

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS  
HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR  
CLAIMS

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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*In re* : Chapter 11  
WASHINGTON MUTUAL, INC., et al.,<sup>1</sup> : Case No. 08-12229 (MFW)  
Debtors. : (Jointly Administered)  
: Hearing Date: September 14, 2012 at 10:30 a.m. (ET)  
-----X : Response Deadline: September 4, 2012 at 4:00 p.m. (ET)

**WMI LIQUIDATING TRUST'S EIGHTY-SECOND  
OMNIBUS (SUBSTANTIVE) OBJECTION TO CHANGE IN CONTROL CLAIMS**

WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMI Investment”), formerly debtors and debtors in possession (collectively, the “Debtors”), pursuant to section 502 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3007-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), files this eighty-second omnibus substantive objection (the “Eighty-Second Omnibus Objection”) to those Claims<sup>2</sup> listed on Exhibits A (Disallowed Claims) and B (Reduce

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan (as defined herein).



and Allowed Claims) hereto, and in support of the Eighty-Second Omnibus Objection, respectfully represents as follows:

### **Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. On September 26, 2008 (the "Commencement Date"), each of the Debtors commenced with this Court a voluntary case pursuant to chapter 11 of the Bankruptcy Code.

3. On December 12, 2011, the Debtors filed their *Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code* [D.I. 9178] (as modified, the "Plan"). By order [D.I. 9759] (the "Confirmation Order"), dated February 23, 2012, this Court confirmed the Plan and, upon satisfaction or waiver of the conditions described in the Plan, the transactions contemplated by the Plan were substantially consummated on March 19, 2012.

### **WMI's Business and JPMC**

4. Prior to the Commencement Date, WMI operated as a savings and loan holding company that owned Washington Mutual Bank ("WMB") and, indirectly, such bank's subsidiaries, including Washington Mutual Bank fsb ("WMBfsb"). Like all savings and loan holding companies, WMI was subject to regulation by the Office of Thrift Supervision (the "OTS"). WMB and WMBfsb, in turn, like all depository institutions with federal thrift charters, were subject to regulation and examination by the OTS. In addition, WMI's banking and

nonbanking subsidiaries were overseen by various federal and state authorities, including the Federal Deposit Insurance Corporation (“FDIC”).

5. On September 25, 2008, the Director of the OTS, by order number 2008-36, appointed the FDIC as receiver for WMB and advised that the receiver was immediately taking possession of WMB (the “Bank Seizure”). Immediately after its appointment as receiver, the FDIC purportedly sold substantially all the assets of WMB, including the stock of WMBfsb (the “JPMC Transaction”), to JPMorgan Chase Bank, National Association (“JPMC”) pursuant to that certain *Purchase and Assumption Agreement, Whole Bank*, dated as of September 25, 2008 (the “Purchase Agreement”).

#### **The Bar Date and Schedules**

6. On December 19, 2008, the Debtors filed with the Court their schedules of assets and liabilities and their statements of financial affairs. On January 27, 2009, and February 24, 2009, WMI filed with the Court its first and second, respectively, amended schedule of assets and liabilities and its first and second, respectively, amended statements of financial affairs. On January 14, 2010, WMI filed a further amendment to its statement of financial affairs (collectively, the “Schedules”).

7. By order, dated January 30, 2009 (the “Bar Date Order”), the Court established March 31, 2009 (the “Bar Date”) as the deadline for filing proofs of claim against the Debtors in these chapter 11 cases. Pursuant to the Bar Date Order, each creditor, subject to certain limited exceptions, was required to file a proof of claim on or before the Bar Date.

8. In accordance with the Bar Date Order, Kurtzman Carson Consultants, LLC (“KCC”), the Debtors’ court-appointed claims and noticing agent, mailed notices of the Bar Date and proof of claim forms to, among others, all of the Debtors’ creditors and other

known holders of claims as of the Commencement Date. Notice of the Bar Date also was published once in *The New York Times (National Edition)*, *The Wall Street Journal*, *The Seattle Times*, and *The Seattle Post-Intelligencer*.

### **Proofs of Claim**

9. Over 4,000 proofs of claim have been filed in these chapter 11 cases. WMILT is in the process of reviewing and reconciling the filed proofs of claim. To date, approximately 3,100 claims have been disallowed or withdrawn.

10. As part of their ongoing review, WMILT has reviewed each of the proofs of claim listed on Exhibits A and B hereto and has concluded that each such claim is appropriately objected to on the bases set forth below.

### **Objection to Change in Control Claims**

11. Local Rule 3007-1 allows a debtor to file an omnibus objection to proofs of claim on substantive grounds. Omnibus substantive objections must include sufficient detail as to why each claim should be disallowed and must be limited to no more than 150 claims. *See* Local Rule 3007-1(f)(i). The following omnibus objection complies with Local Rule 3007-1(f)(i) as well as the other requirements of Local Rule 3007.

12. The majority of the claims objected to herein (the "CIC Claims") consist of multiple components. Subject to certain limited exceptions, WMILT requests the Court disallow each of the claim components in their entirety, such that the majority of the claims objected to herein be disallowed in their entirety. To the extent WMILT does not object to certain components, leaving an allowed amount of a particular CIC Claim, WMILT requests that the Court reduce and allow such CIC Claims as set forth herein.

## **I. Change in Control Components**

13. Each of the CIC Claims asserts a claim (the “Change in Control Component”) pursuant to the “change in control” provisions in either or both of: (i) the WaMu Severance Plan, effective January 1, 2008,<sup>3</sup> established by WMI to provide benefits to eligible employees of WMI and its subsidiaries and affiliates in the event of a job elimination pursuant to the terms and conditions contained therein (the “WaMu Severance Plan”), and (ii) an individual cash long-term incentive award agreement (the “Cash LTI Agreements” and, together with the WaMu Severance Plan, the “WMI CIC Documents”) entered into between WMI and the respective claimant, each a former employee of WMB.

14. WMILT objects to the Change in Control Components on the ground that no “Change in Control,” as such term is defined in the respective WMI CIC Documents, has occurred. Accordingly, WMILT is not liable for “change in control” payments or other benefits that are triggered or accelerated by a “change in control” pursuant to the terms of the WMI CIC Documents. Specific objections with respect to each of the WMI CIC Documents are set forth below.

### **WaMu Severance Plan Components**

15. WMILT objects to the Change in Control Components arising from the WaMu Severance Plan (the “WaMu Severance Plan Components”) on the ground that no

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<sup>3</sup> In accordance with Section 7.1 of the WaMu Severance Plan, which authorized WMI or the Plan Administrative Committee (appointed by the Human Resources Committee of WMI’s Board of Directors, the “PAC”) to amend or terminate the WaMu Severance Plan “at any time when, in its judgment, such amendment or termination is necessary or desirable” (provided that such amendment or termination did not affect the rights of any individual then entitled to receive severance pay), the PAC adopted a resolution ratifying, confirming and approving the termination of the WaMu Severance Plan, effective as of September 25, 2008, pursuant to that certain Unanimous Written Consent in Lieu of Special Meeting of the Washington Mutual, Inc. Plan Administration Committee, dated April 19, 2011 (the “Severance Plan PAC Consent”). Thereafter, pursuant to that certain Written Consent to Action of the Operations Committee of the Board of Directors of Washington Mutual, Inc. in Lieu of a Special Meeting, dated April 29, 2011, the operations committee of WMI’s Board of Directors adopted resolutions that, among other things, ratified, confirmed, and approved termination of the Severance Plan as of September 25, 2008.

“Change in Control,” as such term is defined in the WaMu Severance Plan, occurred. In particular, certain of the CIC Claims allege that the Bank Seizure and/or the JPMC Transaction constituted a “Change in Control” pursuant to the terms of the WaMu Severance Plan. The WaMu Severance Plan defines “Change in Control” as, among other things, “[t]he sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual Inc.’s assets to another Person<sup>4</sup> (other than a Subsidiary<sup>5</sup>) whether assisted or unassisted, voluntary of [sic] involuntary.” WaMu Severance Plan § 1.5(e), attached hereto as Exhibit C.

16. WMILT submits that no “Change in Control” occurred pursuant to the terms of the WaMu Severance Plan. For example, neither the Bank Seizure nor the JPMC Transaction constituted a “Change of Control” within the meaning of Section 1.5(e) of the WaMu Severance Plan. Indeed, none of WMI’s assets, which, in September 2008, included, among other things, its equity interest in WMB, were transferred or sold to the FDIC or to JPMC, as the case may be, pursuant to the Bank Seizure or JPMC Transaction. *See Williams v. McGreevey (In re Touch Am. Holdings, Inc.)*, 401 B.R. 107, 126 (Bankr. D. Del. 2009) (“It is well recognized that ‘a corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary.’”) (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003))). Moreover, even if WMB’s assets could fall within the plain meaning of “Washington Mutual Inc.’s assets” pursuant to the WaMu Severance Plan,

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<sup>4</sup> Pursuant to Section 1.5(f)(i) of the WaMu Severance Plan, “‘Person’ shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).” WaMu Severance Plan § 1.5(f)(i).

<sup>5</sup> Pursuant to Section 1.5(f)(2) of the WaMu Severance Plan, “‘Subsidiary’ shall mean a corporation that is wholly owned by the Company, either directly or through on [sic] or more corporations that are wholly owned by the Company.” WaMu Severance Plan § 1.5(f)(2). Section 1.7 of the WaMu Severance Plan defines “Company” as “Washington Mutual, Inc. and its subsidiaries and affiliates.” WaMu Severance Plan § 1.7.

the assets of WMB did not constitute “all or substantially all” of WMI’s assets. Thus, no “Change in Control” occurred pursuant to the terms of the WaMu Severance Plan.

17. As a result, claimants with WaMu Severance Plan Components are ineligible to receive “change in control” severance benefits under the WaMu Severance Plan because they did not experience a “Job Elimination” within eighteen (18) months after a “Change in Control” as required by the terms of the WaMu Severance Plan.<sup>6</sup> See WaMu Severance Plan § 3.2(d) (describing “change in control” severance benefits); *id.* at § 2.1 (providing that an employee will be eligible for benefits “only if he: (a) experiences a Job Elimination; and (b) signs and returns a Severance Agreement”); *id.* at § 2.3 (defining “Job Elimination” and providing that “[f]or purposes of this section a Participant who is designated as a Level 6 employee will also be deemed to have experienced a job elimination if his employment is terminated for any reason other than for Cause within 18 months after a Change in Control”). Based on the foregoing, WMILT requests that the WaMu Severance Plan Components be disallowed in their entirety as set forth on Exhibit A hereto.

18. Moreover, even if a “Change in Control” occurred pursuant to the terms of the WaMu Severance Plan, the claimants with WaMu Severance Plan Components are nevertheless divested of their “change in control” severance benefits pursuant to the terms and conditions of such plan. In particular, Section 8.2 of the WaMu Severance Plan provides that: “[i]f a Participant is offered a position with another company that has purchased some or all of the assets of the Company or has purchased the stock of the Company or one of its affiliates or subsidiaries, the Participant will not be entitled to severance benefits under the Plan” provided

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<sup>6</sup> Pursuant to the WaMu Severance Plan, “[t]he Plan Administrator shall be the Plan Administration Committee” and such committee has broad and absolute discretion to interpret the plan and make decisions regarding eligibility, among other things. See, e.g., WaMu Severance Plan §§ 5, 7.

that the job offered meets certain conditions contained in Sections 2.4(a) and 2.4(b) of the WaMu Severance Plan. WaMu Severance Plan § 8.2; *id.* at § 2.4(a) (requiring base pay be at least eighty percent (80%) of the base pay of prior position); *id.* at § 2.4(b) (new position must not increase the employee's one-way commute from his primary residence to his place of work by 25 miles or more). "Company," as defined in the WaMu Severance Plan, means "Washington Mutual, Inc. and its subsidiaries and affiliates." WaMu Severance Plan § 1.7. Upon information and belief, all of the claimants with WaMu Severance Plan Components became employees of JPMC upon consummation of the JPMC Transaction without experiencing any disruption of employment. And, notwithstanding that each claimant became an employee of JPMC, rather than WMB, each continued to work in the same position, for the same base pay and in the same office, in satisfaction of Sections 2.4(a) and 2.4(b) of the WaMu Severance Plan. *See* WaMu Severance Plan §§ 2.4(a); 2.4(b). Accordingly, pursuant to Section 8.2 of the WaMu Severance Plan, such claimants are not eligible to receive severance payments.<sup>7</sup> *See id.* at § 8.2. Indeed, "[c]ircuit courts have held, *even in the absence of explicit terms in an employer's severance policy*, that employees re-hired by the purchasing firm did not qualify for severance benefits because they were not laid-off or terminated." *Kosswig v. Timken Co.*, No. 06 Civ. 499, 2007 WL 2320537, at \*6 (D. Conn. Aug.10, 2007) (emphasis added) (collecting cases).

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<sup>7</sup> Furthermore, Section 2.2 of the WaMu Severance Plan provides that: "[a]n Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan, arrangement, agreement or program or if he has received such payment within the last two years from the Company or any Acquired Companies." WaMu Severance Plan § 2.2. Upon information and belief, each of the claimants with WaMu Severance Plan Components became eligible to receive and, in fact, many did receive, certain severance benefits pursuant to JPMC's severance plan on account of such claimant's former employment with WMB.



19. In addition, WMILT is not liable on the WaMu Severance Plan Components to the extent any of the claimants failed to execute a “Severance Agreement,” as required by Section 2.1 of the WaMu Severance Plan. *See* WaMu Severance Plan § 2.1 (“An Eligible Employee will be eligible for benefits under Section 3 only if he: (a) experiences a Job Elimination; and (b) signs and returns a Severance Agreement within 21 business days or within such other period or by such other date specified in the ‘Notification.’”); *id.* at § 1.15 (defining “Severance Agreement” as “[a] written agreement provided by the Company [i.e., Washington Mutual, Inc.] by which a Participant releases any claims he might have against the Company in exchange for the benefits set forth in Section 3 which the Company is not otherwise obligated to provide.”).

