Mutual Preferred Funding Trust ("WaMu Delaware I"), Washington Mutual Preferred Funding Trust II ("WaMu Delaware II"), Washington Mutual Preferred Funding Trust III ("WaMu Delaware III") and Washington Mutual Preferred Funding Trust IV ("WaMu Delaware IV" and, together with WaMu Cayman, WaMu Delaware I, WaMu Delaware II and WaMu Delaware III, the "Trusts"), including any interests of the Trusts in any of the Securities

EXHIBIT E

Any questions?



Stop by any WaMu branch.

Or call customer service:

800.788.7000

Para información en español, oprima el 8.

800.841.1743

TDD for the deaf and hearing impaired.

Our Business Account Disclosures and Regulations

The legal details about your business
deposit accounts and related services.

Washington Mutual Bank and Washington Mutual Bank fsb are FDIC insured



Equal Housing Lender

91001 (04/08)

Effective April 2008

BUSINESS ACCOUNT DISCLOSURES AND REGULATIONS QUICK REFERENCE GUIDE

This booklet and other documents we give you provide information about how your accounts and services work and about your and our rights and responsibilities. You should review all material we provide thoroughly and carefully.

Some of the topics most frequently referenced by customers are noted below. You may also find the Table of Contents useful to locate information.

Check Holds—See the *Funds Availability* section.

Electronic Fund Transfers—For information on automated teller machine (ATM), Point of Sale (POS), Automated Clearinghouse (ACH) and other types of electronic transfers, see the *Electronic Fund Transfer Agreement and Disclosures* section.

Identification—For account opening and identification requirements, see the *Identification* section and *Taxpayer Information* section.

Overdrafts/Non-Sufficient Funds Practices—See the *Non-Sufficient Funds Transactions Including Overdrafts* section.

Problem Reporting and Resolution—For requirements to report problems related to your account, see the *Customer Responsibilities and Limit on Time to Assert Claims* section. For dispute resolution procedures, see the *Resolution of Disputes (Including Arbitration)* section.

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INTRODUCTION

Welcome to WaMu. These *Business Account Disclosures and Regulations* (also referred to as *Account Disclosures and Regulations Relating to Deposit Accounts and Other Services and Electronic Fund Transfer Agreement and Disclosures*) and certain other documents we provide to you include the rules and terms of the accounts and services you have selected or may select in the future. Please read these materials carefully and keep a copy for future reference. The words "you," "your," "depositor" and "account holder," mean each and all of the account owners, all of the Authorized Signers and all others who use your accounts and services. The words "Washington Mutual," "WaMu," "Bank," "we," "us" and "our" mean Washington Mutual Bank or Washington Mutual Bank fsb, as the case may be.

THE CONTRACT

The *Master Account Agreement*, these *Account Disclosures and Regulations*, the *Bank Rate Information Sheet* or other rate documents (*Rate Sheet*), the *Business Statement of Fees*, other account and service agreements and amendments to any of them (including electronic documents) provided when you open an account or select a service make up a legally binding contract between you and us (the "Contract" or "Agreement"). This Contract shall also apply to your heirs, successors and beneficiaries.

This Contract applies even if you have not expressly given us a document showing your acceptance of the agreement with us (e.g., by signature), unless this is prohibited by law; in that case, you must not use the account or service until you have agreed. Your continued use of our accounts and services is your agreement to the Contract and confirmation that all the information you have given us is true and complete. You also agree that if there is more than one owner, any one of you can open other accounts and services in the same names and capacities and the terms and conditions related to that account or service will be binding on all of you.

WaMu may change or terminate the terms of this Contract, including these *Account Disclosures and Regulations*, at any time without notice to you, except where we cannot terminate because we have agreed to a product or service for a specified time period (e.g., a Time Deposit). We will tell you in advance about any changes adverse to you, if required by law. Whether or not we give notice, you agree to these changes by not closing your accounts or by continuing to use a service. You can get the most current copy of the Contract at any time by visiting one of our financial centers or calling Customer Service.

If any of the terms of this Contract is found to be void or unenforceable, the remaining terms of the Contract will continue to apply.

Accounts and services described below may not be available at all times, in all areas, or to all account holders, whether or not noted below.

CUSTOMER SERVICE QUESTIONS

You may call us 24 hours a day, 7 days a week at 1-800-788-7000.*

If you use a Telephone Device for the Deaf, call us at 1-800-841-1743.* If this number is not available, dial 711 for Telecommunications Relay Service assistance.

*Calls may be monitored or recorded to ensure quality and for training purposes.

RESOLUTION OF DISPUTES (INCLUDING ARBITRATION)

We try to solve any problems and disputes as fast as we can. In most cases, we can resolve a problem in a financial center or by telephone. When we cannot, you and we agree to this dispute resolution procedure.

YOU AND WE ARE WAIVING THE RIGHT TO HAVE OUR DISPUTE HEARD BEFORE A JUDGE OR JURY. This applies to disputes that are arbitrated or resolved by judicial reference.

Agreement to Arbitration: Except as set forth below, you and we agree to arbitrate any dispute described below WHEN EITHER OF US requests it. You and we agree to be bound by the Federal Arbitration Act. This applies whether or not the dispute arises out of Federal or state law or regulation or otherwise.

What Can and Cannot be Submitted to Arbitration? Disputes about your deposit account, safebox, and any related service with us are subject to this process. They include, for example, disputes related to debit/ATM cards, checks, deposits, withdrawals, treasury/cash management services, ACH, online or telephone banking and wire transfers. Except as set forth below, a dispute involving one deposit account or safebox relationship, or two or more deposit accounts and/or safebox relationships with at least one common owner, is eligible for arbitration hereunder. Actions eligible for small claims court, class actions, or actions filed on behalf of the general public under applicable state statutes are not eligible for arbitration.

Certain rights and responsibilities are not affected by arbitration. For example, we can offset against your account in the appropriate circumstance; we can exercise our security interest in any property in case of default on a loan secured by your deposit account; and, we can comply with legal process, such as a writ of garnishment, involving you or any account or safebox. You also retain certain legal rights, such as the right to file bankruptcy.

How Does It Work? If arbitration is requested, the Commercial Arbitration Rules of the American Arbitration Association (AAA) as modified by AAA's Supplementary Procedures for the Resolution of Consumer-Related Disputes will apply. (The modification does not apply if the account or service is not opened and used primarily for personal, family or household purposes.)

Under the procedure, the dispute is submitted to a neutral party for determination. Together, you and we will select the arbitrator. If you and we cannot agree, the arbitrator will be selected in accordance with the procedure provided in the rules of the arbitration service selected to resolve the matter. If there is no such procedure, or if you and we do not agree on an arbitration service, the arbitrator will be selected according to Section 5 of the Federal Arbitration Act.

If our dispute involves someone who is not subject to this Agreement, then arbitration will not be stayed pending resolution of the dispute with them, unless you and we agree differently.

You agree to the service of legal process by mail, including demand for arbitration, at the most recent address we have for you.

The decision of the arbitrator is final and binding unless vacated or modified in accordance with the Federal Arbitration Act. The decision of the arbitrator can be entered in the court as a judgment and enforced according to the state and/or Federal laws. An award may also be enforced pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention").

Costs: You and we will be subject to the AAA fee schedule, which may be changed from time to time. The costs of arbitration will be equally borne by you and the Bank unless the arbitrator's decision allocates costs differently.

In California: If any dispute described in this paragraph is filed or asserted in California as a class action or as a representative action under the Business and Professions Code section 17200, it will be decided by a reference under the California Code of Civil Procedure section 638 or related sections and not as an arbitration WHEN EITHER OF US requests it. This paragraph applies to any dispute involving your deposit account relationship with us including, without limit, debit or ATM cards, ACH Transactions, and wire transfers or safeboxes. A referee is selected according to the procedures for selecting arbitrators of the AAA and is then appointed by the court in which the action commenced. The referee may be either an active attorney or a retired judge. The decision of the referee stands as the decision of the court, and judgment may be entered on that decision in the same manner as if the action had been tried in court.

DISCLOSURE OF ACCOUNT TERMS

Accounts described below may not be available at all times, in all areas, or to all accountholders, whether or not noted below.

BUSINESS CHECKING ACCOUNTS

FREE BUSINESS CHECKING/BUSINESS CHECKING/BUSINESS ANALYSIS CHECKING/BUSINESS ANALYSIS BANCONTROL RECEIVABLES

Rate Information: These are non-interest bearing accounts.

Minimum Balance Requirements: The minimum deposit to open this account is set forth in the *Business Statement of Fees* applicable to your account.

Fees: Any fees associated with these accounts are set forth on the *Business Statement of Fees* applicable to your account.

Limitations: These accounts are intended for business/commercial purposes and cannot be used for personal, family or household uses. If this account is being used for personal, family or household purposes, we reserve the right to change the account to a personal checking type account.

BUSINESS INTEREST CHECKING/BUSINESS ANALYSIS INTEREST CHECKING/POOLED CLIENT CHECKING

Rate Information: Refer to the *Rate Sheet* applicable to your account for the interest rate and annual percentage yield (APY) for these accounts. The interest rate and the corresponding APY are established at our discretion, are variable, and are subject to change without notice or limit.

Interest may be set on a tiered basis. If your daily ending collected balance is equal to or greater than the balance stated for that tier the interest rate and APY paid on the balance deemed collected in your account will be as quoted for that tier. Refer to the *Balance Calculation/Definitions* and *Interest Payments and Calculations* section of these *Account Disclosures and Regulations*.

Compounding and Crediting: Interest on your account will be compounded monthly and credited to your account on the last day of each monthly cycle, on a 365/365 day basis (366/366 day in leap years). For California government agency (public funds) accounts that require interest to be calculated on 360-day basis, the interest rate will be reduced from the rate disclosed in the *Rate Sheet* to a rate which, when calculated on a 360-day basis, will result in the equivalent APY unless a specific rate is otherwise noted in the *Rate Sheet* applicable to such California Public Funds account.

For interest accrual, refer to the *Balance Calculation/Definitions* and *Interest Payments and Calculations* sections of these *Account Disclosures and Regulations*.

Minimum Balance Requirements: The minimum deposit to open this account is set forth in the *Business Statement of Fees* applicable to your account.

Balance Computation Method: We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account at the end of each day, subject to the interest accrual method described above.

Fees: Any fees associated with these accounts are set forth on the *Business Statement of Fees* applicable to your account.

Pooled Client Checking: If your account is set up in our records as a multi-client trust account under programs such as IOLTA (Interest on Lawyers Trust Account), or IRETA (Interest on Real Estate Trust Account), the account will be opened as a Pooled Client Checking account. We reserve the right to charge fees directly to your multi-client trust account. You represent and warrant to us that you will account for these fees in accordance with applicable law.

Limitations: These accounts are intended for business/commercial purposes and cannot be used for personal, family or household uses. If this account is being used for personal, family or household purposes, we reserve the right to change the account to a personal checking type account.

Except for Pooled Client Checking, only sole proprietors, non-profit organizations and governmental entities are eligible.

BUSINESS MONEY MARKET ACCOUNTS

BUSINESS MONEY MARKET/BUSINESS ANALYSIS MONEY MARKET

Rate Information: Refer to the *Rate Sheet* applicable to your account for the interest rates, corresponding annual percentage yields and tiers for your account.

Interest rate may be set on a tiered basis. If your daily ending collected balance is equal to or greater than the balance stated for the tier the interest rate and APY paid on the balance deemed to be collected in your account will be as quoted for that tier. Refer to the *Balance Calculation/Definitions* and *Interest Payments and Calculations* sections of these *Account Disclosures and Regulations*.

The interest rate and the corresponding annual percentage yield (APY) are established at our discretion, are variable, and are subject to change without notice or limit.

Compounding and Crediting: Money Market Deposit Account – Interest will be compounded monthly.

For each account, interest will be credited to your account on the last day of each monthly cycle, on a 365/365 day basis (366/366 day in leap years). For California government agency (public funds) accounts that require interest to be calculated on a 360-day basis, the interest rate

will be reduced from the rate disclosed in the *Rate Sheet* to a rate which, when calculated on a 360-day basis, will result in the equivalent APY unless a specific rate is otherwise noted in the *Rate Sheet* applicable to such California Public Funds account.

For interest accrual, refer to the *Balance Calculation/Definitions* and *Interest Payments and Calculations* sections of these *Business Account Disclosures and Regulations*.

Minimum Balance Requirements: The minimum deposit to open this account is set forth in the *Business Statement of Fees* applicable to your account.

Balance Computation Method: We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account at the end of each day, subject to the interest accrual method described above.

Transaction Limitations: These are Limited Transaction Accounts. Please refer to the *Limited Transaction Accounts* section of these *Business Account Disclosures and Regulations* for detailed information regarding transaction limitations.

- You may make unlimited deposits.
- The Bank reserves the right to require written notice seven (7) calendar days prior to any withdrawal or transfer from these accounts.

Fees: Any fees associated with these accounts are set forth on the *Business Statement of Fees* applicable to your account.

Limitations: These accounts are intended for business/commercial purposes and cannot be used for personal, family or household uses. If this account is being used for personal, family or household purposes, we reserve the right to change the account to a personal checking type account.

BUSINESS SAVINGS ACCOUNTS

PLATINUM BUSINESS SAVINGS

Limitations: These accounts are intended for business/commercial purposes and cannot be used for personal, family or household uses. If this account is being used for personal, family or household purposes, we reserve the right to change the account to a personal type account.

Platinum Business Savings is not offered for public funds, institutional investors or brokers.

Rate Information: Refer to the *Rate Sheet* applicable to your account for the interest rates, corresponding annual percentage yields and tiers for your account.

Interest rate may be set on a tiered basis. If your daily ending collected balance is equal to or greater than the balance stated for the tier, the interest rate and APY paid on the balance deemed to be collected in your account will be as quoted for that tier. Refer to the *Balance Calculation/Definitions* and *Interest Payments and Calculations* sections of these *Account Disclosures and Regulations*.

The interest rate and the corresponding annual percentage yield (APY) are established at our discretion, are variable, and are subject to change without notice or limit.

Compounding and Crediting:

Interest on your account will be compounded monthly and credited to your account on the last day of each monthly cycle, on a 365/365 day basis (366/366 day in leap years).

For interest accrual, refer to the *Balance Calculation/Definitions* and *Interest Payments and Calculations* sections of these *Account Disclosures and Regulations*.

Minimum Balance Requirements: The minimum deposit to open this account is set forth in the *Business Statement of Fees* applicable to your account.

Balance Computation Method: We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account at the end of each day, subject to the interest accrual method described above.

Transaction Limitations: These are Limited Transaction Accounts. Please refer to the *Limited Transaction Accounts* section of these *Account Disclosures and Regulations* for detailed information regarding transaction limitations.

- You may make unlimited deposits.
- You may NOT use checks or similar items to debit this account.
- The Bank reserves the right to require written notice seven (7) calendar days prior to any withdrawal or transfer from these accounts.

Fees: Any fees associated with these accounts are set forth on the *Business Statement of Fees* applicable to your account.

TIME DEPOSITS (CDs)

CDs including Traditional Certificate of Deposit, Promotional Certificate of Deposit, \$100,000 Certificate of Deposit, Liquid Certificates of Deposits and Retirement Certificate of Deposit accounts are subject to the terms of the CD Certificate with Additional Terms Sheet ("Certificate") provided at account opening (or if provided, at renewal). The terms of the CD Certificate are part of this Agreement.

TERMS APPLICABLE TO CHECKING, MONEY MARKET AND SAVINGS ACCOUNTS

ACCOUNT ANALYSIS – GENERAL INFORMATION

Introduction: Fees and charges related to Account Analysis are based on monthly activity volumes, services used and balances maintained as set forth in the *Business Statement of Fees* and any other statement of fees applicable to your account or services used. Fees and services used by you will be assessed in full to your accounts except to the extent they may be offset through Account Analysis by applying the Earnings Allowance to your eligible service charges to determine a single monthly net service charge as set forth herein. We reserve the right to charge any interest earned in your Business Analysis Money Market account as an analyzed fee that may be offset by the Earnings Allowance. If your Earnings Allowance is less than the amount of fees and charges due hereunder, you agree that such amounts are immediately due and payable to Bank without demand and may be debited from any of your accounts. If the Earnings Allowance is greater than the amount of the fees, excess Earnings Allowance will not be paid nor carried forward.

Earnings Allowance: Earnings Allowance for the month is calculated by dividing the result by 365 (366 in leap year).

Earnings Allowance Rate: The Earnings Allowance Rate is established by Bank at its discretion and may change from time to time without notice or limit.

Funds Deposited: If you deposit funds belonging to third parties in an analyzed account, you represent that your use of any related earnings credit will not violate any law, regulation or agreement with such parties.

Collected Balance and Monthly Average Collected Balance: The Collected Balance is the daily ending Ledger Balance of the account(s), less amounts for which we are deemed not to have received credit. (We determine the day we are deemed to have received credit for your deposit in the same manner as described in the *Balance Calculation/Definitions* section of these *Account Disclosures and Regulations*.) The Monthly Average Collected Balance is the sum of the Collected Balances (positive or negative) for the monthly period divided by the number of calendar days in the month.

Average Positive Collected Balance and Average Negative Collected Balance: The Average Positive Collected Balance is the sum of the Collected Balances during the month equal to or greater than zero divided by the number of calendar days in the month. The Average Negative Collected Balance is the sum of the Collected Balances during the month less than zero divided by the number of calendar days in the month.

Investable Balance: The Investable Balance is the Average Positive Collected Balance, less the Reserve Factor (also sometimes referred to as "Reserve Requirements") applicable to the account(s) for the month.

Reserve Factor: The Reserve Factor for each month is the Average Positive Collected Balance for the month multiplied by the highest reserve rate (Federal Reserve Rate) established by the Federal Reserve Board from time to time for the account type. An account designated by us as a checking account shall be treated for this purpose as a checking account without regard to whether such account is treated as a master account with a checking and money market deposit account (MMDA) subaccount for purposes of establishing actual reserve requirements. The Reserve Factor deduction on your analyzed account statement may not necessarily reflect the actual reserves incurred by the Bank.

FDIC Assessment: The Bank reserve the right to charge your accounts an FDIC (Federal Deposit Insurance Corporation) Assessment based on your average monthly Ledger Balance(s). The rate used by us to determine the FDIC Assessment is the same as that charged to the Bank by the FDIC.

AUTOMATIC SAVINGS PLAN

You may be able to enroll in our Automatic Savings Plan (ASP). ASP lets you automatically transfer money from your eligible checking, savings, or money market account to another of these. Ask us if your account is eligible.

You may choose weekly, biweekly, monthly, semi-monthly or quarterly ASP transfers. ASP transfers are processed the next Business Day if: the scheduled transfer date is not a Business Day; or, if the month does not have the scheduled transfer date (e.g., you select the 30th and the month is February).

If the Available Balance is not enough to cover the transfer, we may: not process the ASP transfer and charge an NSF Fee; or, process it and apply an Overdraft Charge.

If we allow the transfer to be made from a savings or money market account, the transfer is counted as one of the six monthly transfers that may be made from the account. You agree not to initiate transactions on your savings or money market account which, when added to this transfer, would cause you to exceed the transaction limits. If you do, we may charge you an Excess Activity Fee; we may also close your account; or change your account type to one not subject to these limits. (See the *Limited Transaction Accounts* section for more details.)

FREE ID THEFT SERVICES

You will enjoy the benefits of this free service if you are the individual owner of or authorized signer on a WaMu business checking and a resident of the U.S. This service does not apply if your account is not owned in your individual capacity (e.g., fiduciary or attorney in fact, or any individual on whose behalf the account is held).

The service includes:

1. Toll-free access to identity theft recovery specialists who can assist you if you become a victim of identity theft. Services which are supplied by Europ Assistance USA ("Provider") include:
 - Providing a uniform Identity Theft Affidavit and assistance with completion of the Affidavit. (Note: You are responsible for submitting the Affidavit to appropriate law enforcement authorities, credit bureaus and creditors.);
 - Notifying the three major credit reporting agencies (Experian, TransUnion and Equifax) on your behalf and placing a fraud alert on your credit records with the agencies;
 - Assisting with credit card replacement; and
 - Providing information on how identity theft can occur and information regarding protective measures that you can take to limit further occurrences.
2. On-line access to our identity theft assistance web site. Visit www.wamu.com/identitytheft to learn more about safeguarding your credit information, helpful tips and contact information for sources you can use to respond to identity theft incidents.
3. Identity theft insurance up to \$5,000 (with no deductible for one claim per 12 month period) to help offset recovery costs (e.g., legal fees, lost wages and expenses paid out of pocket in connection with the theft of your identity). For coverage details, see the *Free ID Theft Services Program Provisions* section at the end of the booklet.

WaMu reserves the right to change the benefits and features of the Free ID Theft Services Program at any time without prior notice, except as may be required by law.

We seek in good faith to make arrangements with reputable companies to provide goods and services to members of the Free ID Theft Services Program. We do not endorse, warrant or guarantee these goods or services. The Free ID Theft Services Program is NOT FDIC Insured—NOT Bank Guaranteed—NOT Insured by any Federal Government Agency.

CHECK CASHING

We may require anyone who presents an item drawn on your account to provide additional information. This information may include, for example, fingerprints and identification satisfactory to us. We may also require a valid signature guarantee. We may also require a non-customer to pay a Non-Customer Check Cashing Fee; we may but are not required to allow a non-customer to avoid this fee if they go to the financial center where the account is assigned in our records (if your account was opened in person at a financial center) or our home office. We may refuse to cash or accept an item if these requirements are not met.

CHECK IMAGING AND SAFEKEEPING

At times we may make or receive electronic images of checks or other items (Image Replacement Documents or IRDs). These may be used for any purpose. If we create an IRD we may destroy the original item. We may also act upon IRDs received from other banks.

You may also ask or we may require that checks (or check images) not be returned with your statement; we call this Safekeeping.

If your account has Safekeeping or check image service, or if an IRD or other substitute check (see *Check 21/Expedited Recredit* section) is made of your check, your original check will not be returned to you. Canceled checks and other items will be deemed to be made available to you when your statement is made available. We have no obligation to retain the original or a copy, except when required by law. You agree that our statements provide sufficient information for you to determine if each paid check is proper and authorized if the statement includes the item number, amount, and date the item posted to your account. You agree to examine your statements promptly. Any time limits for notifying us of any error concerning the statement or items listed still apply, even if the original items are not returned to you.

You can request a copy of a check if you call or write us. We may charge a Research Fee; we will also charge a Copy Fee for each item, unless you have Safekeeping.

CHECK ORDERS, BANK BY MAIL KITS AND CHECK FORMAT

You can order checks and Bank by Mail Kits (if available) by visiting your nearest financial center, by using our online banking service for check orders only or by calling us. We will deduct from your account any fees for checks and Kits you order through us.

You are responsible for reviewing the accuracy of all information shown on your checks whether ordered through us or a third party. We are not liable for losses resulting from incorrectly printed checks.

We establish format and other specifications for checks and can change them at any time without notice. We may not honor checks that do not meet our then current specifications even if they met our specifications at the time they were initially printed or drawn.

Without limiting the above, we may refuse to process documentary drafts, automobile drafts and other irregular (non-standard) items drawn on your account.

CHECK PROCESSING CUTOFF TIME

Our processing cutoff time with respect to knowledge, notice, Stop Payment Orders or legal process received by us involving a check under the applicable State's version of the Uniform Commercial Code is the later of 10:00 a.m. on a Business Day or one hour after we open on a Business Day following the Business Day on which we receive the check.

LIMITED TRANSACTION ACCOUNTS

For Limited Transaction Accounts, certain transactions are limited in number even if your Available Balance is enough to cover the transaction. Generally, the following transactions are not limited in number for purposes of this section: transfers and withdrawals payable to you if made in person, by mail, by messenger, or at an automated teller machine (ATM). However, they may be limited for security purposes and, for example, transactions at ATMs are also limited in amount as disclosed in the *Electronic Funds Transfer Agreement and Disclosure* section of this booklet. In addition, some limitations may apply for security or other reasons. Other transfers or withdrawals from your account are limited to no more than a total of 6 per monthly cycle as follows: Type-A preauthorized, automatic or telephonic transfers or withdrawals, electronic transfers between accounts, and transfers to an overdrawn checking account; and Type B checks, drafts, point of sale or point of purchase debits or similar orders. No more than 3 of the 6 total may be of Type B above. These may also be further limited (e.g., for security purposes). We count transactions on the date we process them, which may be different than the date you write the check or initiate the transaction. Thus, we may count a transaction in a later cycle period. (See the *Date and Time of Transaction* section.)

