

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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<i>In re</i>	:	<b>Chapter 11</b>
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WASHINGTON MUTUAL, INC., <u>et al.</u> , <sup>1</sup>	:	<b>Case No. 08-12229 (MFW)</b>
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<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	
	:	<b>Hearing Date: December 19, 2019 at 2:00 p.m. (ET)</b>
-----X	:	<b>Objection Deadline: December 2, 2019 at 4:00 p.m. (ET)</b>

**APPLICATION OF WMI LIQUIDATING TRUST FOR AN ORDER,  
PURSUANT TO SECTION 350 OF THE BANKRUPTCY CODE  
BANKRUPTCY RULE 3022 AND LOCAL RULE 3022-1, AUTHORIZING,  
AMONG OTHER THINGS, (A) CLOSING THE CHAPTER 11 CASES OF  
WASHINGTON MUTUAL, INC, AND WMI INVESTMENT CORP. AND (B)  
AUTHORIZING THE WIND-UP AND DISSOLUTION OF THE LIQUIDATING TRUST**

WMI Liquidating Trust (“WMILT” or the “Trust”), as successor to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (collectively, the “Debtors”), hereby moves for entry of an order, pursuant to section 350 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3022-1 of the Local Rules of Bankruptcy Procedure (the “Local Rules”), authorizing, among other things, (a) the closing the Debtors’ chapter 11 cases, (b) a post-closing mechanism with respect to undelivered and uncashed distributions, and (c) following a final distribution to holders of Class 18 Allowed Claims, (i) the wind-up and dissolution of the Trust, including the making of one or more charitable contributions of remaining Liquidating Trust Assets, and

<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 800 Fifth Avenue, Suite 4100, Seattle, Washington 98104. Subsequent to the Effective Date, as defined below, WMI Investment Corp. was dissolved in accordance with applicable law.



(ii) the termination of Kurtzman Carson Consultants LLC (“KCC”) as Claims Agent (the “Application”), and respectfully represents as follows:

**Preliminary Statement**

1. Over eleven years ago, and during the height of the national financial crisis, the Office of Thrift Supervision (the “OTS”) closed Washington Mutual Bank (“WMB”), WMI’s main subsidiary. In connection therewith, the OTS appointed the Federal Deposit Insurance Corporation (the “FDIC”) as receiver for WMB (the “FDIC Receiver”), and advised that the FDIC Receiver was immediately taking possession of WMB’s assets. Immediately after its appointment, the FDIC Receiver sold substantially all of the assets of WMB, including the stock of Washington Mutual Bank fsb, to JPMorgan Chase Bank, N.A. (“JPMC”) pursuant to that certain Purchase and Assumption Agreement, Whole Bank, dated September 25, 2008 (the “Purchase Agreement”). In an effort to preserve their remaining value for the benefit of their creditors and equity interest holders, the following day, September 26, 2008, the Debtors commenced their chapter 11 cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. As detailed below, such filings generated significant value for creditors, producing sizeable distributions over the years, and even delivered recoveries for holders of WMI’s Preferred and Common Equity Interests pursuant to the Debtors’ confirmed chapter 11 plan in the form of shares of common stock of Reorganized WMI, as defined below.<sup>2</sup>

2. By no means, however, has the road been easy or short. Rather, initially, it was marred by the competing claims of the Debtors and JPMC to the Debtors’ assets, with JPMC

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<sup>2</sup> Pursuant to subsequent transactions, including the merger of Reorganized WMI and Mr. Cooper, f/k/a Nationstar Mortgage Holdings Inc., and a subsequent one (1) for twelve (12) stock split, as of November 1, 2019, the price per share of Mr. Cooper common stock split, was \$12.80. It must be noted that, although the Debtors have generated a significant recovery, including a recovery for WMI’s preferred and common equity interest holders, the Debtors’ estates remain unable to satisfy Creditors’ claims in full.

asserting that it had purchased certain tangible and intangible assets pursuant to the Purchase Agreement, including the Debtors' deposits with WMB and numerous federal and state tax refunds. Creditor groups, including the statutory committee of unsecured creditors (the "Creditors Committee") and groups of WMB's bondholders, injected themselves into such disputes. Additionally, the Bankruptcy Court directed the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") to appoint an equity committee (the "Equity Committee") to safeguard the interests of WMI's preferred and common equity interest holders. Ultimately, the Debtors, the Creditors' Committee, JPMC, the FDIC Receiver, the FDIC and significant creditor constituencies negotiated a compromise and settlement of all outstanding issues, including the disputed claims regarding ownership of assets. However, in furtherance of its perceived directive, the Equity Committee challenged the merits of the proposed understanding and, with the agreement of all parties, an examiner was appointed to review and opine on the merits of the compromise and settlement reached. Even after the examiner's and the Bankruptcy Court's acknowledgement in the January Opinion and the September Opinion, each as defined below, that the proposed compromise and settlement therein was fair, equitable and in the best interests of the Debtors and their chapter 11 estates, the Equity Committee continued its challenges to confirmation of a chapter 11 plan. But, with the assistance of a court-appointed mediator and after limited modifications suggested by the Bankruptcy Court, as well as the overwhelming acceptance by the Debtors' creditors and equity interest holders, by order, dated February 23, 2012 (the "Confirmation Order"), the Bankruptcy Court confirmed the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011, as amended and modified (the "Plan")<sup>3</sup>. The Plan

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<sup>3</sup> Unless otherwise defined herein, capitalized terms use herein shall have the meanings ascribed thereto in the Plan.

became effective on March 19, 2012 and billions of dollars of cash and Liquidating Trust Interests were promptly allocated to creditors, and shares of stock in Reorganized WMI were issued to holders of Preferred Equity Interests and Common Equity Interests. As noted above, as of November 1, 2019, the aggregate value of such shares distributed or reserved for distribution was approximately \$213 million.

3. During the succeeding seven plus years, the Debtors and, thereafter, WMILT, have reconciled thousands of claims filed against the Debtors' chapter 11 estates and recovered and/or liquidated assets of the Debtors for the benefit of Creditors. Specifically, WMILT has recovered millions of dollars of tax refunds and secured settlements associated with director and officer liabilities. Additionally, the Trust's litigation subcommittee investigated potential claims against various third parties, including WMI's auditor, investment bankers and other professionals, pursued claims in connection with directors' and officers' duties and obligations and, thereafter, determined that WMILT maintained no additional claims and causes of action worth pursuit. On the liability side, WMILT zealously pursued the reduction of claims in an effort to generate the greatest recovery for Creditors holding Allowed Claims. Again, it has not been an easy task as several of such reconciliation efforts involved protracted litigation, including one series of litigation that lasted over six years. But, such efforts have been extremely successful and, as discussed below, since the Effective Date, the Debtors and WMILT have already distributed over \$983 million to Creditors (thereby paying general unsecured claims in full) and, with all claims now being reconciled, WMILT currently anticipates a final distribution (to holders of Allowed Claims within Class 18 of the Plan—the lowest rung of Creditor Claims on the Court-approved distribution waterfall) in the amount of approximately \$35-\$40 million, a recovery of almost eighty-five percent (85%).

4. As set forth below, the Bankruptcy Court and WMILT have indulged the numerous theories of creditors, equity interest holders and other parties in interest regarding all forms and types of transactions, have responded to all inquiries of every size and shape, and have unearthed and, with the upcoming final distribution to holders of Class 18 Allowed Claims, distributed all of the Debtors' available assets. Nothing more needs to be done and, upon closure of the Debtors' chapter 11 cases, WMILT does not anticipate the need for the Bankruptcy Court's involvement or assistance nor the need to incur the costs and expenses associated with the ongoing judicial administration of these chapter 11 cases. Likewise, upon the final distribution being made, the dissolution of the Trust is appropriate. Such action would alleviate the ongoing incurrence of fees and expenses and, in connection with the final distribution, permit the maximum distribution to be available.

5. The time has come for the Debtors' chapter 11 cases to conclude. Accordingly, WMILT respectfully requests that the Bankruptcy Court approve the Application and grant the relief requested herein.

### **Background**

#### **A. The Chapter 11 Cases**

6. On September 26, 2008, each of the Debtors filed with the Bankruptcy Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to the Bankruptcy Court's order, dated October 3, 2008 [Dkt. No. 25], the Debtors' chapter 11 cases have been jointly administered pursuant to Bankruptcy Rule 1015(b).

7. Pursuant to an order, dated October 30, 2008 (the "KCC Order") [Dkt. No. 202], KCC was retained by the Debtors as the official noticing and claims agent for the Clerk of the Bankruptcy Court in connection with the Debtors' chapter 11 cases.

8. On October 15, 2008, the U.S. Trustee appointed the Creditors' Committee. On January 11, 2010, the U.S. Trustee appointed the Equity Committee.

9. On October 6, 2010, the Debtors filed the Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated October 6, 2010, as modified (the "Sixth Amended Plan"). The Sixth Amended Plan was premised on the implementation of that certain Amended and Restated Global Settlement Agreement, dated as of October 6, 2010, by and among the Debtors, JPMC the FDIC, the Creditors' Committee and certain creditor constituents ("the "Initial GSA").

10. The Bankruptcy Court held hearings to consider confirmation of the Sixth Amended Plan and, upon conclusion thereof, issued an opinion (the "January Opinion") and order which, among other things, found that (a) the Initial GSA, the integral foundation of the Sixth Amended Plan, and the transaction contemplated therein, were fair, reasonable, and in the best interests of the Debtors' creditors and the Debtors' chapter 11 estates, (b) the Debtors were not likely to achieve a significantly better result if they were to continue to litigate the claims resolved pursuant to the Initial GSA, (c) there were difficulties inherent in collecting on account of the Debtor's potential claims against JPMC and the FDIC Receiver, (d) the claims resolved pursuant to the Initial GSA were complex and would be expensive and cause delay to litigate, (e) the Initial GSA provided a reasonable return in light of the possible results of the litigations being resolved, and (f) certain modifications to the Sixth Amended Plan, if made, would enable the Sixth Amended Plan to be confirmed. Additionally, the Bankruptcy Court expressly noted that, "[a]lthough equity interest holders are not likely to get a recovery, the Court is not convinced that continued litigation, against JPMC and/or the FDIC would change that result." January Opinion, at pp. 66-67.

11. On February 7, 2011, the Debtors, JPMC and other parties entered into that certain Second Amended and Restated Global Settlement Agreement (the “GSA”). As per the Bankruptcy Court’s January Opinion, the GSA modified certain non-economic provisions of the Initial GSA to conform to certain plan related modifications.