20. Furthermore, even if the Court were to determine that a “Change in Control” occurred pursuant to the terms of the WaMu Severance Plan, the allowed amounts of the WaMu Severance Plan Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the WaMu Severance Plan Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7). Section 502(b)(7) of the Bankruptcy Code addresses the maximum allowable claim of an employee under a terminated employment contract and provides that the court shall disallow:

[a] claim of an employee for damages resulting from the termination of an employment contract, [to the extent] such claim exceeds (A) the compensation provided by such contract, without acceleration, for one year following the earlier of – the date of the filing of the petition; or (ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus (B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates.

11 U.S.C. § 502(b)(7). This Court and others have found that claims for severance payments, including “change in control” payments, are subject to the limitation in section 502(b)(7). *See, e.g., In re VeraSun Energy Corp.*, 467 B.R. 757 (Bankr. D. Del. 2012); *Protarga Inc. v. Webb (In re Protarga Inc.)*, 329 B.R. 451, 465-66 (Bankr. D. Del. 2005); *In re Dornier Aviation (N. Am.), Inc.*, 305 B.R. 650, 653-56 (E.D. Va. 2004); *see also Bitters v. Networks Elecs. Corp. (In re Networks Elecs. Corp.)*, 195 B.R. 92, 100 (B.A.P. 9th Cir. 1996) (“The purpose of § 502(b)(7) is to protect the employer/debtor from valid employee claims which would unreasonably compromise the debtor’s fresh start, and work to the detriment of other creditors.”). As such, any liability pursuant to the WaMu Severance Plan—and WMILT submits that there is none—should be significantly reduced.

21. Additionally, upon information and belief, each of the claimants with WaMu Severance Plan Components became eligible to receive and, in fact, the significant majority did receive, certain severance benefits pursuant to JPMC’s severance plan on account of the claimants’ former employment with WMB. To the extent such payments were not already deducted from the filed amount of the respective proof of claim, WMILT is entitled to a credit for any severance payments actually received by a claimant from JPMC on account of his or her employment with WMB. *See Skidmore, Owings & Merrill v. Intrawest I L.P.*, No. 35195-8-1, 1997 WL 563159, at \*6 (Wash. App. Div. 1997) (“Washington law [holds] that a party who breaches a contract is not liable for damages that are mitigated or recovered from other sources.”); *Barney v. Safeco Ins. Co. of Am.*, 869 P.2d 1093, 1094 (Wash. App. Div. 2 1994), *overruled on other grounds, Price v. Farmers Ins. Co. of Wash.*, 946 P.2d 388 (Wash. 1997) (explaining that there is a general public policy against “double recovery” of damages in lawsuits); *Harms v. Cavenham Forest Indus., Inc.*, 984 F.2d 686, 693 (5th Cir. 1993) (finding

that beneficiaries were not entitled to certain severance benefits because it would result in a “double-recovery windfall—a result abhorred by ERISA”).

### **Cash LTI Components**

22. WMILT objects to the Change in Control Components arising from the Cash LTI Agreements (the “Cash LTI Components”) on the ground that no “Change in Control,” as such term is defined in the respective Cash LTI Agreements, occurred. As a result, the claimants failed to satisfy the eligibility requirements for payment pursuant to the Cash LTI Agreements. *See* Sample Cash LTI Agreement, attached hereto as Exhibit D (“To earn the Cash LTI Award and receive a payment, you must remain continuously employed by the Company through each applicable anniversary date. . . . You must be employed on each anniversary date in order to receive each portion of the award. Vesting and payment of the Award will accelerate upon a ‘Change in Control.’”).

23. Pursuant to the individual Cash LTI Agreements, “Change in Control” has the meaning ascribed to such term in the “Form Change in Control Agreement for Senior Leaders.” Sample Cash LTI Agreement.<sup>8</sup> Although the term “Senior Leaders” is not defined in the Cash LTI Agreements, upon information and belief, the quoted language refers to a form agreement entered into between WMB and WMB employees classified in Level 4 or Level 5 pursuant to WMB’s employment scheme. As reflected in certain of the claimants’ proofs of claim and WMILT’s books and records, the “change in control” agreements between WMB and its “Senior Leaders” contain substantially the same definition of “Change in Control” as the

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<sup>8</sup> The Cash LTI Agreements provide the “Committee” with broad discretion to interpret the Cash LTI Agreements and to determine controversies arising thereunder. *See* Sample Cash LTI Agreement.

WaMu Severance Plan.<sup>9</sup> Accordingly, for the reasons set forth above, no “Change in Control” occurred pursuant to the terms of the Cash LTI Agreements.

24. Based on the foregoing, and as reflected on Exhibits A and B, WMILT is not liable for the Cash LTI Components of the CIC Claims. In the absence of a “Change in Control,” the vesting of the respective claimants’ cash awards was not accelerated, and the claimants otherwise failed to satisfy the eligibility requirements set forth in the agreements. *See* Sample Cash LTI Agreement (“Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the Cash LTI Award. This letter merely sets forth the terms of the Cash LTI Award that may be paid to you for achievement of the stated criteria.”).

25. Moreover, even if the Court were to find that WMILT were liable for payments pursuant to the terms of the Cash LTI Agreements, (i) the allowed amounts of the Cash LTI Components are subject to a cap pursuant to section 502(b)(7) of the Bankruptcy Code because the Cash LTI Components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) certain of the claimants with Cash LTI Components received partial payment of their Cash LTI award from JPMC and, accordingly, their claims should be reduced by the amount of such partial payment to the extent their proofs of claim did not already deduct the amounts received from JPMC. *See Skidmore, Owings*, 1997 WL 563159, at \*6; *Barney*, 869 P.2d at 1094.

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<sup>9</sup> Specifically, the form “change in control” agreement for Senior Leaders defines “change in control” as, among other things: “The sale or transfer (in one transaction or series of related transactions) of all or substantially all of the Company’s assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.” The term “Company” in such agreements is defined as “Washington Mutual, Inc.”

## II. Wrong Party Components

26. Certain of the CIC Claims objected to herein assert liability for “change in control” or other benefits pursuant to certain retention bonus agreements (the “WMB Retention Bonus Agreements”), “change in control” agreements (the “WMB CIC Agreements”), or other individual employment agreements between the respective claimant and WMB (together with the WMB Retention Bonus Agreements and WMB CIC Agreements, the “Wrong Party Documents”), *not* WMI (collectively, the “Wrong Party Components”). Because neither Debtor is a party to the respective agreements that form the basis of the Wrong Party Components, WMILT has no liability with respect thereto. Accordingly, the Wrong Party Components of the CIC claims, as set forth on Exhibits A and B, should be disallowed and expunged in their entirety.

27. Should the Court find that WMILT were liable with respect to the Wrong Party Components notwithstanding that neither Debtor is a party to the applicable agreements, WMILT asserts that it is not liable for any “change in control” payments or other benefits pursuant to the Wrong Party Documents.<sup>10</sup> First, with respect to payments triggered or accelerated upon a “change of control,” WMILT asserts that no “change in control,” as defined in the respective agreements, occurred. The definition of “change in control” in certain of the WMB Retention Bonus Agreements<sup>11</sup> and the WMB CIC Agreements<sup>12</sup> is substantially similar

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<sup>10</sup> WMILT expressly reserves its right to fully brief these issues should such briefing be required.

<sup>11</sup> There are multiple forms of WMB Retention Bonus Agreements, only one of which contains an express “change in control” provision. A sample WMB Retention Bonus Agreement with a “change in control” provision and with personal information redacted is attached hereto as Exhibit G.

<sup>12</sup> A sample WMB CIC Agreement, with personal information redacted, is attached hereto as Exhibit F.

to the definition of “change in control” found in the WaMu Severance Plan.<sup>13</sup> Thus, for the reasons set forth above, no “Change in Control” occurred pursuant to the terms of the Wrong Party Documents and, as a result, the claimants are ineligible for payments triggered or accelerated by a “change in control.” Second, the claimants are not entitled to other payments or benefits pursuant to the Wrong Party Documents because the claimants otherwise failed to satisfy the eligibility requirements pursuant to the respective documents.<sup>14</sup> Accordingly, even if the Court were to determine that WMILT is liable for and on behalf of WMB with respect to the Wrong Party Components, WMILT submits that the claimants are unable to satisfy the requirements and conditions to recovery pursuant to the respective agreements.

28. Furthermore, WMILT objects to the Wrong Party Component of Claim No. 3982, filed by Julie Liabraaten, because the proof of claim lacks supporting documentation for such component and WMILT’s books and records contain no record of the alleged obligation.

29. Moreover, to the extent the Court determines that WMILT were liable to the claimants for “change in control” or other payments pursuant to the WMB Retention Bonus Agreements, WMB CIC Agreements or other “wrong party” employment agreements: (i) the allowed amounts of such Wrong Party Components are subject to a cap pursuant to section

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<sup>13</sup> See Sample WMB CIC Agreement, at § 5(g)(5) (“For purposes of this Agreement, “Change in Control” shall mean: . . . The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of . . . [Washington Mutual, Inc.’s] assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.”); Sample WMB Retention Bonus Agreement (cross-referencing the definition of “change in control” found in the recipient’s WMB CIC Agreement). Moreover, the employment agreement of one claimant, Gary Brady (Claim No. 2178), cross-references the definition of “change in control” in the claimant’s “change in control” agreement.

<sup>14</sup> For example, certain WMB Retention Bonus Agreements state that the “employment requirement” is waived to the extent the claimant experienced a job elimination pursuant to the WaMu Severance Plan. WMILT submits that the applicable claimants are ineligible for benefits pursuant to the WMB Retention Bonus Agreements because they did not experience a “job elimination” pursuant to the WaMu Severance Plan by virtue of a “change in control” or otherwise.

502(b)(7) of the Bankruptcy Code because such components assert claims for damages resulting from the termination of an employment contract within the meaning of section 502(b)(7); and (ii) WMILT is entitled to a credit for any severance payments or other relevant benefits actually received by the claimant from JPMC on account of such claimants' employment with WMB. *See Skidmore, Owings, 1997 WL 563159, at \*6; Barney, 869 P.2d at 1094; see also Sample WMB CIC Agreement § 5(c); see generally id.*

### **III. WMI SERAP Components**

30. Certain of the CIC Claims contain a component (the "WMI SERAP Component") arising from the WMI Supplemental Executive Retirement Accumulation Plan (the "WMI SERAP"). WMILT's books and records indicate a corresponding obligation owed to such claimants with respect to the WMI SERAP Component and, as set forth on Exhibit B, WMILT seeks to allow these portions of the CIC Claims in the amounts reflected in WMILT's books and records.

### **IV. ETRIP Base Component**

31. One CIC Claim contains a component (the "ETRIP Base Component") arising from the Washington Mutual Inc. Executive Target Retirement Income Plan (the "ETRIP"), unrelated to the "change in control" provisions thereof. WMILT's books and records indicate a corresponding obligation owed to such claimant with respect to the ETRIP Base Component and, as set forth on Exhibit B, WMILT seeks to allow such component in the amount reflected in WMILT's books and records.

### **V. Other Components**

32. WMILT objects to Claim No. 2571, filed by Gennadiy Darakhovskiy, on the basis that Mr. Darakhovskiy's employment with WMB was terminated effective August 15, 2008. Mr. Darakhovskiy's claim seeks benefits pursuant to his Cash LTI Agreement (the

Darakhovskiy Cash LTI Component”), WMB CIC Agreement (the “Darakhovskiy WMB CIC Component”) and the WMI SERAP. With respect to his Cash LTI Agreement and WMB CIC Agreement, Mr. Darakhovskiy alleges that he is entitled to payments as a result of a “change in control” having occurred. However, pursuant to the terms of the respective documents, Mr. Darakhovskiy’s right to benefits pursuant to his WMB CIC Agreement and Cash LTI Agreement terminated upon the termination of his employment with WMB—on August 15, 2008—even before the alleged “change in control.” Thus, regardless of whether a “change in control” occurred, as a result of the termination of his employment with WMB, Mr. Darakhovskiy is ineligible for benefits pursuant to his WMB CIC Agreement and Cash LTI Agreement.

33. WMILT further objects to the Darakhovskiy Cash LTI Component and Darakhovskiy WMB CIC Component for the reasons set forth above with respect to the Cash LTI Components and Wrong Party Components, respectively.

34. Along with the other WMI SERAP Components, WMILT seeks to allow Mr. Darakhovskiy’s WMI SERAP Component in the amount reflected on WMILT’s books and records, as set forth on Exhibit B hereto.

#### **Reservation of Rights**

35. Pursuant to Local Rule 3007-1(f)(iii), “[a]n objection based on substantive grounds shall include all substantive objections to such claim.” To conserve its resources, WMILT requests that, to the extent the Court finds that WMILT may, in fact, be liable on account of the CIC Claims, it be granted limited relief from Local Rule 3007-1(f)(iii) to further object to the CIC Claims. WMILT also requests that, to the extent it is found liable, it



be allowed to seek to impose on the CIC Claims any applicable cap on the amount of such claims as prescribed by the Bankruptcy Code.

36. In support of the foregoing, WMILT relies on the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Claims*, dated as of August 15, 2012, attached hereto as Exhibit G.

37. Nothing contained in this Eighty-Second Omnibus Objection shall be, or shall be deemed to be, a determination that JPMC or any of its affiliates or subsidiaries, WMB or any of WMB's subsidiaries, or any person other than the Debtors and WMILT is or is not liable or responsible in any way for any of the claims that are subject to this Eighty-Second Omnibus Objection.