Each time you exceed these limits, we may charge an Excess Activity Fee. If you frequently exceed these limits, we may either convert your account to an account not subject to these limits or close your account.

MINIMUM BALANCE TO MAINTAIN ACCOUNT

The minimum balance to maintain your account is \$.01, unless otherwise stated.

NON-SUFFICIENT FUNDS TRANSACTIONS INCLUDING OVERDRAFTS

NSF Transactions: If the Available Balance in your account is not enough to cover a transaction, we may pay, authorize, or reject the transaction. We call these Non-Sufficient Funds (NSF) Transactions. Types of NSF Transactions include any transfer or withdrawal request, such as, checks, ATM withdrawals and transfers, debit card purchases and electronic bill payments.

We may choose when to determine if the Available Balance is enough to cover a transaction. For example, we may make this determination when we receive a transaction, when we process it, when we receive notice of it, or when we receive a request to authorize it. We will not be liable to you based on our determination that a transaction is an NSF Transaction even if the Available Balance is enough to cover the item at a different time. We also will not be liable to you for paying, authorizing or rejecting a transaction regardless of whether we have established an Overdraft Limit or you have requested that we do not establish an Overdraft Limit.

Fees: Whether we pay or reject an NSF Transaction, we will charge you a fee. Fees will be assessed regardless of the amount of the NSF Transaction:

- Overdraft Charge if we pay an NSF Transaction; or
- Non-Sufficient Fund (NSF) Charge if we do not pay it.
- If the NSF Transaction is paid under the terms of our Overdraft Transfer Service, you will be charged an Overdraft Transfer Fee rather than an Overdraft Charge.
- If the NSF Transaction is paid under the terms of an overdraft line of credit, you will be charged an Advance Fee and finance and other charges described in other documents you receive from us, including the *Business Statement of Fees* and your line of credit agreement, rather than an Overdraft Charge. We will not charge the Advance Fee if you do not have a negative Available Balance at the end of the business day in which an Advance occurred.
- Any of these fees may be charged at any time, including on the day the NSF Transaction occurs, the day we make the determination that it is an NSF Transaction or any day after that.

Overdrawn Balance Immediately Due: You agree to pay any overdrawn amount immediately and without notice or demand. We may require you to make payment in cash or other good funds (such as a cashier's check). We may also exercise our right of offset by taking

money from any other account you (or any of you if there is more than one accountholder) have with us. (See the *Offset Rights* section for more information.) If you do not pay us immediately, we may close your account at any time without notice, except where notice may be required by law. This is in addition to any other rights we have to close your account.

Overdraft Limit (OD Limit): We may set an OD Limit on your account to help us make the decision to pay or not to pay an NSF Transaction. If we set an OD Limit, we may pay (or authorize) an NSF Transaction up to the amount of the OD Limit, but we are not obligated to do so. When we determine whether the OD Limit has been reached, we may include any charges to your account, for example, prior overdrafts, the current NSF Transaction, and any other deductions from your account, like fees or returned deposited items.

If we set an OD Limit, we may list it on your statement. If we do, it will be accurate as of the statement end date. We may have changed it since that date, even before you receive your statement.

The OD Limit is not a line of credit. You still must pay any overdrawn amount immediately and without notice or demand. The OD Limit is provided at our sole option, and we may increase, decrease, or remove it at any time without notice. We may also choose not to pay (or authorize) a particular NSF Transaction at any time without notice, even if we have in the past, and even if the OD Limit has not been reached.

You can ask that we do not use an OD Limit on your account. Just call us or visit your local financial center. If we do not set an OD Limit, we may still pay or authorize NSF transactions, and your account may still become overdrawn due to NSF Transactions or other deductions from your account.

ORDER OF PROCESSING TRANSACTIONS

We may process and account for transactions on your account received on the same Business Day in any order we want. This may not be in the order you initiate them. This applies to all types of transactions—credits, debits (e.g., fees, checks, ACH, ATM, Point of Sale or other electronic transactions) and returns. For example, we may process payment to us or any of our affiliated companies first.

The order of processing may affect which transactions are paid or returned and the fees that may be charged if the Available Balance in your account is not enough to cover all your transactions.

POST-DATED, STALE-DATED AND CONDITIONAL CHECKS

We may either pay or return any: (1) post-dated check (dated after the date we receive it for payment); (2) stale-dated check (dated six months before we receive it for payment); (3) check without a date; and (4) "conditional" check (e.g., stating that it can be paid only if one or more conditions are satisfied, such as payable only for a specified time, with specified number of signers, or in a maximum amount). We can do so without confirming with you and without confirming the dates or conditions on the check. Our check processing system does not distinguish these checks from any other checks you write. If we decide to pay it, you agree that your account will be charged for the amount of the check. Whether we decide to pay it or return it, you agree that we will not be liable to you or anyone else for doing so or for any return or delay because the endorser or maker placed a writing or marking on the front or back of the check or item.

If you do not want us to pay a check, including a check of any of the types listed above, you must place a Stop Payment Order according to the *Stop Payments* section of this booklet and pay a Stop Payment Fee.

PRE-ENCODED DEPOSIT ITEMS

With the Bank's consent, which may be given or denied at its option, you may use pre-encoded checks or other items for deposit. If you pre-encode checks or other items for deposit, you agree to comply with the pre-encoded deposit specifications as may be established and revised by the Bank from time to time. You also agree to indemnify and hold the Bank harmless from any and all claims, costs, damages, losses, liabilities and expenses, including reasonable attorney's fees, that result from a failure to comply with the Bank's pre-encoded deposit specifications or encoding items with incorrect information.

REGULATORY CLASSIFICATION OF CHECKING ACCOUNTS

Checking accounts include a master account with two sub accounts: 1) Checking sub account; and 2) Money Market Deposit Account (MMDA) sub account. Your transactions will be through the master account. Balances for purposes of interest fees and funds availability will be based on the combined balances of the sub accounts in accordance with this Agreement. Statements will show activity on the master account.

The sub accounts will be in our records for our accounting purposes only and you will not have direct access to them. Except for this section, all terms and conditions of this Agreement apply to the entire master account without reference to the sub accounts.

At the beginning of each monthly cycle, we will allocate funds between your Checking and MMDA sub accounts we deem appropriate to meet your anticipated transaction needs. Periodically, we will transfer funds between your sub accounts. Funds in your Checking sub account will be transferred to the MMDA sub account when not needed or expected to be needed to pay transactions on your master account. Funds will be transferred to your Checking sub account from the MMDA sub account as needed to pay your transactions, so that you will have access to your funds as provided for in this Agreement.

In accordance with Federal regulations, no more than six transfers per monthly period will be made from your MMDA sub account. On the sixth transfer from the MMDA sub account during the monthly cycle we establish for this purpose, all of the funds on deposit will be transferred to the Checking sub account for the remainder of the cycle. These transfers will not appear on any periodic statement or other transaction report and will not cause any fees.

STOP PAYMENTS

You may ask us to stop payment on an Item. For purposes of stopping payment, "Items" includes checks (or series of checks), ACH debits, electronic transactions initiated by use of a check (including Point of Purchase (POP) and Returned Check (RCK) transactions).

You must give us a Stop Payment Order or revocation (Order) following our requirements including the provisions of this section. Even if you do this, we may not honor your request under certain circumstances described below.

Who? You and any other owner or person authorized to act on your account may place an Order, even if the person placing the Order is not the person who made or initiated the Item.

What? You must give us exact, specific information to describe the Item: the account number, the exact amount of the Item, and the Item number or serial number. We may also require the date of the Item, the name of the person who signed or authorized the Item, and the

name of the person to whom the Item was made payable. Accuracy is required. If you give us incomplete or inaccurate information, we may not honor your Order and we will not be liable for payment of the Item. You agree that our records will be conclusive as to what information you gave us. You also agree that we may record any phone conversation with you in which you give us any information regarding an Order.

Where and How? To place a proper Order, you must visit or call one of our financial center stores, call our Customer Service number, use the stop payment function through our online banking service at wamu.com, or deliver to us a proper written Order at our address in the *Communications* section. However, if you have initiated an electronic transaction using a check (including POP and RCK transactions), you must contact us by calling our Customer Service number or by visiting one of our financial centers where we will help you contact our Customer Service number.

Written or Oral? Except as noted otherwise for a specific type Item, you must give us a written Order unless we agree to take it orally. If you call us and we agree to take an oral Order, we may ask you to confirm your Stop Payment Order in writing in a form we require. We may give you a confirmation of an Order, but we are not required to do so.

When? You must give us an Order in a timely manner. You must give us a reasonable opportunity to act on the Order before we are required to stop payment, pay or take other action on the Item. Your Order will not be effective until after we have verified: 1) that the Item is unpaid; 2) that the Item can be charged back without creating an overdraft if the Item was credited to another account at any Bank location; and, 3) that the Item has not been cashed at any Bank location.

You may renew an Order by giving us a new Order as described in this section before the existing Order expires. We may give you notice of the expiration of an Order, but we are not required to do so.

Effect? If the Item is received for payment on the day the Order is received or when it expires (if not previously renewed) or afterwards, we may pay it. Otherwise, if the Item is presented for payment while the Order is in effect, we will return the Item and may designate it (for paper items) "payment stopped" or "refer to maker." You agree to hold us harmless for the amount of the Item and to indemnify us against any loss, expenses, and costs incurred by reason of our refusal to pay the Item. If we pay an Item against a valid Order, we may be liable to you for up to the amount of the Item if you had a legal right to stop payment and if you establish that you suffered a loss because of the payment, but we will not be liable for any amount over and above the face amount of the Item unless the law requires otherwise.

How Long? Orders are effective for six months from the date initially requested (unless a shorter period applies, such as for an oral Order as described below or for an Order which expires on the effective date of a post-dated check, or unless we have agreed in writing to a longer period). For purposes of this section, six months means 182 days, including the date you placed your Order.

If you give us an oral Order and we have agreed to take it, but told you it must be confirmed in writing, it will be effective for only 14 calendar days, unless confirmed in writing during that period.

Fee? You agree to pay us a fee for each Order placed or renewed, as set forth in the *Business Statement of Fees*.

Please also refer to the *Electronic Fund Transfer Agreement and Disclosures Rights Regarding Preauthorized Transfers and Stop Payment on ECK Transactions* sections for more information on those types of transactions.

INFORMATION ON ALL ACCOUNTS AND SERVICES

ACCOUNT OWNERSHIP

Ownership Types: YOUR ACCOUNT OWNERSHIP TYPE MAY DETERMINE HOW PROPERTY PASSES ON YOUR DEATH. YOUR WILL MAY NOT CONTROL DISPOSITION OF FUNDS. YOU SHOULD CONSULT YOUR PROFESSIONAL TAX, ESTATE OR LEGAL ADVISOR TO FIND OUT WHICH ACCOUNT OWNERSHIP IS RIGHT FOR YOU.

We offer several types of account ownerships. We may restrict the ownership types available for any account. The account ownership you choose may depend on several criteria, for example, whether you are opening the account by yourself or with someone else and what you want to happen to your money if you die while the account is open. Not all accounts and services are available for all ownership types. Ask us for information about ownership types we offer or check online at www.wamu.com/thedetails.

Your ownership type will be indicated on the *Master Account Agreement* or other record we maintain for your account.

Authority to Transact: If you are a signer or owner on an account, you agree individually and in any capacity, that you:

- (1) are authorized to execute all documents individually and in any applicable capacity;
- (2) have provided documents necessary to show that authority;
- (3) will furnish any other documents we may request;
- (4) will give written or oral instruction in your representative capacity, whether indicated at the time of the instruction or for the benefit of the person or entity represented; and
- (5) are entitled to funds if you initiate a transaction (e.g., make a withdrawal payable to cash or to yourself).

Honoring Requests: The Bank may rely on the account ownership type and the Contract terms at the time the payments are made or the instructions are followed. The Bank does not need to determine the source, ownership or *pro rata* interest of any funds received or payments made. Unless the Bank has actual knowledge that a dispute exists or that there has been a death or incompetency of a depositor, beneficiary, payee or other person claiming an interest in the funds, all payments made by the Bank at your request (or request of any of you) will constitute a complete release and discharge of the Bank from all claims for the amounts paid. The Bank is released even if payment is inconsistent with the actual ownership of the funds deposited by a depositor and/or the beneficiaries and payees of a Totten Trust or Pay on Death account, and/or their heirs, successors, personal representatives and assigns, unless the law states otherwise. This means, for example, that we may honor a request from any of you, if more than one, to pay the entire amount to any of you and to pay any items drawn by or withdrawal (including transfer requests) initiated by, or on behalf of, any of you.

As used herein, "actual knowledge" of the Bank means that the Bank has received written notice in accordance with the requirements of this Agreement. Notice must be given to a financial center manager, or an officer in the course of that officer's employment and must pertain to funds held in an account maintained by the financial center, or to any other product or service offered by us. We must have time to act upon the knowledge.

Accounts with More than One Owner or Signer: IF YOU ELECTED TO HAVE AN ACCOUNT WITH MORE THAN ONE OWNER OR SIGNER, EACH OF YOU AUTHORIZES EACH OTHER TO TAKE ALL ACTIONS WITH RESPECT TO THE ACCOUNT. This includes, for example:

1. to endorse any check or debit payable to any of you;
2. to cash or deposit the same;
3. to open additional accounts and request additional products or services in the same ownership capacity; and,
4. to receive cash back from any check payable to you, whether or not endorsed by you.

If more than one person is named on the account, but not everyone has signed the *Master Account Agreement* or otherwise agreed to the terms of this Agreement, we may treat the non-signing (non-agreeing) person in any respect: as if they had signed/agreed, for example, to transact or perform activity on the account; or, as a non-owner having no rights on the account. If you establish a joint account without the other accountholder's signature or agreement, you agree to hold us harmless if we rely on your designation of the other joint accountholder's interest on our records.

Information for New York Jointly Owned Accounts: For New York joint accounts, one of the following is applicable:

1. Joint Account with Right of Survivorship is an account opened in the names of two or more people and will be paid to any of them or the survivor of them. Each is an owner and has the right to all of the funds in the account. On the death of one, the survivor(s) owns the account. In the absence of a contrary indication on the *Master Account Agreement*, a joint account is deemed to be a Joint Account with Right of Survivorship.
2. Joint Tenancy Without Right of Survivorship not designated as a Convenience account is a Tenants in Common account. This account is opened in the names of two or more people and will be paid to any of them. Each is an owner and has the right to all of the funds in the account. On the death of one, their share passes to their estate.
3. Joint Tenancy Without Right of Survivorship account designated as "Joint Account for Convenience Only" for which a convenience signer has been identified. For these types of accounts, the account is opened in the name of the depositor and another person for the convenience of the depositor. On the death of the depositor, the convenience signer has no right of survivorship. The convenience signer is not considered an owner; the owner is the person identified as the account owner/depositor in our records.

Information for New Jersey Jointly Owned Accounts: If this is a New Jersey jointly owned account, it is subject to the New Jersey Multiple Party Deposit Account Act (MPDAA). Bank will not be liable for payments made pursuant to the MPDAA. By signing the *Master Account Agreement*, or otherwise indicating your agreement to the terms of this Contract, you acknowledge reading the contract.

Information for Texas Jointly Owned Accounts: On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate, unless our records tell us that your account is owned jointly without right of survivorship.

Payable on Death and Totten Trust Accounts: Accounts designated as Payable on Death (POD) or Totten Trust are payable to the owners during their lifetime. If the account is co-owned, it is payable to the surviving co-owner, and after the death of the last surviving co-owner, it is payable to one or more designated beneficiaries sometimes called payees. We may pay any funds remaining on deposit after payment of any amount due the Bank, to the beneficiaries named in our records when we receive satisfactory proof of death of all owners. If there is more than one beneficiary, they will share equally, unless our records tell us differently.

ACCOUNT OWNERSHIP AND CONTACT INFORMATION CHANGES

Ownership Changes: Once your account is open, you may ask us to change the ownership (e.g., joint ownership, POD or Totten Trust beneficiary designation) of the account, but we do not have to agree to the change. You agree to notify us (in writing, if we require it) of any change in the ownership of your account or if a signer dies or becomes incompetent. You also agree that if there is more than one owner, any one of you may request to close out the account or to remove any other owner or authorized signer terminating their interest. If you are removed as an owner, your liability continues for anything occurring prior to the time your ownership is removed. Additionally, your liability regarding this account will continue after the account is closed.

If ownership of your account changes or you want to terminate the account, we reserve the right to require: all owners to confirm that change in writing; you to close the account (assessing any applicable fees and early withdrawal penalty); or, you to open a new account under the new ownership (if you meet all the requirements for the new account).

Contact Information Changes: You must notify us of any change, temporary or permanent, in your telephone number or mailing or e-mail address. (This includes changes related to military duty.) This notice may change the record for all of your accounts, but it is your responsibility to confirm that.

See the *Communications* section for more information.

ADJUSTMENTS

We may make adjustments to your account to reflect corrections or changes to your balances, rates and fees. Adjustments might occur, for example, if deposits or charges are posted for the wrong amount, or to the wrong account, posting is delayed or if items are returned unpaid for any reason at any time. Also, if any item is lost, stolen or destroyed during the collection process (except for our gross negligence or willful misconduct), you agree that we have the right to make an adjustment to your account. In the event of an error or something else which has caused an overstated balance, you agree to reimburse the Bank for the overstated amount immediately and without prior notice.

AUTHORIZED SIGNERS

Authorized Signers are distinct from "owners". Owners are accountholders who may be individuals or, if an entity, may be, a partnership, a limited liability company, corporation or an association. Authorized Signers are those authorized, on behalf of the owner, to: (a) write any check and/or execute any other written, telephonic, oral or computer-originated authorization or instructions to debit or transfer funds from any authorized deposit account; (b) withdraw funds from any deposit account authorized; (c) endorse and deposit any negotiable item payable to the owner; and/or (d) authorize disclosure of account information to third parties.

We may, at our option, permit encashment of any negotiable item payable to the owner at the request of an Authorized Signer. The Bank has no obligation to determine that funds or proceeds of any item payable to the owner are applied to a specific deposit account or for the benefit of the owner. Endorsement made by a rubber stamp or facsimile signature will bind the owner.

Without limiting any other rights we may have, we may pay checks drawn on the business account by any Authorized Signer, owner, or other agent, acting alone, even if the checks(s) are made payable to the person writing the check, to cash (although at our discretion, we may decide not to pay a business check payable to cash), to the Bank, or to credit a personal account of such Authorized Signer, owner, or agent. We may do so without investigating or questioning the check.

Unless otherwise indicated, any Authorized Signer can give us oral instructions to open additional accounts in the same owner's name, but the signature requirements and statement mailing address must be the same. Unless you contact us to make corrections or further changes within thirty (30) calendar days from the date of the first statement containing the corrections or evidencing the new account, or such information is otherwise made available to you (e.g., via online banking service), we will assume that all changes or new accounts are authorized by the owner and such will be deemed so authorized.

BALANCE CALCULATION/DEFINITIONS

We calculate the balance in your account differently for different purposes. A check or transaction may still be returned unpaid or later payment reversed by the paying bank even if it has been included in your Collected Balance, Ledger Balance or Available Balance.

Available Balance: Your Available Balance is the balance that is available for withdrawal (e.g., transfers, paying checks and electronic transactions) and authorizing transactions. The Available Balance in your account is reduced by funds on hold in accordance with our *Funds Availability* Policy. It can also be reduced when we receive legal process relating to your account or when your account is used as security for a loan. It may also be (but is not always) reduced when we authorize a transaction or have received notice that a transaction will be presented or returned, even before the transaction is actually processed on your account.

Sometimes the Available Balance might not be available for withdrawal and authorizing transactions. This happens when you transfer funds between WaMu accounts after our cutoff time for transfers; while the transfer may be reflected in the Available Balances for both accounts immediately, the funds from the transfer may not be used for some purposes (e.g., check processing and point of sale and POP authorizations). Ask us what our current cutoff time is. You should ask periodically, as the cutoff time may change at any time without notice.

The Available Balance may be different than your Collected Balance and Ledger Balance.

Collected Balance: Your Collected Balance is the balance used to determine what interest tier applies, if any, and the amount on which interest will accrue. Deposits that are "deemed collected" are included in your Collected Balance.

We delay including check deposits in your Collected Balance until they are deemed collected; they are deemed collected when we are deemed to have received credit for the check based on our check payment and collection processing experience. This may be later than the day we are deemed to have received your deposit for other purposes (like funds availability). If actual collection of a check is delayed beyond our average experience for checks, we may retroactively adjust your Collected Balance and interest. If you withdraw funds that are not deemed collected, you may be assessed fees and/or charges, if applicable to your account.

Non-cash deposits to a CD, *School Savings*® account, and deposit account in a Washington Mutual IRA, QRP or CESA plan, as well as, cash deposits (made to an employee at a financial center), incoming internal transfers (other than those designated as External Transfers) and wire transfers are deemed collected on the Business Day they are deemed received. External Transfers to your account from External Accounts (transfers from accounts at other financial institutions) and transfers from WaMu accounts designated as External Accounts for purpose of the transfer initiated through our online banking will be included in your Collected Balance no later than the effective date of the transfer. Funds otherwise electronically transferred to your account (such as direct deposits) are deemed collected on the effective date of the transfer to your account.

Your Collected Balance may be different than your Ledger Balance and Available Balance.

Investable Balance – Your Investable Balance is defined in the Account Analysis-General Information section of these Account Disclosures and Regulations. This balance may be different than your Available, Collected, and Ledger Balances.

Ledger Balance (sometimes referred to as "Current Balance"): Your Ledger Balance is the money we are deemed to have received less any amounts paid from your account. Whether we are deemed to have received your deposit is based on a number of things, for example, how and when you made your deposit, and what our cutoff times are (ask about current cutoff times). Fees based on balances use the daily ending Ledger Balance, unless we tell you differently in writing. The "daily ending balance" is the Ledger Balance after nightly processing at the end of each Business Day.

Your Ledger Balance may be different than your Available Balance and Collected Balance.

BRANCH/FINANCIAL CENTER/FINANCIAL STORE

Certain accounts and services may only be available at certain financial centers or through certain channels (e.g., phone or Internet). Usually, the financial center where you open your account is the financial center assigned to your account, if you open your account in person. Otherwise, your account opening documents may identify the state or pricing region assigned to your account. If you do not know, ask us. Your assigned financial center will not change just because you changed your address on file with the Bank. If you move to another state, you can request us to change your assigned financial center (but we do not have to). We may decide to change your assigned financial center; if we do, we will let you know.

CASH VOUCHERS AND ELECTRONIC CAPTURE DEVICES

Cash Vouchers: In some of our financial centers, cash may be dispensed to you from a machine. You will be given a voucher with an access number by the employee assisting you. Your account records will show your cash transaction as if the employee had handed you the money, rather than as a separate withdrawal transaction. These transactions are teller transactions and are not electronic funds transfers.

When the number is entered at the machine, your cash will be dispensed. You will have a short time to use the access number to get your cash. If you do not get it by the expiration, return the voucher to us and we will give you a new one. If the cash is not obtained by the time we close our financial center on a calendar day, we may: mail or hold for pick up an official check for the cash amount; or, deposit the funds into any of your accounts or into the account of any owner of the account on which the transaction was initially processed.

Treat the voucher as you would cash. If you lose it, tell us immediately. If the voucher has already been redeemed by you or a third party, we may not replace it and you may not be paid the cash. The voucher is not transferable or negotiable.

Electronic Capture Devices: Sometimes we use an electronic process to expedite your transactions in our financial centers with a bank employee, such as electronic key or signature pads; these are considered teller-initiated transactions and not electronic funds transfers.

CHANGES TO YOUR ACCOUNT TYPE

We may allow or require you to change your account from one type to another. If we do, we may require you to open a replacement account with a new account number. Certain features or services you have enjoyed with the old account may not be available with the new account

or may only be available for a fee.

If we let you keep your old account number, previous activity may apply to the new account for certain purposes. For example: balances during the entire fee cycle, including prior to the change, may apply when we determine whether to charge a monthly fee; transactions processed prior to the change may count when we determine whether you have exceeded transaction limits for determining whether to charge an Excess Activity Fee; and, fee waivers for certain transactions (e.g., if your original and new account type each include one OD or NSF fee waiver per year, any fee waiver used on the original account, may count towards any fee waiver benefit on the new account and you may not receive the waiver for the new account). This does not apply to interest calculation, which is based on the rate in effect for the account type you had on the particular Business Day.