12. On February 8, 2011, the Debtors filed the modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of United States Bankruptcy Code, as modified (the “Modified Sixth Amended Plan”). Like the GSA, the Modified Sixth Amended Plan incorporated modifications consistent with the January Opinion.

13. During July 2011, the Bankruptcy Court held hearings to consider, among other things, confirmation of the Modified Sixth Amended Plan. By opinion and order, dated September 13, 2011 (the “September Opinion”), the Bankruptcy Court (a) reaffirmed its conclusions that the settlements underlying the Initial GSA, which were then embodied in the GSA, and the transactions contemplated therein were fair and reasonable, (b) ordered that the Bankruptcy Court’s ruling with respect to the GSA constituted the “law of the case”, and (c) denied confirmation of the Modified Sixth Amended Plan, but identified certain modifications that, if incorporated, would permit confirmation thereof.

14. In accordance with the September Opinion, the Bankruptcy Court appointed the Honorable Raymond Lyons, then United States Bankruptcy Judge, as mediator, and directed parties to attend mediation in an effort to resolve outstanding issues, including those raised by the Equity Committee with respect to actions of several creditors in connection with the negotiation and documentation of the Initial GSA and the GSA and the subsequent filing of the Modified Sixth Amended Plan (the “Mediation”). As a result of the Mediation, the parties agreed to modifications to the Modified Sixth Amended Plan that resolved all outstanding disputes and formed the basis of the Plan.

15. The Debtors filed the Plan and corresponding Disclosure Statement on December 12, 2011. Pursuant to an order, dated January 13, 2012 [Dkt. No. 9414], the Bankruptcy Court approved the Disclosure Statement and found, among other things, that the Disclosure Statement contained “adequate information” within the meaning of section 1125 of the Bankruptcy Code. In such regard, and in light of the competing interests of the Debtors and JPMC to assets of the Debtors and the resolution thereof pursuant to the GSA, as well as the concerns raised by certain holders of Preferred Equity Holders and Common Equity Holders, the Disclosure Statement contained detailed descriptions of such assets and traced the historical, disposition or dissolution thereof. A copy of such description from the Disclosure Statement is annexed hereto as Exhibit “A”.

16. Distribution of the Disclosure Statement and related solicitation materials were made in accordance with the provisions of the Disclosure Statement Order, including, without limitation, the mailing to requisite creditors and parties in interest, the publication of notices, and the issuance of press releases by the Equity Committee. Such efforts were largely successful, as 96.46% (by dollar amount) of holders of Senior Note Claims, 99.71% (by dollar amount) of holders of Senior Subordinated Note Claims, 97.22% (by dollar amount) of holders of PIERS, 87.26% (by dollar amount of liquidation preference) of holders of Preferred Equity Interests, and 63.70% (by number of shares) of holders of Common Equity Interests voted on the Plan.

17. All classes of Claims and Equity Interests, including, without limitation, Preferred Equity Interests and Common Equity Interests in Classes 19 and 22, voted to accept or, pursuant to stipulations approved by the Bankruptcy Court, were deemed to have accepted the Plan and, in consideration for distributions made or to be made thereunder, granted releases to the Debtors and various third parties.

18. On February 23, 2012, the Bankruptcy Court entered the Confirmation Order confirming the Plan and authorizing and directing the consummation of the transactions contemplated in the Plan and GSA, including the compromise and settlement regarding the competing claims to ownership of the Debtors' assets. Incorporated therein were the granting of releases among the respective parties, including the mutual releases among the Debtors, the FDIC and the FDIC Receiver. Based thereon, the Debtors maintained no additional claims against the FDIC Receiver or the related receivership for any assets and the FDIC and the FDIC Receiver released all claims against the Debtors and their assets.

19. On March 19, 2012, the Effective Date occurred and the transactions contemplated by the Plan were consummated, including, without limitation, the discharge of the Debtors from any and all Claims and initial distributions of over \$6.5 billion being made to holders of Allowed Claims and 195 million shares of Reorganized WMI to holders of Preferred Equity Interests and Common Equity Interests. Since the Effective Date, additional distributions in the approximate amount of \$983 million have been made by WMILT to holders of Allowed Claims, including paying general unsecured claims in full. Additionally, since the Effective Date, approximately four million additional shares of Reorganized WMI have been distributed from the Disputed Equity Escrow to holders of Preferred Equity Interests and Common Equity Interests.<sup>4</sup>

20. As reflected in WMILT's 10K for the period ending December 31, 2018 (the "2018 10K"), with the latest distribution of \$50 million having been made in February 2019, a final distribution by WMILT shall be made to holders of Allowed Claims in Class 18 of the

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<sup>4</sup> The share amounts reflected above are amounts prior to the stock splits referred to footnote 2 supra.

Plan.<sup>5</sup> Specifically, at this time, and as reported in the September 30, 2019 Quarterly Summary Report filed with the Bankruptcy Court, the Trust's remaining net assets total approximately \$37.8 million (including the Tax Refund, as defined below), with no additional material assets available,<sup>6</sup> with Class 18 Allowed Claims already in the amount of \$38.2 million (plus accrued post-petition interest in the amount of \$9.0 million as of September 30, 2019, for an aggregate Class 18 liability of \$47.2 million). Accordingly, pursuant to the provisions of the Plan and the Confirmation Order, other than the shares of equity in the Disputed Equity Escrow to be redistributed, no additional distributions shall be made to holders of WMI's equity interests in Classes 19 and 22.

**B. The Liquidating Trust**

21. Decretal paragraph 25 of the Confirmation Order provides in pertinent part as follows:

Liquidating Trust. On or before the Effective Date, the Liquidating Trust Agreement shall be executed by the Debtors or the Reorganized Debtors, as applicable, and the Liquidating Trustee. In addition, the parties shall, without any additional or further Court authority, take all other steps necessary to establish the Liquidating Trust and the Liquidating Trust Interest therein. In the event of any conflict between the terms of the Plan and the terms of the Liquidating Trust Agreement, the terms of the Liquidating Trust Agreement shall govern.

Confirmation Order, ¶25. In furtherance thereof, on March 6, 2012, the Liquidating Trust Agreement, a copy of which is annexed hereto as Exhibit "B", was executed and the Liquidating

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<sup>5</sup> Distributions to holders of Class 18 Allowed Claims may be preempted by the re-filing (prior to closure of the Debtors' chapter 11 cases) of other claims in excess of \$400 million, as may be permitted pursuant to a prior order of the Court and the allowance thereof.

<sup>6</sup> WMILT, as successor to WMI, is also a member of a plaintiff class in two LIBOR-related litigations: the ISDAFIX litigation and the US Dollar LIBOR litigation. WMILT anticipates an award could be up to \$1 million but, more likely, would be closer to \$25,000.00 (dependent upon the number of responding claimants and the amounts of their respective damages) which, if recovered, will not result in materially different distributions to Creditors.

Trust was formed, with its purpose, as set forth in Section 27.2 of the Plan and Section 1.2 of the Liquidating Trust Agreement, being to:

serve as a mechanism for liquidating, converting to Cash and distributing the Liquidating Trust Assets in accordance with Treasury Regulations section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

Liquidating Trust Agreement, §1.2. Accordingly, on the Effective Date, all assets not otherwise liquidated or distributed to holders of Allowed Claims were transferred to the Trust, together with all distributions otherwise attributable to Disputed Claims.

22. Section 27.6 of the Plan provides as follows:

Role of the Liquidating Trustee: In furtherance of and consistent with the purpose of the Liquidating Trust and the Plan, and subject to the terms of the Confirmation Order, the Plan and the Liquidating Trust Agreement, and the oversight of the Trust Advisory Board, the Liquidating Trustee shall, among other things, have the following rights, powers and duties, in each case subject to the Global Settlement Agreement: ... (vi) in the Liquidating Trustee's reasonable business judgment, to object to claims and manage, control, prosecute, and/or settle on behalf of the Liquidating Trust, objections to Claims on account of which the Liquidating Trustee (as Disbursing Agent) will be responsible (if Allowed) for making distributions under the Plan....

Plan, §27.6.

23. Likewise, with respect to the authority of the Liquidating Trustee, Section 6.2 of the Liquidating Trust Agreement, entitled Powers of the Liquidating Trustee, subsections (iii) and (vi), provide for the following authority:

(iii) in the Liquidating Trustee's reasonable business judgment, to investigate, prosecute, settle and/or abandon rights, Causes of Action, Claims or litigation of the Liquidating Trust, including, without limitation, Avoidance Actions;

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(vi) in the Liquidating Trustee's reasonable business judgment, to object to Claims, and manage, control, prosecute, and/or settle on behalf of the Liquidating Trust, objections to Claims on account of

which the Liquidating Trustee (as Disbursing Agent) will be responsible (if Allowed) for making distributions under the Plan;...

Liquidating Trust Agreement, §§6.2 (iii) and (vi).

24. Pursuant to Section 27.14(d) of the Plan and Section 3.2 of the Liquidating Trust Agreement, the term of the Trust was for three (3) years subject to the right to extend such term for an additional three (3) years upon motion and entry of an order of the Bankruptcy Court. By order, dated January 23, 2015 [Dkt. No. 11960], such initial term was extended until March, 2018. However, due to the ongoing nature of the claims reconciliation process and outstanding litigation, including extensive employee claims litigation, on November 21, 2017, WMILT subsequently obtained a favorable private letter ruling from the IRS, and a corresponding order of the Bankruptcy Court, dated December 20, 2017 [Dkt. No. 12444], confirming that the extension of the term of the Trust until March, 2021 would not disqualify the Trust from “liquidating trust” status.

25. As noted above, the Trust is governed by the provisions of the Liquidating Trust Agreement and its actions are effectuated by the Trust Advisory Board, the Liquidating Trustee and WMILT’s officers and employees. In accordance with Section 6.4 of the Liquidating Trust Agreement, the Trust Advisory Board was initially comprised of ten (10) members, with three (3) members being selected by the Creditors’ Committee, four (4) members being selected by the Equity Committee, one (1) member being selected by the Creditors’ Committee, but approved by the Equity Committee, one (1) member being selected by Tricadia Capital Management and one (1) *ex officio* member selected by Holdco Advisors, L.P. Such section, and, as reflected in Recital RR of the Confirmation Order, “to address the concern of the Court that the composition of the Trust Advisory Board should change once creditors have been paid in full,” see Confirmation Order, Recital RR, p. 40, further provides that, as distributions are made pursuant

to the Plan, and tranches of claims are paid in full, the membership of the Trust Advisory Board would be modified to reflect the then-current economic interests of the Debtors' creditors and equity interest holders.<sup>7</sup>

26. As reflected in the 2018 10K, based upon the aforementioned payments and staggering of positions, the Trust Advisory Board is currently comprised of seven (7) members, as follows: (a) three (3) members selected by the Creditors' Committee, with one such member, Thomas Korsman, being designated by Wells Fargo Bank, N.A., (b) three (3) members selected by the Equity Committee, with one such member, Joe McInnis, named by TPS Funds, and (c) one (1) member selected by the Creditors' Committee and approved by the Equity Committee. The Trust Advisory Board elected not to fill a vacancy following the resignation of a member selected by the Creditors' Committee. 2018 10K, p. 25. The current members of the Trust Advisory Board are Messrs. Cantor, Kastenbaum, Kirschner, Korsman, McInnis, Southard and Willingham.<sup>8</sup> 2018 10K, p. 25-26. Pursuant to Section 1.143 of the Plan, Mr. William Kosturos was appointed as Liquidating Trustee and continues to serve in such capacity today.