#### **Notice**

38. Notice of this Eighty-Second Omnibus Objection has been provided to: (i) the U.S. Trustee, (ii) those parties entitled to receive notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, and (iii) each holder of a claim objected to herein. In light of the nature of the relief requested, WMILT submits that no other or further notice need be provided.

39. Pursuant to Bankruptcy Rule 3007, WMILT has provided all claimants affected by the Eighty-Second Omnibus Objection with at least thirty (30) days' notice of the hearing to consider the Eighty-Second Omnibus Objection.

#### **Statement of Compliance with Local Rule 3007-1**

40. The undersigned representative of Richards, Layton & Finger, P.A. ("RLF") certifies that he has reviewed the requirements of Local Rule 3007-1 and that the

WHEREFORE WMILT respectfully requests that the Court enter the proposed order, attached hereto as Exhibit H, granting WMILT (i) the relief requested herein and (ii) such other and further relief as is just.

Dated: August 15, 2012  
Wilmington, Delaware



---

Mark D. Collins (No. 2981)  
Michael J. Merchant (No. 3854)  
Amanda R. Steele (No. 5530)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
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Telephone: (302) 651-7700  
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– and –

Brian S. Rosen, Esq.  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys to the WMI Liquidating Trust*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X	:	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	<b>Case No. 08-12229 (MFW)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	<b>Hearing Date: September 14, 2012 at 10:30 a.m. (ET)</b>
-----X	:	<b>Response Deadline: September 4, 2012 at 4:00 p.m. (ET)</b>

**NOTICE OF WMI LIQUIDATING TRUST'S EIGHTY-SECOND  
OMNIBUS (SUBSTANTIVE) OBJECTION TO CHANGE IN CONTROL CLAIMS**

PLEASE TAKE NOTICE that on August 15, 2012, WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”) filed the *WMI Liquidating Trust’s Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims* (the “Objection”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses to the Objection must be filed in writing with the Bankruptcy Court, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned counsel for the Debtors on or before **September 4, 2012 at 4:00 p.m. (ET)**.

PLEASE TAKE FURTHER NOTICE that, in the event that one or more responses to the Objection are timely filed, the Objection shall be considered at a hearing before

---

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMI Liquidating Trust are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

The Honorable Mary F. Walrath at the Bankruptcy Court, 824 Market Street, 5<sup>th</sup> Floor,  
Courtroom 4, Wilmington, Delaware 19801 on **September 14, 2012 at 10:30 a.m. (ET)**.

**PLEASE TAKE FURTHER NOTICE THAT IF NO RESPONSES TO THE  
OBJECTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE  
WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF  
REQUESTED IN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: August 15, 2012  
Wilmington, Delaware



Mark D. Collins (No. 2981)  
Michael J. Merchant (No. 3854)  
Julie A. Finocchiaro (No. 5303)  
Amanda R. Steele (No. 5530)  
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*Attorneys for WMI Liquidating Trust*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X  
:  
*In re* : **Chapter 11**  
:  
WASHINGTON MUTUAL, INC., et al.,<sup>1</sup> : **Case No. 08-12229 (MFW)**  
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**Debtors.** : **(Jointly Administered)**  
:  
:  
:  
Hearing Date: September 14, 2012 at 10:30 a.m. (ET)  
-----X  
Response Deadline: September 4, 2012 at 4:00 p.m. (ET)

**NOTICE OF WMI LIQUIDATING TRUST'S EIGHTY-SECOND  
OMNIBUS (SUBSTANTIVE) OBJECTION TO CHANGE IN CONTROL CLAIMS**

PLEASE TAKE NOTICE THAT on August 15, 2012, WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”) filed the attached *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims* (the “Objection”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).<sup>2</sup> By the Objection, the Debtors are seeking to either, disallow, reclassify or reduce your claim(s) (each, a “Claim” and collectively, the “Claims”) as listed in the Objection.

THE OBJECTION SEEKS TO ALTER YOUR RIGHTS. THEREFORE, YOU SHOULD READ THIS NOTICE (INCLUDING THE OBJECTION) CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

**Critical Information for Claimants Choosing to File a Response to the Objection**

**Filing a Response.** If you oppose the treatment of your Claim(s) set forth in the Objection, and if you are unable to resolve the Objection with the Debtors before the deadline to object, then you must file and serve a written response (the “Response”) to the Objection in accordance with this Notice. If you do not oppose the disallowance of your Claim(s), then you do not need to file a written Response to the Objection and you do not need to appear at the hearing on the Objection (described below).

**The deadline for filing a Response is September 4, 2012 at 4:00 p.m. (ET) (the “Response Deadline”).**

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMI Liquidating Trust are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Objection.

THE BANKRUPTCY COURT WILL ONLY CONSIDER YOUR RESPONSE IF YOUR RESPONSE IS FILED, SERVED AND RECEIVED BY THE RESPONSE DEADLINE IN ACCORDANCE WITH THE INSTRUCTIONS SET FORTH IN THIS NOTICE.

Your Response will be deemed timely filed only if the Response is **actually received** on or before the Response Deadline in the office of the clerk of the Bankruptcy Court at the following address:

Clerk of the Court for the  
United States Bankruptcy Court  
for the District of Delaware  
824 North Market Street, 3rd Floor  
Wilmington, Delaware 19801

Your Response will be deemed properly-served only if the Response is **actually received** on or before the Response Deadline by the following parties (collectively, the "Notice Parties"):

**WEIL, GOTSHAL & MANGES LLP**

Attn: Brian S. Rosen  
767 Fifth Avenue  
New York, New York 10153

**RICHARDS, LAYTON & FINGER, P.A.**

Attn: Mark D. Collins  
Attn: Michael J. Merchant  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801

*Co-Counsel to the Debtors*

**Contents of Each Response.** Every Response to this Objection must contain at a minimum the following information:

- a caption setting forth the name of the Court, the name of the Debtors, the case number and the title of the Objection to which the Response is directed;
- the name of the claimant, his/her/its claim number and a description of the basis for the amount of the claim;
- the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- any supporting documentation, to the extent it was not included with the Proof of Claim previously filed with the clerk or claims agent, upon which the party will rely to support the basis for and amounts asserted in the Proof of Claim; and
- the name, address, telephone number and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtors should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

**Hearing on the Objection.** If a Response is properly filed and served in accordance with this notice, a hearing on the Objection and the Response will be held on **September 14, 2012 at 10:30 a.m. (ET)** (the "Hearing") before The Honorable Mary F. Walrath, United States Bankruptcy Judge, in the Bankruptcy Court located at 824 North Market Street, 5th Floor, Courtroom 4, Wilmington, Delaware 19801. If you file a Response to the Objection, then you should plan to appear at the hearing on the Objection. The Debtors, however, reserve the right to continue the hearing with respect to the Objection and the Response.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS  
NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED  
BY THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.**

**Additional Information**

**Questions.** If you have any questions regarding the Objection and/or if you wish to obtain a copy of the Objection or related documents, please feel free to contact the Debtors' Voting and Claims Agent, Kurtzman Carson Consultants LLC, by: (a) calling the Debtors' restructuring hotline at (888) 830-4644 (b) visiting the Debtors' restructuring website at: <http://www.kccllc.net/wamu> and/or (c) writing to Washington Mutual Claims Processing, c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245.

**Reservation of Rights.** Nothing in this notice or the Objection constitutes a waiver of the Debtors' right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions or any other claims against you of the Debtors. Unless the Bankruptcy Court allows your Claims or specifically orders otherwise, the Debtors have the right to object on any grounds to the Claims (or to any other Claims or causes of action you may have filed or that have been scheduled by the Debtors) at a later date. In such event, you will receive a separate notice of any such objections.

Dated: August 15, 2012  
Wilmington, Delaware



Mark D. Collins (No. 2981)

Michael J. Merchant (No. 3854)

Julie A. Finocchiaro (No. 5303)

Amanda R. Steele (No. 5530)

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- and -

Brian S. Rosen

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767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

*Attorneys for WMI Liquidating Trust*



**Exhibit A**

**Claims to be Disallowed**

<b>Claimant</b>	<b>Claim Number</b>	<b>Filed Claim Amount</b>	<b>Debtor</b>	<b>Reason(s) for Objection</b>
Thomas Allen	1822	\$33,333.00	WMI	Cash LTI Component
		\$640,466.00		Wrong Party Component – WMB CIC Agreement
		\$100,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Amy Driver Anderson	403	\$177,000.00	WMI	WaMu Severance Plan Component
		\$40,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Nirmal Baid	1050	\$102,500.00	WMI	Cash LTI Component
Monica Berger	1527	unliquidated	WMI	WaMu Severance Plan Component
Robert Bjorklund	2880	\$225,000.00	WMI	WaMu Severance Plan Component
		\$180,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Gary Brady	2178	\$393,750.00	WMI	WaMu Severance Plan Component
		\$75,000.00		Wrong Party Component – individual WMB employment agreement
Cynthia Carter	2329	\$242,593.00	WMI	WaMu Severance Plan Component
Jeanine Catalano	2921	\$50,000.00	WMI	Cash LTI Component
Ryan D. Devereux	1755	\$257,985.00	WMI	WaMu Severance Plan Component
Duane Duck	744	\$443,625.00	WMI	WaMu Severance Plan Component
Camille J. Everett	651	\$294,343.19	WMI	WaMu Severance Plan Component
Peter Heller	2930	\$66,666.67	WMI	Cash LTI Component
		\$575,100.00		Wrong Party Component – WMB CIC Agreement
		\$35,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Rolland Jurgens	4053	\$66,666.67	WMI	Cash LTI Component
		\$660,000.00		Wrong Party Component – WMB CIC Agreement
		\$25,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Adam D. Kleiver	3964	\$230,555.55	WMI	WaMu Severance Plan Component
Julie Liabraaten	3982	\$210,000.00	WMI	WaMu Severance Plan Component

Claimant	Claim Number	Filed Claim Amount	Debtor	Reason(s) for Objection
		\$35,000.00		<ul style="list-style-type: none"> <li>missing documentation</li> <li>Wrong Party Component – WMB Retention Bonus Agreement</li> </ul>
Marc Malone	466	\$175,000.00	WMI	Cash LTI Component
		\$834,690.00		Wrong Party Component – WMB CIC Agreement
Christopher A. Marando	1596	\$405,699.09	WMI	WaMu Severance Plan Component
Pradeep Narayan	2079	\$75,000.00	WMI	Cash LTI Component
		\$643,519.00		Wrong Party Component – WMB CIC Agreement
Casey M. Nault	2595	\$301,029.82	WMI	WaMu Severance Plan Component
		\$100,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Elizabeth Pepper	4052	\$286,247.00	WMI	WaMu Severance Plan Component
Michael S. Reilly	2199	\$289,464.00	WMI	WaMu Severance Plan Component
Scott B. Shaw	3975	\$342,069.00	WMI	WaMu Severance Plan Component
Mitchell Stevens	376	\$75,000.00	WMI	Cash LTI Component
Andrew Tauber	3941	\$125,000.00	WMI	Cash LTI Component
		\$1,101,669.00		Wrong Party Component – WMB CIC Agreement
Radha Thompson	1153	\$125,000.00	WMI	Cash LTI Component
		\$1,229,040.00		Wrong Party Component – WMB CIC Agreement
Kurt Wisecup	3278	\$258,750.00	WMI	WaMu Severance Plan Component
Weijia Wu (“Vicky”)	3920	\$258,750.00	WMI	WaMu Severance Plan Component

**Exhibit B**

**Claims to be Reduced and Allowed**

<b>Claimant</b>	<b>Claim Number</b>	<b>Filed Claim Amount</b>	<b>Debtor</b>	<b>Reason(s) for Objection</b>	<b>Amount of Allowed Component</b>	<b>Allowed Amount</b>
David Beck	1344	\$13,469.33	WMI	ETRIP Base Component. WMILT's books and records reflect an account balance of \$14,800.26.	\$14,800.26	\$78,742.74
		\$130,066.34		WMI SERAP Component. WMILT's books and records reflect an account balance of \$63,942.48.	\$63,942.48	
Gennadiy Darakhovskiy	2571	\$115,000.00	WMI	<ul style="list-style-type: none"> <li>Darakhovskiy Cash LTI Component</li> <li>Cash LTI Component</li> </ul>	Disallowed	\$25,931.10
		\$1,078,477.20		<ul style="list-style-type: none"> <li>Darakhovskiy WMB CIC Component</li> <li>Wrong Party Component – WMB CIC Agreement</li> </ul>	Disallowed	
		\$26,373.40		WMI SERAP Component. WMILT's books and records reflect an account balance of \$25,931.10.	\$25,931.10	
Michelle McCarthy	2497	\$300,000.00	WMI	Cash LTI Component	Disallowed	\$78,518.69
		\$1,262,645.00		Wrong Party Component - WMB CIC Agreement	Disallowed	
		\$110,000.00		Wrong Party Component – WMB Retention Bonus Agreement	Disallowed	
		\$78,519.00		WMI SERAP Component. WMILT's books and records reflect an account balance of \$78,518.69.	\$78,518.69	
Chandan Sharma	2539	\$73,333.33	WMI	Cash LTI Component	Disallowed	\$3,815.42
		\$504,478.80		Wrong Party Component – WMB CIC Agreement	Disallowed	
		\$3,815.42		WMI SERAP Component. WMILT's books and records reflect an account balance of \$3,815.42.	\$3,815.42	
Ann Tierney	3862	\$100,000.00	WMI	Cash LTI Component	Disallowed	\$16,461.26
		\$701,036.66		Wrong Party Component – WMB CIC Agreement	Disallowed	
		\$41,648.67		WMI SERAP Component. WMILT's books and records reflect an account balance of \$16,461.26.	\$16,461.26	

**Exhibit C**

**WaMu Severance Plan**

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# **WaMu Severance Plan**

**Amended and Restated  
Effective January 1, 2008**

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## PREAMBLE

Washington Mutual, Inc. has established the WaMu Severance Plan (the "Plan") with the intention of providing benefits to Eligible Employees of Washington Mutual, Inc. and its Affiliates (the "Company"), in the event of a job elimination. This document sets forth the basic terms that are applicable to all eligible participants. Provisions that apply exclusively to eligible employees of acquired companies are set forth in appendixes to this document. The Plan is intended to be a welfare benefit plan governed by ERISA and is intended to constitute a single plan.