If the old account included a service, and the new account allows the service as an add-on for an additional fee, you agree to the add-on service and related fee. If you do not want the add-on service, you must tell us at the time you make the change.

CLOSING ACCOUNTS AND TERMINATION

We may close your account, stop providing service to you or terminate our Contract at any time for any reason (unless the specific terms for the account or service state otherwise). We may not send prior notice to you, unless the law says we have to.

When we close your account, we will stop paying interest on any interest earning account. Additionally, any linked or add-on services will terminate immediately, unless the terms for that service say otherwise. We will return any unpaid items presented after your account is closed. We will not be liable to you for any losses or damages that may be caused by the return of these items.

If we decide to close your account, we may take one or more of the following actions: We may charge a fee if we close your account because of account abuse (e.g., fraudulent activity or excessive overdrafts). We may hold funds from your account after closure (including funds received afterwards) until we are reasonably satisfied that no checks or other deposits will be returned unpaid or that no other claim may be made against us related to the account or any of the services provided to you. We may allow you to leave on deposit sufficient funds to cover any outstanding items to be paid from your account. We may hold any remaining funds for your pick up. We may terminate your right to perform all or some types of transactions on your account. We may deposit the balance in another open account any of you have with us or, we may mail you a check at the most recent address we have in our account records for any of you.

This Contract will continue to apply to matters relating to your account and services that arose prior to termination or account closure or which may arise later. This includes, for example, your liability on items cashed against or deposited to your account, even if the item is disputed or returned after the account has been closed.

COLLECTIONS

We may help you collect items, such as bonds, coupons, certain checks, and drafts, we believe are not appropriate for automated processing. If we do, we will send the item to the bank or other entity responsible for paying it. When we receive credit for the item, we will credit your account. We will not credit your account nor be held responsible if the item is lost, stolen or destroyed during this process (except for our gross negligence or willful misconduct). We will return any unpaid item to you once we receive it back.

We will charge a Collection Fee, even if the item is not paid. We will also charge a Collection Fee for items we receive to be paid from your account using a collection process. Other financial institutions may charge a fee and costs of collection and you will pay these charges, too. We will charge for any special handling of an item (e.g., tracking or faster delivery) that you request. We may take these fees directly from your account or from the proceeds of the items.

COMMUNICATIONS

Communicating with You: We may send (including deliver) any Communications about your account or service to any of you. This includes, for example, notices of change affecting your rights and obligations, statements and other information (all referred to as Communications).

Communications may be addressed and sent (by mail or electronically, if the addressee has signed up for that service) to any of you. Communications delivered in accordance with this section will constitute notice to each of you. They may be sent either separately or as a part of another Communication. Communications to be sent will be mailed or electronically delivered to the current address (electronic address, if applicable) maintained for any of you in our records related to this or any other of your accounts or services (except as limited by law). They will be treated as received when mailed or sent electronically (as applicable).

Any of you may also request that your mail be held for pickup. (This service is not available for accounts held in IRAs, QRPs or CESAs.) That request, if approved by us, will be effective as to each of you, but we reserve the right to send mail to any of you. Held mail generally will be held at the financial center of account. It will generally be held for at least thirty (30) calendar days and then may be destroyed or sent to you. Any mail returned by the post office or otherwise obtained by us may be held or destroyed.

If Communications have been returned by the post office, or electronic service provider, we may handle them in a variety of ways. For a returned Communication: we may attempt redelivery to any of you; send it to a forwarding address for any of you; or, destroy it. For a future Communication we may: print it and immediately destroy it; send it to a forwarding address for any of you; deliver it to a financial center or office; or not print it and, instead, prepare it electronically with the information stored in our records. These electronically prepared Communications will be treated as if sent on the date they would have been sent had the address you provided been valid. A copy of a destroyed or electronically prepared Communication will be made available within a reasonable time upon request.

Held Communications include Communications held at your request and those treated as held because they were returned and not forwarded or Communications were previously returned. Held Communications will be treated as delivered to you when prepared. The returned and not forwarded Communications will be treated as delivered when initially sent.

We need a telephone number to contact you about your account. You may choose a number as your primary contact number, but we can contact you at any number we have for you, including numbers for mobile, cellular, or similar devices. We may also require a telephone number for other services we offer. You agree we may contact you by phone to any telephone number in our records for any lawful purpose, including but not limited to: suspected fraud or identity theft; obtaining information necessary or desirable; your account transactions or servicing; and, collecting on your Account. Numbers you provide include numbers you give us and/or numbers from which you call us. You agree to pay any fees or charges that you may incur for incoming calls from us, and/or outgoing calls to us, to or from any such number without reimbursement from us.

Communicating with Us: Unless we have designated a different address for a specific purpose, mail and notices directed to us should be sent to P.O. Box 1165, Northridge, CA 91328-1165 or such other address as we may specify from time to time. For Retirement and CESA accounts, mail correspondence to P.O. Box 1023, Northridge, CA 91328-1023, Mailstop N110607.

Unless prohibited by law, if you send us mail to any other address, we may treat it as if it had not been received until received at the correct address specified by us. Mail sent to a financial center or any other address not designated by us may be redirected to our mail processing center. In order to avoid delay, use the address we specify for a particular purpose or, if not specified, the above address.

We may, but don't have to, act upon instruction, notice, or order, by you or any third party, received via telephone, fax, voice mail or e-mail, unless expressly agreed by us in writing or as otherwise required by law.

CONFLICTING INSTRUCTIONS AND DISPUTES

Nothing in these Account Disclosures and Regulations shall be deemed to require the Bank, and the Bank shall not be required, to make payment from or provide services related to an account to a depositor, or to any trust or P.O.D. account beneficiary or payee, or any other person claiming an interest in any funds deposited in the account, if the Bank has actual knowledge (as defined in the Account Ownership section of these Account Disclosures and Regulations) of, or otherwise believes there may be, a dispute between the depositors, beneficiaries, payees, or other persons concerning the account including, without limit, their respective rights of ownership to or authority to act with respect to the funds contained in or proposed to be withdrawn or previously withdrawn from the account, or in the event the Bank is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit, or otherwise receives instructions which Bank determines, in its discretion, to be unclear or conflicting. We may, but are not required to, place the funds in a court for resolution. We will deduct from your account all expenses and fees that we incur, including attorney fees.

We may, but are not required to, continue honoring instructions based on current Agreement or close account and send a check for the balance to you. We also may permit you to withdraw funds from your account if you provide us with a security bond that is acceptable to us. In our discretion, we may require the bond to be in excess of the amount in the account.

CREDIT REPORTING AGENCIES AND DEPARTMENT OF MOTOR VEHICLE RECORDS

Obtaining Information: We can obtain credit information about you individually or in any other capacity and about anyone you represent from any credit reporting agencies (including check reporting agencies) or by any other means. We can do so if you: request to open an account with us; are an owner or signer on an account with us; or, obtain a service from us. We can obtain this information at any time and can use it for any purpose, including offering you other accounts and services, unless the law says we cannot.

Authorization to Obtain Personal Information from State Motor Vehicle Departments and Records: State Departments of Motor Vehicles maintain records, including personal information, about people who obtain driver's licenses or state identification from these departments. Personal Information includes, for example, information such as your name, address, telephone number, driver's identification number, social security number, medical and disability information, and photograph. Under Federal and State law, a State Department of Motor Vehicles may only release your Personal Information under certain limited conditions.

You acknowledge that we may have a legitimate need to obtain your Personal Information from the State Department of Motor Vehicles which issued your driver's license. For example, we may need to use the information to verify the accuracy of information given to us by you, to prevent fraud by you, or to pursue legal remedies against you.

You hereby give your express permission and express consent to all States' Departments of Motor Vehicles to provide us with all Personal Information about you maintained in their records. By this provision you give us your written waiver and release of Section 1808.21 of the California Vehicle Code, and all other States' and Federal laws establishing and protecting the privacy of this Personal Information. You agree that you are granting to us your written waiver, release, permission, and consent as described in this section: when you sign the *Master Account Agreement* or otherwise enter an Agreement with us; when you sign, or any one else authorized signs, any check issued in connection with your Account; or, when you use or anyone else authorized uses any service or makes any transaction in connection with your Account.

Reporting Information: We may report information about you and your account (e.g., account activity or losses we may suffer related to your account) to credit (including check) or other reporting services. We may report information about your accounts to Credit Reporting Agencies. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

CUSTOMER RESPONSIBILITIES AND LIMIT ON TIME TO ASSERT CLAIMS

You agree to exercise reasonable control over all bank checks, unissued checks, time or certificates of deposit, passbooks, cards (of any kind), personal and user identification numbers and codes and access devices and any other item, instrument or card related to any of the above. It is your responsibility to keep all of the above information and items safe and secure and to promptly discover and immediately report if any of them are, or believed to be at risk of becoming, missing in time to prevent misuse.

You agree to notify us immediately if any of these items may be lost, stolen or used without your authorization, or if you believe there is an error in your periodic statement or that an unauthorized transaction has occurred or may occur on your account or otherwise may be related to any of the above. In addition to any other liability you may have hereunder, and except as limited by applicable law, if you give your Personal Identification Number (PIN), User ID and any other code or other access device to anyone, you will be liable for any use made of such until you advise us that such person is not authorized to use them. You acknowledge that your account, service or any of the above may have to be closed if any of these events occurs. In addition, you assume full responsibility for the monitoring and reviewing the work of your employees, agents (including Authorized Signers) and accountants.

You are responsible for exercising reasonable promptness and care in examining your account statements, and, if provided, originals or imaged copies of cancelled checks, advices of debit or credit, transaction reports, or your account activity through the internet if we provide you such access via online banking services, to determine whether any payment or debit was not authorized because of an alteration of an item or because a signature or endorsement on the item was unauthorized, or for any error related to your account or service, or any forgery, alteration, unauthorized transaction, including an unauthorized payment order, or other problem (collectively, a Problem). The parties agree that reasonable promptness means within fourteen (14) calendar days from the date that the statement, advice or transaction report or other information is sent or otherwise made available to you, whichever first occurs.

If you discover or should have discovered a problem, you must promptly notify us in writing of the relevant facts. You should also report the Problem to us orally by contacting your branch of account or the telephone number at the end of these *Account Disclosures and Regulations*.

However, your oral report shall not relieve you of your obligation to report the Problem to us in writing, except where required by law. Your written report must identify the specific items, debits or credits that you are challenging and the nature of the Problem.

In addition, if your claim involves a series of items containing unauthorized signatures or alterations by the same wrongdoer, you shall be precluded from asserting against us any unauthorized signature or alteration by the same wrongdoer on any item paid in good faith that you do not report within fourteen (14) calendar days after the first item in the series or first statement containing that item was sent or made available to you, whichever first occurs. By these provisions, the parties intend to define a reasonable time period for the "Repeater Rule," as provided in §4-406(d) of the UCC.

Without regard to the care or lack of care of either you or us, without limiting the foregoing: (a) if you fail within thirty (30) calendar days after the statement or item is sent or made available to you, whichever occurs first, to discover and report with respect to an item (i) your unauthorized signature, (ii) any unauthorized or missing endorsement, or (iii) any alteration on an item, you shall be precluded from asserting against us the unauthorized signature, the unauthorized or missing endorsement or alteration on that item; (b) if you fail within thirty (30) calendar days after the statement or other advice of debit or execution of a wire transfer Payment Order is sent or made available to you, whichever occurs first, to discover and report an unauthorized Payment Order, you shall be precluded from asserting against us the unauthorized Payment Order; and (c) without limiting the foregoing, if you fail within thirty (30) calendar days after the statement or other advice, transaction report or other information revealing the Problem is sent or made available to you, whichever occurs first, to discover and report any Problem, you shall be precluded from asserting against us the Problem.

These absolute preclusions apply (i) to each item, unauthorized Payment Order or any other Problem that you fail to report in writing within thirty (30) calendar days and (ii) regardless of the legal theory you assert. By these provisions, the parties intend to shorten the absolute statutory preclusion period for reporting unauthorized signatures, alterations and endorsements specified in §4-406(f) of the UCC (and even if not specified in §4-406(f)) and for reporting unauthorized Payment Orders specified in §4A-505 of the UCC, and any other reporting period established by any law or regulation, and to establish a contractual condition precedent for reporting claims on Problems.

If we provide you with access to your account via the internet through online banking services, or hold mail services, then for purposes of this section, account statements, items, advices, reports, and all other information will be deemed to be "made available" on the date the subject debit or credit is reflected online, or the date that the information is delivered to the hold mail area, whether or not you accessed your account through the Internet or picked up your mail, respectively.

If we truncate your checks or you subscribe to an electronic statement service, you understand that your original checks will not be returned to you with your statement. Unless otherwise required by law, we may not send you the original or copies of checks or other items representing debits or credits to your account. We may impose a charge for reproducing the original or copies of such items. Our retention of checks does not alter or waive your responsibility to examine your statements or change the time limits for notifying us of any Problems, as specified in this section.

If you do not timely receive any account statement or other information concerning your account that you expect to receive, or you cannot access your account through the internet, you shall notify us as soon as possible but in no event later than ten (10) calendar days after such information or access would ordinarily be received by or available to you. If you fail to advise us of these facts, the time for discovery and reporting shall not be affected by your failure to receive or access the subject information.

If the time periods for discovery and reporting contained in this section differ from the time periods for discovery and reporting contained in any other agreement between us, or by law, the shortest time period shall apply and govern the claim, except where such longer period is required by law.

Except for shorter periods provided under this Agreement or other agreement or by applicable law, any action or proceeding brought by you to enforce any obligation, duty, or right arising under or relating to this Agreement or otherwise relating to your account or services provided to you hereunder, must be commenced within one year after the event that gives rise to the cause of action occurs.

You agree to pursue all rights you may have under any insurance coverage you maintain before making a claim against us in connection with any account transaction, and to provide us with all reasonable information about your insurance coverage (such requirement does not extend the time limits set forth above). Our liability to you is reduced by the amount of any and all insurance proceeds you receive, or are entitled to receive.

In the event you do assert a claim against us regarding a Problem, you must cooperate with us and assist us in seeking criminal and civil penalties against the person responsible. You must file reports and complaints with appropriate law enforcement authorities. If we ask, you must also give us a statement, under oath, about the facts and circumstances relating to your claim and provide such other proof as we may reasonably request. If you do these things, and provide such security or indemnification as we may require, we may, at our option, replace any item in question. If you fail or refuse to do these things, we will consider your failure or refusal to be your acknowledgment of the defect in the statement, or item, unauthorized transaction or other Problem and your agreement that we can charge the full amount to your account and have no liability to you for the Problem, except as required by law.

You agree that we will have a reasonable time to investigate the circumstances surrounding your claim. During our investigation we will have no obligation to provisionally credit your account, except as may otherwise be required by law.

You agree to indemnify, defend and hold us harmless from any claims arising from your breach of these *Account Disclosures and Regulations* or any agreement with us or your act or omission.

DATE AND TIME OF TRANSACTION

Business Days are Monday through Friday, except Federal holidays. Transactions on non-Business Days are considered made the next Business Day.

We may set cutoff times for certain types of transactions. Transactions after those times are treated as made the next Business Day. Unless we have established a different cutoff time for the service you are requesting, our cutoff time for transactions with a teller in financial centers on a Business Day is 6 p.m. We do not have to state our cutoff times for various services unless the law says we must. We have stated some of our cutoff times in this booklet, in documents for particular services and at our financial centers. We may set a different cutoff time based on the financial center or pricing region to which your account is assigned by us or the location of the transaction. We may also change our cutoff times without notice, unless the law says we have to notify you. Ask us about our cutoff times.

DEATH OR INCOMPETENCE

You agree to notify us immediately if anyone with an interest in your account dies or is declared incompetent by a court. We may require proof of death or adjudication of incompetency (e.g., certified copy of court order or official record).

Until we receive notice and any required proof of death or incompetence, we may act as if all owners are alive and competent. After we receive notice and any required proof, we may freeze the account and refuse to accept transactions, reverse deposits and/or return government or benefit payments made to the account.

We may treat any instructions regarding your account which may be effective upon account maturity as invalid if we receive notice and proof of death or incompetence before we honor the instructions.

DEPOSITS

Subject to applicable account rules, deposits in current funds, within the limits hereinafter prescribed, may be received at any time, with our consent. All deposits received are subject to final collection or subsequent return. Credit for items, deposits received via fund transfer service (e.g., wire or automated clearinghouse), or otherwise deposited is provisional and subject to revocation if the item or transaction is not paid or for which payment is reversed for any reason. You agree that you will not deposit any item into your account which does not bear either a true original signature of the person on whose account the item is drawn, or an authorized mechanical reproduction of that person's signature, without our prior express written consent, which may be withheld at our discretion. If we do consent to deposit of such items, such consent may be withdrawn at any time without cause or prior notice.

Except as may otherwise be required by law, we shall not be deemed to have received items sent by mail or placed in lobby or night depositories or any other type depository we operate until we have received actual delivery of items sent by mail at the address we designate for receipt of such item or have removed the contents from such depositories. Items sent by mail must be sent to the address noted for your account in the *Statements* section of these *Account Disclosures and Regulations*. Until we remove items from the depositories, we are only responsible for loss of such items caused by our gross negligence or willful misconduct. Deposits placed in a Night Depository may not be processed until the following Business Day, as set forth in the *Funds Availability* section of these *Account Disclosures and Regulations*.

In our discretion, we may permit a first deposit and a minimum balance in an account in an amount which is lower than that otherwise required for such account.

The Bank may, in its discretion, refuse to open an account, receive a deposit, or accept a deposit on a collection basis, or may in our discretion at any time return all or any part of any deposits previously received or require the withdrawal of any interest paid to the account. We reserve the right to reverse credit for any deposited item that we later reject or lose in the clearing/collection process. Without limiting the foregoing, we may, at our option, refuse to process documentary drafts and other irregular (non-standard) items deposited into our account or sent to us for processing.

If the depositors have elected to have joint accounts, each of the depositors authorize each other as attorney-in-fact to endorse any check or debit payable to the order of any one or more of the depositors and to cash or deposit the same and to open additional accounts and request additional products or services in the same ownership capacity. You also authorize us to accept or process items/transactions payable to any of you and to deposit such to your account from any source without questioning the authority of the person making the deposit, and to give cash back to you or any Authorized Signer(s) or agent on any check payable to any one or more of you, whether or not endorsed by you.

If we receive a deposit or payment for you or your account which is not accompanied by an instruction satisfactory to us, in our discretion, indicating how or where it is to be credited, we may apply it at our discretion to any loan or deposit account any of you maintain with us and you will be responsible for any loss or expense related thereto.

You may request the Bank and the Bank may, at its option, agree to accept deposits through certain banking channels, including without limitation, messenger and armored car service, night and lobby depository services, and/or mail, whose amounts are not verified in your presence prior to deposit. These deposits shall be counted and credited to your account and our count and record of the amount presented for deposit shall be binding and conclusive upon you. Deposits may be credited in the amount shown on your deposit slip, but will be subject to adjustment to reflect the Bank's own count. The Bank may agree to accept deposits to your account electronically. In addition to these *Account Disclosures and Regulations*, such deposits shall be governed by the applicable service terms.

Sending Deposits to Us: The addresses designated for deposits sent by mail are:

ID, OR, UT and WA accounts: P.O. Box 1106, Northridge, CA 91328

AZ, CA, CO, NV and Telephone and Online Banking—West accounts: P.O. Box 30810, Los Angeles, CA 90030

CT, FL, GA, IL, NJ, NY, TX and Telephone and Online Banking—East accounts: P.O. Box 6868, Lake Worth, FL 33463.

Retirement and CESA accounts: P.O. Box 1023, Northridge, CA 91328-1023, Mailstop N110607. (Contact us in advance to receive a Contribution instruction form.)

We may credit deposits in the amount shown on the deposit slip. This credit is subject to verification. Our count and record of the amount presented for deposit is binding. For Retirement and CESA accounts, deposits are further subject to the terms of your plan.

When a check is cashed or accepted for deposit we act as your agent in the collection of the check. We are not responsible if the check is lost in the collection process, unless caused by our gross negligence or willful misconduct. We also do not guarantee that a check will be paid, even if we do not place a hold on the check.

All non-cash deposits are subject to final payment or subsequent return by the payor bank regardless of when returned. Credits to your account are provisional and subject to revocation. This includes any interest paid to your account.

For our rules on deposits received via fund transfer service refer to the *Electronic Fund Transfer Agreement and Disclosures* and *Wire Transfer Services* sections, as applicable. For our rules on availability of deposits refer to the *Funds Availability* section.

DISCLOSURE OF INFORMATION TO THIRD PARTIES

Reasons Why We Disclose Information: We will disclose information to third parties for a variety of reasons, unless the law says we cannot. For example, we will disclose information:

- Where it is necessary or helpful for completing a transaction or conducting our business;
- To verify information about you or your account or service for a third party, such as a credit bureau or merchant;
- In connection with Legal Process (see the *Legal Process* section for more information);

- If you give us your permission;
- To offer you additional products and services from us and others; and
- As otherwise permitted or required by law.

Sharing of Your Information: You agree that we may share any information we have about you, and your accounts and services with: any other account holder or signer on your account; any of their heirs, successors, representatives, beneficiaries; and, anyone else authorized to receive such information.

If your account or service is linked by you or someone else to another account or service, you agree we can share any information we have about that account or service with anyone authorized to receive information about the linked account or service. This applies, for example, to accounts linked to an Overdraft Transfer Service, Automatic Savings Plans, Combined Statements, and Permanent Interest Orders. You agree that if someone makes a deposit to your account, we may release information to them about your account. This information may include, for example, your balance, holds on deposited funds, and reasons for any holds.

You agree that we may share information about you and your account and service with affiliates, and to affiliates sharing such information with us, for purposes of conducting transactions, investigations and loss recoveries.

ENDORSEMENTS

You agree to endorse each check on the top 1½ inches at the end (when viewed vertically from the trailing edge) of the check. If you endorse a check outside of that area, mark or otherwise obscure the other area or a prior endorsement or make an endorsement that is illegible or incomplete, we may, at our option, accept such nonconforming endorsement and you agree to hold us harmless from any loss, delay, liability, claim or damage which may arise as a result. We may endorse and/or collect items deposited to your account without your endorsement but may, at our option, require your personal endorsement prior to accepting an item for deposit. If you deposit items which bear the endorsement of more than one person or persons who are not signers on the accounts, we may refuse the item or may require all endorsers to be present and to provide identification acceptable to us, in our discretion or to have their endorsement guaranteed before we accept an item. If you provide an endorsement to or encode the amount on an item deposited to your account, such must adhere to any standards set by Federal and state law and banking industry practice. Without limiting any other rights we may have, and not withstanding anything to the contrary herein, you agree that we may, but are not required to, accept for deposit or collection to your account an item initially made payable to anyone other than you. If we do so, we may, at our option, require such other person to endorse the item in our presence to provide identification acceptable to us, and for you to provide an endorsement guarantee acceptable to us.

FACSIMILE SIGNATURES

You may wish to use a facsimile signature stamp or other mechanical signature device to sign checks or other orders relating to your accounts. If you do, we may, without contacting you, debit your account for items bearing an imprint that looks substantially like your authorized mechanical signature, whether or not such items bear the actual facsimile signature stamp. You agree to notify us and give us a sample imprint if you plan to use such a device. If you do not give us a sample, this section still applies to your use of the device. You are responsible for the security of any mechanical signature device. We will not be responsible for payment of unauthorized items bearing an imprint from, or similar to, your authorized mechanical signature.

FDIC INSURED

Washington Mutual Bank (WMB) and Washington Mutual Bank fsb (WMBfsb) are two different companies, although both use "Washington Mutual" and "WaMu." Deposits at WMB and WMBfsb are insured separately by the FDIC to the maximum amount permitted by law.

WMB also operates under the name Washington Mutual Bank, FA (WMBFA). When you deposit funds or contract with WMBFA, you are doing business with WMB. Deposits at WMB include those at WMBFA and are combined when determining the maximum insurance provided by the FDIC.

FEES AND COSTS

The Bank may establish fees applicable to deposit accounts and related services, and such fees shall be set forth in the *Business Statement of Fees* applicable to your account or other documentation provided to you for the account or Bank service, and shall be incorporated by this reference into these *Account Disclosures and Regulations*. The Bank reserves the right to change its fees from time to time without notice, except as may be required by law.