27. In accordance with the provisions of the Plan and the Liquidating Trust Agreement, during the post-Effective Date period, WMILT has satisfied all tax obligations to date related to the Disputed Claims Reserve, including, without limitation, filing all tax returns and other documents as may be required and making all payments on account of income generated by the funds and Liquidating Trust Interests in the Disputed Claims Reserve from time

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<sup>7</sup> Due to the possible re-filing of a proof of claim in accordance with a Bankruptcy Court-approved stipulation, which, if filed, would have significantly altered potential claims within the distribution waterfall, the composition of the Trust Advisory Board has not been altered.

<sup>8</sup> Pursuant to the Liquidating Trust Agreement, certain members of the Trust Advisory Board served on a litigation subcommittee. In that role, such members and its professionals, the former counsel to the Equity Committee, investigated and, to the extent viable, pursued claims and causes of actions on behalf of the Trust and its beneficiaries.

to time. Additional tax returns will need to be filed post-closing of the Chapter 11 Cases and in connection with the anticipated wind-up and dissolution of the Trust.<sup>9</sup> Likewise, in connection with the upcoming distribution from the Disputed Equity Escrow, the Plan-created escrow to reserve shares of stock of Reorganized WMI pending claim reconciliation, WMILT has submitted requests to the IRS pursuant to section 505 of the Bankruptcy Code for a determination as to whether WMILT has satisfied its outstanding tax obligations.

**C. Plan Distributions**

28. Since the Petition Date, the Trust Advisory Board and the Liquidating Trustee have overseen the above-referenced distributions of over \$983 million (as of September 30, 2019).

29. In connection with making such distributions, from time to time, and due to, among other things, incomplete contact information provided by creditors, certain distributions have been returned to WMILT as unable to be delivered or, in other circumstances, delivered but “unclaimed” or “uncashed.” To address these occurrences, Section 31.6 of the Plan provides in pertinent part as follows:

(a) (1)  Holding of Undeliverable Distributions by the Disbursing Agent.  
If any distribution to any holder is returned to the Disbursing Agent as undeliverable, no further distribution shall be made to such holder unless and until the Disbursing Agent is notified, in writing, of such holder’s then-current address. Undeliverable distributions shall remain in the possession of the Disbursing Agent until such time as a distribution becomes deliverable. All Entities ultimately receiving undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Disbursing Agent to attempt to locate any holder of an Allowed Claims or Equity Interest.

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<sup>9</sup> Other than as relates to the Disputed Claims Reserve, WMILT is a “grantor trust” and, as such, all income and expense is allocated and reported to the beneficiaries of the Trust. Upon the final distribution being made, a final allocation shall be provided.

(2) Holding of Undeliverable Distributions by the Liquidating Trustee. In connection with distributions to be made pursuant to the Liquidating Trust Agreement, an “undeliverable” distribution shall include, without limitation, a check that is sent to a holder in respect of a distribution to such holder, which check has not been negotiated within six (6) months following the issuance thereof. Subject to the provisions of Section 31.6(c) of the Plan, if any distribution to a holder of a Liquidating Trust Interest is undeliverable, no additional distribution shall be made to such holder unless and until the Liquidating Trustee (or its duly authorized agent) is notified, in writing, of such holder’s then-current address. Undeliverable distributions shall remain in the possession of the Liquidating Trustee (or its duly authorized agent) until such time as a distribution becomes deliverable or as set forth in Section 31.6(b) of the Plan. All Entities ultimately receiving an undeliverable distribution shall not be entitled to any interest or other accruals of any kind on account of the delay in payment resulting from the undeliverable status of such distribution. Except as required by law, the Liquidating Trustee (or its duly authorized agent) shall not be required to attempt to locate any holder of a Liquidating Trust Interest.

(b) Failure to Claim Undeliverable Distributions. If (i) a check is sent, by either the Disbursing Agent or the Liquidating Trustee, to a holder in respect of distributions and such check is not negotiated within six (6) months following the date on which such check was issued, or (ii) any other form of distribution to a holder is otherwise undeliverable, the Disbursing Agent or the Liquidating Trustee, as the case may be, (or their duly authorized agent) shall, on or prior to the date that is one hundred eighty (180) days from (i) the Effective Date, with respect to all Allowed Claims as of the Effective Date, and (ii) the date that a distribution is made with respect to any Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date, file a list with the Bankruptcy Court setting forth the names of those Entities for which distributions have been made hereunder that have not been negotiated or have been returned as undeliverable as of the date thereof. Any holder of an Allowed Claim or Entity Interest on such list that does not identify itself and assert its rights pursuant to the Plan to receive a distribution discharged and shall be forever barred from asserting any entitlement pursuant to the Plan, against the Reorganized Debtors, the Liquidating Trust, the Liquidating Trustee, the Trustees, or their respective professionals, agents, or property. In such case, the Liquidating Trustee is authorized to permanently remove such holder and its corresponding Claim and/or Trust Interest from such trustee’s books and records and any consideration held for distribution on account of such Allowed Claim or Equity Interest shall revert to such trustee for redistribution to holders of Liquidating Trust Interests in accordance with the terms and provisions hereof.

Plan, § 31.6. See also, Liquidating Trust Agreement, § 4.4.

30. Over the course of the Debtors’ chapter 11 cases, as noted above, numerous distributions have gone either undistributed due to dated contact information (including no

forwarding addresses) or, in the case of distributions of checks, uncashed or non-negotiated instruments. In accordance with Section 31.6(b) of the Plan, WMILT has filed notices with the Bankruptcy Court setting forth the names of Entities for which distributions have been made and have either been returned or not negotiated. In the event contacted, consistent with its obligations, WMILT has forwarded a subsequent distribution to such Entity. If not contacted, however, WMILT has redistributed such distribution to other Creditors in subsequent distributions, has removed such Entity from the distribution procedures and such Entity has been barred from the receipt of any further distributions.

31. With a final distribution to be made and based upon the number of recipients to receive such distribution in excess of six thousand (6,000) Entities, it is possible that some of these distributions may be “undelivered” or go “unclaimed” or “uncashed”<sup>10</sup>. And, with the chapter 11 cases being closed, and, therefore, WMILT being unable to file a list with the Bankruptcy Court, in such event, WMILT proposes that, one hundred twenty (120) days following such distribution, WMILT (a) publish a notice, the form of which is annexed hereto as Exhibit “C”, in The Seattle Times, and (b) post a list on the WMILT website, [www.wmitrust.com](http://www.wmitrust.com), which list shall remain posted for a period of thirty (30) days, notifying any such parties of their entitlement and the potential loss of recovery. Thereafter, to the extent unclaimed, and due to the *de minimis* amount of such distribution and the inability to make a reallocation and distribution pursuant to the terms of the Plan, WMILT proposes to donate any such distributions for charitable purposes.

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<sup>10</sup> Since the Effective Date, WMILT has taken several actions to reduce the possibility that distributions are not delivered, including updating address databases through letters being sent to holders, searching public databases to obtain updated information and seeking updated tax information.

**D. Remaining Assets to be Recovered**

32. As noted above, at this time, the remaining net Trust assets are approximately \$37.8 million, with Class 18 Allowed Claims in the amount of \$38.2 million, plus accrued post-petition interest thereon in the amount of \$9.0 million as of September 30, 2019, or an aggregate amount of \$47.2 million. The net assets of the Trust are comprised of cash and/or cash equivalents with the exception of one remaining tax refund, as discussed immediately below.

33. WMILT has a pending tax refund claim from the State of Washington Department of Revenue (the “DOR”) in the approximate amount of \$4.3 million (the “Tax Refund”), relating to Business & Occupancy (“B&O”) taxes for the tax years 2004 and 2005. While the DOR and WMILT have agreed on the entitlement to and the amount of the Tax Refund, due to DOR concerns regarding potential competing claims to the Tax Refund, payment has been delayed. However, recently, the FDIC Receiver and JPMC have acknowledged that the Tax Refund is the property of WMILT.

**E. The Griffin Appeal and Motion to Withdraw the Reference**

34. On March 22, 2019, Alice Griffin filed that certain First Omnibus Objection (Substantive) of Alice Griffin, Class 19 Interest Holder, to Claims (Nos. 3935 and 4045) Allowed Pursuant to a Stipulation Dated March 28, 2013 Between WMI Liquidating Trust and Morgan Stanley & Co., Incorporated, Credit Suisse Securities (USA) LLC, and Goldman, Sachs & Co., on Behalf of Themselves and Certain Underwriters [Dkt. No. 12595] (the “Griffin Objection”). Therein, Ms. Griffin asserted, among other things, that (a) the terms of the underlying stipulation (the “Underwriter Stipulation”) required Bankruptcy Court approval and such approval was never sought or obtained, (b) WMILT failed to disclose the existence of such stipulation in violation of applicable securities laws, (c) the Plan did not permit the allowance and treatment of Claims in the manner contained in the stipulation, and (d) if any Claim were

allowed, distributions with respect thereto were more appropriately allocated to Class 22 of the Plan (Common Equity Interests) and not Class 19 (Preferred Equity Interests), the class containing Ms. Griffin's interests. WMILT responded to the Griffin Objection on April 12, 2019 (the "WMILT Response") [Dkt. No. 12604], refuting each of the contentions raised in the Griffin Objection, including illustrating the detailed disclosure of the stipulation in multiple public filings and in accordance with applicable securities laws and the benefits delivered by holders of Class 19 Preferred Equity Interests. Ms. Griffin filed a reply on April 17, 2019 [Dkt. No. 12609], (the "Griffin Reply").