## SECTION 1. DEFINITIONS

For the purpose of this Plan, the following definitions shall apply unless the context requires otherwise. Words used in the masculine gender shall apply to the feminine, where applicable, and wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural. The words "Section" or "Section" in this Plan shall refer to an Section or Section of this Plan unless specifically stated otherwise. Compounds of the word "here" such as "herein" and "hereof" shall be construed to refer to another provision of this Plan, unless otherwise specified or required by the context. It is the intention of the Company that the Plan be governed the provisions of the Code and ERISA and that all its provisions shall be construed to that result.

In determining the time within which an event or action is to take place for purposes of the Plan, no fraction of a day shall be considered, and any act, the performance of which would fall on a Saturday, Sunday, holiday or other non-business day, may be performed on the next following business day.

1.1 Acquired Company. Any company or part of a company acquired by the Company either through an asset purchase or stock purchase.

1.2 Base Pay. Base Pay includes salary, but does not include bonus, commissions, incentives (except as noted in this Section 1.2) or any other compensation. For salaried employees, weekly Base Pay means annual salary divided by Fifty Two (52). For hourly employees, weekly Base Pay means base hourly rate times Forty (40). Base Pay includes incentives and commissions, but only if they are guaranteed or are not dependent upon achievement of certain goals or objectives.

1.3 Basic Program. The portion of the Severance Plan set forth in this document, not including the appendixes.

1.4 Cause. Any of the following shall constitute cause:

- (a) Participant violates the Company's policies regarding drug or alcohol use on a recurring basis,



(b) Participant is convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement) or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving dishonesty, breach of trust or money laundering; or

(c) Participant has engaged in: (a) dishonesty or fraud, (b) destruction or theft of property of the Company or a Subsidiary, (c) physical attack on another employee, (d) willful malfeasance or gross negligence in the performance of Participant's duties, or (e) misconduct materially injurious to the Company.

1.5 Change in Control. Any of the following shall constitute a Change in Control:

(a) The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as amended from time to time), other than Washington Mutual, Inc., a Subsidiary or any employee benefit plan of the Company, of shares representing more than 25% of (i) the common stock of Washington Mutual, Inc., (ii) the aggregate voting power of Washington Mutual, Inc.'s voting securities or (iii) the total market value of Washington Mutual, Inc.'s voting securities;

(b) During any period of 25 consecutive calendar months, a majority of the board of directors of Washington Mutual, Inc. (the "Board") ceasing to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; provided that, any director appointed or elected to the Board to avoid or settle a threatened or actual proxy contest shall in no event be deemed to be an individual referred to in clauses (i), (ii) or (iii) above;

(c) The good-faith determination by the Board that any Person or group (other than a Subsidiary or any employee benefit plan of the Company) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of Washington Mutual, Inc., whether through the ability to exercise voting power, by contract or otherwise;

(d) The merger, consolidation, share exchange or similar transaction between Washington Mutual, Inc. and another Person (other than a Subsidiary) other than a merger in which the stockholders of Washington Mutual, Inc. immediately before such merger, consolidation or transaction own, directly or indirectly, immediately following such merger, consolidation or transaction, at least seventy-five percent (75%) of the combined voting power of the surviving entity in such

merger, consolidation or transaction in substantially the same proportion as their ownership immediately before such merger, consolidation or transaction; or

(e) The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of Washington Mutual, Inc.'s assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

(f) The following definitions shall apply for purposes of Section 1.5:

1. "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

2. "Subsidiary" shall mean a corporation that is wholly owned by the Company, either directly or through one or more corporations that are wholly owned by the Company.

1.6 Code. The Internal Revenue Code of 1986, as amended:

1.7 Company. Washington Mutual, Inc. and its subsidiaries and affiliates.

1.8 Eligible Employee. Any "regular" employee of the Company who is scheduled to work at least 20 hours per week. The following are not considered Eligible Employees:

(a) workers hired through a contract with any other unrelated entity, including but not limited to contingent staffing companies, professional employer organizations, temporary agencies or other similar entities;

(b) employees hired for a fixed or limited term;

(c) employees who are classified in the Company's Human Resources Information System as "fully commissioned" are not eligible to participate in the Plan even if they receive a minimum incentive, guaranteed incentive or other similar payments; and

(d) an individual who is classified as an independent contractor or another non-employee position by the Company even if such individual is subsequently reclassified by a court of law or a regulatory body as a common law employee of the Company.

1.9 ERISA. The Employee Retirement Income Security Act of 1974, as amended.

1.10 Job End Date. The date a Participant's job is to be eliminated. Job End Date will be set forth in the notice issued pursuant to Section 4 and is subject to change in accordance with

that Section. "Original Job End Date" refers to the date set forth in the first notice without regard to any acceleration or extension of that date.

1.11 Job Elimination. Has the meaning set forth in Section 2.3.

1.12 Notification. Has the meaning set forth in Section 4.

1.13 Participant. An Eligible Employee who becomes eligible for benefits under this Plan by satisfying the requirements of Section 2.

1.14 Plan. The Severance Plan, as amended from time to time. The Plan is comprised of this document (the "Basic Program") and any appendixes attached hereto (the "Acquisition Programs").

1.15 Severance Agreement. A written agreement provided by the Company by which a Participant releases any claims he might have against the Company in exchange for the benefits set forth in Section 3 which the Company is not otherwise obligated to provide.

1.16 Termination Date. The last active day of employment. For these purposes, an employee will be deemed to have terminated on the last day of employment at 5:00 p.m. in the Participant's time zone.

1.17 Service. A "Year of Service" means a full year of continuous employment with Company measured on each anniversary date from the Participant's date of hire. Partial years will be ignored. Years of service will be calculated by using Participant's hire date and Termination Date. For purposes of this calculation, hire date will be the Participant's latest hire date. Prior service with the Company or Acquired Companies shall not be counted toward Years of Service unless otherwise specified in an appendix to the Plan. In the case of an acquisition, Years of Service will be determined based on the records provided by the Acquired Company, which shall be conclusive; no adjustment will be made for any reason.

## SECTION 2. ELIGIBILITY

2.1 Requirements. An Eligible Employee will be eligible for benefits under Section 3 only if he:

- (a) experiences a Job Elimination; and
- (b) signs and returns a Severance Agreement within 21 business days or within such other period or by such other date specified in the "Notification."

2.2 Exceptions. An Eligible Employee is not eligible to receive benefits under this Plan if he is eligible to receive benefits or payments from any other severance plan, arrangement, agreement, or program or if he has received such payment within the last two years from the Company or any Acquired Companies.

2.3 Job Elimination. The Eligible Employee's position is eliminated because of corporate restructuring, downsizing, or a reduction in force and, as a result, his employment with the Company terminates. Job elimination does not include termination by the Company for any other reason or voluntary termination. Whether or not a position is being eliminated due to corporate restructuring, downsizing, or a reduction in force is conclusively determined by the responsible manager. If an Eligible Employee's position is eliminated but he accepts another position with the Company, he will not become a Participant and will not be eligible for Benefits hereunder. For purposes of this section a Participant who is designated as a Level 6 employee will also be deemed to have experienced a job elimination if his employment is terminated for any reason other than for Cause within 18 months after a Change in Control.

2.4 Loss of Eligibility. An Eligible Employee who would otherwise be eligible under this Section 2, will not be eligible for benefits under the Plan if he rejects an offer of another position within the Company provided that the new position:

- (a) has Base Pay that is at least eighty percent (80%) of the Base Pay for the position that is being eliminated; and
- (b) does not increase Eligible Employee's one-way commute from his primary residence to his place of work by 25 miles or more.

2.5 Repayment Upon Rehire. If a Participant has received Severance Pay and subsequently becomes employed by the Company, Participant will be required to repay a pro-rata portion of the Severance Pay. The pro-rata portion to be repaid will be equal to:

$$\left( \frac{\text{Number of weeks between Termination Date and rehire date}}{\text{Number of weeks of Severance Pay}} \right) \times \text{Severance Pay}$$

Reemployment also includes employment by an unrelated entity that provides services to the Company through a contract with the Company.

2.6 Leave of Absence. If an employee's job is eliminated while he is on unpaid leave of absence that is not protected by federal or state law, including but not limited to the Family Medical Leave Act, he will not be eligible for benefits under this Plan. For purposes of this Section 2.6, an employee's job is considered eliminated effective on the Job End Date.

### SECTION 3. BENEFITS

3.1 In General. If a Participant meets the eligibility requirements he will be eligible for Severance Pay based on the appropriate schedule set forth in Section 3.2.

3.2 Severance Pay. Except as noted in Section 3.2(d) below, Severance Pay is equal to Base Pay for the number of weeks indicated in the table in subsection (a), and the number of weeks indicated in subsection (b), if any.

(a) The number of weeks of basic Severance Pay are calculated as follows:

Senior Leader	Levels 6-8		Levels 9-13	
	Years of Service	Total Weeks	Years of Service	Total Weeks
4 weeks per year Min: 16 weeks Max: 52 weeks	< 6 mos	4.0	< 6 mos	3.0
	6-23 mos	8.0	6-23 mos	6.0
	2 yrs	10.0	2 yrs	7.5
	3	12.0	3	9.0
	4	14.0	4	10.5
	5	16.0	5	12.0
	6	18.0	6	13.5
	7	20.0	7	15.0
	8	22.0	8	16.5
	9	24.0	9	18.0
	10	26.0	10	19.5
	11	28.0	11	21.0
	12	30.0	12	22.5
	13	32.0	13	24.0
	14	34.0	14	25.5
	15	36.0	15	27.0
	16	38.0	16	28.5
	17	40.0	17	30.0
	18	42.0	18	31.5
	19	44.0	19	33.0
	20	46.0	20	34.5
	21	48.0	21 or more	36.0
	22	50.0		
	23 or more	52.0		

- (b) Any Participant who is required to repay a portion of Severance Pay pursuant to Section 2.5 will be entitled to additional weeks of Base Pay equal to the number of weeks of Severance Pay he was required to repay upon rehire.
- (c) Severance Pay will be reduced dollar for dollar by the amount of any pay received during a period when the Participant is on Nonworking Notice, provided that Severance Pay will not be reduced to less than one week of Severance Pay.
- (d) Notwithstanding the foregoing, a Participant who is designated as a Level 6 employee at the time of the Change in Control will be entitled to Severance Pay equal to one and a half times his annual compensation, reduced by any other payments due under this Section 3.2 if his employment is terminated for any reason other than for Cause within 18 months after the Change in Control. For purposes of this Section 3.2(d), annual compensation will include base pay at the time of the Change in Control, plus the greater of: (i) the target bonus or incentive pay for the current year; or (ii) the actual bonus or incentive pay for the preceding year.

3.3 Payment Method. Severance Pay will be paid to Participant in a lump sum payment unless the Plan Administrator determines, in its sole discretion, that periodic payments or other forms of payment may be made in lieu of the lump sum payment. State and federal taxes will be withheld from the payment as required by law.

3.4 Loss of Some or All Benefits. If a Participant has received Severance Pay and subsequently becomes employed by the Company, Participant will be required to repay a pro-rata portion of the Severance Pay pursuant to Section 2.5.

3.5 Limitation on Payments. In the event that Participant would, except for this Section 3.6, be subject to a tax pursuant to Section 4999 of the Code; or any successor provision that may be in effect, as a result of "parachute payments" (as that term is defined in Sections 280G(b)(2)(A) and 280G(d)(3)) made pursuant to the Plan, or a deduction would not be allowed to the Company for all or any part of such payments, by reason of Section 280G(a), or any successor provision that may be in effect, such payments shall be reduced, eliminated, or postponed in such amounts as are required to reduce the aggregate "present value" (as that term is defined in Section 280G(d)(4)) of such payments to one dollar less than an amount equal to three times Participant's "base amount," (as that term is defined in Sections 280G(b)(3)(A) and 280G(d)(1) and (2)) to the end that Participant is not subject to tax pursuant to such Section 4999 and no deduction is disallowed by reason of such Section 280G(a).

3.6 Death of Participant. If a Participant dies before his Job End Date, no benefits will be paid under the Plan. If a Participant dies after his Job End Date but before he has

received Severance Pay under the Plan, payment will be made to his beneficiaries or to his estate provided that his personal representative signs and returns the Severance Agreement.

#### **SECTION 4. NOTIFICATION**

4.1 General. When Participant's position is to be eliminated, Participant will be notified in writing ("Notice"). Only a notice issued by the Transition Services Group (or its successor) constitutes notice under this Plan. The notice will indicate Participant's Job End Date.

4.2 Extension and Acceleration. The Company reserves the right to extend, cancel or accelerate Participant's Job End Date in accordance with the following rules:

(a) A Participant's Job End Date may be accelerated at any time by the Company. If the Job End Date is accelerated at any time within fourteen (14) days of a Participant's Original Job End Date, the Company will pay Participant his regular salary through the Original Job End Date in addition to any Severance Pay.

(b) A Participant's Job End Date may be extended or canceled by the Company at any time, however, if the Company notifies a Participant of its intent to extend or cancel the Job End Date within fourteen (14) days of the Original Job End Date, the Participant may reject such extension or cancellation, voluntarily terminate on the Original Job End Date, and receive full Severance Pay under this Plan.