If you request a service, including without limit, wire transfers and check collection, which are processed by or through or in conjunction with a third party, you agree to pay all fees/cost accessed by such third party on Bank in connection with such service or transaction. Such third party fees/cost may be debited from the proceeds of such transaction or any of your accounts with Bank, at our option.

FOREIGN TRANSACTIONS

All transactions (e.g., ATM, debit card, check) conducted inside or outside of the United States (U.S.) must be in U.S. Dollars. If you attempt a transaction in some other currency, we may refuse the transaction; if it is a deposit, we may also choose to process it on a collection basis. If we process the transaction, we may use: the foreign currency exchange rate imposed on us on the Business Day we receive the deposit or debit transaction, or if it is a deposit sent for collection, the Business Day we receive the collected funds; or, a rate we set, which may be higher than the rate charged to us. If any of these debits or credits are reversed we may use the rate imposed on us on the Business Day we receive the reversal or higher rate we set. These rates may be different from the rate in effect on the day you conducted the underlying transaction or the merchant processed the reversal.

You agree to pay any charges and fees assessed by a third party in connection with processing the foreign transaction or reversal.

For card transactions processed through the MasterCard® system (including Cirrus® and Maestro®), the exchange rate between the transaction currency (the currency for the location at which the transaction is processed) and U.S. currency is either a government-mandated rate in effect for the applicable processing date, or a rate selected by MasterCard® from the range of rates available in wholesale currency markets for the applicable processing date.

A Foreign Transaction Fee may be charged for international Business Debit MasterCard® transactions, whether or not currency conversion occurred. The fee is a percentage as shown on the *Business Statement of Fees* and the resulting amount, based on the amount of the

transaction, will be shown on your statement. An international Card transaction is one conducted in foreign currency with a merchant or at an ATM outside of the U.S. and its territories or within the U.S. with a merchant or at an ATM owned or operated by a foreign person or entity. The fee may also be assessed when you return merchandise or due to a credit in an international Card transaction. This fee is in addition to the Bank's International ATM fee, if any.

GOVERNING LAW

This Contract and all accounts and services provided to you are generally governed and interpreted according to Federal law. When not superseded by Federal law, the applicable state law is as follows: 1) The law of the state where the account was opened, if opened by you in person; 2) if not opened in person, the law of the state where you live if we have a financial center in that state (see below); and, 3) if neither of those apply, then the law of the Bank's home office (Nevada for Washington Mutual Bank and Utah for Washington Mutual Bank fsb.)

As of publication, Washington Mutual Bank operates in AZ, CA, CO, CT, FL, GA, ID, IL, NJ, NV, NY, OR, TX, UT, and WA; Washington Mutual Bank fsb operates in ID and UT.

If governing law prohibits taking action otherwise permitted by this Agreement or requires action which is otherwise excused by this Agreement, and does not allow us to agree otherwise, then governing law applies.

IDENTIFICATION

We may require you to provide identifying information, such as your Taxpayer Identification Number, that meets our requirements at any time and for any reason. We also may require you to provide information and certifications meeting our requirements of your authority to open accounts, conduct transactions or otherwise engage in business with us. At all times you must comply with all legal requirements of doing business with us.

Important information about procedures for opening a new account: To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your legal name, street address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

INACTIVE AND ABANDONED ACCOUNTS

Inactive Accounts: We may consider your account inactive if there has not been a transaction on your account for a period of time we set. We will not consider as activity for this purpose any bank initiated transaction such as fees and interest. If we consider your account inactive, we may stop sending you periodic statements and interest checks; we may also charge you an Inactive Account Fee if stated in the *Business Statement of Fees*.

Abandoned Accounts: The law requires us to turn over abandoned property to the state. You abandon your account when a transaction you initiated has not been processed on your account and you or any beneficiary or authorized signer has not contacted us about the account during a time period set by law. Preauthorized automatic transfers and bank-initiated account activities (like fees and interest) do not count as activity for this purpose.

You will be charged for our costs to comply with this law and a fee for sending you notice, unless the law says we cannot charge these amounts to you.

If we turn your property over to the state, we will not be liable to you. We do not have to assist you in recovering your property from the state.

INTERBANK AND INTERSTATE TRANSACTIONS

We operate two banks using the Washington Mutual and WaMu names: Washington Mutual Bank and Washington Mutual Bank fsb. Sometimes one or both of these banks may operate under more than one name.

We may allow you to conduct transactions on your account with one of these banks at a financial center of the other. Sometimes we will only allow this if the assisting bank acts as your agent; you agree the assisting bank is acting as your agent, unless the receipt or other document you get at the time states differently. Also, when the transaction is a deposit or withdrawal, the transaction is not considered made until an accounting entry has been made on the bank holding your account.

This does not create a general agency between these banks. Also, the banks are not agents for, nor authorized to accept service or process for each other.

We may restrict certain activity to the bank of account, at a financial center in the same state and/or pricing region as the one to which your account is assigned by us, or in some cases, only to the financial center to which your account is assigned.

INTEREST PAYMENTS AND CALCULATIONS

This section applies to accounts which pay interest. Unless otherwise stated for your account:

Annual Percentage Yield (APY) assumes interest remains on deposit. Withdrawals and fees reduce earnings. We may change the interest and APY for your account at any time without notice or limit. If interest tiers apply to your account, we may set interest rates and APY for various tiers in any amount; thus, interest and APY for one tier may be the same as for a lower tier. We may set interest rates and APYs on a specific account, pricing region assigned to an account, or customer basis and they may be higher or lower than our standard, at our discretion.

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the Collected Balance at the end of each day. Interest is paid on the last day of your monthly interest cycle, on a 365/365 day basis (366/366 day in leap years). Interest is compounded monthly unless otherwise stated for your account.

Interest is not earned for the date of withdrawal. Interest accrued but not yet credited to your account is not available for withdrawal except at account closure. For our convenience, we may process the interest payment on the last Business Day of the cycle, to be effective the last calendar day of the cycle. We may adjust the interest payment if there is a transaction between those days.

LANGUAGE

We conduct business in English. In some cases, we may provide documents in other languages as a courtesy, along with the English version of those documents; when we do, the English version applies unless we tell you differently in writing. Even if we have provided documents in another language in the past, we might not do so in the future and we might not provide other documents or service in that other language.

Some of our employees may be able to talk to you in another language. However, they are not always available. We currently offer a third-party language line that may also assist with transactions for some, but not all languages. Ask us how the language line works. This is a courtesy service and may be terminated at any time (for some or all languages). Keep in mind that the people providing this service (employees or third parties) are not acting as your independent financial or legal advisor. If you need help with translating applications, disclosures, or other documents related to a deposit or other product or service we offer, you should consult with a trusted family member, friend or other non-WaMu related person fluent in both languages.

Whether you speak English or another language, if you need help understanding the documents and your or our obligations, you should consider seeking separate legal counsel, at your expense.

LARGE CURRENCY TRANSACTIONS, OFAC AND OTHER LAWS

Accounts, transaction and services are governed by the laws and regulations administered by the Office of Foreign Assets Control (OFAC) and all other applicable Federal, state and local laws and regulations. In addition to any other rights we may have, we may provide information regarding your account(s), restrict your account(s) and/or refuse transactions and services when required to do so, or when we reasonably believe we are required to do so, by applicable Federal, state and local law or regulation, including, without limit, laws and regulations administered by OFAC. You agree to use any services, accounts, checks, cards (of any kind), Personal Identification Numbers, user identification numbers, pass codes or other codes and access devices, and instruments related to any of the foregoing for lawful purposes only. Without limiting the foregoing, you agree that such may not be used for, or otherwise in connection with, any illegal transaction or activity.

Government regulations require us to report transactions occurring in the same Business Day that involve currency in excess of \$10,000 and other transactions to the Internal Revenue Service (IRS) and other government agencies. We have this obligation even if the \$10,000 is spread out over several transactions in one Business Day, or if two or more transactions that total more than \$10,000 occur on different days but are processed by us on the same Business Day. This can happen if you made a deposit or withdrawal after the cutoff time on one day, then make a second deposit or withdrawal the following day.

LEGAL PROCESS

Legal Process includes, for example, a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, tax withholding order, search warrant, forfeiture or other similar order or government request for information relating to your account, safebox, or other service, which we believe to be valid.

The Bank may comply with any legal process that is served in any manner at any of our locations, even if it is served at a location or in a state other than a location or state where the account, property, or records are held. We may provide access to any bank or third-party location that maintains our records. We may also require that any Legal Process be served in the manner and at the place established by law.

We may charge your account a Legal Processing Fee for each legal process that we receive related to you or your account (or any of you) as provided by law or in the *Business Statement of Fees*. You also agree to pay our expenses for responding (e.g., researching, copying documents, attorney's fees and any other costs). We may deduct these fees and costs from any of your accounts without prior notice to you even if this deduction creates an overdraft or results in an early withdrawal penalty.

If we pay any Legal Process related to your account, we may debit any of your accounts even if this causes an overdraft. We may also charge an early withdrawal penalty if applicable to the account debited.

LIABILITY AND LIMIT OF LIABILITY

Your Liability: Each account owner and signer on the account and user of a service will be responsible jointly and individually for all costs related to the account or service regardless of the amount contributed or percentage ownership or use. This includes, for example: any items given for payment or received for deposit to or cashed against the account; transactions on or related to the account; overdrafts and related fees of you or any of you if more than one; offset rights; and, obligations secured by the account. You will be responsible even if you did not: write, deposit or cash the item; authorize the transaction; agree to the obligation; or, benefit in any way.

We can honor, and you will continue to be responsible for, any items and transactions authorized by an account owner or signer prior to the termination of their authority. This includes items or transactions that are presented or processed after termination of the account.

Limit of Liability: UNLESS PROHIBITED BY LAW, YOU AGREE THAT OUR LIABILITY WILL BE LIMITED TO: THE FACE VALUE OF AN ITEM OR TRANSACTION IMPROPERLY DISHONORED OR PAID; THE ACTUAL VALUE OF ANY DEPOSITS NOT PROPERLY CREDITED; OR, WITHDRAWALS NOT PROPERLY DEBITED. YOU FURTHER AGREE THAT WE WILL HAVE NO LIABILITY TO YOU FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

In addition, any claim you have against us will be further reduced by: your (or any co-owner, authorized signer, your agents or employees) negligence or failure to use reasonable care; any damages which we could not have avoided by our using ordinary care; your failure to comply with the reporting requirements in this Agreement; and, any proceeds from an insurance carrier or other third party you receive or are entitled to receive.

You will pursue your rights under any insurance policy and against any third party if they cover or may cover the loss. You will provide us with all information applicable to those policies and third parties. Any proceeds from them that you receive or are entitled to receive will be applied first to reduce our obligations to you. If we repay you for the loss before you receive compensation, you will assign us your rights under those policies and against any third parties.

You will reimburse us for any liability, loss and expense we incur in connection with your account unless it was caused by our fault. We will not be responsible to you for losses beyond our control. This includes, for example, natural disasters, wars, riots, strikes, computer failure, loss of power, communication or transportation facilities or third-party actions, such as those involving networks, fund transfer systems, clearinghouses, or other third-party vendors.

LIMITATION ON USE OF ACCOUNT

You agree to use your accounts and services for lawful purposes only. We may reject any transaction or attempted transaction we believe to be unlawful. We may also limit transactions and services for security or other reasons.

We may restrict the ownership types available for any account. These accounts and services may be used for business purposes; this means, for example, that they cannot be used for personal, family or household uses. If used for purposes other than business, we reserve the right to change the account or service to an account or service we offer to consumers or to close it.

MARRIED ACCOUNTHOLDERS / DOMESTIC PARTNERSHIPS

The Bank may enter into a deposit contract with you even if you are married (or are a registered domestic partner) or if money in your account is community or separate property. Rights and obligations relating to one or more spouse or parent also apply to domestic partners, unless the law provides otherwise.

MINORS' AND INCOMPETENTS' ACCOUNTS

Minors and Incompetents have the same rights and obligations as any other owner. This means that we may follow their instructions about their accounts. No defense may be made based on a minor's or incompetent's capacity to contract.

Minors and Incompetents agree that we may release any account information to a parent, guardian, custodian or conservator of their estate. We may also follow written instructions from any of them to withhold payment from the Minor's or Incompetent's account.

If the beneficiary/payee of any account is a Minor or Incompetent, we may require an order from a court of competent

MONTHLY, QUARTERLY AND OTHER CYCLES

Your account may be charged fees for services and credited interest on a periodic basis. We also may elect to send you statements on a periodic basis for certain accounts. These periods are sometimes called cycle periods and may be, for example, monthly, quarterly or semi-annually. These statement, interest and fee cycle periods may not match. Thus, for example, you may get quarterly statements and incur a monthly service charge.

These cycle periods (e.g., monthly) are roughly the same length, but they will not be exactly the same. For example, one monthly cycle period might be 29 days (and end on the 15th) in one month and be 32 days (and end on the 17th) in another month. This means, for example, that we may charge a monthly fee because you did not maintain a specific average balance or an Excess Activity Fee due to too many transaction during the cycle when we might not have charge it if the cycle period had ended or started on a different day.

If a cycle period changes (e.g., for statements), we may require that the other cycle periods (e.g., for purposes of fees and interest) change to fall on the same date. If we do, your last cycle prior to the change and first cycle following the change may be shorter or longer than usual. And, as described above, the cycles may not fall on the same day or be precisely the same length from cycle period to cycle period (e.g., from month to month).

MULTIPLE PARTY INSTRUCTIONS

We do not offer accounts on which two or more signatures are required for transacting on your account. Any instruction that more than one signature is required for a transaction is for your own purposes only and is not binding on us. We may follow instructions from any one of you.

OFFSET RIGHTS

If we are unable to collect what you owe us related to an account or service or any other amount owed by you to the Bank, you agree we have the right to offset any account or asset of yours then held by us, by our sister bank, or any subsidiary of ours or our sister bank. When we take this action, we do not have to provide notice, unless the law says we have to. If we offset from a CD, an early withdrawal penalty may apply.

If there is more than one owner on your account, we can offset against any account any of you owns (entirely or partially); this applies even if the debt is a result of a transaction by another of you. We may do so without regard to contributions made, the source of funds, any restrictions on the account, or the death or incompetence of an owner.

If it is later determined that you did not owe us the money, we will reimburse you for the amount of the offset and refund any applicable early withdrawal penalties. You also agree we will have no other liability related to the offset.

OTHER AGREEMENTS

You may have another agreement with us which, by its terms, supersedes this agreement in whole or in part. For example, certain provisions of your other written agreements with us (e.g., the Treasury Management Services Terms and Conditions) may supersede some of the terms of this agreement to the extent that they are inconsistent, but only if the other agreement is in writing and accepted by the Bank

PASS-THROUGH FDIC INSURANCE

Under Federal law, whether an employee benefit plan deposit is entitled to per-participant (or "pass-through") deposit insurance coverage (excluding SEPs which are not subject to pass-through insurance coverage) is based, in part, upon the capital status of the insured institution at the time each deposit is made. Specifically, "pass-through" coverage is not provided if, at the time an employee benefit plan deposit is accepted by an FDIC-insured bank or savings association, the institution may not accept brokered deposits under the applicable provisions of the Federal Deposit Insurance (FDI) Act. Whether an institution may accept brokered deposits depends, in turn, upon the institution's capital level. If an institution's capital category is either "well-capitalized" or is "adequately capitalized" and the institution has received the necessary broker deposit waiver from the FDIC, then the institution may accept brokered deposits. If an institution is either "adequately capitalized" without a waiver from the FDIC or is in a capital category below "adequately capitalized", then the institution may not accept brokered deposits. The FDI Act and FDIC regulations provide an exception from this general rule on the availability of "pass-through" insurance coverage for employee benefit plan deposits when, although an institution is not permitted to accept brokered deposits, the institution is "adequately capitalized" and the depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis. The availability of "pass-through" insurance coverage for employee benefit plan deposits also is dependent upon the institution complying with FDIC's recordkeeping requirements.

The Bank's capital category currently is "well capitalized". Thus, in our best judgment, employee benefit plan deposits are currently eligible for "pass-through" insurance coverage under the applicable Federal law and FDIC insurance regulations.

PAYMENT IN FULL

If you send a check to us intended as full satisfaction of a disputed debt, you must comply with all legal requirements and send it to our Legal Department at one of the addresses below. We may refuse or return any such payment even if sent there and received by us, unless the law says we must accept it.

- Attn: Legal Department (Mailstop N110701) 9200 Oakdale Avenue, Chatsworth, CA 91311
- Attn: Legal Department (Mailstop 4812LGFL) 8050 S.W. 10th St., Bldg. Four, Ste. 1000, Plantation, FL 33324
- Attn: Legal Department (Mailstop WMC3501) 1301 Second Ave., Seattle, WA 98101

PERMANENT INTEREST ORDERS

If you have an account offering Permanent Interest Order (PIO) you or any other account owner or signer may elect to have PIO for such account. With a PIO, interest payments may be sent by check to any of you or a third party you designate, or paid to another eligible account any of you has with us.

We may require the PIO to be in writing, signed by any or all of you. When you make a PIO, you represent, at the time of the election and of each PIO payment, that: neither the funds in the account nor evidence of account, have been pledged, assigned or transferred; no one other than you has any interest in the payment, funds in the account and evidence of account; you hold all rights to the funds in the account and evidence of accounts; and, you are authorized to direct payment of interest in accordance with the PIO.

We reserve the right to deposit interest earned into the account and not forward interest under the PIO for any reason (e.g., if the amount of interest paid is below any threshold we may set from time to time or if your account is considered inactive or dormant).

You or any other accountholder or signer can change a PIO at any time. PIO is not available if you have elected deferred interest payments.

POWERS OF ATTORNEY / APPOINTMENT AND PAYMENT TO AGENTS

We may accept any instructions or actions on your account by your agent or attorney-in-fact (jointly "agent"). Prior to accepting the authority of your agent, we may require the appointment to be in a form satisfactory to us, which may include completing our power of attorney form. Instructions or actions include, for example, payments to, withdrawals from and transfers between accounts, regardless of from or to whom they are made and changing account information, types and terms. Unless prohibited by law, we may refuse to honor power of attorney or agency which you grant to others for any reason. We may require you or your agent to present the original form. In some cases, we may require that the agent confirm in an affidavit that the powers have not been revoked or terminated. We also reserve the right to restrict the types and size of transactions we permit an agent to conduct on a case-by-case basis.

We may continue to rely on the instructions and actions of your agent until we receive written notice in accordance with applicable law and this Agreement that the agent's authority has been terminated and we have had time to act on that notice.

You agree to indemnify, defend and hold the Bank harmless from any losses, claims, expenses, or damages (including, among other things, court costs and attorney fees) incurred by us for acting in reliance upon the authority granted to the agent and in accordance with the instructions of the agent. If we act in good faith upon any representation or instruction of the agent, we will not be liable to you, your estate, beneficiaries, or joint owners for such acts.

PRICING REGION

Interest rates, fees, and charges for accounts and services may vary based on the pricing region to which we assign to your account or within any pricing region, at our discretion. The pricing region may vary based on where your financial center is located or how you open your account. For accounts opened in person, your pricing region is the State or other pricing region in which the financial center is located. Some states may have more than one pricing region; some pricing regions may include more than one state. And, for accounts opened by telephone or online, your pricing region may be assigned differently than if opened in the financial center. We reserve the right to change the pricing region assigned to your account from time to time without notice. At any time, an account initially assigned to one pricing region may be reassigned to another pricing region, a pricing region may be subdivided into two or more new pricing regions, or two or more pricing regions may be combined into a single pricing region, all without prior notice to you.

PROTECT YOUR ACCOUNT

You play an important role in protecting yourself and your account. These are some steps we strongly recommend you take:

In General

- Call us immediately if your driver's license or other identification is lost, stolen or missing.
- Use our online banking service to check your account balances and transactions regularly.
- If your check order or Business Debit MasterCard® does not arrive within 14 days from the date of your order, call us.
- Keep your blank and canceled checks, deposit and withdrawal slips and account statements in a very safe place; otherwise you may be responsible for misuse of any of them. Call us immediately if any of them are lost, stolen or missing.
- Do not give any account or personal information to callers. Call them back at a number you know to be legitimate.
- If your account, card or other service is compromised in any way, open a new account or get a new card, and change your PIN, depending on the type of compromise. If you do not, you are accepting full responsibility for any future loss which might have been prevented if you had taken this action.

Checks

- Do not include your driver's license or taxpayer identification or social security number on a check unless you believe it is necessary and you are directly providing the check to a trusted person.
- Write checks in ink and fill in all lines completely. Make sure all numbers begin at the far left line.
- Do not give anyone a pre-signed check or allow someone else to sign your name on a check.
- Use tamper resistant checks.

ATM Cards and Debit MasterCard®

- Do not share your PIN with anyone.

- Ask for a copy of our ATM safety tips.
- Look for evidence of anything unusual when using an ATM; if concerned do not use the ATM.
- Memorize your PIN, do not write it on your card or carry it with you.

Online

- Do not share your user ID or password with anyone. Follow the online site guidelines for creating a password.
- Forward to spoof@wamu.com any e-mail that appears to come from WaMu but which is suspicious to you in any way. Do not open any attachments or click on any links in these e-mails. If you do, immediately call us and other financial institutions where you have accounts.

Statements

- Keep accurate records of your transactions.
- Check promptly to see that each statement is accurate. Look for: checks out of sequence or payable to cash; use of a previous used check number; and, balances which do not match what you think they should be.
- Review your statements yourself, do not rely on others.
- Call us immediately if you find any problems or have any questions about a statement or if you do not receive it when expected.

Mail

- Deposit mail only in a locked U.S. Postal Service mailbox and do not leave it for pick up from your home or an unsecured area at your work.
- Pick up your mail as soon as possible each day and promptly pick up any statements or other mail held for you at one of our financial centers.
- If you do not receive Communications from us when expected, call us immediately.

RECORDING AND MONITORING

You agree that we may record or monitor any telephone conversation you have with us. If we do record, we do not have to keep the recordings, unless the law says we have to.

RECORDS

If we cannot find a written record regarding your account or service, for example, the *Master Account Agreement*, the Bank's other records will control. Also, if there is a conflict between your records and ours, ours will control.

REFUSAL/TERMINATION/RESTRICTIONS ON ACCOUNTS AND SERVICES

We reserve the right to refuse to open any account or to provide any service or to accept additional deposits to or permit withdrawals from an existing account, or to comply with any instruction or request you make. Your account or other relationship with us may be terminated by you or by us at any time and without previous notice, except where specifically set forth in the terms of such account.

The Bank reserves the right to freeze or restrict accounts at any time, including by requiring written notice of an intended withdrawal from any account not less than seven (7) calendar days before the withdrawal is made, consistent with applicable law. The Bank reserves the right to terminate the account for any reason. If the Bank elects to exercise its right to terminate the account, the Bank shall have the right to hold any funds in the account for a reasonable period of time, to protect against loss from any outstanding or returned items on the account or other losses that Bank may suffer related to the account or other account any of you may have or to any accountholder or Authorized Signer.

If you or we terminate the account or service hereunder, rights and obligations accruing prior to such termination shall survive. Without limiting the foregoing, you agree that your liability with respect to items cashed against or deposited or transaction posted to the account shall continue even if such item or transaction is disputed, returned, rejected or reversed after the account is terminated.

If you are a co-owner or Authorized Signer on an account, and your ownership or authority is terminated, you acknowledge and agree that your liability continues after such termination with respect to any claim accruing or transaction initiated prior to that date, regardless of when posted, and such termination does not affect your liability with respect to any other account or service, whether or not such other account or service is linked to the terminating account. If you are a co-owner of an account and another co-owner's interest is terminated, you agree that we may continue to honor items and transactions authorized by such person prior to the termination, even if presented or processed after termination.

RETURNED DEPOSITED ITEMS

Checks You Cash or Deposit: If you cash or deposit an item which is later returned unpaid (or we get a notice that it will be returned unpaid), we may: charge your account the amount of that item and interest; or, resend the item through our standard check process, electronically or on a collection basis and, place or extend a hold related to the item, and charge your account any expenses for collection of the item. Whether or not we resend the item for collection, we will charge your account a Returned Deposited Item Fee, even if the item is ultimately paid.

We are not obligated to question why an item is returned. We are also not required to evaluate if the return was timely. You waive any claim against us regarding the paying bank's Midnight Deadline and final settlement; and, notice of dishonor and protest. You agree we will have no obligation to notify you of any item that is or may be returned.

You agree that if an item deposited to or cashed against your account is paid and at any later time returned by the maker bank claiming that it was altered, forged or unauthorized or should not have been paid for any reason, we may debit or hold any of your accounts for the amount of that item.