35. The Bankruptcy Court held a hearing to consider the Griffin Objection, the WMILT Response and the Griffin Reply on April 22, 2019 (the "Griffin Hearing"), and, based upon the findings made on the record of the Griffin Hearing, by order, dated April 24, 2019, the Bankruptcy Court denied the Griffin Objection in its entirety [Dkt. No. 12619] (the "Griffin Order"). Specifically, the Bankruptcy Court determined that (a) there had been full and complete disclosure of the Underlying Stipulation upon entry thereof, (b) Ms. Griffin was barred from challenging the Underlying Stipulation based upon the doctrine of laches and (c) most importantly, if the Trust had requested Bankruptcy Court approval of the Underlying Stipulation, the Bankruptcy Court believed that the compromise and settlement set forth therein was in the best interests of the Debtors, their Creditors and, especially, holders of Preferred Equity Interests, as it removed a senior \$24 million claim which would have had to be paid in full prior to distributions being made to holders of Preferred Equity Interests, and it would have approved any such request. Tr. of Griffin Hearing, pp. 41:9-45:8.

36. Pursuant to a notice of appeal, dated April 29, 2019 [Dkt. No. 12624] (the "Griffin Appeal"), Ms. Griffin has appealed from the Griffin Order. The merits of such appeal

have been fully briefed to the United States District Court for the District of Delaware (the “District Court”) and the matter is *sub judice*.

37. On October 31, 2019, Ms. Griffin filed a motion (the “Griffin Motion”) seeking to withdraw the reference from the Bankruptcy Court in an effort to preclude this Court from considering this Application and entering an order granting the relief requested herein. In support thereof, Ms. Griffin contends that this Court has already indicated an inclination to grant the Application, when this Court has only mentioned that it would schedule a hearing, see Tr. of Status Conference, dated September 26, 2019, p. 12:15-13:2, and that, if granted and Ms. Griffin were successful with respect to the Griffin Appeal, Ms. Griffin would be required to become familiar with new aspects of law and courts and that the time and expense of doing so would be unduly burdensome for her. Ms. Griffin further indicated that the Griffin Appeal related to alleged violations of the Plan, breaches of fiduciary duty and *ultra vires* acts and, if the Griffin Appeal were successful, Ms. Griffin contends that the Court would be required to address all such claims.

38. Of course, none of the foregoing issues are part of the Griffin Appeal. As mentioned above, the sole issue being considered by the District Court is whether this Court erred as a matter of law in connection with the entry of the Griffin Order and was clearly erroneous when it made its findings of fact in connection therewith. Contemporaneously herewith, WMILT has filed an objection to the Griffin Motion.

**F. Ongoing Costs of the Chapter 11 Cases**

39. Administration of the Debtors’ chapter 11 cases and the ongoing nature of the Trust causes the incurrence of significant costs and expenses to the Debtors’ estates. As reflected in WMI’s 2018 10K, based upon projected estimates as of December 31, 2018 for the then-current conditions of the Debtors’ chapter 11 cases and the anticipated term of the Trust,

WMILT management estimated total expenses for the remainder of the Trust through March 19, 2021 to be approximately \$16.1 million. Included therein were (a) U.S. Trustee fees, (b) KCC fees, (c) fees and expenses associated with compliance with securities laws, and (d) other fees and expenses of the Liquidating Trust.

**G. Limited Bankruptcy Court Involvement**

40. As the Bankruptcy Court is acutely aware, over the past seven years, the majority of WMILT's actions (and the Bankruptcy Court's involvement) have been associated with the recovery and/or liquidation of remaining assets and the reconciliation of claims -- most notably, with respect to the litigation of employee related claims seeking payments associated with, among other documents and instruments, change of control agreements and other benefits. Such litigation involved applications for authority to make "golden parachute payments" being filed with, considered by and rejected by the FDIC, and actions being filed in multiple courts, including the United States District Court for the Western District of Washington, the United States District Court for the District of Columbia, the United States District Court for the District of Delaware and ultimately, the Bankruptcy Court. Parties included WMILT, the FDIC and former officers and employees of the Debtors and asserted claims exceeded, at their height, over \$100 million.<sup>11</sup> With the Bankruptcy Court's confirmatory Memorandum Opinion, dated February, 1, 2019 [Dkt. No. 12584], and order, dated February 1, 2019 [Dkt. No. 12585], in February 2019, approximately \$50 million (of the \$68.4 million remaining in the Disputed Claims Reserve on account of such Claims) was distributed to holders of Allowed Claims and, in accordance with the waterfall provisions of the Plan, entitling holders of the Claims in Classes

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<sup>11</sup> Based upon orders of the Bankruptcy Court, such amounts were reduced pursuant to the limitations set forth in section 502(b)(7) of the Bankruptcy Code.

17B (Section 510(b) Subordinated WMB Notes Claims) and 18 of the Plan to receive distributions. After giving effect to such distribution, the balance of cash then held in the Disputed Claims Reserve was released to WMILT and recorded on its financial statements as an unencumbered asset to be used for a future distribution. However, based upon releases provided pursuant to the Plan, stipulations and settlement agreements and distributions previously received, all parties within Class 17B (Section 510(b) Subordinated WMB Notes Claims) have waived their rights to distributions, entitling holders with Class 18 to the final distribution pursuant to the Plan. Beyond this, the Bankruptcy Court and WMILT have merely waited for the final reconciliation of remaining claims and monetization of assets.

#### **Proposed Trust Amendments**

41. As described below, pursuant to this Application, WMILT seeks, among other relief, authority to wind-up and dissolve the Trust following the contemplated final distribution and, in connection therewith, (a) to reserve such funds as are necessary for such wind-up and dissolution, and (b) consistent with the provisions of the Plan and the Confirmation Order, to donate any remaining Liquidating Trust Assets to one or more qualified charitable organizations. Prior to doing so, however, WMILT intends to make certain modifications to the Liquidating Trust Agreement in accordance with its terms. Specifically, pursuant to Section 9.9 of the Liquidating Trust Agreement, any provision of the Liquidating Trust Agreement may be amended or waived by the Liquidating Trustee with the consent of all voting members of the Trust Advisory Board provided that any such amendment or waiver is not inconsistent with the purpose and intention to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with applicable Treasury Regulations.

42. As noted above, WMILT anticipates making its final distributions to creditors in the first quarter of 2020, leaving WMILT with funds necessary for the dissolution and wind-up

of WMILT (including for the potential of ongoing litigation)<sup>12</sup> and, thereafter, for the contribution to one or more charitable organizations. In connection with such wind-up and dissolution, the Liquidating Trustee, with the full support and consent of the Trust Advisory Board, intends to amend or waive certain provisions of the Liquidating Trust Agreement, one or more of which are discussed below.

**1. Books and Records**

43. Pursuant to Section 3.3 of the Liquidating Trust Agreement, upon the distribution of all Liquidating Trust Assets,

the Liquidating Trustee shall retain the books, records and files that shall have been delivered to or created by the Liquidating Trustee. At the Liquidating Trustee's discretion, all of such records and documents may be destroyed at any time that is six (6) years after the final distribution of the Liquidating Trust Assets, subject to any joint prosecution and common interest agreement(s) to which the Liquidating Trustee may be party.

Liquidating Trust Agreement, Section 3.3. See also, Liquidating Trust Agreement, Section 4.10.

Rather than reserving significant funds necessary to preserve books and records for an additional six (6) years, especially because WMILT has already preserved all such books and records (including those of the Debtors) for almost eight (8) years, pursuant to Section 9.9 of the Liquidating Trust Agreement, the Trust Advisory Board shall amend the Liquidating Trust Agreement, to remove the obligation to further preserve such books and records no earlier than one (1) year following the dissolution and wind-up of WMILT.

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<sup>12</sup> As noted below, the Griffin Appeal, as defined below, has been fully briefed and has been submitted to the District Court for determination. WMILT submits that the pendency of the Griffin Appeal does not affect the Court's ability to consider the Application and the relief requested herein. Additionally, on October 31, 2019, Ms. Griffin filed the Griffin Motion seeking an order withdrawing the reference pursuant to 28 U.S.C. § 157(d) so as to preclude this Court from considering the Application. Contemporaneously herewith, the Trust has objected to the Griffin Motion and submits that, similar to the other theories espoused by Ms. Griffin, such motion has no basis in law or fact.

**2. Trust Advisory Board/Administrators**

44. With the closing of the Debtors' chapter 11 cases and the final distribution being made, the Trust Advisory Board and the Liquidating Trustee will have completed all of their respective duties and responsibilities. Accordingly, it would be appropriate for the Trust Advisory Board to be released from further responsibilities and to replace such individuals with administrators to complete the wind-up and dissolution of the Trust.

45. Since the Effective Date, Charles Edward Smith and Doreen Logan have served as officers of WMILT, together with the Liquidating Trustee, developed all information for and facilitated all public filings, and are aware of the many issues that have confronted WMILT. The Liquidating Trust Agreement shall be amended to provide for the appointment of Mr. Smith and Ms. Logan as administrators to complete the wind-up and dissolution of the Trust and to release the Trust Advisory Board and the Liquidating Trustee from obligations in connection therewith.

**Relief Requested**

46. WMILT requests that the Bankruptcy Court enter an order, pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1, (a) closing the Debtors' chapter 11 cases, (b) establishing a post-closing mechanism with respect to undelivered and uncashed distributions, and (c) following a final distribution to holders of Class 18 Allowed Claims, (i) authorizing the wind-up and dissolution of the Trust, including the making of one or more charitable contributions of remaining Liquidating Trust Assets, and (ii) terminating KCC as Claims Agent.

**The Chapter 11 Cases Should Be Closed and Procedures  
Approved in Connection with the Wind-Up and Dissolution of WMILT**

A. The Chapter 11 Cases Have Been Fully Administered and Should Be Closed

47. Section 41.23 of the Plan provides that the “Liquidating Trustee shall, promptly upon the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court.” Plan, §41.23.

48. Section 350 of the Bankruptcy Code, entitled Closing and Reopening Cases, provides in pertinent part as follows:

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

Bankruptcy Code, §350(a). Likewise, Bankruptcy Rule 3022 provides as follows:

Final Decree In Chapter 11 Reorganization Case. After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

Bankruptcy Rule 3022. Additionally, Local Rule 3022-1(a) provides:

Upon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required files due under 28 U.S.C. § 1930 have been paid. Such motion shall include proposed final decree order that (i) order the closing of the case and (ii) identifies in the caption and body of the order the case name and the case number of each case to be closed under the order. Del. Bank L.R. 3022-1(a).