4.3 Plan Document Controls. Notices may indicate eligibility for specific benefits under this Plan, including benefits set forth in an Appendix, and an estimate of actual benefits. However, this information is provided merely as a courtesy and does not convey any right upon the Participant to receive a particular benefit nor does it mean that Participant is eligible for a particular program. The amount of any benefit and eligibility for a particular benefit are governed by this Plan document, including any appendixes thereto.

#### **SECTION 5. ADMINISTRATION COMMITTEE**

5.1 Plan Administrator. The Plan Administrator shall be the Plan Administration Committee (the "Committee"). The Administrator may delegate any of its duties, responsibilities, or authority to one or more person (by name or by title), committee, or unrelated service provider. The Plan Administrator has absolute discretion to make all decisions under this Plan, including making determinations about eligibility for and the amounts of benefits payable under this Plan and interpreting all provisions of this plan. All decisions of the Plan Administrator are final, binding and conclusive.

5.2 Powers of the Administration Committee. The Committee shall have the following powers and duties:

- (a) To direct the administration of the Plan in accordance with the provisions herein set forth;
- (b) To adopt rules of procedure (including distribution procedures) necessary for the administration of the Plan provided the rules are not inconsistent with the terms of the Plan;
- (c) To interpret the provisions of the Plan and determine all questions with respect to rights of Participants under the Plan, including but not limited to rights of eligibility of a Participant to participate in the Plan, and the value of a Participant's benefit.
- (d) To interpret and enforce the terms of the Plan and the rules it adopts;
- (e) To review and render decisions with respect to a claim for, (or denial of a claim for) a benefit under the Plan;
- (f) To furnish the Company with information which the Company may require for tax or other purposes;
- (g) To engage the service of counsel (who may, if appropriate, be counsel for the Company) and agents whom it may deem advisable to assist it with the performance of its duties;
- (h) To receive from the Company and from Participants such information as shall be necessary for the proper administration of the Plan; and
- (i) To interpret and construe the terms of the Plan in its discretion.

The Committee shall have no power to add to, subtract from, or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a benefit under the Plan provided that the Committee may amend the Plan to comply with changes in relevant laws, to provide for more efficient administration or other changes it deems appropriate as long as the changes do not materially increase the obligation or liabilities of the Company. Nonetheless, the Committee shall have absolute discretion in the exercise of its powers in this Plan. All exercises of power by the Committee hereunder shall be final, conclusive and binding on all interested parties, unless found by a court of competent jurisdiction, in a final judgment that is no longer subject to review or appeal, to be arbitrary and capricious.

## SECTION 6. ACQUISITION PROGRAMS

6.1 In General. Special provisions that apply only to certain classes of former employees of Acquired Companies shall be set forth in the appendixes to this document (the "Acquisition Programs"). The terms set forth in the appendixes shall control to the extent they



are inconsistent with the terms set forth in this Basic Program document. All other terms in this Basic Program document shall apply to the Acquisition Programs.

6.2 Expiration. Acquisition Programs are intended to provide benefits to Participants of certain Acquired Companies should their positions be eliminated within a certain time after the acquisition. Every Acquisition Program will expire on the expiration date set forth in the appendix that corresponds to such program, provided that if a Participant in an Acquisition Program is notified before the expiration date that his position is being eliminated within six (6) months of the expiration date, the acquired Participant will continue to be eligible for the Acquisition Program benefits provided that he is actually terminated within six (6) months of the expiration date.

6.3 Authority to Adopt. The Company may add Appendixes at any time by amending the Plan. In addition, Appendixes may be added by adopting and approving a binding agreement to acquire the stock or some or all of the assets of an unrelated entity. If the Company adopts and approves such an agreement, and under the terms of that agreement, the Company is obligated to provide severance benefits to employees of the acquired company under terms that are different from the terms of the Basic Program, the terms will be included in an Appendix. The Company's most senior Human Resources executive shall have the authority to prepare and execute the Appendix on behalf of the Company.

6.4 Reliance on Records. In administering the Acquisition Programs, the Plan Administrator will conclusively rely on records provided by the Acquired Company for purposes of determining eligibility and benefits.

## SECTION 7. COMPANY ADMINISTRATIVE PROVISIONS

7.1 Amendment to Termination. The Plan may be amended or terminated by the Company or the Plan Administration Committee (for certain enumerated reasons) at any time when, in its judgment, such amendment or termination is necessary or desirable. No such termination or amendment shall affect the rights of any individual who is then entitled to receive Severance Pay at the time of such amendment or termination.

Severance Pay is not intended to be a vested right. The Committee reserves the right to interpret the Plan, prescribe, amend and rescind rules relating to it, determine the terms and provisions of the Severance Payments and make all other determinations it deems necessary or advisable for the administration of the Plan. The determination of the Committee on all matters regarding the Plan shall be conclusive.

Notwithstanding the foregoing, upon a Change in Control, and for a period of two years thereafter, the Company or its successor shall have no authority to amend the Plan to the extent that the amendment would interfere with change or reduce benefits that would otherwise be payable under Section 3.2 (d).

7.2 Claim Procedure.

(a) In General. If a Participant's claim for benefits is denied, the Plan Administrator will furnish written notice of denial to the Participant making the claim (the "Claimant") within sixty (60) days of the date the claim is received, unless special circumstances require an extension of time for processing the claim. This extension will not exceed sixty (60) days, and the Claimant must receive written notice stating the grounds for the extension and the length of the extension within the initial sixty (60) day review period. If the Plan Administrator does not provide written notice, the Claimant may deem the claim denied and seek review according to the appeals procedures set forth below.

(b) Denial Notice. The notice of denial to the Claimant shall state:

(i) the specific reasons for the denial;

(ii) specific references to pertinent provisions of the Plan upon which the denial was based;

(iii) a description of any additional material or information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed; and

(iv) a statement that the Claimant may request a review upon written application to the Plan Administrator, review pertinent Plan documents, and submit issues and comments in writing, and that any appeal that the Claimant wishes to make of the adverse determination must be in writing to the Plan Administrator within ninety (90) days after the Claimant receives notice of denial of benefits.

The notice of denial of benefits shall identify the name and address of the Administrator to which the Claimant may forward an appeal. The notice may state that failure to appeal the action to the Plan Administrator in writing within the ninety (90) day period will render the determination final, binding and conclusive.

7.2 Appeal Procedure. If the Claimant appeals to the Administrator, the Claimant or his or her authorized representative may submit in writing whatever issues and comments he or she believes to be pertinent to the appeal. The Administrator shall reexamine all facts related to the appeal and make a final determination about whether the denial of benefits is justified under the circumstances. The Administrator shall advise the Claimant in writing of:

(a) its decision on appeal;

(b) The specific reasons for the decision; and

(c) The specific provisions of the Plan upon which the decision is based.

Notice of the Administrator's decision shall be given within sixty (60) days of the Claimant's written request for review, unless additional time is required due to special circumstances. In no event shall the Administrator render a decision on an appeal later than one hundred twenty (120) days after receiving a request for a review.

## SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Severance Agreement. Participants will receive the Severance Agreement after they receive Notification of Job Elimination. The Severance Agreement will not be valid unless it is signed and returned after the Termination Date but within 21 business days or other time period prescribed by the Administrator. The Severance Agreement will be generally effective for any claims against the Company through the Termination Date, but will not cover any claims or appeal processes set forth in any ERISA plans sponsored by the Company. Failure to sign and return the Severance Agreement within twenty one (21) business days will result in Participant being ineligible for Severance Pay under the Plan.

8.2 Divestiture. If a Participant is offered a position with another company that has purchased some or all of the assets of the Company or has purchased the stock of the Company or one of its affiliates or subsidiaries, the Participant will not be entitled to severance benefits under the Plan, provided that the job offered meets the requirements of Section 2.4(a) and 2.4(b).

8.3 Outsourcing. If a Participant is offered a position with an entity unrelated to the Company in connection with a decision to outsource particular services, Participant will not be eligible for severance under this Plan.

8.4 Governing Law. To the extent not preempted by ERISA, the terms of the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington, including all matters of construction, validity and performance.

### 8.5 Miscellaneous Provisions.

(a) Anti-Alienation. Severance Pay and benefits under the Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge prior to actual receipt thereof by an Participant; and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge prior to such receipt shall be void; and the Company shall not be liable in any manner for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any Severance Pay or benefits under the Plan.

(b) Employment at Will. Nothing contained herein shall confer upon any Participant the right to be retained in the service of the Company or an affiliate nor limit the right of the Company or an affiliate to discharge or otherwise deal with any Participant with regard to the existence of the Plan.

(c) Unfunded. The Plan shall at all times be entirely unfunded and no provision shall at any time be made with respect to segregating assets of the Company or

an affiliate for payment of any Severance Pay or Severance Benefits hereunder. No Participant or any other person shall have any interest in any particular assets of the Company or an affiliate by reason of the right to receive Severance Pay or Severance Benefits under the Plan and any such Participant or any other person shall have only the rights of a general unsecured creditor of the Company or an affiliate with respect to any rights under the Plan.

(d) Notwithstanding any provision of this Plan to the contrary, if, at the time of Participant's termination of employment with Washington Mutual, he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Participant pursuant to this Plan would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Plan until the earlier of (a) the date that is six (6) months following Participant's termination of employment with Washington Mutual, or (b) the Participant's death. The provisions of this Section 8.5(d) shall only apply to the extent required to avoid Participant's incurrants of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Plan would cause Participant to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, Washington Mutual may reform such provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

Pursuant to the authority delegated to me by the Plan Administration Committee, this Plan is hereby adopted effective as of the date specified above:



Daryl D. David  
Executive Vice President  
Human Resources  
Washington Mutual, Inc.

**Exhibit D**

**Sample Cash LTI Agreement**

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Washington Mutual, Inc  
Notice of Cash Long-Term Incentive Award

Date: February 1, 2008  
To: NAME  
From: Leadership Rewards, Stock Administration

We are pleased to inform you that on January 22, 2008 you were awarded a Cash Long-Term Incentive Award ("Cash LTI Award") in the amount of \$XX.XX as a reward for your continued service to Washington Mutual (the "Company" or "WaMu"). The Cash LTI Award is subject to the terms and conditions of this agreement (the "Agreement").

***Terms of Award***

To earn the Cash LTI Award and receive a payment, you must remain continuously employed by the Company through each applicable anniversary date

If you fulfill these requirements the Cash LTI Award will be made in cash and will vest and become payable in three equal installments on the anniversary date of the Award over a three year period. Payment will be made in cash. You must be employed on each anniversary date in order to receive each portion of the Award. The installments are as follows:

<u>Anniversary Date</u>	<u>Dollar Amount Payable</u>
January 22, 2009	<u>\$XX.XX</u>
January 22, 2010	<u>\$XX.XX</u>
January 22, 2011	<u>\$XX.XX</u>

Subject to your continued employment with the Company, the Cash LTI Award will be paid in accordance to the above schedule, less taxes and withholding, in the pay cycle immediately following the applicable anniversary date.

You will continue to be subject to all Company policies and management directives. Your employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the Cash LTI Award. This letter merely sets forth the terms of the Cash LTI Award that may be paid to you for achievement of the stated criteria.

### ***Acceptance of the Cash LTI Award***

You will not be entitled to any of the benefits under this Cash LTI Award unless and until you accept this Award agreement no later than the 90<sup>th</sup> day following the date hereof. If you fail to accept the Cash LTI Award as specified above by April 21, 2008 the Cash LTI Award shall terminate without consideration and be deemed cancelled upon the expiration of such 90-day period, unless the Committee determines, in its sole discretion, that any delay was for good cause (including your death, disability or other incapacitation). By accepting the Cash LTI Award, you irrevocably agree on behalf of yourself and your successors and permitted assigns to all the terms and conditions of the Cash LTI Award as set for the in or pursuant to this Agreement .)

### ***Termination of the Award***

You must be employed on each applicable anniversary date in order to receive each portion of the Award. Vesting and payment of the Award will accelerate upon a Change in Control (as defined in the form of Change in Control Agreement for Senior Leaders), a Termination of Service by reason of death or Disability , or a Termination of Service other than for Cause at or after age 65. In case of death, disability or retirement, your payment will be processed as soon as administratively practical after we receive notice of your death, disability or retirement.

### ***Committee Authority***

Any question concerning the interpretation of this Agreement or the Plan, and any controversy that may arise under the Plan or this Agreement shall be determined by the Committee (including any person(s) to whom the Committee has delegated its authority) in its sole and absolute discretion. Such decision by the Committee shall be final and binding

### ***Agreement Not to Solicit Personnel***

As a condition of this Cash LTI Award, you agree that you will not solicit WaMu personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company to terminate or diminish his or her relationship with the company, or to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the Cash LTI Award promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.

### ***Intellectual Property Ownership***

WaMu will own all rights to the results of your work, including inventions and other intellectual property developed using Company equipment, supplies, facilities or trade secret information.



It will also own all rights to the results of any other effort by you (outside of your performance of WaMu work) that relate directly to your work or to the Company's business or actual or demonstrably anticipated research or development. WaMu's rights extend to anything that is authored, conceived, invented, written, reduced to practice, improved or made by you, alone or jointly with others, during the period of your employment by the Company or a Related Company. To the extent that the results of your work or other effort constitute a "work made for hire" as defined under U.S. copyright law, the copyright shall belong solely to the Company. Otherwise, to the extent that such results are legally protectable, then you hereby irrevocably assigns all copyrights, patent rights, and other proprietary rights therein to the Company, and no further action by you is required to grant ownership to WaMu. You will assist in preparing and executing documents, and will take any other steps requested by WaMu, to vest, confirm or demonstrate its ownership rights, and you will not at any time contest the validity of such rights. You understand that the termination of your employment will not terminate or invalidate any of your obligations, or WaMu's rights, as described above.