Checks You Write: If we return a check that you write unpaid, the depositing bank may redeposit it electronically. An electronically re-deposited item will appear in the Electronic Payments section of your statement as a debit and show the check number. The original check will be destroyed. Call us if you want a copy.

SIGNATURE VERIFICATION AND NOTATIONS

Checks written on, and other items debited from, your account may be processed mechanically based on information encoded on such items. Although we may visually review such checks and other items from time to time, reasonable commercial standards do not require us to do so. Any instructions to permit withdrawals only upon more than one signature do not apply to checks, electronic fund transfers, or debit withdrawal requests; such instructions are only binding on accountholders and are of no concern or limitation to us; and, we may follow the instructions of any one signer on the account.

If we do visually review any such check or other item, we may return it unpaid without liability to you if, in our opinion, it does not bear a signature matching the specimen signature (without limit on a *Master Account Agreement* or *Authorized Signer Agreement*) you have on file with us, does not have the correct number of signers or is otherwise unacceptable to us. In addition, we may, but are not obligated to, pay or accept items bearing restrictions or notations (e.g., "2 Signatures Required", "Void after 6 months"). You agree if you write or accept an item with such restrictions or notations, such as between you and the payee, payor, endorser, or drawer, as the case may be, and such shall have no affect on us. You agree, however, that we will not be liable to you for honoring any check or other item bearing a signature which, in our sole opinion, matches your signature on file with us or any check bearing restrictions, conditions, notation, or, at our option, for rejecting, such item in accordance with such restriction, condition or notation. You also agree to indemnify and hold us harmless from any and all losses, claims, damages, liability, costs and expenses (except attorneys' fees) arising directly or indirectly out of (a) the misuse or unauthorized use of any facsimile signature or logo bearing reasonable similarity to the logo applicable to your business on a check or other item or (b) the payment, acceptance or rejection of any item with restrictions or notations, whether you are the payee, payor, endorser, drawer or otherwise.

STATEMENTS

We may not send you statements, unless required by law. If we do provide a statement, we may stop sending you statements at anytime without notice; for example, we may choose not to send a statement for any month or other period when there is no activity on your account.

You may request, and we may require, combined statements if you have more than one eligible account with us. When statements are combined, whether or not at your request, you agree that copies of these statements (which include information on other accounts and services) may be provided to any accountholder, authorized signer and other person authorized by any of them. (See the *Disclosure of Information to Third Parties* section.)

You agree that any Communication to you may be sent on or with any periodic statement we send.

THIRD-PARTY COURIERS

You may utilize a courier, armored or otherwise, to deliver or receive banking transactions, and in so doing, you agree at all times and in all respects that (1) courier is the Agent of Customer and not of the Bank, (2) we make no representation or warranty regarding, and assume no responsibility with respect to, services performed or promised by courier, and (3) you assume all risk of loss (including loss or theft by third parties, your employees, or the courier's employees) prior to our acceptance of deliveries from courier and subsequent to courier's acceptance of deliveries from the Bank. You also agree that you and courier will be responsible for all loss recovery procedures and processes, although we will undertake reasonable efforts to facilitate loss recovery.

THIRD-PARTY SERVICE PROVIDERS

Some services (e.g., ATM, check clearing, wire transfer, electronic funds transfer) are provided through third parties, for example, network service provider and clearing house organizations. Thus, these services depend upon the availability of the service provider's network, our membership and other conditions. We are subject to the provider's rules when we or you use their services. You also agree to those rules unless the law or a written agreement with us states otherwise. If the third party charges us a fee or passes through a cost, we can pass those fees and costs to you. These fees/costs may be deducted from either your account or the proceeds of your transaction.

We are not responsible if the third party stops providing the services (temporarily or permanently). We do not guarantee the services you receive from them and are not responsible for the services they provide you, unless law or written agreement with you says we are.

We can choose which service provider to use if we have an agreement with more than one to provide the same service. We can stop or have someone else provide these services at any time.

TRANSFER/ASSIGNMENT

You cannot give, transfer or assign any of your account rights to someone else without our written approval. We do not have to accept or recognize any attempt to do so; if we do, it will not be valid until we consent and it is reflected in our records.

WAIVER OF THESE RULES

The Bank may elect to waive any of these provisions, but any such waiver will only apply on that occasion. We may elect to delay enforcement of any of our rights without losing them. You waive diligence, demand, presentment, protest, and any notice of any kind, except as stated in this Agreement.

WIRE TRANSFER SERVICES

The Bank offers both incoming (credits to your account) and outgoing (debits from your account) wire transfer services. All outgoing wire transfer payment orders (sometimes referred to herein as "Payment Order") are subject to this section and any additional documentation to implement these services as may be required by us for the services you select and we agree to provide. Fund transfers are subject to Article 4A of the Uniform Commercial Code, as adopted by the state whose law applies to the account which you are using for the funds transfer service ("Article 4A"). This section does not apply to transactions governed by the Electronic Funds Transfer Act, Federal Reserve Board Regulation E, or transfers by check, draft, or other written item.

The applicable wire transfer service fees are reflected in the *Business Statement of Fees* applicable to your account. For the purposes of these services, "Domestic" refers to the 50 states of the United States and the District of Columbia. "International" and "Foreign" refer to foreign countries and parts of the United States that are not considered states (e.g., U.S. Territories). You also agree to pay any costs assessed by third parties for processing any special request related to a Payment Order. Intermediary and receiving banks, including the beneficiary's bank, may assess a fee for processing a Payment Order. If transfer is in foreign currency, Bank may set the rate to convert funds remitted in U.S. Dollars to local currency, at its discretion, which may be different than the conversion rate charged to Bank for purchasing funds. Alternatively the intermediary or receiving bank may apply a currency conversion fee to convert wire transfers remitted in U.S. Dollars to convert funds to the local currency (unless funds are remitted to a U.S. Dollar account). Any fees assessed by the intermediary or receiving bank, including the beneficiary's bank, may be debited from the amount of the wire and all or a portion of these fees may be paid by the intermediary or receiving bank back to Washington Mutual and not credited to your account. Cancellation of a Payment Order involving any currency other than U.S. Dollars is subject to any rate exchange loss as determined by Bank. Customer agrees to sell any cancelled Payment Order to Bank at the then current applicable foreign currency rate.

1. Sending Wire Transfer Payment Orders

- (A) **Processing Requests and Cutoff Times** – We have Cutoff Times for processing Payment Orders, and we process Payment Orders on a same-day basis until such Cutoff Times. Cutoff Times may vary depending on the particular office of the Bank and the type of Payment Order and may be changed by us at any time without notice. We will provide you our current Cutoff Times upon request. We treat Payment Orders we receive after a Cutoff Time as received on the next Business Day.
- (B) **Amendment or Cancellation of Requests** – You have no right to amend or cancel a Payment Order after we receive it. If you ask us to do this; we may make a reasonable effort to act on your request prior to the time we execute such Payment Order. However, we are not liable to you if, for any reason, a Payment Order is not amended or cancelled.
- (C) **Inconsistent Names and Account Numbers** – Bank and any other party executing or receiving Bank's Payment Order, including the beneficiary's bank, may rely on the number in the Payment Order that identifies the beneficiary and on any numbers that identify the beneficiary's bank and any intermediate financial institutions identified in the Payment Order, even if such numbers do not correspond to the name of the beneficiary or the financial institution. Bank and any other receiving financial institution have no obligation to determine whether a name and number identify the same person or institution. Customer acknowledges that payment of a Payment Order initiated by Customer might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary.
- (D) **Transmission of Requests** – You authorize us to select any intermediary bank, funds transfer system, or means of transmittal to send your Payment Order. Our selection may differ from that indicated in your instructions. We shall not be responsible for any acts or omissions of any funds transfer system, any Federal Reserve Bank, any intermediary bank or any recipient of any Payment Order in any way related to your Payment Order, or any cancellation or amendment thereof, and no such entity or person shall be deemed to be our agent.
- (E) **Rejection of Requests** – The Bank may reject for any reason a Payment Order, including, without limitation, any Payment Order that we believe (a) contains incorrect, incomplete, ambiguous or missing information, (b) involves funds that are subject to lien, security interest, hold, dispute or legal process prohibiting transfer or withdrawal, or (c) would violate any applicable law or regulation. We will notify you of any rejection of a Payment Order from your account orally, electronically or in writing, at our option. We are not liable to you for the rejection or obligated to pay interest for the period before you receive notice of the rejection.
- (F) **Notices of Your Payment Orders** – We ordinarily notify you about executed Payment Orders by listing them on your account statement or, at our option, a customer advice.
- (G) **Interest Compensation** – If we are obligated to pay for a loss of interest that results from our error or delay regarding your Payment Order, we will calculate the interest as follows: With an account subject to analysis and Earnings Credits, we adjust the account under our account analysis procedures to recredit Earnings Credits for the period involved. With a non-analyzed account, we use a rate equal to the average of the Federal Funds rates set by the Federal Reserve Bank of New York.

2. Payment Order Initiation and Authorized Representatives

A Payment Order may be initiated in the manner and by the means agreed to by the Bank by any person who is an owner or Authorized Signer on the account from which the Payment Order is to be made, provided we receive confirmation of identification satisfactory to us in our discretion. In such case, no additional confirmation of authorization is required. In addition, you may designate to Bank, in the form required by us, those individuals authorized to instruct us regarding wire transfer services including, without limitation, appointing individuals authorized to initiate Payment Orders, select advice methods, select confirmation methods, and give any or all authorizations and instructions that may be requested by us (referred to as your "Authorized Representatives").

We may rely on any such authorization until it has been revoked by you in writing. We shall have a reasonable time to act on any such revocation. You shall have sole responsibility for selecting Authorized Representatives who may authorize or confirm Payment Orders and for their supervision, management and control of all such Authorized Representatives and their identifiers and passwords, if any. Bank may, but shall not be required to, assign each Authorized Representative a password(s) or other identifier for use with Payment Order requests.

If an Authorized Representative has authority to both initiate and confirm a Payment Order, you acknowledge that such authority increases the risk that a Payment Order will not be consistent with your wishes and you will be liable for such Payment Order. If you choose to appoint an Authorized Representative(s), we advise you not to waive confirmation of your Payment Orders and you acknowledge and agree that not using confirmation procedures substantially increases your risk of an unauthorized transaction. If you, however, choose to waive confirmation, you agree to be liable for all outgoing Payment Orders, except those Payment Orders where (1) you are able to conclusively prove that the unauthorized transfer could not have been prevented by the use of confirmation procedures; (2) we are unable to produce any evidence that the unauthorized transfer could have been prevented by the use of confirmation procedures; and (3) you are not otherwise liable for the transfer under this Agreement, or applicable law.

3. Security Procedures

You agree to use the Security Procedures offered by us to authenticate, initiate, confirm, amend or request a Payment Order as set forth herein. You acknowledge that Bank's Security Procedures, including, without limitation, passwords and other identifiers issued to you or your Authorized Representatives are highly confidential. You agree to establish and maintain procedures to ensure the confidentiality of all passwords and identifiers of Authorized Representatives and agree to promptly notify Bank when any Security Procedure has become compromised or any Authorized Representative is no longer authorized to act on your behalf. Bank may act in its complete discretion on the oral, written (including facsimile or other electronic requests) instructions from any person who has been reasonably identified by us in accordance with these procedures. You acknowledge and agree that the Bank's Security Procedures are designed to verify the authenticity of Payment Orders and not to detect errors in the content of any such Payment Order. You agree that Bank's Security Procedures are commercially reasonable and agree to be bound by any Payment Order sent in your name that is processed by us in accordance with these Security Procedures, whether or not authorized.

4. Incoming Wire Transfers

We may receive wire transfers directly to your account from a sender, through a funds transfer system or through some other communications system. We may reject an incoming funds transfer for any reason. We are not obligated to notify you if we reject any incoming wire transfer to your account.

We will tell you that we have accepted an incoming wire transfer to your account in accordance with applicable law. If we offer and you select advices by telephone, you will designate a person(s) to be contacted and telephone numbers to be used by us. We are not required to make more than one attempt to reach the designated location by telephone. If we are not able to reach your designated telephone number, we may leave a message with the information. If we offer and you select advices by facsimile, e-mail or other electronic transmission, you must exercise extreme care in maintaining security for the receipt of electronic advices. Any advice may include confidential information such as names, amounts, phone numbers, originating account information, and the text of incoming wires. You are responsible for having security procedures

to keep this information confidential. You agree to indemnify, defend and hold Bank harmless against any and all claims, demands, expenses, liabilities and damages, including attorney fees at trial and on any appeal or petition for review, incurred by the Bank arising directly or indirectly from providing the information by telephone or electronic transmission.

5. Standing and Recurring Payment Orders

You or any of your Authorized Representatives may initiate a standing or recurring Payment Order on the forms required by Bank. A standing Payment Order is an outgoing Payment Order by which you or your Authorized Representatives, at pre-determined times, transfer funds in the same amount or balance calculation from the same accounts at Bank to the same account at Bank or other financial institution for the same beneficiary. A recurring Payment Order is an outgoing wire transfer by which you or your Authorized Representatives from time to time transfer funds from the same account at Bank to the same account at the Bank or other financial institution for the same beneficiary, with the amount to be determined by you or your Authorized Representative at the time of the transfer. You may terminate a standing or recurring Payment Order at any time upon written notice to the Bank's designated representatives. Bank shall have a reasonable time to act on any such notice.

6. Reverse Wire Requests (Fedwire Drawdowns)

If requested by you or your Authorized Representative, you authorize Bank to debit your account upon receipt of a Fedwire drawdown request from another financial institution and to send such funds to the requesting financial institution. Each request will be processed on the Business Day received if received within a reasonable time for Bank to determine whether your account has sufficient funds and obtain access to the Federal Reserve network prior to the close of business. Bank may reject any drawdown request in excess of the available balance in the account or for any other reason in Bank's discretion. Your authorization for a drawdown request shall remain in effect until you give the Bank written notice of the cancellation. Bank shall have a reasonable time to act upon any such cancellation.

7. Errors and Questions about Your Payment Orders

You must notify us at once if you think a Payment Order or incoming funds transfer shown on your account statement or customer advice is incorrect. Notwithstanding anything else in this Agreement providing a longer time, you must send us a written notice describing any discrepancy no later than ten (10) calendar days after the date you receive the first notice or statement on which the problem or error appears. If you fail to notify us within this ten (10) calendar day period, the Bank is not liable for any loss of interest because of an unauthorized or erroneous Payment Order or an erroneous funds transfer.

WITHDRAWALS

You must provide oral or written instructions satisfactory to us to withdraw money from your account. We do not have to question or investigate any withdrawals or application of funds from your account for any reason. Unless you have agreed to leave your funds on deposit for a specified time or we have otherwise restricted your account, you may withdraw available funds in any amount, subject to our right to require advance notice. In addition, the Bank can discontinue or limit the practice of withdrawals by check, cash or otherwise, at any time, without notice. If an account is restricted, we may allow withdrawals, but we do not have to.

If an item drawn on your account is presented for payment or otherwise accepted by us on a weekend, holiday or after 2:00 p.m. on a Business Day, such item may be treated by us as received the next Business Day, except where prohibited by law.

If we receive notice of a transaction to be processed on your account, we may withdraw funds from your account prior to actual receipt of the transaction for processing. This might occur, for example, if we receive notice that a check you have written has been deposited at another financial institution, or a request to authorize a point of sale transaction.

We reserve the right to require at least seven (7) calendar days written notice before you can withdraw funds from your account. If we do require that notice, we may honor a withdrawal request before the seven (7) days has expired.

If you provide your account number to a third party to complete a transaction, you authorize us, but we are not required, to honor any draft or other withdrawal request from this third party. We may refuse to honor demand drafts without cause or prior notice even if we have honored these items previously.

FUNDS AVAILABILITY

YOUR ABILITY TO WITHDRAW FUNDS

Cash and check deposits made in person to a financial center employee will generally be available on the Business Day that we treat them as received. You can use your available funds to withdraw cash. We will use your Available Balance to pay your transactions (e.g., checks, point of purchase and point of sale transactions, and pre-authorized debits). If we do not make a deposit immediately available we will make available the first \$100 of the total deposits on the Business Day we treat your deposit as received.

Electronic Transfers: Electronic direct deposits (initiated through another financial institution) will be available on the effective date of deposit. Except as noted, electronic transfers between eligible WaMu deposit accounts (Internal Account) are available immediately if entered by our established cutoff time. Electronic transfers initiated by you through us from an External Deposit account, either an account with another financial institution or a WaMu account which has been designated as an External Deposit account for transfers (External Account) may not be available until the 4th Business Day after the effective transfer date. More information is available when you set up this Transfer Service and in the *Electronic Fund Transfer Agreement and Disclosures* section 1(j).

ATMs and Night and Express Boxes: The amount over \$100 (see above) of your total deposit at an ATM will be available the next Business Day following the date your deposit is treated as received. Generally your deposit is treated as received on the same Business Day if it is made on a Business Day we are open before:

- 4:00 p.m. local time at an ATM in the Pacific or Mountain Time Zones;
- 3:00 p.m. local time at an ATM in the Eastern or Central Time Zones;
- 8:30 a.m. local time for a Night Depository; and,
- Noon local time for an Express Box.

These times may vary but will never be earlier than noon for an ATM or Express Box, or 8:30 a.m. for a Night Depository. If we vary the time, we will post a notice.

Deposits received after the stated times, on a non-Business Day, or on a day we are closed will be treated as received on the next Business Day that we are open.

Mail: Funds received by mail will generally be available no later than the 2nd Business Day after the Business Day the deposit is treated as received. Deposits received before 2:00 p.m. local time are treated as received on the Business Day we receive the funds. Deposits received after that time, on a non-Business Day, or on a day we are closed will be treated as received on the next Business Day that we are open.

Business Days: For the purposes of this section, every day is a "Business Day" except Saturdays, Sundays, and Federal holidays.

Additional Hold: We may place or extend a hold on your deposit (see *Longer Delays May Apply to Check Deposits* in next section), even if we did not give you notice at the time your deposit was made or, if at that time, we told you there was no hold being placed.

LONGER DELAYS MAY APPLY TO CHECK DEPOSITS

Sometimes we delay the availability of a deposit longer. If this happens and the deposit is made to a financial center employee, we will usually notify the person making the deposit (except for deposits of foreign items) of the availability. If we take action to delay after the person depositing funds has left the financial center or the deposit is made in another way, notice will usually be sent by the following Business Day after the deposit is treated as received. If you need quick funds availability, you should ask us when they will be available.

Existing Customer: Unless a longer delay (described below) applies, funds (in excess of the first \$100) may not be made available until the 5th Business Day after the day your deposit is treated as received.

Existing and New Customers: Also, availability may be delayed longer if: we believe a deposited check will be unpaid; check deposits total over \$5,000 in one Business Day; a foreign item is deposited; an item that has been returned unpaid is re-deposited; your account has been repeatedly overdrawn in the last 6 months; or, there is an emergency such as computer failure or communication equipment failure. In these circumstances, we may delay the availability of your funds (except the first \$100). Generally, this delay may be until the 11th Business Day after the day your deposit is treated as received and in some instances, even longer. Foreign Funds may also be delayed longer.

If we cash a check for you that is drawn on another bank, we may place a hold or extend a hold on funds in the same amount in any of your accounts with us. They will be treated as if you had deposited the item to an account subject to this policy.

Special Rules for New Accounts: Special rules may apply during the first 30 calendar days your account is open. Funds from electronic direct deposits will be available on the effective date of the deposit. Generally, cash, wire transfers, and first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's and Federal, State and local government checks will be available on the Business Day your deposit is treated as received if certain conditions are met. To receive this availability, the check must be payable to you and the deposit must be made in person to a financial center employee. Otherwise, these funds (other than U.S. Treasury checks) usually will be available on the 2nd Business Day after the day your deposit is treated as received. The amount over \$5,000 of those type of checks and any others will generally be available on the 7th Business Day after your deposit is treated as received. Funds deposited by check may also be delayed for a longer period under the circumstances described above. However, the first \$100 will be available to you the Business Day your deposit is treated as received.

ELECTRONIC FUND TRANSFER AGREEMENT AND DISCLOSURES

You authorize us to deposit, withdraw, and transfer funds to and from your account through electronic, telephone, or automated instructions from you where offered for your account. This authorization includes, for example, electronic transactions initiated by use of: 1) a check ("check electronification"); 2) our online banking service; or 3) an ATM. For certain services, a Personal Identification Number (PIN) will be issued to you so you can make deposits, withdrawals, and transfers.

If you request bill pay, automated clearing house (ACH) or other automated payment services, you authorize us to take money from your account and to pay the requested sums. The authorization must be satisfactory to us.

These disclosures apply to your WaMu® Business Debit MasterCard® ("Debit Card"), check electronification, telephonic, preauthorized, and other electronic fund transfers. They do not include wire transfers and in branch/in person, ticketless and Cash Voucher transactions. Some transactions may be made only if the ATM or point of sale (POS) terminal has a logo for one of the networks in which we are a participant ("Participant Networks") as described below. The reverse side of your Debit Card (Card) has the Participating Networks logos at the time the Card was issued. Call us for a current list.

Contact Us

Please call Customer Service, if you need to notify or contact us for any reason regarding services described in this section, including incidents where Cards or PINs may have been lost or stolen, or if there has been unauthorized use.

For Debit Card transactions, you can also write us at WaMu, ATM/Debit, P.O. Box 9017, Pleasanton, CA 94566-9020.

For ACH and electronified check transactions, notifications and other matters, you can write to us at WaMu, ACH, P.O. Box 65934, San Antonio, TX 78265.

For *Business Bill Pay*® and Online Banking transactions, notifications and other matters you can write to us at WaMu, Bill Pay Back Office, 400 E. Main Street, MS STA2BPC, Stockton, CA 95202.

Consumer Account: an account used primarily for personal, family, or household purposes and the accountholder is a natural person.

Non-Consumer Accounts: an account that is not a Consumer Accounts.

Linked Account: any account you have with us that is linked to your Debit Card, as stated in our records.

Service Terms and Disclosures

1. Services

Services described below may not be available at all times in all areas, for all ownership accounts or all ownership types. Some services require you to enroll or subscribe.

(A) **Deposits, Withdrawals and Cash Advances.** You may use your Debit Card and PIN to withdraw funds from linked accounts at WaMu ATMs (as defined in the *Charges and Fees* section) or from your Primary Checking and Primary Savings Accounts as designated in our records at other ATMs displaying a Participating Network logo and offering this service. Your Debit Card may be used to get cash (Cash Advance) at financial institutions participating in MasterCard® processing. You may use your Debit Card and PIN to make deposits at most of our ATMs to your linked accounts. Some WaMu ATMs do not allow deposits. If the ATM has this capability, you may choose the account to which the transaction will be processed. Otherwise, the transaction will be made to the Primary Account shown in our records. ATMs may not be available during routine maintenance periods or because of restricted business hours.

- (B) **Transfers with Card/PIN.** You may use your Debit Card and PIN to transfer funds from one Bank account (any eligible checking, money market or savings account) to another of these linked accounts. These transfers can be made at WaMu ATMs and between your Primary Checking and Primary Savings Accounts at ATMs displaying a Participating Network logo as long as the transfer capability is provided. You may also transfer funds between eligible accounts through our online services or by calling Customer Service at 800-788-7000 (CDs and other accounts for which monthly statements are not provided). Transfers between accounts at different banks within the WaMu family of companies may be permitted.

You may electronically deposit funds to your primary account from another financial institution where permitted by the ATM, telephone banking or Internet based banking operator and the financial institution holding the account from which the debit will occur.

You may withdraw funds from your Primary Checking account linked to your ATM or Debit Card by using the card or card number and PIN to be electronically deposited to an account at another financial institution where permitted by the ATM, telephone banking or Internet based banking operator and the financial institution holding the account to which the deposit will occur. These withdrawals will count towards your daily ATM withdrawal limit and may be subject to the fee for a withdrawal at a non-WaMu ATM whether or not the withdrawal occurs at an ATM, or through a telephone or Internet banking service.

- (C) **Purchases and other POS Transactions.** You may use your Debit Card and PIN for Point of Sale purchases from your Primary Account at participating terminals/merchants. For this purpose, your Primary Account is the first account linked to the card, unless you close that account or request, and we agree that another account may be the Primary Account. You may use your Debit Card to make POS purchases at merchants and other locations where the Debit MasterCard® symbol appears. If you are entitled to a refund for any reason for goods and services obtained with your Debit Card, you agree to accept credit to your account instead of a cash refund. You may not place a stop payment on any purchase described above, POS transaction, or Cash Advance (see below for information on stop payment of preauthorized transactions).