49. The term “fully administered” is not defined in the Bankruptcy Code, the Bankruptcy Rules or the Local Rules. Notwithstanding, in determining whether an estate has been fully administered for final decree purposes, courts have frequently considered the following non-exhaustive factors set forth in the Advisory Committee’s note to the 1991 amendment to Bankruptcy Rule 3022:

- (a) Whether the order confirming the plan has become final;
- (b) Whether deposits required by the plan have been distributed;
- (c) Whether the property proposed by the plan to be transferred has been transferred;
- (d) Whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;
- (e) Whether payments under the plan have commenced; and
- (f) Whether all motions, contested matters, and adversary proceedings have been finally resolved.

Bankruptcy Rule 3022, Advisory Committee Notes (1991). In re SLI, Inc., et al., 2005 WL 1668396, 44 Bank. Ct. Dec 281 (D. Del 2005). See also, In re Ginko Associates, L.P., 2009 WL 2916917 (E.D. Pa. 2009). But, these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before a case is closed. In re Valence Technology, Inc., 2014 WL 5320632, 60 Bank Ct. Dec. 49 (W.D. Tex. 2014). See, e.g., In re Union Home & Indus., Inc., 375 B.R. 912, 917 (10th Cir. BAP 2007) (a party need not demonstrate all factors before a case is closed); In re Provident Fin. Inc., 2010 WL 6259973, at \*9 (9th Cir. BAP 2010), aff'd, 2012 WL 172887 (9th Cir. Jan. 17, 2012) (bankruptcy courts have flexibility in determining whether a case is fully administered). A court should review each request on a case-by-case basis. In re Ginko Assoc., L.P., WL 2916917, at \*2 (E.D. Pa. 2009).

50. In reviewing the Debtors' chapter 11 cases, it is patently apparent that these cases have been "fully administered" and that they should be closed. As noted above, since the Petition Date, the Debtors and WMILT have taken all necessary steps to gather the Debtors' assets, reconcile claims and make distributions in accordance with the terms and provisions of the Plan. Generally speaking, such actions have included, among many others, (a) engaging in significant litigation with the FDIC, the FDIC Receiver and JPMC in an effort to determine the

property of the Debtors' chapter 11 estates, (b) compromising and settling such issues pursuant to the GSA, (c) participating in Bankruptcy Court-ordered mediation to resolve outstanding claims asserted by the Equity Committee, (d) confirming and consummating the Plan, (e) gathering and/or liquidating the Debtors' assets, and (f) reconciling all remaining Claims, including litigating and resolving employee-related Claims subject to "golden parachute regulations."

51. Applying the non-exhaustive six Advisory Committee factors, it is expressly clear that these cases have been fully administered: (a) the Confirmation Order is final; (b) all deposits, to the extent required by the Plan, have been distributed; (c) all property was transferred to the Trust on the Effective Date; (d) the Trust assumed responsibility for the reconciliation of claims and distribution of assets in the liquidating chapter 11 cases; (e) payments commenced being made pursuant to the Plan; and (f) all motions, contested matters and adversary proceedings, other than the Griffin Appeal, have been finally resolved. But, as noted above, the Adversary Committee's "six factors" are non-exhaustive and not every factor must be satisfied in order to close a case. Indeed, most notably, courts have held that the existence of a pending matter is an insufficient reason to deny closure of a chapter 11 case as it does not necessarily mean that a case has not been "fully administered". See In re Union Home and Indus., 375 B.R. 912, 918 (10th<sup>h</sup> Cir. BAP 2007).

52. Here, closing of the Debtors' chapter 11 cases will not prejudice any party and, actually, will inure to the benefit of Class 18 Creditors, as it will permit WMILT to maximize amounts available for distribution by reducing ongoing costs of administration of the chapter 11 cases and, thereby, permit the release of amounts otherwise reserved for future administration of the Trust. Specifically, costs saved would include public reporting fees, U.S. Trustee fees,

WMILT operational infrastructure, professional fees and expenses, costs associated with tax payment preparations and expenses related to document retention.

53. Additionally, the pendency of the Griffin Appeal is not an impediment to closure of the Debtors' chapter 11 cases. First, it must be noted that, no court has granted a stay of the effectiveness of the Griffin Order, nor has Ms. Griffin even sought to do so. The recently-filed motion to withdraw the reference is not a request for a stay with respect to the Griffin Appeal. Rather, it is an effort to enjoin this Court from acting upon this Application because of this Court's statement that it would schedule a hearing to consider this Application and the relief requested herein. Nowhere did this Court state what position it would take with respect to the Application. WMILT submits that the latest request is inappropriate and, as mentioned above, has filed an objection in connection therewith. If this Court were to grant this Application, Ms. Griffin would certainly be entitled to take an appeal from any such order and seek to stay the effectiveness thereof. Conversely, if the relief requested herein were not granted, Ms. Griffin similarly has suffered no prejudice.

54. Second, and as courts have observed in connection with other "closing" applications, see, e.g., In re Valence Technology, Inc., 60 Bankr. Ct. Dec. 49, 51 (Bankr. W.D. Tex 2014), in the event the Griffin Appeal were successful, and WMILT submits it will not, there is always the opportunity to reopen the Debtors' chapter 11 cases in order to provide appropriate relief to the Debtors and any other party or for other cause.

**B. Dissolution of the Liquidating Trust**

55. Section 27.14(d) of the Plan and Section 3.2 of the Liquidating Trust Agreement provide for the dissolution of the Liquidating Trust. Specifically, Section 3.2 of the Liquidating Trust Agreement provides in pertinent part as follows:

If at any time the Liquidating Trustee determines, in reliance upon such Trust Professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to the Liquidating Trust Beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidating Trust, (ii) donate any balance to a charitable organization (A) of the type described in section 501(c)(3) of the IRC, (B) exempt from United States federal income tax under section 501(a) of the IRC, (C) that is not a “private foundation”, as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the Liquidating Trust, and any insider of the Liquidating Trust, and (iii) dissolve the Liquidating Trust. Upon receipt of such authority from the Bankruptcy Court, the Liquidating Trustee shall (X) notify each Liquidating Trust Beneficiary, (Y) file a Certificate of Cancellation with the Secretary of State of the State of Delaware and (Z) provide a copy of the evidence of such cancellation to the Resident Trustee.

Liquidating Trust Agreement, §3.2

56. Based upon current projections, and with a final distribution projected to being made to Creditors no later than the first quarter of 2020 (subject to the rights with respect to “undelivered” or “uncashed” distributions), WMILT anticipates that administrative obligations to wind-up and dissolve the Trust shall continue through calendar year 2020. Such activities shall include the final disposition of all assets and the preparation and filing of appropriate tax returns. In accordance with the Plan and section 505(b) of the Bankruptcy Code, WMILT recently filed with the IRS several requests for prompt determinations as to any unpaid tax liabilities with respect to the Disputed Claims Reserve and the Disputed Equity Escrow. The time period for the IRS to respond to the request related to the Disputed Claims Reserve has expired and no action was requested by the IRS. The time period related to the Disputed Equity Escrow request has not expired and the IRS has not taken any action as of the date hereof.

57. In connection with such obligations, WMILT estimates that approximately \$5-7 million of cost fees and expenses (including contingency reserves) will be incurred through December 31, 2020<sup>13</sup>. Such amount includes fees and expenses in connection with further litigation which may arise from, among other matters, the Griffin Appeal and the closing of the chapter 11 cases, thereby reducing amounts available for distribution to Creditors. Based upon WMILT's 2018 10K, applying the 2019 actual and projected amounts and the 2020 projections, there will be a favorable variance of approximately \$800,000.00 which will become available for distribution to Creditors.

58. Pursuant to the Plan and the Confirmation Order, WMILT is authorized to distribute such remaining assets to one or more qualified charitable organizations. Prior to or contemporaneously with dissolution of the Trust, WMILT intends to contribute any such amounts to Seattle-based organizations.

C. Unclaimed/Uncashed Distributions

59. As mentioned above, with the final distribution about to be made to over six thousand (6,000) new recipients, based upon prior distributions, WMILT anticipates that some of these payments will go undelivered or unclaimed for one reason or another. Rather than voiding such distributions in short order and causing Creditors to forfeit recoveries, similar to the Plan, WMILT believes that such recipients should have another opportunity to realize upon their recoveries. Accordingly, WMILT requests that the Bankruptcy Court authorize WMILT to (a) post a notice for thirty (30) days on WMILT's website, [www.wmitrust](http://www.wmitrust), setting forth the names of parties (i) to whom distributions have been sent and such distributions have been returned to

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<sup>13</sup> It must be noted that wind-up and dissolution of WMILT could go longer due to pending litigation and final steps necessary to be undertaken.

WMILT or (ii) to whom distributions have been made and such distributions remain uncashed or not-negotiated and (b) publish a notice, the form of which is annexed hereto as Exhibit “C”, once in The Seattle Times, on a date at least ninety (90) days following the final distribution, notifying all parties that have had their distributions returned to WMILT or which have gone unclaimed. Thereafter, such recipients would have twenty (20) days to notify WMILT of their whereabouts and receive a distribution. WMILT submits that, in order to complete the distribution process and dissolve the Trust, failure of a Creditor to respond and negotiate its distribution within sixty (60) days of such publication should be a bar to any recovery and the distribution allocated to such Creditor should be forfeited and become part of any ultimate donation to a charitable organization.

D. Termination of Claims and Noticing Agent

60. With the closure of the Debtors’ chapter 11 cases and a final distribution being made to Class 18 Creditors, WMILT submits that KCC will have fulfilled all of its duties and obligations as noticing agent and claims agent. Accordingly, effective as of the final distribution being made, WMILT requests that KCC be released from any further obligations pursuant to the KCC Order. Notwithstanding such termination, KCC shall continue to provide certain ancillary services to WMILT in connection with the wind-up and dissolution of the Trust.

E. Cancellation of LTIs and Escrow Markers/Escrow CUSIPs

61. With the final distribution being made to holders of Allowed Claims within Class 18, all Liquidating Trust Interests which were issued pursuant to the Plan to holders of Allowed Claims or reserved on account of holders of Disputed Claims, and subsequently transferred to holders of Allowed Claims as payments flowed down and in accordance with the Bankruptcy Court-approved Plan and waterfall, will have been satisfied and there will be no remaining beneficiaries of the Trust other than potential charitable organizations. To the extent that

“escrow markers/escrow CUSIPs” have been administratively issued for tracking purposes, WMILT submits that cancellation thereof is appropriate in order to avoid inconsistency and misunderstanding in the marketplace. WMILT submits that such cancellation of escrow markers/escrow CUSIPs will not prejudice any party as no additional distributions will be made.

**Notice**

62. Notice of this Application has been served in accordance with the provisions of Bankruptcy Rule 2002 and upon (a) the U.S. Trustee, (b) the IRS and (c) all parties requesting notices in the Debtors’ chapter 11 cases. Additionally, WMILT shall file this Application as an exhibit with the Securities and Exchange Commission under Form 8-K.