You understand that the above commitments are in furtherance of the WaMu Intellectual Property Policy (a copy of which you have had an opportunity to review and is also found on wamu.net), which is incorporated herein but not set forth in full due to space limitations. If you live or work in Washington, California, Illinois, or in any other state mentioned in the Invention Notice section of the policy, then the above assignment does not apply to inventions described in the Invention Notice for your state.

### ***Notice***

Whenever any notice is required or permitted hereunder, such notice must be in writing and delivered in person or by mail (to the address set forth below if notice is being delivered to the Company) or electronically. Any notice delivered in person or by mail shall be deemed to be delivered on the date on which it is personally delivered, or, whether actually received or not, on the third business day after it is deposited in the United States mail, certified or registered, postage prepaid, addressed to the person who is to receive it at the address that such person has theretofore specified by written notice delivered in accordance herewith. Any notice given by the Company to you directed to you at your address on file with the Company shall be effective to bind you and any other person who shall have acquired rights under this Agreement. You or the Company may change, by written notice to the other, the address previously specified for receiving notices. Notices delivered to the Company in person or by mail shall be addressed as follows:

Washington Mutual, Inc.  
Attn: Leadership Rewards, Stock Administrator  
Mail Stop WMC 0705  
1301 Second Avenue  
Seattle, WA 98101





***Other Terms***

This letter sets forth all of the terms and conditions upon which the Cash LTI Award may be paid to you, and it supersedes any other representations about this bonus opportunity. No one at the Company has the authority to make any promises to you that are different from those set forth in this letter on the subject of this Cash LTI Award.

IN WITNESS WHEREOF, the parties have executed this Agreement dated below.

**WASHINGTON MUTUAL, INC.**

Daryl David  
Chief HR Officer

\_\_\_\_\_  
Employee's Signature

Date Signed: \_\_\_\_\_

**Exhibit E**

**Sample WMB Retention Bonus Agreement  
(with personal information redacted)**

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August 19, 2008

Dear [REDACTED]

**Re: Special Bonus Opportunity**

I'm pleased to offer you this opportunity to earn a special bonus of \$100,000.00 as a reward for your continued service to Washington Mutual (the "Company" or "WaMu").

***Terms of Offer***

To receive the bonus, you must remain an employee of the Company, have a current overall performance rating of Solid Contributor or better, and continue to perform your job duties as required and in accordance with Company policies and procedures through June 30, 2010 (the "Bonus Period"). The requirement that you remain an employee of the Company through the Bonus Period is referred to as the "Employment Requirement." Additionally, as noted below, a condition to your entitlement to the special bonus is your compliance with your obligations under this agreement.

If you fulfill these requirements and also meet the other conditions in this letter, you will be entitled to the bonus of \$100,000.00. The bonus will be paid in a lump sum, less taxes and withholding, in the pay cycle following the Bonus Period. This payment will be in addition to any other bonus for which you may normally be eligible.

You will continue to be subject to all Company policies and management directives. Your employment will continue to be terminable by you or the company at will, without cause or advance notice. Nothing in this letter is intended to suggest any guaranteed period of continued employment or any guarantee that you will be paid the special bonus. This letter merely sets forth the terms of a special bonus that may be paid to you for achievement of the stated criteria.



August 19, 2008

Page 2

There are two situations in which the Employment Requirement is waived for purposes of this retention bonus. First, if your job is eliminated (as defined in the WaMu Severance Plan) you will be treated as having fulfilled the Employment Requirement as long as you remain employed through your Job End Date (as defined in the WaMu Severance Plan). Second, you will be treated as having fulfilled the Employment Requirement if, within two years after a change in control (as defined in Section 5 of your Change in Control ("CIC") Agreement), your employment is terminated by the Company or a successor for any reason other than for cause (as defined in Section 5 of your CIC Agreement) or you resign for good reason (as defined in Section 5 of your CIC Agreement) and no reason exists for the Company or a successor to terminate you for cause (as defined in Section 5 your CIC Agreement).

***Agreement Not to Solicit Personnel***

As a condition of this offer, you agree that you will not solicit Washington Mutual personnel for a period of one year after your employment here ends. This means that, regardless of the reason for termination of your employment, you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any person who is then a WaMu employee or a contractor or consultant whom you have worked with, supervised, or been exposed to confidential information about while associated with the Company ("WaMu Employees or Contractors") to terminate or diminish his or her relationship with the company; and you will not directly or indirectly solicit, encourage, induce, or enter into any arrangement with any WaMu Employees or Contractors to seek or accept employment or a similar relationship with any other business or entity including, but not limited to, one that competes with or provides services comparable to those provided by WaMu. If you violate this obligation, you agree to return the bonus promptly, and agree that the Company shall also be entitled to pursue whatever other remedies are available to it.



**Exhibit F**

**Sample WMB CIC Agreement  
(with personal information redacted)**

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COPY

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (the "Agreement") is between the Subsidiary (as defined below) of Washington Mutual, Inc. (the "Company") by which the undersigned employee is currently employed ("Washington Mutual") and the undersigned employee of Washington Mutual ("Employee"). The parties agree as follows:

1. Employment. Washington Mutual hereby employs Employee, and Employee hereby accepts employment, on the terms in this Agreement.

2. Duties. Employee shall perform such duties as Washington Mutual may from time to time direct.

3. Compensation & Benefits. Employee's compensation and benefits shall be as determined by Washington Mutual from time to time.

4. Performance of Duties. Employee agrees that during his or her employment with Washington Mutual: (a) Employee will faithfully perform the duties of such office or offices as he or she may occupy, which duties shall be such as may be assigned to him or her by Washington Mutual; (b) Employee will devote to the performance of his or her duties all such time and attention as Washington Mutual shall reasonably require, taking, however, from time to time, such reasonable vacations as are consistent with his or her duties and Washington Mutual policy; and (c) Employee will not, without Washington Mutual's express consent, become actively associated with or engaged in any business or activity during the term of this Agreement other than that of Washington Mutual (excepting customary family and personal activities, which may include management of personal investments so long as it does not entail active involvement in a business enterprise) and Employee will do nothing inconsistent with his or her duties to Washington Mutual.

5. Termination.

(a) Either Washington Mutual or Employee may terminate Employee's employment at any time in its sole discretion, with or without advance notice. Except as expressly provided in this Agreement or under any employee benefit plan maintained by the Company or its Subsidiaries, upon termination of employment, Washington Mutual shall have no liability to pay any further compensation or any other benefit or sum whatsoever to Employee. Notwithstanding any other provision of this Agreement, this Agreement shall terminate and no further amounts or benefits shall be payable under this Agreement if, at least 120 days prior to a Change in Control (as defined below), Employee transfers to another Washington Mutual position and, under Washington Mutual's policies then in effect, persons occupying that position or a similar position are not eligible to receive a change in control agreement.

(b) Upon termination of employment, Employee's rights under all employee pension plans, employee welfare benefit plans, bonus plans and stock option and restricted stock plans shall be determined under the terms of the plans and grants themselves except as otherwise specifically provided in this Agreement.

(c) If (i) Employee's employment is terminated by Washington Mutual or its successor without "cause" (as defined below) upon or within two years after a Change in Control or (ii) Employee resigns for "good reason" (as defined below) upon or within two years after a Change in

[REDACTED]

Control and no reason for Washington Mutual to terminate Employee for "cause" exists, then Employee shall be entitled to receive, within five business days after the effective date of such termination or resignation, from Washington Mutual or its successor, a lump sum equal to two times Employee's annual compensation. Notwithstanding the preceding, the amount paid to employee under this Section 5(c) shall be offset by any payment received by Employee from Washington Mutual or any acquired company pursuant to: (i) a severance or change in control agreement, arrangement or plan, with the exception of any such payment received more than two years before either clause (i) or clause (ii) of this Section 5(c) was satisfied, or (ii) The Worker Adjustment and Retraining Notification Act (WARN Act) or any similar state or local law.

(d) Upon a Change in Control, the lapse of the restrictions on Employee's restricted stock, restricted stock units, stock options and other equity awards shall automatically be accelerated (and, to the extent applicable, the option or other award shall be fully exercisable) unless the applicable award agreement provides otherwise.

(e) For purposes of Section 5(c), Employee's "annual compensation" shall equal the sum of (i) the highest of the Employee's annual base salary for the calendar year in which termination or resignation occurs, the prior calendar year, or the calendar year immediately preceding the year in which the Change in Control occurred, (ii) the highest of (A) the Employee's unadjusted target bonus for the calendar year in which the termination or resignation occurs, (B) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the prior calendar year (annualized if Employee was not employed by Washington Mutual for the entire previous calendar year), or (C) the Employee's actual bonus (including, for the avoidance of doubt, any portion of the actual bonus that was deferred or exchanged at the Employee's election for equity awards) for the calendar year immediately preceding the year in which the Change in Control occurred (annualized if Employee was not employed by Washington Mutual for the entire such calendar year), and (iii) the amount of the contributions or accruals made or anticipated to have been made on Employee's behalf to the Company's or its Subsidiaries' benefit plans for the calendar year in which the termination or resignation occurs, including without limitation contributions to and accruals under qualified and nonqualified defined contribution and defined benefit pension plans and plans qualified under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of this Section 5(e), bonus refers to monthly, quarterly, annual and other periodic performance-based bonuses based on individual and/or company results, and excludes non-periodic lump sum bonuses (such as sign-on and retention bonuses (even if such bonuses are also performance-based bonuses) and cash and non-cash prizes and awards, including awards from sales contests) and the value of equity awards except as otherwise specifically provided herein.

(f) Notwithstanding the foregoing, if any payment described in Section 5(c) and the value of any lapse of restrictions under Section 5(d), together with any other payments or transfers of property, would constitute a "parachute payment" under Section 280G of the Code, or any successor statute then in effect, the aggregate payments by Washington Mutual or its successor pursuant to Section 5(c) shall be reduced to an amount that, when combined with the value of any lapse of restrictions under Section 5(d) and any other payments or transfers of property taken into account under Section 280G, is one dollar less than the smallest sum that would be considered to be a "parachute" payment.

(g) For purposes of this Agreement, "Change in Control" shall mean:

1. The acquisition of ownership, directly or indirectly, beneficially or of record, by any Person (as defined below) or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date of this



Agreement), other than the Company, a Subsidiary or any employee benefit plan of the Company, or its Subsidiaries, of shares representing more than 25% of (i) the common stock of the Company, (ii) the aggregate voting power of the Company's voting securities or (iii) the total market value of the Company's voting securities;

2. During any period of 25 consecutive calendar months, a majority of the Board of Directors of the Company (the "Board") ceasing to be composed of individuals (i) who were members of the Board on the first day of such period, (ii) whose election or nomination to the Board was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of the Board or (iii) whose election or nomination to the Board was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of the Board; provided that, any director appointed or elected to the Board to avoid or settle a threatened or actual proxy contest shall in no event be deemed to be an individual referred to in clauses (i), (ii) or (iii) above;

3. The good-faith determination by the Board that any Person or group (other than a Subsidiary or any employee benefit plan of the Company or a Subsidiary) has acquired direct or indirect possession of the power to direct or cause to direct the management or policies of the Company, whether through the ability to exercise voting power, by contract or otherwise;

4. The merger, consolidation, share exchange or similar transaction between the Company and another Person (other than a Subsidiary), other than a merger in which the stockholders of Washington Mutual immediately before such merger, consolidation or transaction own, directly or indirectly, immediately following such merger, consolidation or transaction, at least seventy-five percent (75%) of the combined voting power of the surviving entity in such merger, consolidation or transaction in substantially the same proportion as their ownership immediately before such merger, consolidation or transaction; or

5. The sale or transfer (in one transaction or a series of related transactions) of all or substantially all of the Company's assets to another Person (other than a Subsidiary) whether assisted or unassisted, voluntary or involuntary.

(h) For purposes of this Agreement:

1. "Person" shall mean any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

2. "Subsidiary" shall mean a corporation that is wholly owned by the Company, either directly or through one or more corporations that are wholly owned by the Company.

3. "Related Company" shall mean any entity that is directly or indirectly controlled by the Company or any entity in which the Company has a significant equity interest, as determined by the Human Resources Committee of the Board.

(i) For purposes of this Agreement, Washington Mutual shall have "cause" to terminate Employee's employment if:

1. Employee violates the Company's or Washington Mutual's policies regarding drug or alcohol use on a recurring basis;

[REDACTED]

2. Employee is convicted of any felony or of a misdemeanor involving moral turpitude (including forgery, fraud, theft or embezzlement) or enters into a pretrial diversion or similar program in connection with the prosecution for an offense involving dishonesty, breach of trust or money laundering; or

3. Employee has engaged in: (a) dishonesty or fraud, (b) destruction or theft of property of the Company or a Subsidiary, (c) physical attack on another employee, (d) willful malfeasance or gross negligence in the performance of Employee's duties, or (e) misconduct materially injurious to the Company or a Subsidiary.

(j) For purposes of this Agreement, "good reason" for Employee to resign shall mean the occurrence of any of the following events without Employee's consent, provided that the Employee in all events shall have resigned within two years after the Change in Control:

1. The assignment of duties to Employee which (a) are materially different from Employee's duties immediately prior to the Change in Control, or (b) result in Employee having significantly less authority and/or responsibility than Employee had prior to the Change in Control.

2. A reduction of Employee's total pay opportunity from that in effect on the date of the Change in Control. Changes in the allocation of Employee's compensation between salary and incentive compensation, and changes to the criteria or method for determining incentive compensation amounts actually earned, shall not constitute "good reason" for Employee to resign. "Total pay opportunity" means base salary plus target incentive compensation, provided that in the case of incentive compensation for which a "target" is not defined (such as some sales commissions), the incentive component of the pay opportunity shall be the average incentive compensation of Employee during the 24 months preceding the Change in Control.

3. A relocation by more than 50 miles of Employee's principal place of employment as in effect on the date of the Change in Control, if the relocation increases the distance between Employee's principal residence and principal place of employment by more than 25 miles. Distances shall be measured by surface miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route.