- (D) **Direct Deposit and ACH.** Your employer, the Treasury Department, financial institutions or other third parties may instruct us to accept direct deposits of your paycheck, Federal payments (e.g., Social Security), or other recurring payments.

Credit for ACH transfers and Direct Deposits is provisional until the receiving financial institution obtains the final settlement. If final settlement does not occur the originator of the transfer is not deemed to have made payment to the beneficiary and the beneficiary's bank is entitled to a refund of the provisional credit. If we give you provisional credit for an ACH transfer, but do not receive final payment, you are obligated to us for the full amount.

We are not required to give you a separate notice of our receipt of an ACH transfer. If we accept ACH credits to your account, you will receive notice of the credit on your next regular periodic statement. You may also call us or access our online banking service to determine if a transfer has been credited to your account.

Direct Deposit and ACH made to or from your account may be affected by a change in the account status, number or location (e.g., transfer to another office). If any of these changes are planned, please call us in advance to determine any impact the change may have on your service. As a courtesy, we may provide the new information to the party with whom you have established such service to facilitate continuation of these transactions. You must contact your originators and provide updated information.

- (E) **Telephone Access.** You may make transfers and withdrawals by telephone from your eligible checking, money market or savings accounts, subject to any applicable limitations. If your line of credit offers direct advances to your deposit account, you may obtain draws against it by telephone; the advances will be subject to your credit agreement and credit limit.

- (F) **Transfers.** You may request transfers by telephone, ATM, online banking and as described in the agreement for the applicable service, depending upon your account. However, if the transfer is made after our Transfer cutoff time, the transferred funds may not be considered part of the balance for certain purposes, including processing certain transactions until the morning of the next calendar day. These funds may be unavailable for paying or authorizing certain transactions such as check clearing, POS or POP authorizations. Call us for our current Transfer cutoff times.

- (G) **Business Online Banking/Business Bill Pay®.** If you enroll in Business Online Banking/Business Bill Pay® service you will receive additional disclosures. If you have previously enrolled in one or more of these services, and you add an account eligible for such service(s), that account will automatically be linked to the service. All business checking accounts are eligible for our Business Bill Pay® service; checking accounts, savings accounts, money market accounts and CDs are eligible for Business Online Banking service, although, not all services available through online banking are available for all account types or all account ownerships. If you access your Consumer Accounts through Business Online Banking/Business Bill Pay®, those transactions will be governed by the consumer Account Disclosures and Regulations.

- (H) **Electronic Check Conversion (ECK).** You may authorize a merchant or other payee to make an electronic payment using your check information to pay for purchases or bills. Participating merchants or other payees will scan your check information and process the transaction electronically. ECK transactions include: POP (Point-of-Purchase Entry) transactions made in person by you using a blank check; ARC (Accounts Receivable Entry) transactions made after you mail or deliver a completed check as payment for a purchase or bill payment; and RCK (Re-presented Check Entry) transactions made by the merchant or others using a returned check that was returned for insufficient or uncollected funds.

- (I) **Other Automated Transactions.** We may allow you to initiate transfers from your account or Card to your account at any other financial institution or to pay eligible third parties. Preauthorized transfers may be affected by a change in account status, number or location. If we change your account or card number, as a courtesy, we may provide the new number (or card expiration date) to the party with whom you have established such recurring transactions. You must contact your originators and provide updated information.

- (J) **Electronic Transfers via Online Banking Service.** You may enroll and use our Online Banking Service to make electronic fund transfers by authorizing us to initiate transfers between eligible accounts you have with us or with other financial institutions. You will receive additional information as part of online banking that also apply to electronic transfers via Online Banking Service.

An "Internal Transfer" is defined as a transfer initiated by you through our online banking service between Internal Accounts; transfers initiated to or from an External Account are referred to as an "External Transfer." Internal Transfers and External Transfers are collectively defined as "Transfers." External Accounts must be registered with us through our online banking service. The External Account must be a transaction account at a U.S. financial institution. If you register an External Account for transfers to and from your account, and for Internal Transfers that we deem to be completed as an External Transfer, we may use the ACH network to process the transfer. The ACH network is an automated payment system that moves funds between U.S. financial institutions for the purpose of debiting and crediting funds to and from designated accounts, and subject to the National Automated Clearinghouse Association (NACHA) rules.

By requesting transfers to and from your eligible account and/or registering an External Account, you authorize us to initiate the credit and debit entries through the ACH network. You authorize us to verify the External Account by a process known as "micro

deposit." This allows us to make one or two small deposits or withdrawals (less than one dollar) and matching withdrawal(s) or deposit(s) from the External Account so we may verify ownership of the External Account by asking you to confirm these amounts. You also authorize us to make adjustments or corrections to your entries as we deem necessary. You may revoke your authorization only by deleting the External Account(s) online or by calling our Customer Service number and requesting that we do so.

A transfer request may not be processed if: the Available Balance in the account is not enough to cover the transaction at the time it is to be initiated; or, you provide incorrect or insufficient information to complete the transfer, including an incorrect number of an External Account. If you provide an incorrect number for an External Account, we may delete the account and you must re-designate an External Account in order to initiate the transfer. We may also request you to re-designate an External Account for any reason. We may, but are not required to, notify you if a transfer is not completed and/or an External Account is deleted. We may limit the number of External Accounts you designate.

ACH transfers are generally initiated by us Sunday through Friday, excluding the day before a Federal holiday ("External Transfer Initiation Day").

If the transfer is not entered by you by our established cutoff time, or on a day on which ACH transfers are not initiated, it may not be initiated until the next External Transfer Initiation Day. We may debit the funds for any transfer at the time that the transfer is entered by you, or for repeat transfers, at the time the scheduled transfer is to be initiated. Transferred funds to and from your eligible accounts may not actually be received and deemed effective ("effective transfer date") for several business days. The transferred funds deposited to your account are subject to our Funds Availability policy. There may be additional delays if the payment system for your External Transfer is unavailable. We may initiate an ACH entry up to 2 Business Days after the transfer schedule date, depending on the account type and purpose of the transfer request. Our Internal and External Transfer cutoff times may vary based upon the state to which the transfer or deposit account is assigned in our records. The Transfer cutoff times may change without notice to you. Call us for current cutoff times.

When you use our Online Banking Service to schedule any Transfer from your eligible account, the Transfer Date will be scheduled as required by our online banking services at the time of the transfer. The Transfer Date will appear on our online banking website at the time you submit the transfer request.

If Transfers credited to your eligible accounts are returned or rejected, we may debit your account in the amount of the return or rejected transfer, or any account any of you have with us. We may also adjust or correct any Transfers to or from your account.

Transfers are subject to transaction limits for Limited Transaction Accounts and other limits we may set from time to time (see *Limitations on Transactions* section).

All Transfers are governed by the terms and conditions of our online banking service, unless we state otherwise.

- (K) **PIN and Debit Cards.** Certain services require a PIN. If you forget your PIN, please visit our financial center and request another one. If you decide not to use your Debit Card(s); cut them in half, dispose of them securely and notify us immediately.
- (L) **Emergency Card Replacement Service.** If your Debit MasterCard® is lost or stolen and you are in urgent need of a replacement card, you may request that a Debit Card be sent to you. The account linked to your card must have been opened for at least 30 days, have a positive balance at the time of the request, and have no restraints. Emergency Card Replacements are limited to 3 requests in any calendar year.
- (M) **Emergency Cash Advance Service.** If you lose or have your Business Debit Card stolen, you may request an Emergency Cash Advance from the linked Primary Checking account (subject to funds availability and transfer limitations) if you are more than 100 miles from the mailing address listed for the account. You must have requested and been eligible for a replacement Debit Card, prior to requesting an Emergency Cash Advance. Advances are limited to 3 requests in any calendar year.

2. Limitations on Transactions

- (A) **Limited Transaction Accounts.** If you have a limited transaction account, do not initiate transactions including Transfers in excess of those limitations.
- (B) **Deposits, Withdrawals, POS and ECK Transactions and Transfers.** We may limit the frequency of deposits, withdrawals, POS or ECK transactions and transfers for security purposes and may change the limits without notice, except if the law tells us otherwise. There are daily dollar limits that apply to ATM withdrawals, POS transactions, retail purchases and MasterCard cash advances (if applicable) based on the following card types and are subject to the Available Balance in your account.

Card Type	ATM Withdrawals, Cash Back and Negotiables Daily Limit	POS, Purchases and Other Transactions Daily Limit
Business Debit MasterCard®	\$500	\$7,000

"ATM Withdrawals, Cash Back and Negotiables" includes ATM withdrawals, the cash back portion of any POS transaction and purchases of negotiable items such as cashier's checks and money orders.

"POS, Purchases and Other Transactions" includes PIN and other POS transactions (excluding the cash back portion of any POS transaction and purchases of negotiable items), withdrawals when transferred to an account at another financial institution through a network interbank exchange service or other payments using your card number through a non-WaMu system (e.g., at an ATM, by phone or online). This limit also includes Cash Advances and cannot exceed either \$500 total or 9 advances per day.

We may agree to higher limits, upon request. Withdrawals, POS transactions, retail purchases, or cash advances made at terminals not owned by us and operating in the WaMu name may be subject to lower limits. Restrictions and fees imposed by third-party owners/operators may apply. All withdrawals, cash advances, POS, ECK transactions (including those at MasterCard locations) and other debit transactions processed electronically are subject to Available Balance in your account, plus any applicable overdraft protection product or service linked to your account. Funds being reserved for authorized but unposted purchases or other purposes may not be used to pay checks, other debits or withdrawals. We may pay a withdrawal, cash advance, POS, ECK or other debit transaction that exceeds the account's Available Balance. If we do, our Overdraft Charge may apply. The charge will not apply if a payment is made by an automatic advance from an Overdraft Line of Credit, or automatic transfer authorization (Overdraft Transfer Service). An Overdraft Transfer Fee may apply if payment is made by means of an automatic transfer authorization; an Advance Fee will apply if payment is made by an advance from an Overdraft Line of Credit. A merchant may reinitiate a ECK transaction if returned for insufficient or uncollected funds. Any limitations under applicable law, regulations, clearinghouse or other rule may apply. A Non-Sufficient Funds Charge may apply each time the transaction is returned.

- (C) **ATM Deposits.** Deposits before 4:00 p.m. local time at an ATM in the Pacific or Mountain Time Zones or 3:00 p.m. local time at an ATM in the Eastern or Central Time Zones on a Business Day we are open are considered made that day. Deposits made after 4:00 p.m. local time in the Pacific or Mountain Time Zones or 3:00 p.m. local time at an ATM in the Eastern or Central Time Zones) on a Business Day or at any ATM not on a Business Day or any day we are not open are considered made the next Business Day. (For information about when these deposits are part of your Available Balance, see the *Funds Availability* section.)
- (D) **Direct Deposits.** We will accept an unlimited amount or number of direct deposits, subject to security limitations.
- (E) **Transfer Limitations.** We set Transfer limits. The Bank may, at its discretion, set a per-transfer dollar limit other than the Available Balance for any Transfer. The Bank reserves the right, at its discretion, not to complete any Transfer that exceeds the limit set by us, whether or not such Transfers may have been allowed on your account in the past. This limit may change from time to time at our discretion, except where prohibited by law. The Bank may also, at its discretion, set transfer limits on the type (e.g., Internal Transfers and/or External Transfers) and frequency of transfers permitted on a particular account offered by the Bank. We may but are not required to notify you of transfer limits in your Online Banking Service disclosures and/or if you exceed set limits at the time you schedule a transfer for transfers initiated through that service.
- (F) The Bank may reject any Internet gaming, gambling, lottery or other transaction we believe is unlawful. Logos displayed on a Debit Card or by a merchant/vendor does not mean the transaction is legal. If the transaction is not rejected, we can debit your account and will not be liable if you engage in any illegal transaction.
- (G) We may block your Debit Card if transactions are being made outside of your usual geographic location, transactions are inconsistent with your usual card usage, or upon receipt of legal process or if we believe there is a dispute about your account.

3. Right to Receive Documentation of Transfers

- (A) **Terminal Transactions.** Generally, you will get a receipt at the time you make any transaction to or from your account at any of our ATMs or ATM displaying a Participating Network logo. Many ATMs offer customers the option not to get a receipt. If a receipt is unavailable, you should be notified prior to completing the transaction and be given the option to cancel the transaction.
- (B) **Direct Deposits.** If you have direct deposits made to your account at least once every 60 calendar days from the same person or company, you can call us to find out whether your deposit has been received.
- (C) **ECK Transactions.** Blank checks should be used for POP or other similar transactions. It should not be previously voided, negotiated or used in any prior transaction. After it is scanned, the merchant should mark it void and return it to you. You should sign and receive a copy of your authorization along with information relating to the merchant and transaction. Merchants who initiate an RCK transaction must provide you notice, before accepting your check, that your returned check may be collected electronically if the check is returned for insufficient or uncollected funds. POP, RCK and other ECK transactions will appear in the electronic payments section of your bank statement. The original checks will not be returned with your statement. The merchant retains the original check relating to an RCK entry for 90 calendar days. The merchant may then destroy the original check, but keep a copy. You may request the original or copy of the check relating to an RCK entry from the merchant or us.
- (D) **Other Transactions.** The merchant should give you a receipt when you make a POS purchase with your ATM or Debit Card, or obtain a cash advance at a MasterCard participating financial institution. A receipt may not be provided for small transactions where permitted by law.
- (E) **Periodic Statements.** Generally, for accounts subject to the Federal Electronic Funds Transfers Act you will get a monthly account statement if there is a transfer subject to the Federal Electronic Funds Transfers Act in a particular month and, if not such transfer. In any case, you will get a statement at least quarterly. This does not apply to inactive or dormant accounts and certain accounts to which allow only direct deposit electronic fund transfers subject to the Act

4. If Your Card or Access Code is Lost, Stolen or Misused or If an Unauthorized Transfer Occurs; and Your Liability

Notify us immediately if your Debit Card, or PIN or any other access code or device has been lost, stolen or used without your permission; or if you believe an electronic funds transfer has been or may be made using information from your check; or if you believe someone has or may transfer money from your account (including any advance on a line of credit through a service described in this section). Refer to *Contact Us* section.

Except as set forth below, you could lose your account balance and your maximum line of credit and transfer authorization. If your statement shows unauthorized transfers, or if you believe your receipt is wrong, tell us immediately.

5. Our Business Days

Business Days are Monday through Friday. Federal holidays are excluded.

6. Charges and Fees

All of our charges and fees are disclosed in this Contract, the *Business Statement of Fees* or other agreement applicable to your account or service. You will not be charged for deposits, withdrawals, balance inquiries, or funds transfers at our ATMs, unless stated.

We may charge fees for transactions initiated using a Card (or Card Number) and PIN at a non-WaMu ATM, by telephone, or Internet based service. These fees may differ for domestic and international ATM transactions. "Domestic" refers to the 50 states of the United States and the District of Columbia. "International" and "Foreign" refer to foreign countries and parts of the United States that are not considered states (e.g., U.S. Territories). A domestic ATM that is operated by a non-U.S. operator is considered International. Non-WaMu ATM ("Non-Proprietary ATMs") operators may also charge fees/surcharges. Any fees charged by any network or operator used to offer the transactions should be disclosed at the time of your transaction. We do not charge POS or POP purchase fees, but the merchant may.

Fees for online banking, bill pay or other electronic services may be charged. Any applicable monthly fees will begin the month you request service, and will apply every month thereafter, unless we tell you otherwise.

There is no direct deposit fee. There is no fee (other than the finance and other charges applicable to borrowings) for the telephonic draw feature online of credit accounts offering such service unless the credit agreement states otherwise. An Advance Fee may apply for automatic advances on your line of credit to your deposit account.

If you exceed the number of transactions authorized for your Limited Transaction Account, an Excess Activity Fee may apply.

If you conduct a transaction in foreign currency, see the *Foreign Transactions* section for details about related charges and exchange rates.

7. Information to Third Parties

Please see the *Disclosure of Information to Third Parties* section.

8. In Case of Errors or Inquiries about Your Electronic Transfers

If you think your statement or receipt is wrong, or need more information about a transfer listed on the statement or receipt, notify us immediately (refer to the *Contact Us* section).

For Consumer Accounts, you notify us within 60 calendar days after we send you the FIRST statement on which the error appeared. (For Non-Consumer Accounts, the provisions of Paragraph 12 of this *Electronic Fund Transfer Agreement and Disclosures*, including the notification requirements apply.) Please provide us the following:

- Your name and account number.
- Describe the error or the transfer you are unsure about, (including the date) and explain why you believe it is an error or want more information.
- The dollar amount of the suspected error.

We may require that you send us your complaint or question in writing within 10 Business Days (15 days for a check electronification issues).

Zero Liability (\$0 Liability Fraud Coverage): Notwithstanding Section 8 above, if you have a Business Account linked to your Business Debit MasterCard®, you will not be liable for the unauthorized use of that card for purchases and at ATMs, if (1) you exercised reasonable care in safeguarding your card from risk of loss or theft; (2) you have not reported two or more incidents of unauthorized use of your card in the preceding 12 months; and (3) your account is in good standing at the time the unauthorized transaction is posted to your account and when you make your claim. This feature is in addition to any protections afforded to you under applicable law. This feature does not apply to cards issued to non-U.S. cardholders, unless we tell you otherwise. It also does not apply if your card and PIN are used for transactions conducted at our store. The term "unauthorized use" means the use of our card by a person other than yourself who does not have actual, implied or apparent authority for such use, and from which you receive no benefit. For this purpose, the term "good standing" means that your account is open and not overdrawn, there has been no fraud by the accountholder or breach of any agreement with us. This feature does not modify or amend the requirements for prompt notification to us of the unauthorized use of your card or PIN, as provided in the *Electronic Fund Transfer Agreement and Disclosures* section of this booklet. If you fail to notify us of an unauthorized card transaction within 60 days of your statement that first shows such unauthorized use, as set forth in that section, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

9. Our Liability for Failure to Make Transfers

If we do not complete a timely transfer to or from your Business Account or in the correct amount according to our agreement, we will not be liable to you if:

- Due to no fault of ours, your account does not have sufficient funds to make the transfer.
- Someone does not honor your Business Debit MasterCard®, or check.
- The transfer would cause you to exceed your line of credit limit, or other overdraft protection.
- The terminal where you are making the transfer has insufficient cash.
- The terminal was improperly working and you knew about the breakdown when starting the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer and reasonable precautions were taken.
 - We will not be liable for, and you agree to indemnify, defend and hold us harmless from, any and all losses, damages, costs, claims and expenses which may occur in connection with any authorized or unauthorized use of any service herein including, without limit, use of any card, PIN or other access device.

10. Rights Regarding Preauthorized Transfers

- (A) **Stop Payment Procedure.** If you have told us in advance to make regular payments out of your account or if you anticipate receiving an automatic transfer into your account, you can stop any of these payments. Call us or write us in time for us to receive your request three (3) Business Days or more before the payment is scheduled to be made. If you call, we may require you to put the request in writing and get it to us within 14 calendar day. A Stop Payment Fee may apply.
- (B) **Claims.** The *Customer Responsibilities and Limit on Time to Assert Claims* section apply to these claims. This includes claims under Paragraph 4, 8 and 9 of this section. If there is a conflict, then this section applies.

11. Stop Payment on ECK Transactions

You may stop electronic transactions initiated by use of a check (including POP, RCK and other ECK transactions) by calling Customer Service at 800-788-7000 or writing us. However, we must have a reasonable opportunity to act on the Stop Payment Order before acting on the electronic transaction.

12. Business and Other Non-Consumer Accounts/ACH Fraud Protection Services

The error resolution and liability provisions applicable to Consumers and Consumer Accounts at the end of or with any periodic statements or other documents you may receive from us (including these Account Disclosures and Regulations), do not apply to Non-Consumer Accounts (e.g., business or non-personal Accounts). The owners of Non-Consumer Accounts must notify us immediately if they discover any unauthorized transactions or errors. If such is not an ACH transaction, we must receive written notice of and, at our request, an affidavit regarding the problem in a form satisfactory to us within a reasonable time (not to exceed fourteen (14) calendar days) from the date of discovery or their receipt of the first statement, report or notice reflecting the problem, whichever occurs first. If such is an ACH transaction, we must receive notice, written or oral, by the established cutoff time on the Business Day following the posting date of the transaction. Except as provided in the Zero Liability section above, if you do not notify us within these timeframes, you will be deemed to have authorized the transaction.

The Bank offers ACH Fraud Protection Services as a way to prevent unauthorized ACH transactions. Upon your submission and the Bank's acceptance of a service application and Bank's confirmation that such service application has been implemented, all incoming ACH transactions shall be processed in accordance with the service application. Bank shall have a reasonable time to implement any service application submitted by customer (usually not to exceed five business days). By using this service, you agree that a) electronic payments originated by or through the Bank will not be affected by this Service; b) Accountholder must provide the Bank with accurate information for single authorizations to be processed correctly; and c) Accountholder must comply with the reporting requirements of this section for any unauthorized transaction.

You will be liable for all losses, costs or expenses that you incur as a result of the use of your card, PIN, access device or other electronic transaction, unless the laws governing your account require a lesser liability. Under no circumstances will we be liable for any special or

consequential damages involving such accounts. The owners of such accounts assume sole responsibility for any unauthorized use of the account's cards, and/or PIN, and/or any other access device or other electronic transaction, and shall indemnify, defend and hold the Bank harmless from all claims, actions, proceedings, losses and damages related to or arising out of any unauthorized transaction.

BUSINESS DEBIT MASTERCARD®/MASTERCARD® EASY SAVINGS™ REBATE PROGRAM

By using or allowing another person to use your card, or by receiving or accepting the benefit of any rebate under the MasterCard Easy Savings program, you agree to the Terms and Conditions of the MasterCard Easy Savings Program between you, MasterCard and Washington Mutual.

This MasterCard® Easy Savings™ Program Agreement ("Agreement") sets forth the terms applicable to your use of the MasterCard® Easy Savings™ program (the "Program"). The Program is a rebate program currently offered to holders of the WaMu® Business Debit MasterCard® (a "Card") as well as certain other MasterCard®-branded, small business credit cards and signature debit cards. Please read this Agreement carefully and keep it for your records.

In this Agreement, the words "you" and "your" mean the person to whom a Card has been issued, the words "MasterCard", "we," "us" and "our" mean MasterCard International Incorporated, and the words "Washington Mutual" or "WaMu" mean your Card issuing bank. "Program Web Site" means www.mastercardeasysavings.com/wamu or such other web site as we may establish for the Program.

Participation: You may participate in the Program if you are enrolled in the Program and, at the time you make a Qualifying Purchase at a merchant that is participating in the Program ("Merchant"), your Card has been determined by us and Washington Mutual to be eligible for participation in the Program ("Eligible Card"). A "Qualifying Purchase" is a signature debit purchase with your Card (i.e., a Card purchase in which you do not use your PIN) that is processed through our U.S.-based transaction processing system. To determine if your Card is an Eligible Card, please check with Washington Mutual or visit the Program Web Site prior to making a purchase at a Merchant. The Program is available only to holders of Eligible Cards located in the United States.

Enrollment: You will be automatically enrolled in the Program by Washington Mutual upon Card activation as a part of the benefits that are associated with your Card. You must be enrolled in the Program prior to using an Eligible Card at a Merchant to receive the benefits of the Program.

Merchant Offers: Merchants may provide offers for rebates on purchases of goods or services ("Offers") at participating Merchant locations. The amount of any rebate and other terms and conditions applicable to a rebate will be determined by us and the Merchant, and are subject to change at any time and without notice. Please refer to any disclosures provided by Washington Mutual and the Program Web Site for any Offer terms and condition details.

Offers may be redeemed only at participating Merchant locations. See the Program Web Site for the latest information on available Offers.

Offer Acceptance: When you make a Qualifying Purchase of goods or services using an Eligible Card from a participating Merchant location in the United States, you will receive a rebate on your purchase, subject to any terms and conditions of the Offer. The rebate will not appear on your receipt at the point of sale. The form of the rebate may be a credit to your Eligible Card account or the rebate may be in another form, as determined by Washington Mutual. If a rebate is credited to your Card account, please note that it might not appear on the same statement as the related purchase. There may be a delay of up to one statement cycle in crediting a rebate. To receive the rebate, your Eligible Card account must be open and in good standing on the posting date of the rebate credit.