WHEREFORE WMILT respectfully requests that the Bankruptcy Court enter an order, in the form annexed hereto as Exhibit “D”, (a) closing the Debtors’ chapter 11 cases, (b) authorizing the transactions provided for herein and (c) granting WMILT such other and further relief as is just.

Dated: November 14, 2019  
Wilmington, Delaware

/s/ Christopher M. DeLillo

RICHARDS, LAYTON & FINGER, P.A.

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*Attorneys to the WMI Liquidating Trust*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
<i>In re</i>	:	<b>Chapter 11</b>
<b>WASHINGTON MUTUAL, INC., <u>et al.</u>,<sup>1</sup></b>	:	<b>Case No. 08-12229 (MFW)</b>
<b>Debtors.</b>	:	<b>(Jointly Administered)</b>
	:	<b>Hearing Date: December 19, 2019 at 2:00 p.m. (ET)</b>
	:	<b>Obj. Deadline: December 2, 2019 at 4:00 p.m. (ET)</b>

**NOTICE OF APPLICATION AND HEARING**

PLEASE TAKE NOTICE that, on November 14, 2019, WMI Liquidating Trust (“WMILT” or the “Trust”), as successor in interest to Washington Mutual, Inc. (“WMI”) and WMI Investment Corp., formerly debtors and debtors in possession (collectively, the “Debtors”), filed the *Application of WMI Liquidating Trust for an Order, Pursuant to section 350 of the Bankruptcy Code Bankruptcy Rule 3022 and Local Rule 3022-1, Authorizing, Among Other Things, (A) Closing the Chapter 11 Cases of Washington Mutual, Inc, and WMI Investment Corp. and (B) Authorizing the Wind-up and Dissolution of the Liquidating Trust* (the “Application”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Application must be filed in writing with the Clerk of the Bankruptcy Court, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 on or before **December 2, 2019 at 4:00 p.m. (prevailing Eastern Time)**.

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<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 800 Fifth Avenue, Suite 4100, Seattle, Washington 98104.

PLEASE TAKE FURTHER NOTICE that, in the event that one or more objections or responses to the Application are timely filed and not otherwise resolved, the Application will be considered at a hearing before The Honorable Mary F. Walrath at the Bankruptcy Court, 824 North Market Street, 5<sup>th</sup> Floor, Courtroom 4, Wilmington, Delaware 19801, on **December 19, 2019 at 2:00 p.m. (ET)**.

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

Dated: November 14, 2018  
Wilmington, Delaware

*/s/ Christopher M. De Lillo*

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Mark D. Collins (No. 2981)  
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**EXHIBIT A**

DISCLOSURE STATEMENT EXCERPT

accordance with Section 21.1(a) of the Seventh Amended Plan, Wilmer Cutler Pickering Hale & Dorr LLP (“Wilmer Hale”), Pachulski Stang Ziehl & Jones LLP (“Pachulski”), and Boies, Schiller & Flexner LLP (“Boies Schiller” and, collectively with Fried Frank, Blank Rome, White & Case, Kasowitz, Zolfo, Wilmer Hale, and Pachulski, the “Section 41.18 Professionals”), to the extent the clients with respect to the Section 41.18 Professionals seek reimbursement for the payment of fees and expenses incurred, shall file with the Bankruptcy Court an application (for purposes of reviewing the reasonableness of the amounts requested therein), together with detailed invoices annexed thereto, requesting payment for *reasonable* fees and expenses incurred during the period from the Petition Date through and including the Effective Date, in connection with the Chapter 11 Cases, the Global Settlement Agreement, the Seventh Amended Plan, or the transactions contemplated therein (including, without limitation, investigating, negotiating, documenting, and completing such transactions and enforcing, attempting to enforce, and preserving any right or remedy contemplated under the Global Settlement Agreement and in the Chapter 11 Cases), and that, within ten (10) Business Days of the entry of a Final Order by the Bankruptcy Court approving the payment thereof, in whole or in part, the Disbursing Agent shall pay such fees and expenses so approved. The Debtors have been informed by the Section 41.18 Professionals that the Section 41.18 Professionals project that they will request an aggregate total of at least<sup>33</sup> \$37.3 million on account of fees for services rendered and expenses incurred through the date hereof in connection with the Chapter 11 Cases, the Global Settlement Agreement, the Seventh Amended Plan, or the transactions contemplated therein. As summarized in Section VI.B.18.a below, up to \$10 million of Cash distributed on account of the BB Liquidating Trust Interests will be used to satisfy the fees and expenses of Wilmer Hale, Pachulski, and Boies Schiller (which currently account for approximately \$7.9 of the total amount the Section 41.18 Professionals project they will request).

#### IV.

#### OVERVIEW OF THE DEBTORS’ OPERATIONS

##### A. The Debtors’ Corporate History and Past and Current Organizational Structure and Assets

###### 1. Overview

WMI is a holding company incorporated in the State of Washington and headquartered at 925 Fourth Avenue, Suite 2500, Seattle, Washington 98104.<sup>34</sup> WMI is the direct parent of WMI Investment (discussed below).

Prior to the Petition Date, WMI was a multiple savings and loan holding company that owned WMB and such bank’s subsidiaries, including FSB. WMB primarily provided banking services to consumers and small businesses in major U.S. markets. WMI was the largest savings and loan holding company and WMB, together with its subsidiaries, was the seventh largest U.S.-based bank. As of the Petition Date, WMI also had several non-debtor subsidiaries. Like all savings and loan holding companies, prior to the Petition Date, WMI was subject to regulation by the OTS. WMB and FSB, 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 non-banking subsidiaries were overseen by various federal and state authorities, including the FDIC.

<sup>33</sup> Some of the Section 41.18 Professionals have not provided current accountings of fees and expenses.

<sup>34</sup> The Debtors anticipate relocating to 1201 Third Avenue, Suite 3000, Seattle, Washington 98101 by the end of January 2012.

On September 25, 2008, the OTS, by order number 2008-36, closed WMB, appointed the FDIC Receiver as receiver for WMB and advised that the FDIC Receiver was immediately taking possession of WMB's assets. Immediately after its appointment as receiver, the FDIC sold substantially all the assets of WMB, including the stock of FSB, to JPMC pursuant to the Purchase and Assumption Agreement in exchange for payment of \$1.88 billion and the assumption of all of WMB's deposit liabilities, including those deposit liabilities owed to the Debtors. Shortly thereafter, JPMC assumed all of FSB's deposit liabilities by merging FSB with its own banking operations.

Prior to the Receivership, WMI's equity securities were registered with the United States Securities and Exchange Commission (the "SEC") and were traded on the New York Stock Exchange (NYSE) under the symbol "WM." Accordingly, WMI was subject to the informational disclosure requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and filed annual, quarterly and current reports and other information with the SEC. WMI has adopted so-called "modified Exchange Act reporting" under the SEC Staff's Legal Bulletin No. 2 and, accordingly, no longer files Form 10-Q and 10-K reports. Instead, WMI files its monthly operating reports (the "MORs") with the Bankruptcy Court and furnishes the MORs to the SEC under cover of Form 8-K. WMI also files 8-K reports as necessary to report "line items" and material developments concerning WMI and WMI's chapter 11 case.

## 2. List of WMI's Current Directors

As set forth in WMI's public filings with the SEC, available at [www.sec.gov](http://www.sec.gov), WMI's current directors are Stephen E. Frank, Alan Fishman, Margaret Osmer McQuade, Phillip Matthews, Regina T. Montoya, Michael K. Murphy, William G. Reed, Jr., Orin Smith, and James H. Stever.

## 3. WMI's Consolidated Corporate Organizational Structure

On the Petition Date, in addition to WMB,<sup>35</sup> WMI owned, directly and indirectly, thirty-three (33) subsidiaries (the "Non-Banking Subsidiaries"). For the avoidance of doubt, Second and Union LLC is not now and has never been an asset of the Debtors' estates. (See Debtor's Response to the Letter of Joe Schorp Requesting Information Regarding Second and Union LLC [D.I. 6811].) A complete list of the Non-Banking Subsidiaries, as well as information regarding their organizational relationships, financial information and a summary of their respective operations, is set forth below. During the pendency of the Chapter 11 Cases, in addition to monetizing assets at such Non-Banking Subsidiaries, the Debtors have undertaken three corporate reorganizations in order to consolidate WMI's corporate structure. Upon completion of each of these reorganizations, available cash has been either distributed to WMI in accordance with applicable law or paid to WMI in satisfaction of an intercompany obligation. After giving effect to these reorganizations, WMI owned (and continues to own) seven directly-owned Non-Banking Subsidiaries. Below are visual representations of WMI's corporate organizational chart (i) prior to the FDIC Receiver's seizure of all of WMB's assets on September 25, 2008 and JPMC's purchase, pursuant to the Purchase and Assumption Agreement, of substantially all of such assets (including FSB and all other subsidiaries owned, directly and indirectly, by WMB), (ii) as of the Petition Date, and (iii) as of the date of the filing of this Disclosure Statement.

<sup>35</sup> Although, as of the date hereof, WMB remains a subsidiary of WMI, the FDIC seized all of WMB's assets on September 25, 2008, including all of WMB's subsidiaries, and sold substantially all of WMB's assets to JPMC pursuant to the Purchase and Assumption Agreement. Accordingly, none of WMB's subsidiaries are considered subsidiaries of WMI.

***a.* WMI and WMB Combined Organizational Chart Prior to FDIC Seizure<sup>36</sup>**

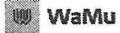
The organizational chart on the following page reflects the combined WMI and WMB structure prior to the FDIC seizure and JPMC's acquisition of WMB's assets.