(k) For purposes of this Agreement, Employee shall be considered to have resigned for "good reason" only if Washington Mutual fails to cure within 15 days after receiving a written demand to cure that specifies the circumstances constituting "good reason." Also, Employee shall be considered to have resigned for "good reason" only if the effective date of Employee's resignation is within 60 days after the effective date of the occurrence that constitutes "good reason."

6. Death or Disability. If Employee should die or become disabled at any time during his or her employment hereunder, neither Employee nor anyone claiming by, through or under him or her shall be entitled to any further compensation or other sum under this Agreement (but shall be entitled to payments made by insurers under policies of life and disability insurance and any sums which may become available under any employee benefit plan).

7. Confidentiality. Employee agrees that information not generally known to the public to which Employee has been or will be exposed as a result of Employee's employment by Washington Mutual is confidential information that belongs to the Company or its Subsidiaries. This includes information developed by Employee, alone or with others, or entrusted to Employee, or entrusted to the

[REDACTED]

Company or its Subsidiaries by its customers or others. The Company's and its Subsidiaries' confidential information includes, without limitation, information relating to the Company's or its Subsidiaries' trade secrets, know-how, procedures, purchasing, accounting, marketing, sales, customers, clients, employees, business strategies and acquisition strategies. Employee will hold the Company's and its Subsidiaries' confidential information in strict confidence and will not disclose or use it except as authorized by Washington Mutual and for Washington Mutual's benefit.

8. Possession of Materials. Employee agrees that upon conclusion of employment or request by Washington Mutual, Employee shall turn over to Washington Mutual all documents, files, office supplies and any other material or work product in Employee's possession or control that were created pursuant to or derived from Employee's services for Washington Mutual.

9. Resolution of Disputes. Any dispute arising out of or relating to this Agreement or Employee's employment (or termination of employment) shall be submitted to and resolved by final and binding arbitration as provided in the Binding Arbitration Agreement attached as Exhibit A, whether the claimant is Employee or Washington Mutual. Employee and Washington Mutual also agree to exhaust all remedies available under the Washington Mutual, Inc. Dispute Resolution Process, as in effect from time to time, before initiating arbitration; provided that Employee shall not be required to use or follow the Dispute Resolution Process before initiating arbitration of any claim that arises upon or within two years after a Change in Control. In any dispute in arbitration or court arising out of or relating to this Agreement, the losing party shall pay the prevailing party's reasonable attorneys' fees, costs and expenses.

10. Agreement Not To Solicit Personnel. In consideration for the mutual undertakings of the parties under this Agreement and Employee's access as an employee of Washington Mutual to employees, contractors and consultants of the Company and Related Companies, Employee agrees that, during Employee's employment with Washington Mutual, and for a period of one year following termination of employment, Employee will not in any manner, directly or indirectly, solicit, encourage, induce, or recruit any person who is then an employee, contractor, or consultant of the Company or a Related Company, and whom Employee worked with, supervised, or had access to confidential information about while employed by Washington Mutual, to seek or accept employment or a contractual or consulting engagement with any business that competes with or provides services comparable to those provided by the Company or its subsidiaries.

11. Intellectual Property Ownership. In addition, in consideration of the mutual undertakings of the parties under this Agreement, Washington Mutual will own all rights to the results of Employee's work, including inventions and other intellectual property developed using Company or its subsidiaries' equipment, supplies, facilities or trade secret information. It will also own all rights to the results of any other effort of Employee (outside of Employee's performance of Washington Mutual work) that relate directly to Employee's work or to the Company's or its subsidiaries' business or actual or demonstrably anticipated research or development. Washington Mutual's rights extend to anything that is authored, conceived, invented, written, reduced to practice, improved or made by Employee, alone or jointly with others, during the period of Employee's employment by Washington Mutual. To the extent that the results of Employee's work or other effort constitute a "work made for hire" as defined under U.S. copyright law, the copyright shall belong solely to Washington Mutual. Otherwise, to the extent that such results are legally protectable, then Employee hereby irrevocably assigns all copyrights, patent rights, and other proprietary rights therein to Washington Mutual, and no further action by Employee is required to grant ownership to Washington Mutual. Employee will assist in preparing and executing documents, and will take any other steps requested by Washington Mutual, to vest, confirm or demonstrate its ownership rights, and Employee will not at any time contest the validity of such rights.

Employee understands that the termination of Employee's employment will not terminate or invalidate any of Employee's obligations, or Washington Mutual's rights, as described above.

Employee understands that the above commitments are in furtherance of the WaMu Intellectual Property Policy (a copy of which Employee has had an opportunity to review and is also found on wamu.net), which is incorporated herein but not set forth in full due to space limitations. If Employee lives or works in Washington, California, Illinois, or in any other state mentioned in the Invention Notice section of the policy, then the above assignment does not apply to inventions described in the Invention Notice for Employee's state.

12. Remedies for Certain Breaches Related to Solicitation and Intellectual Property. Should Employee breach the agreements set forth in Section 10 or 11, in addition to any other remedy available to Washington Mutual, (a) the Employee shall immediately pay to Washington Mutual any payment made pursuant to Section 5(c); (b) pursuant to the relevant award agreements, any option that vested upon a Change in Control ("Option"), or portion of such Option, that remains unexercised shall terminate and cease to be exercisable; (c) pursuant to the relevant award agreements, for any Option, or portion of such Option, already exercised, Employee shall immediately pay to Washington Mutual any difference between the fair market value of the Option shares on the date of exercise and the exercise price of such Option shares; and (d) pursuant to the relevant award agreements, Employee will immediately pay to Washington Mutual the fair market value as of the Change in Control of any shares of restricted stock that vested upon a Change in Control. The parties agree that, to the extent the restrictions set forth in Sections 10 and 11 and this Section 12 are found to be unenforceable in any respect, this Section 12 shall be construed to be enforceable to the maximum extent permitted by law.

13. Miscellaneous.

(a) This Agreement is the entire agreement between the parties and may not be modified or abrogated orally or by course of dealing, but only by another instrument in writing duly executed by the parties. This Agreement replaces and supersedes all prior agreements on these subjects that Employee may have with the Company, or any Subsidiary, provided, however, that this Agreement shall supplement and shall not supersede any other agreement that Employee has signed in favor of the Company or any Subsidiary protecting the confidentiality of its confidential information or its interest in intellectual property. All such agreements remain in full force and effect. Employee acknowledges that Employee shall be entitled to change in control benefits, severance benefits or other employment separation benefits only as specifically provided in this Agreement (or, to the extent applicable according to its terms, as provided in the Washington Mutual, Inc. Special Severance Plan as in effect from time to time), notwithstanding the terms of any other representation, policy, severance plan, benefit plan or agreement.

(b) Notwithstanding any provision of this Agreement to the contrary, if, at the time of Employee's termination of employment with Washington Mutual, he or she is a "specified employee" as defined in Section 409A of the Code, and one or more of the payments or benefits received or to be received by Employee pursuant to this Agreement would constitute deferred compensation subject to Section 409A, no such payment or benefit will be provided under this Agreement until the earlier of (a) the date that is six (6) months following Employee's termination of employment with Washington Mutual, or (b) the Employee's death. The provisions of this Section 13(b) shall only apply to the extent required to avoid Employee's incurrance of any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder. In addition, if any provision of this Agreement would cause Employee to incur any penalty tax or interest under Section 409A of the Code or any regulations or Treasury guidance promulgated thereunder, Washington Mutual may reform such

provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

(c) This Agreement has been drafted in contemplation of and shall be construed in accordance with and governed by the law of the state of Employee's principal place of employment with Washington Mutual.

(d) Employee acknowledges that this Agreement has been drafted by counsel for Washington Mutual, and that Employee has not relied upon such counsel with respect to this Agreement.


(e) If a court or arbitrator of competent jurisdiction or governmental authority declares any term or provision hereof invalid, unenforceable or unacceptable, the remaining terms and provisions hereof shall be unimpaired and the invalid, unenforceable or unacceptable term or provision shall be replaced by a term or provision that is valid, enforceable and acceptable and that comes closest to expressing the intention of the invalid, unenforceable or unacceptable term or provision.

(f) Employee may not assign Employee's rights or delegate Employee's duties under this Agreement.

Washington Mutual may assign its rights and delegate its duties under this Agreement to the Company or any Subsidiary or to any purchaser of all or substantially all of Washington Mutual's assets. The transfer of Employee's employment from Washington Mutual to any other Subsidiary or to the purchaser of all or substantially all of the assets of Washington Mutual shall not be considered a termination of employment, but this Agreement shall run to the benefit of, and be binding upon, the new employer. In the event of a Change in Control, this Agreement shall bind, and run to the benefit of, the successor to Washington Mutual resulting from the Change in Control.

DATED effective as of the 17th of December 2007.

WASHINGTON MUTUAL: WASHINGTON MUTUAL BANK

By   
Daryl D. David  
Executive Vice President  
Chief Human Resources Officer

EMPLOYEE:



EXHIBIT A  
BINDING ARBITRATION AGREEMENT

This Binding Arbitration Agreement is a part of, and incorporated into, that certain Change in Control Agreement between the parties dated effective as of December 17, 2007. I, the employee who is a party to the Change in Control Agreement to which this Exhibit is attached, as well as Washington Mutual, agree as follows:

1. Any and all disputes that involve or relate in any way to my employment (or termination of employment) with Washington Mutual shall be submitted to and resolved by final and binding arbitration.
2. Washington Mutual and I understand that, by entering into this Binding Arbitration Agreement, we are each waiving any right we may have to file a lawsuit or other civil action or proceeding relating to my employment with Washington Mutual, and are waiving any right we may have to resolve employment disputes through trial by jury. We agree that arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment.
3. This Binding Arbitration Agreement is intended to cover all civil claims that involve or relate in any way to my employment (or termination of employment) with Washington Mutual, including, but not limited to, claims of employment discrimination or harassment on the basis of race, sex, age, religion, color, national origin, sexual orientation, disability and veteran status (including claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act ("ERISA"), the Fair Labor Standards Act, the Immigration Reform and Control Act and any other local, state or federal law concerning employment or employment discrimination), claims based on violation of public policy or statute, and claims against individuals or entities employed by, acting on behalf of, or affiliated with Washington Mutual. However, ERISA plan benefit issues and claims for workers compensation or for unemployment compensation benefits are not covered by this Binding Arbitration Agreement. The statutes of limitations otherwise applicable under law shall apply to all claims made in the arbitration.
4. I understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, I am not waiving the right to file or institute a complaint or charge with any government agency authorized to investigate or resolve employment-related matters, including but not limited to the United States Equal Employment Opportunity Commission, the Department of Labor, the Occupational Safety and Health Administration, the National Labor Relations Board, the Office of Special Counsel for Unfair Immigration-Related Employment Practices or other appropriate immigration authorities, and any other comparable local, state or federal agency. I also understand and agree that, despite anything in this Binding Arbitration Agreement to the contrary, either party may request a court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after arbitration is commenced. The temporary or interim relief may remain in effect pending the outcome of arbitration. No such request shall be a waiver of the right to submit any dispute to arbitration.
5. This Binding Arbitration Agreement does not constitute an employment contract, require discharge only for cause, or require any particular corrective action or discharge procedures.

6. Arbitration under this Binding Arbitration Agreement shall be conducted before a single arbitrator and shall take place within the state where I am currently employed by Washington Mutual, or where I was so employed at the time of termination.

7. In order to initiate arbitration, Washington Mutual or I must notify the other party in writing of its decision to initiate arbitration, either by personal delivery or certified mail. The notification should include the following information about the employee: name, home address, work address, work and home phone number, and the following information about the occurrence: date, location, nature of the claims or dispute, facts upon which the claims are made, and remedy requested. Any notice of arbitration initiated by Washington Mutual shall be sent to my last known residence address as reflected in my personnel file at Washington Mutual. Notice of arbitration initiated by me shall be sent to Washington Mutual's Legal Department, attention General Counsel - Litigation. The Legal Department's address is currently Washington Mutual, 1301 Second Ave., WMC: 3501, Seattle, Washington 98101.


8. Within thirty (30) days after receipt of notice of arbitration, Washington Mutual and I will attempt to agree upon a mutually acceptable arbitrator. If Washington Mutual and I are unable to agree upon an arbitrator, we will submit the dispute to the American Arbitration Association ("AAA"). If AAA is, for some reason, unable or unwilling to accept the matter, we will submit the matter to a comparable arbitration service. The arbitration shall be conducted in accordance with the laws of the state in which the arbitration is conducted and the rules and requirements of the arbitration service being utilized, to the extent that such rules and requirements do not conflict with the terms of this Binding Arbitration Agreement.

9. At the request of either Washington Mutual or myself, the arbitrator will schedule a pre-hearing conference to, among other things, agree on procedural matters, obtain stipulations, and attempt to narrow the issues.

10. During the arbitration process, Washington Mutual and I may each make a written demand on the other for a list of witnesses, including experts, to be called and/or copies of documents to be introduced at the hearing. The demand must be served at least thirty (30) days prior to the hearing. The list and copies of documents must be delivered within twenty-five (25) days of service of the demand.

11. Each party shall be entitled to conduct a limited amount of discovery prior to the arbitration hearing. Each party may take a maximum of two (2) depositions. Each party may apply to the arbitrator for further discovery. Such further discovery may, in the discretion of the arbitrator, be awarded upon a showing of sufficient cause. If any documents to be produced or requested for production contain or refer to matters that are private, proprietary and/or confidential, the arbitrator shall make an appropriate protective order prohibiting or limiting use and disclosure of such documents and providing for return of documents produced after the arbitration is concluded.