Reversals: All or a portion of a rebate may be reversed in certain circumstances, including upon a return, dispute, adjustment, or fraudulent Card activity.

Disclaimer of Liability: Our role under the Program is limited to processing information regarding Offers and rebates on behalf of Merchants and issuers, including Washington Mutual, your Card issuer. MasterCard and Washington Mutual are not responsible for any Offers or rebates, your ability to use Offers or rebates, the crediting of any rebates to your Card account, reversals of Offers or rebates, accuracy or completeness of information about Offers or rebates, or any acts or omissions of Merchants or each other. The Program is provided on an "as is" basis, and each of MasterCard and Washington Mutual disclaim any and all warranties, including any warranties of merchant ability or fitness for a particular purpose, except as expressly set forth herein. MasterCard and Washington Mutual are not liable to you for any damages that you suffer in connection with your participation in the Program, unless the damage results directly from the failure to perform the express obligations in this Agreement. MasterCard and Washington Mutual are not responsible, and shall not be liable for, any indirect, special, incidental, or consequential damages (including lost profits). Without limiting the foregoing, neither MasterCard nor Washington Mutual are responsible for any Card account fees or penalties that you incur on your Card, including fees and penalties that may result from rebate reversals. Any tax liability resulting from your participation in the Program shall be your sole responsibility, and not the responsibility of MasterCard, Washington Mutual, or any Merchant.

Washington Mutual and Merchants may report information regarding the Program and your participation in it to tax authorities. Washington Mutual and Merchants may not vary these terms as applied to the relationship between you and MasterCard, and may not make any commitments that are binding on MasterCard.

Program Information: By activating your Card and providing us with your email address, you agree to receive Program information via e-mail and to advise us of any change in your e-mail address by providing updated information via the Program Web Site. Please note that we will use information regarding purchase transactions initiated with your enrolled Eligible Card(s) to provide you with reports via the Program Web Site as well as for other purposes as determined by MasterCard.

Termination: Since this benefit comes with your Card, you cannot remove the Card from the Program. Therefore, if you do not wish to participate in the Program, please contact Washington Mutual and refrain from using the Card at Merchants. MasterCard or Washington Mutual may terminate your participation in the Program at any time, without notice unless required by law. We reserve the right to add or terminate any participating Merchant or any Offer without notice.

Change of Terms: We can add to, delete from, or change (each, a "change") the terms of this Agreement at any time. We will notify you of changes by posting the revised Terms & Conditions on the Program Web Site.

Questions Regarding the Program: You should direct any questions related to the Program, Offers or rebates to Washington Mutual.

Disputes: Any disputes regarding Offers or rebates, or your ability to participate or receive them, may be determined by us, or by Washington Mutual or the Merchant. That resolution will be final and binding on you.

Additional Terms: Washington Mutual and Merchants may impose additional terms on your participation in the Program. This Agreement is in addition to, and does not amend or replace, your Card agreement with Washington Mutual.

Miscellaneous: These terms will be governed by the laws of New York State, without regard to conflict of law principles. You may not assign your rights under this Agreement. We may assign our rights and obligations at any time.

The invalidity of any provision of this Agreement will not affect the validity of the remaining portions. Any waiver by us of our rights under this Agreement is binding only if in a writing signed by us. The use of Washington Mutual's and the Merchants' names and logos in the Program is by permission and all trademarks are the property of their respective owners.

CHECK 21/EXPEDITED RECREDIT

The Check Clearing for the 21st Century Act (known as "Check 21"), a Federal law effective on October 28, 2004, was enacted to increase the efficiency of the U.S. check clearing system. Today this system relies heavily on the physical transport of checks between financial institutions. Check 21 permits banks to replace an original check with a paper reproduction, or "substitute check", and to accept substitute checks as they would the originals. Substitute checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check. Because of Check 21, some items may clear faster than before. As always, WaMu encourages customers to monitor their account activity and authorize transactions only against available funds. If you request a copy of a check or if you receive checks in your monthly statements, it is likely that some of the items received will be substitute checks. By Federal law, the substitute check is the legal equivalent of the original for any purpose. You should retain substitute checks in the same manner as original checks.

SUBSTITUTE CHECKS AND YOUR RIGHTS NIGHT DEPOSITORY

This section describes rights you have when you receive substitute checks from us. These rights do not apply to original checks or to electronic debits to your account. However, you have rights under other laws with respect to those transactions. In certain cases, Federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (e.g., if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (e.g., OD/NSF Charges). The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of the refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other laws. If you use this procedure, and your account is used for personal, family or household purposes, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim. We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account. If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account; please contact us at the telephone number listed at the end of this booklet. You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances. Your claim must include:

- A description of why you have suffered a loss (e.g., you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: account number, check number, dollar amount, and date posted.

OTHER SERVICES

NIGHT DEPOSITORY

The Accountholder, by using a Night Depository, agrees to the terms and conditions set forth in this section.

1. Accountholder shall place checks, currency, deposit slips and, subject to our advance written consent, other items to be deposited in the Night Depository only in an undamaged Tamper Evident Night Depository Bag ("Night Depository Bag") or Bank-approved envelopes ("Envelopes") or Washington Mutual Deposit Envelope. Accountholder shall prepare a deposit slip that provides a detailed list of currency, checks, or other items placed in the Night Depository Bag or Envelope. Accountholder agrees to keep a copy of each deposit slip for Accountholder's records. Accountholder will then securely seal the Night Depository Bag or Envelope, place it in the Night Depository and close and, if a lock is provided, securely lock the Night Depository door. Deposits shall be subject to the terms and conditions of these *Account Disclosures and Regulations* and the Night Depository Set-Up Form (if any). Accountholder agrees to pay the Bank its standard fees and charges for this service.
2. Accountholder shall not place or allow to be placed in the Night Depository anything except as set forth above. Without limiting the foregoing, Accountholder shall not place or allow to be placed in the Night Depository any object or parcel or other item not enclosed in a sealed, Night Depository Bag or Envelope or whether in or out of the Night Depository Bag or Envelope any liquid, volatile, toxic chemicals, acids, flammable, perishable or illegal substance, explosive device or any dangerous or offensive material which might cause harm or offend the property interest, health or sensibilities of Bank, its officers, employees, customers or other third parties.
3. The Accountholder hereby authorizes Bank to open all Night Depository Bags and Envelopes placed in the Night Depository by or on behalf of Accountholder, count the checks, currency and other items enclosed therein and credit Accountholder's account referenced on the Night Depository Set-Up Form (or as otherwise requested by Accountholder) on the deposit slip for the amount deposited, subject to the same terms and conditions applicable to such items as if they had been directly deposited to Accountholder's account by Accountholder. Bank will not issue to Accountholder a receipt showing a deposit in the amount reflected on the deposit slip provided; however, if Bank finds a discrepancy between the amount of the deposit shown on the deposit slip and the actual amount of checks, currency or other items deposited, Bank will debit or credit the above referenced account to reflect the actual deposit received and provide Accountholder with a credit or debit advice reflecting the adjustment or issue a receipt showing the amount received by Bank. If a deposit is made after the time posted at the Night Depository, such will be considered made the following Business Day. The Bank's records of the Night Depository Bags and Envelopes and contents found in the Night Depository Bags and Envelopes shall be deemed complete, correct and final.

4. Bank will not be liable for any loss or injury to any person, including Accountholder and Accountholder's agents and employees, or to any property arising out of Accountholder's use or failure or inability for any reason to be able to make use of or to operate the Night Depository as provided herein. Accountholder acknowledges that Accountholder's or Accountholder's agents or employee's presence at a Night Depository may attract the attention of criminals and that use of the Night Depository service is made with the understanding that Accountholder assumes all risk in that regard.
5. Accountholder may authorize employees, representatives, agents or others referred to as "Agents" in this section to make deposits to the Night Depository on Accountholder's behalf. Accountholder agrees not to give the Night Depository keys, if issued, or deposits or other items to be deposited to anyone other than persons authorized to make deposits on Accountholder's behalf and who have been notified of and agree to the terms and conditions hereof. Accountholder agrees to notify Bank immediately if any Night Depository key is lost or stolen. Accountholder, and its Agents, shall not make copies of the Night Depository keys. Accountholder agrees to instruct its Agents on proper use of the Night Depository Bags and Envelopes, keys and the Night Depository including, without limit, what items may and may not be placed in the Night Depository and Night Depository Bags and Envelopes, safety procedures, and deliver to each such agent a copy of the Night Depository Safety and Use Tips.
6. Accountholder agrees to indemnify, defend and hold Bank, its officers, representatives, agents, parents, subsidiaries or any other affiliate of Bank (jointly "Bank Affiliate") harmless for any losses, damages and expenses incurred by Bank or Bank Affiliate including without limit: a) for losses of Accountholder or any of its representatives or agents; b) for losses of other Accountholders, including without limit Accountholders using the Night Depository facilities arising out of the acts, omissions or negligence of Accountholder, its employees, representatives or agents including, but not limited to: placing items in the Night Depository or Night Depository Bag or Envelope in violation of this Agreement; permitting access to the Night Depository by persons who cause loss of property deposited by other Night Depository users; the failure to properly secure the Night Depository door after use and the failure to observe reasonable prudent practices in the use of the Night Depository and Night Depository Bag or Envelope.
7. Bank maintains its Night Depository for the convenience of its Business customers. While Bank undertakes to maintain the Night Depository with reasonable care intended to secure the Night Depository Bags and Envelopes placed therein, Accountholder understands that other customers of Bank have access to the Night Depository, that Bank cannot assure that each Night Depository customer will carefully secure the Night Depository after each use or that all persons to whom keys, if any, will be issued or who otherwise have access to the Night Depository or other customers, or other third parties, will be honest. For these reasons, Bank cannot and will not become a bailee of nor will it take any responsibility for the safety and security of money or property placed in the Night Depository until a Bank employee opens the Night Depository and takes actual possession of the Night Depository Bags and Envelopes contained therein during normal business hours. Accountholder agrees to assume all risk of loss with regard to Night Depository Bags and Envelopes placed in the Night Depository until such actual possession occurs.
8. Bank reserves the right to immediately withdraw the Night Depository from use at any time without notice, and to revoke the privilege of Accountholder to use the Night Depository facilities of the Bank by mailing notice of such revocation to the Accountholder at the address indicated in the Bank's records. Such notice is effective when deposited in the mail. Upon receiving such notice of such revocation, Accountholder agrees to return to Bank the key, if any, to the Night Depository.

ELECTRONIC DATA INTERCHANGE (EDI)

If you elected to receive a daily report of our ACH transactions with you, this Section describes the terms and conditions governing the EDI Reporting Service ("EDI Report Service"). The accounts covered by this Service (the "Account(s)") will be the ones on the EDI Report Service Application Form ("Service Application Form"). This Section supplements any other rules, regulations and policies that may be issued by the Bank from time to time that relate to the EDI Report Service ("Service Rules"). In the event of any conflict between the terms of this Section and the *Account Disclosures and Regulations* or Service Rules, this Section shall control to the extent it relates to the Service. In the event a Service Rule (if any) conflicts with *Business Account Disclosures and Regulations*, the Service Rule will prevail to the extent it relates to the Service. Please read the entire Section carefully.

The Service

We will provide EDI payment information on related ACH transactions that have posted to your Account(s) (the "Report"). The Report will be sent by facsimile transmission ("fax"), via standard formats for unencrypted electronic mail through a computer network ("e-mail"), or by regular U.S. Mail ("mail"). If you elect to receive your Report by fax, we will transmit the Report to the fax number or the alternate fax number you have listed in your Service Application Form. If you have elected to receive your report by e-mail, we will transmit the Report to the e-mail address you have listed on the Service Application Form. If you elect to receive the Report by mail, we will send the Report to the mailing address you have listed in your Service Application Form. All account information in the Report will reflect the EDI payment activity on your Account for the previous Bank Business Day. For purposes of the Service, a Bank Business Day is any day Monday through Friday, other than Bank holidays, on which we are open for the conduct of business.

Fees

You agree to pay a service fee per item (i.e., each ACH payment) reported via fax, e-mail, or mail. These fees are set out in the *Business Statement of Fees*, which we may amend from time to time by providing you with ten (10) calendar days prior notice. Fee modifications may be made for any reason, in our sole discretion. The *Business Statement of Fees* as amended from time to time is incorporated into this Section by reference. Fees may either be offset against earnings credit, if the Account is an analyzed account, or debited from the Account each month. You specifically authorize us to debit any of the deposit accounts you may have with us if there are insufficient funds in your Account to pay the monthly fees. If you close your Account(s) during the month, we will not refund any portion of your per transaction service charge(s). You also agree to compensate us for extraordinary services, including, but not limited to compensation for unusually lengthy transmission requirements. You acknowledge that fees and charges for your Service may not apply equally to other customers.

Limitation of Liability

We cannot guarantee that the transmission of any Report will occur at a specified time during the Business Day. Therefore, we will not be responsible for any losses incurred due to delays in transmitting or mailing any Report. You further agree that we will not be liable for our failure to deliver a Report on any particular day.

You acknowledge that facsimile transmission is an inherently insecure means of communicating due to the possibility of error, delay and the potential of observation of transmitted Reports by unauthorized personnel. We will not be responsible for any loss of confidentiality with

respect to the Report that occurs after the Report is transmitted to the designated or alternate fax number. If you elect to receive Reports via facsimile, you agree to assume all risk of loss or disclosure resulting from such facsimile transmission or data. Similarly, you understand that we have no control over the confidentiality of any unencrypted information transmitted on a computer network. We will not be responsible for any loss of confidentiality with respect to the Report that arises from the transmission of unencrypted information via a computer network as long as we use the e-mail address you have designated. If you elect to receive Reports via e-mail, you agree to assume all risk of loss or disclosure resulting from such e-mail transmission of data. You understand and agree that you are responsible for ensuring the confidentiality of any Report you receive by fax, e-mail or mail and that we will not be liable for any losses or damages you may incur from loss of confidentiality once you receive a Report.

You acknowledge that the fees charged for this Reporting Service are small in relation to the dollar amounts of the ACH transactions involved. Therefore, to the extent we are deemed responsible under this Section for any losses you may incur due to our misdirection of a Report or for any inaccuracies contained in a Report, you agree that we will only be liable for direct actual damages or losses you incur and that in no event will we be liable for any consequential or special damages arising from the misdelivery or inaccuracy, nor will the amount of damages exceed the amount of your fees and charges for this Service incurred in the three (3) months preceding the misdelivery or inaccurate Report. You acknowledge that without the limitations on liability contained in this Section, the Bank would not be able to offer this Service for the amount of fees and charges quoted in the *Business Statement of Fees*.

Terminating the Service – Notices

You or we may terminate this Reporting Service in whole or with respect to one or more Accounts by written notice to the other at least five (5) Business Days before the effective date of the termination. If you request termination without stating an effective date we will terminate the Service at our earliest convenience following receipt of the notice. You may also add new Accounts, change an e-mail address, fax number or mailing address, or temporarily suspend the Service. All such requests or notices must be in writing and sent to us as follows:

**Washington Mutual
ACH Business Operations, WST791
12655 S.W. Center Street, Suite 400
Beaverton, OR 97005**

If we terminate the Service, we will send a written notice to the last address we have for you in our records or we may send the notice to your fax or e-mail address.

Amending the EDI Report Service Agreement – Waivers

We can amend this agreement regarding the EDI Report Service at any time upon at least ten (10) Business Days prior notice to you. You will be deemed to have accepted the change if you do not cancel the Service before the effective date of the amendment. If we fail to exercise or delay in exercising any of our rights under this Section or otherwise, that failure or delay will not operate as a waiver of our rights or preclude our exercising rights on that or any future occasion.

WM MORNING REPORT®

If you elected to receive a daily report of account activity for certain of your deposit accounts, this Section describes the terms and conditions governing the *WM Morning Report®* service. The accounts covered by this service (the "Account(s)") will be the ones on the *WM Morning Report Service Application Form* ("Service Application Form"). This Section supplements any other rules, regulations and policies that may be issued by the Bank from time to time that relate to the *WM Morning Report®* service ("Service Rules"). In the event a Service Rule (if any) conflicts with *Business Account Disclosures and Regulations*, the Service Rule will prevail to the extent it relates to the service. Please read the entire Section carefully.

The Service

We will provide certain information regarding your Account(s) via the *WM Morning Report®* service (the "Report") on the morning following each Business Day, sending the Report by either facsimile transmission ("fax") or electronic mail through a computer network ("e-mail"). If you elect to receive your Report by fax, we will transmit the Report to the fax number or the alternate fax number you have listed in your Service Application Form. If you elect to receive your report by e-mail, we will transmit the Report via standard formats for unencrypted e-mail to the e-mail address you have listed on Service Application Form. You may change your e-mail or fax number (or alternate fax number) by giving us notice of the change in writing. We will begin sending the Report to the new number(s) or e-mail address after we have had a reasonable opportunity to process your request.

All account information in the Report will reflect the activity in your Account(s) on the previous Bank Business Day. For purposes of this Service, a Bank Business Day is any day Monday through Friday, other than Bank holidays, on which we are open for the conduct of business.

Fees

You agree to pay a service charge for each Account reported to each report destination (fax number or e-mail address). These fees are set out in the *Business Statement of Fees*, which we may amend from time to time by providing you with ten (10) Business Days prior notice. Fee modifications may be made for any reason, in our sole discretion. The *Business Statement of Fees* as amended from time to time is incorporated into this Section by reference. Fees will either be offset against earnings credit, if the Account is an analyzed account, or debited from the Account each month. You specifically authorize us to debit any of the deposit accounts you may have with us if there are insufficient funds in your Account to pay the monthly fees. If you close your Account(s) during a monthly statement cycle, we will not refund any portion of your monthly service charge. You also agree to compensate us for extraordinary services, including, but not limited to compensation for unusually lengthy transmission requirements. You acknowledge that fees and charges for your Service may not apply equally to other customers.

Limitation of Liability

We cannot guarantee that the transmission of any Report will occur at a specified time during the Bank Business Day. Therefore, we will not be responsible for any losses incurred due to delays in transmitting or mailing the Report. You further agree that we will not be liable for our failure to deliver a Report on any particular day.

You acknowledge that facsimile transmission is an inherently insecure means of communicating due to the possibility of error, delay and the potential of observation of transmitted Reports by unauthorized personnel. We will not be responsible for any loss of confidentiality with respect to a Report that occurs after the Report is transmitted to the designated or alternate fax number. If you elect to receive Reports via

facsimile, you agree to assume all risk of loss or disclosure resulting from such facsimile transmission or data. Similarly, you understand that we have no control over the confidentiality of any unencrypted information transmitted by us on a computer network. We will not be responsible for any loss of confidentiality with respect to a Report that arises from the transmission of unencrypted information via a computer network as long as we use the e-mail address you have designated. If you elect to receive Reports via e-mail, you agree to assume all risk of loss or disclosure resulting from such e-mail transmission of data. You understand and agree that you are responsible for ensuring the confidentiality of the Report you receive by fax or e-mail and that we will not be liable for any losses or damages you may incur from loss of confidentiality once you receive the Report.

You acknowledge that the fees charged for this service are small in relation to the transactions and balances reported on the Report. Therefore, to the extent we are deemed responsible under this Section for any losses you may incur due to our misdirection of a Report or for any inaccuracies contained in a Report, you agree that we will only be liable for direct actual damages or losses you incur, and that in no event will we be liable for any consequential or special damages arising from the misdelivery or inaccuracy, nor will the amount of damages exceed the amount of your fees and charges for this service incurred in the three (3) months preceding the misdelivery or inaccurate Report. You acknowledge that without the limitations on liability contained in this Section, the Bank would not be able to offer this service for the amount of fees and charges quoted in the *Business Statement of Fees*.

Terminating the Service - Notices

You or we may terminate the *WM Morning Report*® service in whole or with respect to one or more Accounts by written notice to the other at least five (5) Business Days before the effective date of the termination. If you request termination without stating an effective date we will terminate the Service at our earliest convenience following receipt of the notice. You may also add new Accounts, change an e-mail address or fax number, or temporarily suspend the Service. All such requests or notices must be in writing and sent to us as follows:

**Washington Mutual
P.O. Box 1165
Northridge, CA 91328-1165**

If we terminate the Service, we will send a written notice to the last address we have for you in our records or we may send the notice to your fax number or e-mail address.

Amending the WM Morning Report Service Agreement - Waivers

We can amend this agreement regarding the *WM Morning Report*® service at any time upon at least ten (10) Business Days prior notice to you. You will be deemed to have accepted the change if you do not cancel the Service before the effective date of the amendment. If we fail to exercise or delay in exercising any of our rights under this Section or otherwise, that failure or delay will not operate as a waiver of our rights or preclude our exercising rights on that or any future occasion.

TAX PAYMENT SOLUTIONS

Bank is the owner or licensee of Washington Mutual systems and procedures for processing certain Federal, state or local tax deposits for businesses electronically. The Federal, state or local tax deposits to be covered by this section are described in the Service Application Form ("Service Application Form") that a subscriber must execute and deliver to the Bank. The Service Application Form is hereby incorporated into this Section by reference. If you elected to subscribe to the Bank's tax payment services and we have accepted and approved your Service Application Form, this Section will describe the agreement between you and Bank that will govern our provision of the tax payment services. Our agreement is also subject to any other rules about this Service we may issue from time to time. In the event of any conflict between those Rules, the terms of this Section shall control and specific Service Rules (if any) shall govern conflicting terms in the Disclosures. In this Section, Customer is referred to as the Subscriber. Subscriber also means any of Subscriber's employees and representatives that Subscriber permits to use these Services.

Subscriber desires that Bank provide those tax deposit and processing services that Subscriber has designated on the Service Application Form and such other tax payment services as Subscriber may authorize from time to time using the Tax Payment telephone response service (collectively referred to herein as "the Services").