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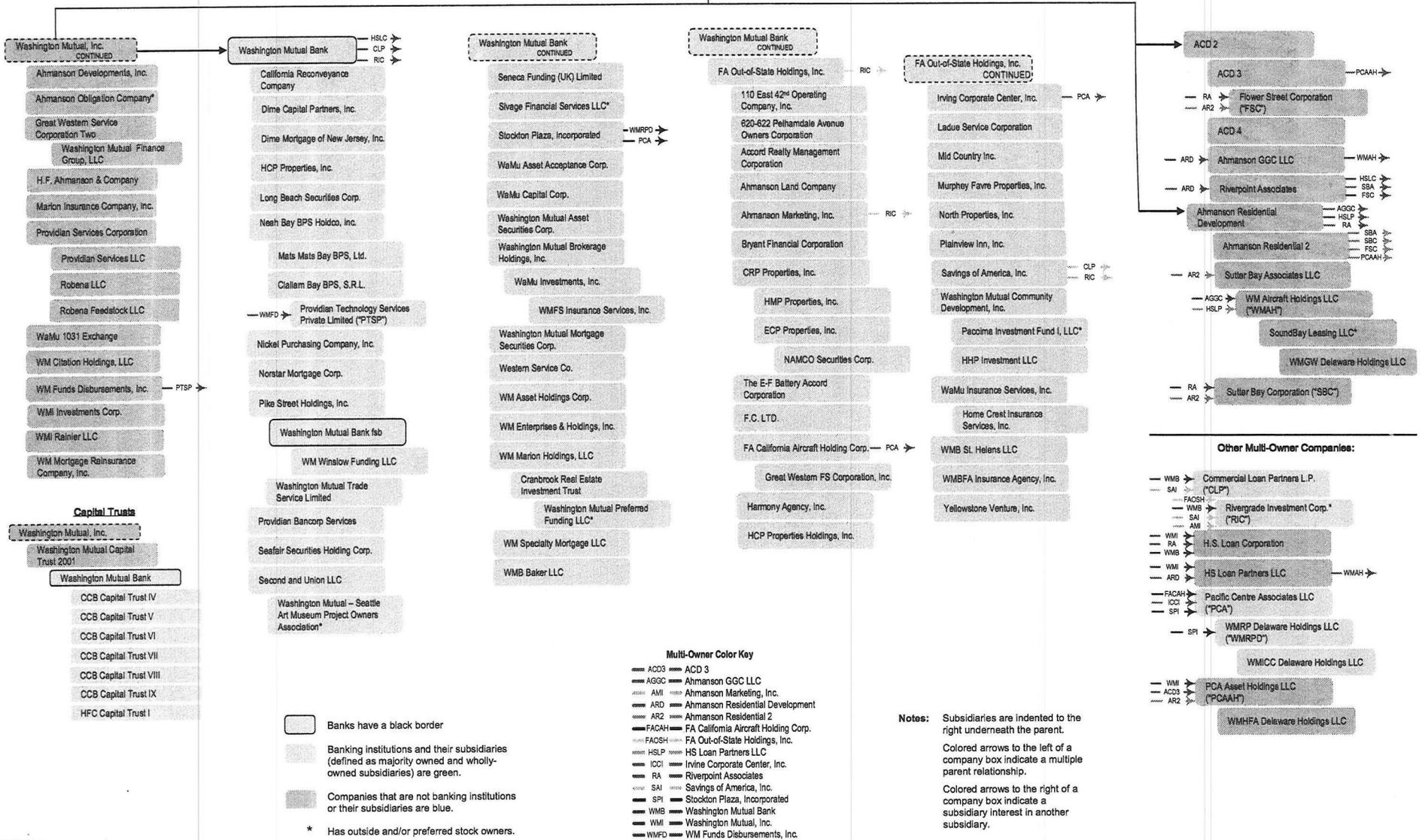
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<sup>36</sup> The Non-Banking Subsidiaries are denoted in blue; WMB's direct and indirect subsidiaries are denoted in green; Subsidiaries are indented to the right underneath the parent, colored arrows to the left of a company box indicate a multiple parent relationship and colored arrows to the right of a company box indicate a subsidiary interest in another subsidiary.

September 24, 2008



Washington Mutual, Inc.



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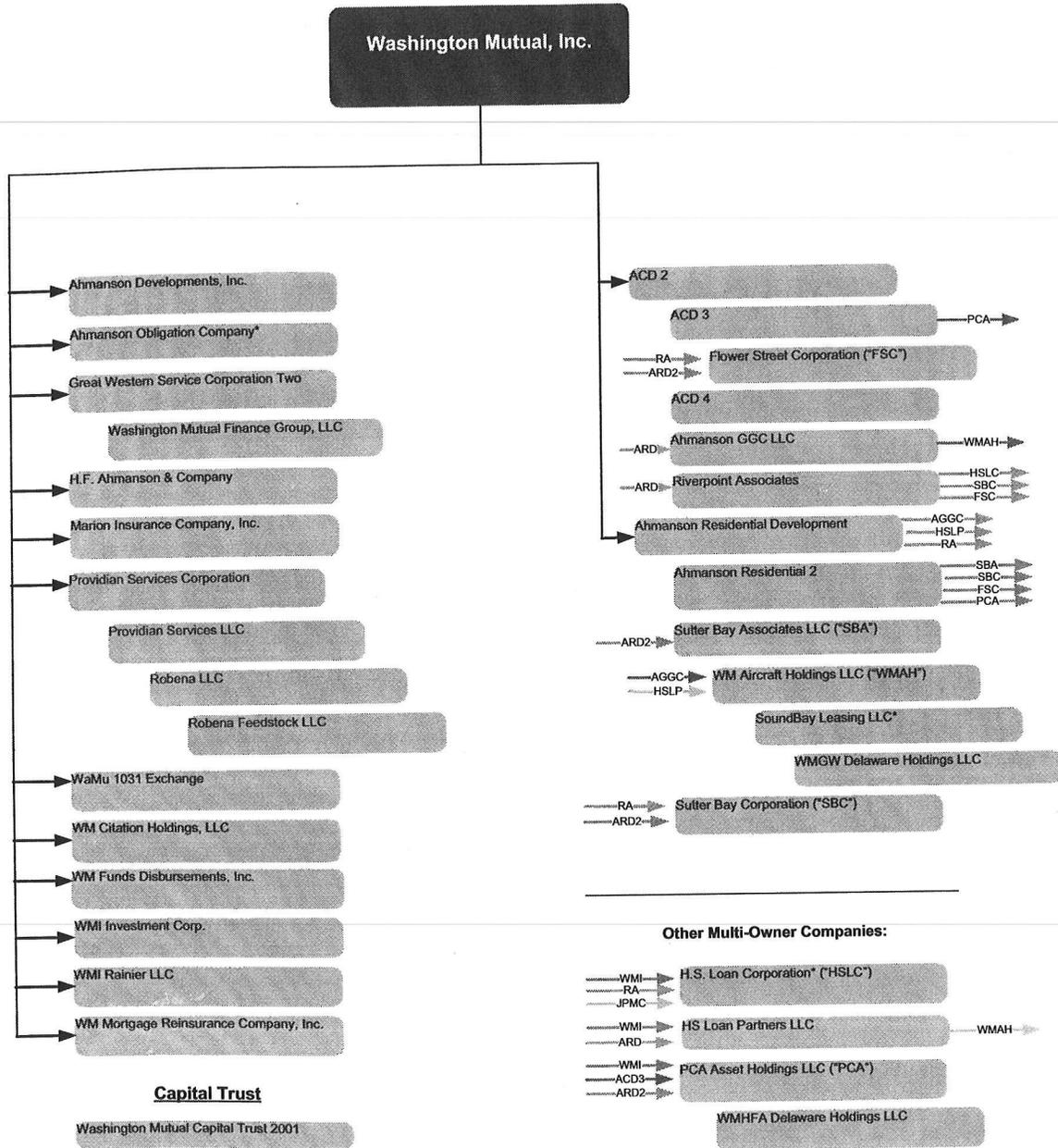
**b. WMI Organizational Chart as of Petition Date<sup>37</sup>**

WMB's banking operations and its subsidiaries (including FSB) were seized by the FDIC Receiver and then acquired by JPMC on September 25, 2008 pursuant to the Purchase and Assumption Agreement. The organizational chart below reflects WMI and the 33 Non-Banking Subsidiaries as of the Petition Date, September 26, 2008. It should be noted that the Washington Mutual Capital Trust 2001 is a trust related to the PIERS Units (defined below), further described in Section IV.B.5 of this Disclosure Statement, and is not considered one of the 33 Non-Banking Subsidiaries.

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<sup>37</sup> Subsidiaries are indented to the right underneath the parent, colored arrows to the left of a company box indicate a multiple parent relationship, and colored arrows to the right of a company box indicate a subsidiary interest in another subsidiary.



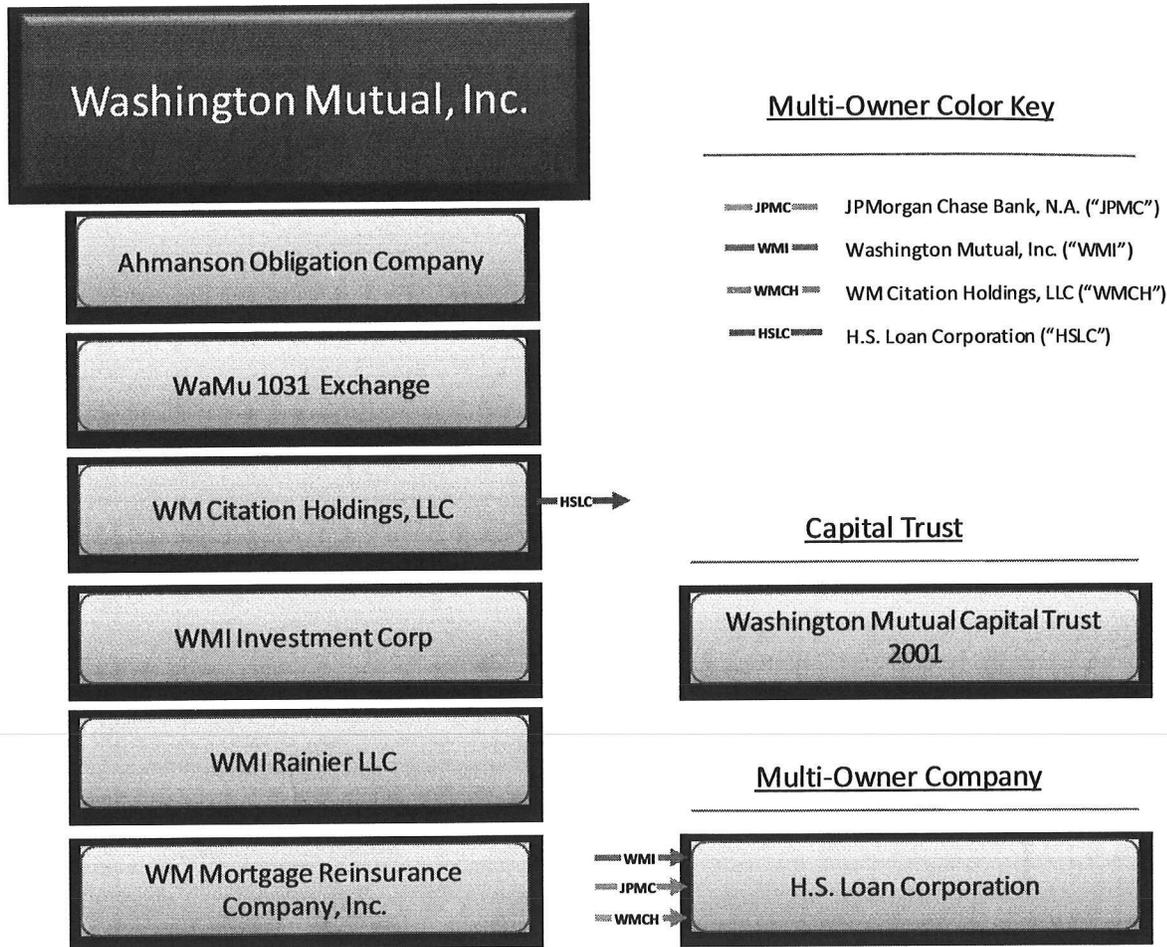
**Multi-Owner Color Key — Alphabetically**

- ACD3 ACD 3
- AGGC Ahmanson GGC LLC
- ARD Ahmanson Residential Development
- ARD2 Ahmanson Residential 2
- HSLP HS Loan Partners LLC
- JPMC JPMorgan Chase Bank, N.A.
- RA Riverpoint Associates
- WMI Washington Mutual, Inc.
- WMTD WM Funds Disbursements, Inc.