12. Each party may file a brief with the arbitrator. Each brief must be served on the arbitrator and the other party at least five (5) working days prior to the hearing and, if not timely served, must be disregarded by the arbitrator. The brief shall specify the facts the party intends to prove, analyze the applicable law or policy, and specify the remedy sought. At the close of the hearing, each party shall be given leave to file a post-hearing brief. The time for filing the post-hearing brief shall be set by the arbitrator.



13. I understand that, at my expense, I have the right to hire an attorney to represent me in the arbitration, and Washington Mutual has that same right. I also understand that all parties shall have the right to present evidence at the arbitration, through testimony and documents, and to cross-examine witnesses called by another party. Each party agrees to pay the fees of any witnesses testifying at that party's request. Each party also agrees to pay the cost of any stenographic record of the arbitration hearing should that party request any such record. The requesting party must notify the other of such arrangements at least two (2) working days in advance of the hearing.

14. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation. During the time the arbitration proceedings are ongoing, Washington Mutual will advance any required administrative or arbitrator's fees. Each party will pay its own witness fees.

15. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award against it.

16. We agree that the decision of the arbitrator shall be final and binding on all parties and shall be the exclusive remedy of the parties. The arbitrator shall issue a written and signed statement of the basis of his or her decision, including findings of fact and conclusions of law. In making the decision and award, if any, the arbitrator shall apply applicable substantive law. The arbitrator may only award a remedy that would have been available in court. The decision and award, if any, shall be consistent with the terms of this Binding Arbitration Agreement and shall include an allocation of the costs of the arbitration proceeding between the parties.

17. This Binding Arbitration Agreement may be enforced by a court of competent jurisdiction through the filing of a petition to compel arbitration, or otherwise. The decision and award of the arbitrator may also be judicially enforced pursuant to applicable law.

18. Because of the interstate nature of Washington Mutual's business, this Binding Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. (the "FAA"). The provisions of the FAA (and to the extent not preempted by the FAA, the provisions of the laws of the state of my principal place of employment with Washington Mutual that generally apply to commercial arbitration agreements, such as provisions granting stays of court actions pending arbitration) are incorporated into this Binding Arbitration Agreement to the extent not inconsistent with the other terms of this Binding Arbitration Agreement.

19. We agree that, if any provision of this Binding Arbitration Agreement is found to be unenforceable to any extent or in violation of any statute, rule, regulation or common law, it will not affect the enforceability of the remaining provisions and the court shall enforce the affected provision and all remaining provisions to the fullest extent permitted by law.

20. This Binding Arbitration Agreement shall remain in full force and effect at all times during and subsequent to my employment with Washington Mutual, or any successor in interest to Washington Mutual.



**Exhibit G**

**Maciel Declaration**

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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

**DECLARATION OF JOHN MACIEL PURSUANT TO LOCAL RULE 3007-1  
IN SUPPORT OF WMI LIQUIDATING TRUST'S EIGHTY-SECOND  
OMNIBUS (SUBSTANTIVE) OBJECTION TO CHANGE IN CONTROL CLAIMS**

I, John Maciel, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I am a Senior Director with Alvarez & Marsal North America, LLC (“A&M”) and the current Chief Financial Officer of WMI Liquidating Trust (“WMILT”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”). Previously, I was Chief Financial Officer of both of the Debtors. By order, dated November 6, 2008 [D.I. 246], the Debtors were, among other things, authorized to retain A&M as restructuring advisors, and to designate certain other personnel of A&M and its wholly owned subsidiaries, such as myself, to assist in the Debtors’ restructuring process. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor’s federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

2. In my capacity as Chief Financial Officer of the Debtors and of WMILT, I have been one of the persons responsible for overseeing the claims reconciliation and objection process in the Debtors' chapter 11 cases. WMILT's ongoing claims reconciliation process involves the collective effort of a team of A&M and WMILT employees, as well as WMILT's counsel, Weil, Gotshal & Manges LLP, and the WMILT's claims agent, Kurtzman Carson Consultants LLC.

3. I submit this Declaration in support of the *WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims* (the "Eighty-Second Omnibus Objection"). Under my direction and/or supervision, each of the claims at issue in the Eighty-Second Omnibus Objection again was carefully reviewed and analyzed in good faith using due diligence by the appropriate personnel. These efforts resulted in the identification of the claims objected to in the Eighty-Second Omnibus Objection, as identified on Exhibits A and B.

4. I have also personally reviewed the Eighty-Second Omnibus Objection and exhibits thereto and am, accordingly, familiar with the information contained therein.

#### **Claims Objection**

5. To the best of my knowledge, information and belief, and for the reasons stated in the Eighty-Second Omnibus Objection, the claims listed on Exhibits A and B of the Eighty-Second Omnibus Objection should be disallowed in their entirety or reduced and allowed, as appropriate, in the amounts set forth in such Exhibits.

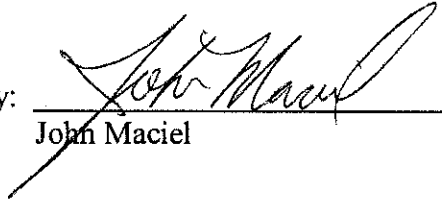
6. Based on the foregoing, and to the best of my knowledge, information and belief, the information contained in the Eighty-Second Omnibus Objection and exhibits thereto is

true and correct, and the relief requested therein is in the best interests of WMILT, the Debtors' estates, and their creditors.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 15, 2012

By:

  
John Maciel

**Exhibit H**  
**Proposed Order**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	x	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
<b>WASHINGTON MUTUAL, INC., et al.,<sup>1</sup></b>	:	<b>Case No. 08-12229 (MFW)</b>
	:	
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	x	<b>Re: D.I. ____</b>

**ORDER GRANTING WMI LIQUIDATING TRUST'S  
EIGHTY-SECOND OMNIBUS (SUBSTANTIVE)  
OBJECTION TO CHANGE IN CONTROL CLAIMS**

Upon the objection, dated August 15, 2012 (the "Eighty-Second Omnibus Objection"),<sup>2</sup> of WMI Liquidating Trust ("WMILT"), as successor in interest to Washington Mutual, Inc. ("WMI") and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the "Debtors"), for entry of an order disallowing certain claims filed against the Debtors' estates, all as more fully set forth in the Eighty-Second Omnibus Objection; and upon the *Declaration of John Maciel Pursuant to Local Rule 3007-1 in Support of the WMI Liquidating Trust's Eighty-Second Omnibus (Substantive) Objection to Change in Control Claims*, dated as of August 15, 2012; and the Court having jurisdiction to consider the Eighty-Second Omnibus Objection and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Eighty-Second Omnibus Objection and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Eighty-

<sup>1</sup> The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The principal offices of WMILT, as defined herein, are located at 1201 Third Avenue, Suite 3000, Seattle, Washington 98101.

<sup>2</sup> Capitalized terms used but not otherwise not defined herein shall have the meanings ascribed to them in the Eighty-Second Omnibus Objection.

Second Omnibus Objection having been provided to those parties identified therein, and no other or further notice being required; and the Court having determined that the relief sought in the Eighty-Second Omnibus Objection is in the best interest of WMILT, the Debtors' creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Eighty-Second Omnibus Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Eighty-Second Omnibus Objection is GRANTED as set forth herein; and it is further

ORDERED that each claim listed on Exhibit A hereto is hereby disallowed in its entirety; and it is further

ORDERED that each claim listed on Exhibit B hereto is reduced and allowed in the amounts set forth in such Exhibit; and it is further

ORDERED that Kurtzman Carson Consultants, LLC, WMILT's court-appointed claims and noticing agent, is authorized and directed to delete the claims listed in Exhibits A from the official claims register in these chapter 11 cases; and it is further

ORDERED that nothing contained herein (a) shall be, or shall be deemed to be, a determination that JPMorgan Chase Bank, N.A. or any of its affiliates or subsidiaries ("JPMC"), Washington Mutual Bank ("WMB") or any of WMB's subsidiaries, or any person other than the Debtors or WMILT is or is not liable or responsible in any way for any of the claims that are the subject of this Order or (b) shall prejudice any of JPMC's rights, claims or defenses against any third-parties asserting the claims that are the subject of this Order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

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Dated: September \_\_, 2012  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE



**Exhibit A**

**Claims to be Disallowed**

<b>Claimant</b>	<b>Claim Number</b>	<b>Filed Claim Amount</b>	<b>Debtor</b>	<b>Reason(s) for Objection</b>
Thomas Allen	1822	\$33,333.00	WMI	Cash LTI Component
		\$640,466.00		Wrong Party Component – WMB CIC Agreement
		\$100,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Amy Driver Anderson	403	\$177,000.00	WMI	WaMu Severance Plan Component
		\$40,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Nirmal Baid	1050	\$102,500.00	WMI	Cash LTI Component
Monica Berger	1527	unliquidated	WMI	WaMu Severance Plan Component
Robert Bjorklund	2880	\$225,000.00	WMI	WaMu Severance Plan Component
		\$180,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Gary Brady	2178	\$393,750.00	WMI	WaMu Severance Plan Component
		\$75,000.00		Wrong Party Component – individual WMB employment agreement
Cynthia Carter	2329	\$242,593.00	WMI	WaMu Severance Plan Component
Jeanine Catalano	2921	\$50,000.00	WMI	Cash LTI Component
Ryan D. Devereux	1755	\$257,985.00	WMI	WaMu Severance Plan Component
Duane Duck	744	\$443,625.00	WMI	WaMu Severance Plan Component
Camille J. Everett	651	\$294,343.19	WMI	WaMu Severance Plan Component
Peter Heller	2930	\$66,666.67	WMI	Cash LTI Component
		\$575,100.00		Wrong Party Component – WMB CIC Agreement
		\$35,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Rolland Jurgens	4053	\$66,666.67	WMI	Cash LTI Component
		\$660,000.00		Wrong Party Component – WMB CIC Agreement
		\$25,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Adam D. Kleiver	3964	\$230,555.55	WMI	WaMu Severance Plan Component
Julie Liabraaten	3982	\$210,000.00	WMI	WaMu Severance Plan Component

Claimant	Claim Number	Filed Claim Amount	Debtor	Reason(s) for Objection
		\$35,000.00		<ul style="list-style-type: none"> <li>missing documentation</li> <li>Wrong Party Component – WMB Retention Bonus Agreement</li> </ul>
Marc Malone	466	\$175,000.00	WMI	Cash LTI Component
		\$834,690.00		Wrong Party Component – WMB CIC Agreement
Christopher A. Marando	1596	\$405,699.09	WMI	WaMu Severance Plan Component
Pradeep Narayan	2079	\$75,000.00	WMI	Cash LTI Component
		\$643,519.00		Wrong Party Component – WMB CIC Agreement
Casey M. Nault	2595	\$301,029.82	WMI	WaMu Severance Plan Component
		\$100,000.00		Wrong Party Component – WMB Retention Bonus Agreement
Elizabeth Pepper	4052	\$286,247.00	WMI	WaMu Severance Plan Component
Michael S. Reilly	2199	\$289,464.00	WMI	WaMu Severance Plan Component
Scott B. Shaw	3975	\$342,069.00	WMI	WaMu Severance Plan Component
Mitchell Stevens	376	\$75,000.00	WMI	Cash LTI Component
Andrew Tauber	3941	\$125,000.00	WMI	Cash LTI Component
		\$1,101,669.00		Wrong Party Component – WMB CIC Agreement
Radha Thompson	1153	\$125,000.00	WMI	Cash LTI Component
		\$1,229,040.00		Wrong Party Component – WMB CIC Agreement
Kurt Wisecup	3278	\$258,750.00	WMI	WaMu Severance Plan Component
Weijia Wu (“Vicky”)	3920	\$258,750.00	WMI	WaMu Severance Plan Component

**Exhibit B**

**Claims to be Reduced and Allowed**

Claimant	Claim Number	Filed Claim Amount	Debtor	Reason(s) for Objection	Amount of Allowed Component	Allowed Amount
David Beck	1344	\$13,469.33	WMI	ETRIP Base Component. WMILT's books and records reflect an account balance of \$14,800.26.	\$14,800.26	\$78,742.74
		\$130,066.34		WMI SERAP Component. WMILT's books and records reflect an account balance of \$63,942.48.	\$63,942.48	
Gennadiy Darakhovskiy	2571	\$115,000.00	WMI	<ul style="list-style-type: none"> <li>Darakhovskiy Cash LTI Component</li> <li>Cash LTI Component</li> </ul>	Disallowed	\$25,931.10
		\$1,078,477.20		<ul style="list-style-type: none"> <li>Darakhovskiy WMB CIC Component</li> <li>Wrong Party Component – WMB CIC Agreement</li> </ul>	Disallowed	
		\$26,373.40		WMI SERAP Component. WMILT's books and records reflect an account balance of \$25,931.10.	\$25,931.10	
Michelle McCarthy	2497	\$300,000.00	WMI	Cash LTI Component	Disallowed	\$78,518.69
		\$1,262,645.00		Wrong Party Component - WMB CIC Agreement	Disallowed	
		\$110,000.00		Wrong Party Component – WMB Retention Bonus Agreement	Disallowed	
		\$78,519.00		WMI SERAP Component. WMILT's books and records reflect an account balance of \$78,518.69.	\$78,518.69	
Chandan Sharma	2539	\$73,333.33	WMI	Cash LTI Component	Disallowed	\$3,815.42
		\$504,478.80		Wrong Party Component – WMB CIC Agreement	Disallowed	
		\$3,815.42		WMI SERAP Component. WMILT's books and records reflect an account balance of \$3,815.42.	\$3,815.42	
Ann Tierney	3862	\$100,000.00	WMI	Cash LTI Component	Disallowed	\$16,461.26
		\$701,036.66		Wrong Party Component – WMB CIC Agreement	Disallowed	
		\$41,648.67		WMI SERAP Component. WMILT's books and records reflect an account balance of \$16,461.26.	\$16,461.26	