1. Subscriber appoints Bank to act as Subscriber's reporting agent for such Federal, state or local tax payments as Subscriber has designated on the Service Application Form. Subscriber may direct Bank to make additional state or Federal tax payments in writing or electronically in such manner as the Bank may prescribe from time to time. As Subscriber's tax reporting agent, Bank shall be authorized to receive notices, correspondence, transcripts or other information related to tax payment obligation. Subscriber also authorizes Bank to execute and file such related forms and documents as required to affect such tax payments. Subscriber shall complete and maintain a current Reporting Agent Authorization (form 8655) for Federal taxes and any similar authorization required for reporting state taxes (State ACH Approval Forms).
2. Subscriber must open a checking account with Bank ("Designated Account") and maintain sufficient funds therein to cover all tax payments at the time Bank receives a tax payment request, as well as all fees charged by Bank for the Services. Bank will have no obligation to make any requested Federal, state or local tax deposits if Subscriber fails to maintain sufficient collected funds in said account. Subscriber agrees to comply with all of the rules and regulations that apply to the Designated Account when requesting Services under this Section.
3. Subscriber will furnish Bank with complete and accurate master file information required to file tax payments with each appropriate taxing agency and as reasonably requested by Bank from time to time. Subscriber will cause the transmission of all required filing data to Bank to be complete, accurate and timely. Subscriber acknowledges that all Services rendered by Bank will be based solely upon information furnished by Subscriber. Provision of the Services will not relieve Subscriber of any duty imposed on Subscriber by law to maintain records, or to verify and if necessary immediately correct in writing, data received by taxing agencies from Bank relative to Services provided by Bank.
4. Subscriber may authorize or cancel a particular tax payment or processing service (a "Transaction Request") only in the manner described in the Tax Payment Solutions User Guide ("User Guide") or in such other manner as the Bank may provide from time to time in writing. The User Guide will be provided to Subscriber with this Section and is hereby incorporated by reference. Methods provided for initiating Transaction Requests will incorporate security procedures to verify that the Transaction Request is accurate and has been authorized by Subscriber ("Authorized Security Procedures"). By signing the Service Application Form, and/or when using a particular security procedure to access Services provided by Bank, Subscriber agrees (i) that Authorized Security Procedures are commercially reasonable,

- (ii) that the Bank may conclusively rely on data submitted by anyone using an Authorized Security Procedure, and (iii) that Bank shall have no liability for unauthorized Transaction Requests, provided that Bank follows an Authorized Security Procedure in good faith when processing a Transaction Request.
5. To verify that Subscriber has authorized all tax payment requests or other Payment Orders, Bank may issue a confidential Access code and a PIN code ("Security Codes") to Subscriber. The Security Codes shall be used in conjunction with an Authorized Security Procedure described in the User Guide to request particular tax payment or tax processing services. Subscriber agrees that Bank may deliver the Security Codes to the person designated on the Service Application Form. Subscriber agrees to keep these Security Codes confidential and to assure that only Subscriber's authorized employees or representatives use those codes. Subscriber shall notify Bank immediately if it believes either its Access code or PIN code is compromised or misused.
 6. Bank will operate the Services during business hours designated for the service, Monday through Friday except for banking holidays ("Business Days"). Bank will process all Transaction Requests that are timely received, except when prevented from doing so by events beyond the Bank's reasonable control, including but not limited to strikes, telephone, equipment, or electrical failure, or the failure of Subscriber to maintain sufficient collected funds in the account to cover all tax liability and fees then due. Interruption of the Services for any reason whether or not listed above will not relieve Subscriber from its obligation to make the required tax payments when due.
 7. Bank will debit Subscriber's account on the Business Day that Subscriber submits a tax deposit request to Bank. Any request for a tax deposit received after the Bank's published cutoff time for tax deposit requests on a particular day shall be treated as having been submitted on the following Business Day. Cutoff times for Transaction Requests are published in the User Guide, but may be amended by the Bank from time to time in its discretion. Funds debited from Subscriber's account shall be held by Bank as a deposit liability of Bank until such a time as the funds are due and paid to the appropriate taxing agency. Subscriber is not entitled to interest on such funds and such funds will not accrue any earnings allowance if the Designated Account is subject to account analysis. Bank may invest the funds debited from Subscriber's Designated Account solely for Bank's benefit. Bank shall have no obligation to make any tax deposit or responsibility for any late payment of taxes if Subscriber does not submit a tax deposit request together with complete information required for processing at least two (2) Business Days before the tax payment due date.
 8. Subscriber may cancel any tax payment request and the electronic transfer of funds to a taxing agency, only if Bank is given sufficient notice to afford Bank a reasonable opportunity to act before the funds transfer Payment Order is executed. Subscriber may cancel a scheduled tax payment and recover funds debited from its account only in accordance with the procedures set forth in the User Guide or by such other method as Bank may provide in writing to Subscriber from time to time.
 9. Subscriber shall be free to make any tax deposit or payment, which may be part of the Services offered under this Section, directly to the appropriate government agency, provided that Bank shall have no liability or responsibility for any such deposit or payment. However, if Subscriber authorizes Bank to make any Federal tax deposits for tax types 941, 943 or 945, Subscriber agrees to make all tax type 941, 943 and 945 deposits through Bank. If Subscriber makes any such tax deposit by any means other than through Bank, Bank will not be liable for any penalty and/or interest charges directly or indirectly arising from the non-Bank deposit.
 10. Unless otherwise agreed in writing, Customer shall timely pay Bank, for all Services provided under this Section, the fees, charges and assessments set forth in the most current *Business Statement of Fees* as that schedule may be amended by Bank from time to time. Subscriber also agrees to pay additional fees and expenses to be determined by Bank for any extraordinary services provided by Bank, which are not listed on the *Business Statement of Fees*. Subscriber authorizes Bank to debit all fees and expenses owed to Bank from the Designated Account at the time of each Transaction Request or request for extraordinary service by Subscriber.
 11. The liability of the Bank and any of its tax service vendors to Subscriber is limited to correcting any error made by Bank or its tax service vendor, which shall be subscriber's sole and exclusive remedy under this provision. Neither Bank nor any of its tax service vendors will be liable for any penalties assessed by reason of customer's failure to make timely tax payments using this service. Neither Bank nor its tax service vendor is liable for special, incidental, or consequential damages. Subscriber acknowledges that these services would not be available or would be available at substantially increased rates without the liability and remedy limitations set forth in this Section.
 12. Bank makes no warranties with respect to the Services, express or implied, in law or in fact, including without limitation, any implied warranties of fitness for a particular purpose, or of merchantability, either to Subscriber or to any other party.
 13. Subscriber acknowledges that the Bank has not and is not giving Subscriber legal, accounting or tax advice; and without limitation, that Subscriber has relied solely upon its own legal, accounting or tax advisor in electing to execute the Agreement, to utilize the Services and to direct the Bank to make any payments or deposits hereunder.
 14. Subscriber hereby agrees and acknowledges that the Services are intended only for reporting of business taxes and shall not be used for any personal, family or household purposes.

GENERAL INFORMATION ABOUT SUBSTITUTE FORM W-9 AND OTHER TAXPAYER INFORMATION

INFORMATION REPORTING

As a payer of interest on deposit accounts, we are required to report to the Internal Revenue Service (IRS) interest payments aggregating \$10.00 or more that we make to any person during any calendar year, and any withholding of Federal Income Tax under the backup withholding rules. We report to the IRS under the first name listed on the account unless you instruct otherwise, using the Taxpayer Identification Number (TIN) you provided when you opened your account, unless you later provide us with an updated TIN certification.

The IRS provides an official Form W-9 (Request for Taxpayer Identification Number and Certification) for a U.S. payee to provide the correct TIN and other required certifications to the payer. If you are a U.S. person, you use Form W-9 to provide your correct TIN to the person requesting it and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

As permitted by the IRS, we have incorporated the required certifications into the *Master Account Agreement* or other form as a substitute Form W-9. The following information is designed to provide you with the substance of the instructions contained on the official Form W-9, with

information sufficient to enable you to determine if the correct TIN is given. If you need more information, please refer to the instructions contained on the official Form W-9, which is available from the official IRS Web site at www.irs.gov, or which you can request from a Bank financial center.

Note: Because we require a TIN before opening an account, the potential use of Form W-9 while waiting for a number to be issued does not apply to our situation. If you do not have a TIN, please refer to the instructions for IRS Form W-9 on how to get a TIN.

Each Account holder who does not qualify as U.S. person for U.S. Federal tax purposes must use the appropriate Form W-8 to certify their foreign status from time to time and, if requested by the Bank, provide proof of foreign residency in a form deemed acceptable by the Bank in its sole discretion. If you become a U.S. resident or citizen after opening your account, you must notify us within thirty (30) calendar days of your change in status and provide us with a certified TIN.

Note: All section references in the following discussion are to the Internal Revenue Code or the regulations promulgated under the Internal Revenue Code.

DEFINITION OF A U.S. PERSON

For U.S. Federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations Section 301.7701-7).

TAXPAYER IDENTIFICATION NUMBER (TIN)

In order to open an account, we require that you provide us with a TIN, certified under penalty of perjury, or certification of foreign status. We use such TIN information for identification purposes and also to comply with applicable tax law on information reporting and backup withholding.

For individuals, the TIN is generally your Social Security Number (SSN). If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). If you do not have an ITIN, please refer to the instructions for IRS Form W-9. For many entities, the TIN is generally the Employer Identification Number (EIN). If you are a sole proprietor and you have an EIN, you may use either your SSN or EIN. However, the IRS prefers that you use your SSN. If you are a single-member LLC that is disregarded as an entity separate from its owner for U.S. Federal Income Tax purposes, use the SSN or EIN of the owner. If the LLC is classified as a corporation or partnership, use the EIN of the entity.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

The table below, based on Form W-9 instructions, provides guidance on the correct TIN to use. Note that we require all parties listed on a joint or custodial account to provide their correct TINs for identification purposes.

<p>For this type of account:</p> <ol style="list-style-type: none"> 1. Individual 2. Two or more individuals (joint account) 3. Custodian account of a minor (Uniform Gift to Minors Act) 4a. The usual revocable savings trust (grantor is also trustee) 4b. So-called trust account that is not a legal or valid trust under state law 5. Sole proprietorship or disregarded entity owned by an individual 	<p>Give name and SSN of:</p> <p>The individual</p> <p>The actual owner of the account, or if combined funds, the first individual on the account</p> <p>The minor</p> <p>The grantor-trustee</p> <p>The actual owner</p> <p>The owner. You must show your individual name and may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN number (if you have one), but the IRS encourages you to use your SSN.</p>
<p>For this type of account:</p> <ol style="list-style-type: none"> 6. Disregarded entity not owned by an individual 7. A valid trust, estate, or pension trust 8. Corporate or LLC electing corporate status on Form 8832 9. Association, club, religious, charitable, educational, or other tax-exempt organization 10. Partnership or multi-member LLC 11. A broker or registered nominee 12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments 	<p>Give name and EIN of:</p> <p>The owner</p> <p>Legal entity. Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.</p> <p>The corporation</p> <p>The organization</p> <p>The partnership</p> <p>The broker or nominee</p> <p>The public entity</p>

PENALTIES

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

BACKUP WITHHOLDING

Persons making interest payments are required to withhold and pay to the IRS a certain percentage (currently 28%) of such payments under certain conditions. This is called "backup withholding." Backup withholding is not an additional tax; any amount withheld is paid to the IRS and can be claimed as a credit on your Federal Income Tax return. Interest payments you receive from us will be subject to backup withholding if:

1. You do not furnish us with your TIN, OR
2. You do not certify your TIN when required, OR
3. The IRS notifies us that you furnished an incorrect TIN, OR
4. The IRS notifies you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return, OR
5. You do not certify to us that you are not subject to backup withholding under (4) above (for accounts opened after 1983 only).
6. You must sign the certification on the *Master Account Agreement*, other forms we give you or IRS Form W-9, if applicable, to avoid backup withholding. **If you are subject to backup withholding and you are merely providing your correct TIN, you must cross out any inapplicable items in the certification prior to signing the certification.** In particular, you must cross out item 2 in the certification if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

EXEMPT PAYEES

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. If you are exempt from backup withholding, you should still complete a W-9 or substitute W-9 to avoid erroneous backup withholding.

Payees exempt from backup withholding on interest payments include the following:

- An organization exempt from tax under Section 501(a), any IRA, or a custodial account under Section 403(b)(7) if the account satisfies the requirements of Section 401(f)(2),
- The United States or any of its agencies or instrumentalities,
- A state, the District of Columbia, a possession of the U.S., or any of their political subdivisions or instrumentalities,
- A foreign government or any of its political subdivisions, agencies, or instrumentalities,
- An international organization or any of its agencies or instrumentalities,
- A corporation,
- A foreign central bank of issue,
- A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
- A real estate investment trust,
- An entity registered at all times during the tax year under the Investment Company Act of 1940,
- A common trust fund operated by a bank under Section 584(a),
- A financial institution,
- A middleman known in the investment community as a nominee or custodian, or
- A trust exempt from tax under Section 664 or described in Section 4947.

BANK DEPOSIT INTEREST AND FOREIGN ACCOUNT OWNERS

Interest paid on deposits to accounts owned entirely by individuals who are not citizens or residents of the United States may or may not be reported to the IRS as determined by the Bank in its discretion, except that the Bank is required to report interest paid to Canadian non-resident individuals.

If the Bank is given proper certification of foreign status, deposit interest on these types of accounts will not be subject to backup withholding. Such certification can generally be established by completing a Certificate of Foreign Status of Beneficial Owner (W-8BEN), which is available at any Bank financial center. A new certification will be required at least every three years, or deposit interest earned on the account will be reportable and backup withholding will apply. If you become a U.S. resident or citizen after opening your account, you must notify us within thirty (30) calendar days of your change in status and provide us with a certified TIN.

PRIVACY ACT NOTICE

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. The IRS may also disclose this information to other countries under a tax treaty, to Federal and state agencies to enforce Federal nontax criminal laws, or to Federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

FREE ID THEFT SERVICES PROGRAM PROVISIONS

If you are a victim of identity theft you may be eligible for benefits under this coverage. You must use due diligence and act reasonable to avoid or diminish any loss or damage to property protected by the program. WaMu and the Provider will rely on the truth of statement made in any affidavit or declaration submitted by you.

Where coverage applies:

This service is offered to you, if you are the owner of an eligible Washington Mutual consumer checking account and are resident of the U.S., at no cost and is in effect for acts occurring while the checking account is open and the service is in effect. The terms and conditions contained in this program guide may be modified by subsequent amendments and endorsements. Modifications to the terms and conditions may be provided via mail, statement insert, statement message, or other reasonable means. MasterCard, Washington Mutual and/or Europ Assistance USA can cancel or non-renew these services at their discretion without prior notice, unless required by law. In the event substantially similar coverage takes effect without interruption, no such notice is necessary. For general questions regarding these services please contact the Program Administrator at 1-877-629-0753.

Identity Theft Expense Reimbursement Coverage

WaMu makes available to you the following insurance coverage issued by Virginia Surety Company, Inc.:

Guide to Benefits:

In the event of identity theft, eligible Washington Mutual checking accountholders can benefit from the security and safety offered through Identity Theft Expense Reimbursement coverage. If you are a victim of identity theft you may be eligible for benefits under this coverage. Identity Theft Expense Reimbursement is an insurance program.

Key terms:

- **You or Yours** means eligible Washington Mutual business or personal checking accountholders or signers.
- **Identity Theft** means the use of your name, address, Social Security number (SSN), bank or credit card account number, or other identifying information without your knowledge to commit fraud or deception.
- **Loss** means the eligible expenses related to your identity theft.
- **Eligible Expense(s)** means reasonable and necessary attorney fees or court costs associated in removing any civil suit wrongfully brought against you as a result of identity theft or a any suit brought against you by a creditor or collection agency or other entity for non-payment of goods and/or services as a result of identity theft, actual U.S. wages lost due to time off relating to efforts in resolving your identity theft issues, loan applications fees, notarizing affidavits or other similar document cost, long distance telephone cost, and postage cost you may have incurred as a direct result of identity theft.

The kind of coverage you receive:

- Identity Theft Expense Reimbursement will reimburse you for certain losses you incur as a result of identity theft.
- Coverage is secondary to any other applicable insurance or coverage available to you. Coverage is limited to only those amounts not covered by any other insurance or coverage benefit.

Coverage limitations:

Coverage is limited to your actual losses, up to \$5,000 per claim, as a result of identity theft. There is a limit of one (1) claim per twelve (12) month period.

Where coverage applies:

Coverage applies only to losses arising out of an identity theft occurring within any of the fifty (50) United States of America and Canada.

What is NOT covered:

- an act of fraud, deceit, collusion, dishonesty or criminal act by you or any person acting in concert with you, or by any authorized representative of you, whether acting alone or in collusion with you or others;
- damages or losses arising out of any business pursuits, loss of profits, business interruption, loss of business information, or other pecuniary loss;
- damages or losses arising from the theft or unauthorized or illegal use of your business name, d/b/a or any other method of identifying your business activity or any lost wages due to sickness or emotional breakdown;
- damages or losses of any type for which the financial institution is legally liable;
- damages or losses of any type resulting from fraudulent charges or withdrawal of cash from a debit or credit card;
- damages or losses of any type resulting from fraudulent withdrawals from financial accounts;
- indirect or direct damages or losses of any nature;
- any incident involving a loss or potential loss not notified to the relevant police authority within seventy-two (72) hours from the date you had knowledge of the loss;
- any cost due to delay in providing services, or damages resulting from any delay in services;
- losses that were incurred or commenced prior to this coverage being provided to you;
- fees or costs associated with the use of any investigative agencies or private investigators;
- any loss that is not a direct result of identity theft;
- theft or damages of traveler's checks, tickets of any kind, negotiable instruments, cash or its equivalent, passports, or any documents;
- war, invasion, acts of foreign enemies, hostilities (whether war is declared or not), rebellion, revolution, insurrection or military or usurped power;
- authorized charges that you have disputed based on the quality of goods or services, and
- authorized account transactions or trades that you have disputed, or are disputing, based on the execution (or non-execution) of electronic transfers, trades or other verbal or written instructions or directions.

What to do if you're a victim of identity theft in order to file a claim:

1. Call 1-877-629-0753 upon discovery of identity theft to report the incident.
2. Contact the major credit bureaus (Equifax, Experian, TransUnion) immediately after discovery of identity theft to place a fraud alert on your credit report;
3. File a police report in your local jurisdiction.
4. File a complaint with the Federal Trade Commission (FTC). If requested, file a report with other agencies.
5. Follow all procedures for recovery and reasonable requests for information and assistance at all institutions affected.
6. File a police report in your local jurisdiction.
7. File a complaint with the Federal Trade Commission (FTC). If requested, file a report with other agencies.
8. Follow all procedures for recovery and reasonable requests for information and assistance at all institutions affected.
9. Maintain copies of all receipts, bills or other records that support your claim for an Identity Theft Expense Reimbursement payment in order to help accurately determine the amount of any loss.
10. Take all other reasonable steps available to protect your identity from any further fraudulent use.

How to file a claim under Identity Theft Expense Reimbursement:

1. Contact 1-877-629-0753 to request a claim form.
2. Submit the following documentation within thirty (30) days after close of your identify fraud case or the claim will not be honored:
 - a. completed and signed claim form;
 - b. copy of your most recent Washington Mutual checking account statement;
 - c. proof that a fraud alert was placed with the major credit bureaus (Experian, Equifax, TransUnion), immediately after discovery of identity theft;
 - d. copy of a police report from your local jurisdiction;
 - e. copy of results of any settlement or denial from credit card companies, banks, creditors, collection agencies, etc. concerning your identity theft claim;
 - f. copy of the complaint filed with the Federal Trade Commission (FTC);
 - g. copy of all receipts, bills or other records that support your claim for an Identity Theft Expense Reimbursement payment;
 - h. any other documentation that may be reasonably requested to validate a claim.

Note: Please refer to the Final Legal Disclosure section below.

IDF-1 (12-04)**Final Legal Disclosure**

This Guide is not a policy or contract of insurance or other contract.

Benefits are purchased by Washington Mutual and provided free for you, but non-insurance services may have associated costs, which will be your responsibility. Identity Theft Expense Reimbursement coverage is provided under a master policy of insurance issued by Virginia Surety Company, Inc. This Guide is intended as a summary of benefits provided to you. All information about the insurance benefits listed in this Guide is governed by the conditions, limitations, and exclusions of the master policy.

As the insurer of the Identity Theft Expense Reimbursement coverage described herein, Virginia Surety Company, Inc. ("VSC") collects personal information about you from the following sources: information the insurer gathers from you, from your request for insurance coverage or other forms you furnish to the insurer, such as your name, address, telephone number, and information about your transactions with the insurer such as claims made and benefits paid.

The insurer may disclose all information it collects, as described above, to companies that perform administrative or other services on our behalf solely in connection with the insurance coverage you have received. The insurer does not disclose any personal information about former insureds to anyone, except as required by law. The insurer restricts access to personal information about you to those employees who need to know that information in order to provide coverage to you. The insurer maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard your personal information. Should you have any questions about the insurance procedures or the information contained within your file, please contact the insurer by writing to:

Compliance Department
Virginia Surety Company, Inc.
175 W. Jackson
Chicago, IL 60604

Effective date of benefits: Effective August 27, 2007, this Guide replaces all prior disclosures, program descriptions, advertising, and brochures by any party. Washington Mutual and the insurer reserve the right to change the benefits and features of these programs at anytime without prior notice, except as may be required by law.

Cancellation: Washington Mutual can cancel these benefits at any time or choose not to renew the insurance coverage for all checking accountholders. If Washington Mutual does cancel these benefits, you will be notified at least sixty (60) days in advance. If the insurance company terminates, cancels, or chooses not to renew the coverage to Washington Mutual, you will be notified as soon as is practicable. Insurance benefits will still apply for any benefits you were eligible for prior to the date of such terminations, cancellation, or non-renewal, subject to the terms and conditions of coverage.

Benefits to you: These benefits apply only to Washington Mutual checking accountholders whose accounts are issued by a U.S. financial institution. The United States is defined as the fifty (50) United States, the District of Columbia, American Samoa, Puerto Rico, Guam, and the U.S. Virgin Islands. No person or entity other than the Washington Mutual checking accountholder shall have any legal or equitable right, remedy, or claim for benefits, insurance proceeds and damages under or arising out of this program. These benefits do not apply if your checking account privileges have been cancelled. However, insurance benefits will still apply for any benefit you were eligible for prior to the date that your account is suspended or cancelled, subject to the terms and conditions of coverage.

Transfer of rights or benefits: No rights or benefits provided under these insurance benefits may be assigned without the prior written consent of the claim administrator for these benefits.

Misrepresentation and Fraud: Benefits shall be void if the Washington Mutual checking accountholder has concealed or misrepresented any material facts concerning this coverage.

Subrogation: If payment is made under these benefits, the insurance company is entitled to recover such amounts from other parties or persons. Any party or checking accountholder who receives payment under these benefits must transfer to the insurance company his or her rights to recovery against any other party or person and must do everything necessary to secure these rights and must do nothing that would jeopardize them, or these rights will be recovered from the checking accountholder.

In no event will these insurance benefits apply as contributing insurance. The non-contribution insurance clause will take precedence over the non-contribution clause found in any other insurance policies.

Benefits listed in this Guide are subject to the conditions, limitations, and exclusions described in each benefit section. **Receipt and/or possession of this Guide to Benefits does not guarantee coverage or coverage availability.**

FLD-2(3/05)

We seek in good faith to make arrangements with reputable companies to provide goods and services to members of the Free ID Theft Services program. We do not endorse, warrant or guarantee these goods or services.

The Free ID Theft Services program is NOT FDIC Insured - NOT Bank Guaranteed - NOT Insured by any Federal Government Agency

**For customer service, you may contact us by phone at 1-800-788-7000
or by mail at Washington Mutual, P.O. Box 1165, Northridge, CA 91328-1165.**

EXHIBIT F

CHASE
WMI

P.O. BOX 2395
 CHATSWORTH, CA 91313-2395

This Statement Covers
 From: 09/19/08
 Through: 09/30/08

WMI
 1301 2ND AVE
 SEATTLE WA 98101-2005

Need assistance?
 To reach us anytime
 call 1-800-788-7000
 or visit us at wmi.com

Please see the end of statement message regarding important information about changes to your deposit accounts and services.

Washington Mutual Internal Checking Detail Information

WMI Account Number: 441-006423-4
 Washington Mutual Bank, FA

Account Summary

Beginning Balance	\$0.00
Deposits	+3,874,000,000.00
Electronic & Misc. Deposits	0.00
Card Purchase/ATM-Withdrawals	0.00
Electronic & Misc. Withdrawals	-8,058,827.50
Checks Paid	0.00
Service Fees	0.00
Ending Balance	\$3,887,943,172.50

Deposits

Date	Amount	Description
09/22	898,888,888.00	Opening Deposit (Eff. Date:09/19/08)
09/22	874,000,000.00	Customer Deposit (Eff. Date:09/19/08)
09/22	898,888,888.00	Customer Deposit (Eff. Date:09/19/08)
09/22	898,888,888.00	Customer Deposit (Eff. Date:09/19/08)
4 Items		\$3,874,000,000.00

Electronic & Miscellaneous Withdrawals


Date	Amount	Description
09/24	3,000,000.00	DOMESTIC OUTGOING WIRE
09/26	3,058,827.50	DOMESTIC OUTGOING WIRE
2 Items		\$6,058,827.50

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Deposits are FDIC Insured



CHASE  **WaMu** Deposit accounts now held by JPMorgan Chase Bank, N.A.

P.O. BOX 860022
DALLAS, TX 75286-0022

This Statement Covers
From: 03/01/09
Through: 03/31/09

WMI
1301 2ND AVE
SEATTLE WA 98101-2005

Need assistance?
To reach us anytime
call 1-800-788-7000
or visit us at wamu.com

Washington Mutual Internal Checking Detail Information

WMI Account Number: 441-006423-4
Washington Mutual Bank, FA

Amendment to Account Disclosures and Regulations, Withdrawals section: We no longer reserve the right to require seven days notice to withdraw funds from any WaMu non-interest bearing checking account.

Account Summary

Beginning Balance	\$3,670,316,883.74
Deposits	0.00
Electronic & Misc. Deposits	+281,658.56
Card Purchases/ATM Withdrawals	0.00
Electronic & Misc. Withdrawals	0.00
Checks Paid	0.00
Service Fees	0.00
Ending Balance	\$3,670,698,422.20

Electronic & Miscellaneous Deposits

Date	Amount	Description	Card Number
03/16	281,658.56	CORRECTING CREDIT	
1 Item	\$281,658.56		

Account Activity Summary

Average Collected Balance	\$3,670,462,184.28	Minimum Daily Ending Balance	\$3,670,316,883.74
Checks Deposited	0	Cash Deposited	\$0.00
Number of Deposits	1	Cash Purchased	\$0.00
Checks/Debits	0		

Your Overdraft Limit as of the statement end date: \$500.00
Please note that this may be changed at any time without notice. (View back of statement for more information.)

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Deposits are FDIC Insured 

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