**Notes:** Subsidiaries are indented to the right underneath the parent.  
 Colored arrows to the left of a company box indicate a multiple parent relationship.  
 Colored arrows to the right of a company box indicate a subsidiary interest in another subsidiary.  
 \* Has outside and / or preferred stock owners

**c. WMI Current Organizational Chart<sup>38</sup>**

The organizational chart below reflects the remaining seven Non-Banking Subsidiaries, after the three corporate reorganizations, owned by WMI as of the date of the filing of this Disclosure Statement.



**4. Analysis of Subsidiary Equity.**

The following chart lists the Non-Banking Subsidiaries owned by WMI as of the Petition Date, a summary in the change in equity value at those subsidiaries from the Petition Date, September 26, 2008, through to, and including, October 31, 2011, and WMI's estimate of the current market value of

<sup>38</sup> Colored arrows to the left of a company box indicate a multiple parent relationship and colored arrows to the right of a company box indicate a subsidiary interest in another subsidiary.

assets remaining in each remaining Non-Banking Subsidiary.<sup>39</sup> This summary is further supplemented by (i) a reconciliation of the change in equity, (ii) background information for all Non-Banking Subsidiaries, and (iii) balance sheets for Non-Banking Subsidiaries as of October 31, 2011, each of which are set forth in the following sections. It should be noted that the financial information referenced in (iii) is not included for WMI Investment or WMMRC, as adequate information on this has been previously provided elsewhere in this Disclosure Statement or in the Debtors' MORs.

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<sup>39</sup> Of WMI's seven remaining Non-Banking Subsidiaries, WMMRC, which is currently operating on a run-off basis, WMMRC is the only Non-Banking Subsidiary with ongoing operations. Refer to Articles IV.A.6, VII, and VIII of this Disclosure Statement for additional information regarding WMMRC. After the Effective Date, WMMRC will be Reorganized WMI's sole operating entity. Pursuant to the September Opinion, the Bankruptcy Court determined, based upon the evidence presented at the July Confirmation Hearing, that the enterprise value of Reorganized WMI is \$210 million. For each of the Non-Banking Subsidiaries other than WMMRC, the market value stated is a sum of, where applicable, (i) cash, (ii) notes receivable being paid by JPMC, carried at current market value, and (iii) in some cases, certain other *de minimis* assets and liabilities, less certain disbursements for expenses related to mergers with other Non-Banking Subsidiaries or dissolution, as applicable. The principal difference between the book value and the stated market value results from the fact that intercompany balances do not represent additional value to the Debtors' estates.

Subsidiary	WMI Owned Equity Value 9/26/2008	Equity Owned by WMI sub(s) 9/26/2008	Total Equity 9/26/2008	Change in WMI Owned Equity Value	WMI Owned Equity Value 10/31/2011	Equity Owned by WMI sub 10/31/2011	Total Equity 10/31/2011	Current Market Value
<i>Direct Ownership by WMI</i>								
1 WMI Investment Corp	\$ 977,488,380	\$ -	\$ 977,488,380	\$ (63,886,758)	\$ 913,601,622		\$ 913,601,622	\$ 276,280,776
2 WMMRC	307,514,652	-	307,514,652	(81,703,877)	225,810,775		225,810,775	210,000,000 (G)
3 WaMu 1031 Exchange	5,772,391	-	5,772,391	(4,262,995)	1,509,396		1,509,396	1,250,000
4 WM Citation Holdings LLC	1,517,346	-	1,517,346	224,533,259	226,050,605		226,050,605	100,128,104
5 Ahmanson Obligation Company	25,078,216	-	25,078,216	(19,412,316)	5,665,899		5,665,899	8,966,631
6 WMI Rainier LLC	2,251,450	-	2,251,450	5,469,263	7,720,713		7,720,713	9,101
7 HS Loan Corp	59,475,241	23,639,103	83,114,344	732,152	60,207,393	23,930,026	84,137,419	84,070,169
8 Marion Insurance	66,661,014	-	66,661,014	(66,661,014)	(D)		-	-
9 ACD 2	102,798,532	-	102,798,532	(102,798,532)	(A)		-	-
10 Great Western Service Corp Two	108,915,537	-	108,915,537	(108,915,537)	(A)		-	-
11 Providian Services Corp	-	-	-	-	(B)		-	-
12 HS Loan Partners LLC	65,819,076	6,128,503	71,947,580	(65,819,076)	(C)		-	-
13 Ahmanson Developments Inc	5,338,733	-	5,338,733	(5,338,733)	(B)		-	-
14 PCA Asset Holdings LLC	19,041,342	3,700,943	22,742,285	(19,041,342)	(C)		-	-
15 Ahmanson Residential Development	147,546,544	-	147,546,544	(147,546,544)	(A)		-	-
16 WM Funds Disbursement Inc.	13	-	13	(13)	(B)		-	-
17 HF Ahmanson & Co	-	-	-	-	(B)		-	-
Investment in Subsidiaries - MOR 3	<u>1,895,218,467</u>	<u>33,468,550</u>	<u>1,928,687,017</u>	<u>(454,652,065)</u>	<u>1,440,566,402</u>		<u>1,464,496,428</u>	<u>680,704,781</u>
<i>Indirect Ownership by WMI *</i>								
18 WM Aircraft Holdings LLC		28,098,191	28,098,191		(C)		-	-
19 SoundBay Leasing LLC		-	-		(F)		-	-
20 Riverpoint Associates		43,449,882	43,449,882		(C)		-	-
21 Flower Street		21,326,909	21,326,909		(A)		-	-
22 Robena Feedstock		-	-		(B)		-	-
23 Providian Services LLC		-	-		(B)		-	-
24 ACD 3		17,298,992	17,298,992		(A)		-	-
25 Ahmanson GGC LLC		84,628,326	84,628,326		(A)		-	-
26 ACD 4		12,931	12,931		(C)		-	-
27 Ahmanson Residential 2		13,588,545	13,588,545		(A)		-	-
28 Sutter Bay Associates LLC		86,030,852	86,030,852		(A)		-	-
29 Sutter Bay Corp		60,708,905	60,708,905		(A)		-	-
30 Robena LLC		-	-		(B)		-	-
31 WMGW Delaware Holdings		-	-		(D)		-	-
32 WMFHA Delaware Holdings		6,959,522	6,959,522		(E)		-	-
33 WM Finance LLC		1,525,671	1,525,671		(C)		-	-

Notes:

- \* Equity value already reflected via direct ownership balances.
- (A) Merged into WM Citation Holdings LLC in December 2008
- (B) Merged into WMI Rainier LLC in December 2008
- (C) Merged into WM Citation Holdings LLC in April 2009
- (D) Merged into WM Citation Holdings LLC in June 2010
- (E) Merged into PCA Asset Holdings LLC in December 2008
- (F) Dissolved in June 2010
- (G) Reorganized WMI valuation is \$210 million, which includes value of WMMRC.

**a. Reconciliation of Change in “Investment in Subsidiaries”**

WMI’s “Investment in Subsidiaries,” as shown on WMI’s balance sheet (set forth in each of the Debtors’ MORs), and in the preceding chart, reflects the total book equity of the Non-Banking Subsidiaries. The total change in “Investment in Subsidiaries” from the Petition Date to October 31, 2011 is approximately \$455 million, as explained below.

<b>Investment in Subsidiaries – 9/26/2008</b>	<b>\$1,895,218,467</b>	<b>Notes</b>
Income / (Loss) from Subsidiaries	(205,040,767)	(1)
Cash Distributed to WMI	(386,865,257)	(2)
Paid Notes and Tax Payables to WMI	72,236,573	(2)
Distribution of Remaining Marion Business to WMI	(16,443,787)	Reported in Dec 2009 MOR <sup>40</sup>
Change in Other Comprehensive Income (“OCI”)	64,183,030	(3)
Other Miscellaneous Changes	<u>17,278,143</u>	
Cumulative Change from Petition Date	<u>(454,652,065)</u>	
<b>Investment in Subsidiaries – 10/31/2011</b>	<b><u>\$1,444,609,697</u></b>	

*Notes to the chart follow on the next page.*

<sup>40</sup> (See Note 4 to the “Financial Statements” in the December 2009 MOR [D.I. 2280].)

**NOTES****(1) INCOME / (LOSS) FROM SUBSIDIARIES – BY SUBSIDIARY**

WMMRC	(103,875,342)	
Marion	18,850,206	
WAMU 1031 Exchange	(262,995)	
Ahamansan Obligation Corporation	(2,032,316)	Incl. loan sale
Citation	2,105,694	Incl. aircraft sale
WMIIC	(122,719,199)	
Other subs	2,893,185	
	<hr/>	
Cumulative to Date	<b>(205,040,767)</b>	Per Oct-2011 Monthly Operating Report

**(2) CASH DISTRIBUTED TO WMI**

As noted previously, the significant asset held by these non-banking subsidiaries was cash. Upon completion of the corporate reorganizations described herein, such cash was distributed to WMI.

<u>Entity</u>	<u>Dividends</u>	<u>Notes &amp; Taxes</u>	<u>Total</u>
Total from WM Citation Holdings LLC (after merger)	235,628,684	51,497,188	287,125,872
Marion	60,000,000	13,739,385	73,739,385
AOC	15,000,000	7,000,000	22,000,000
Wamu 1031 Exchange	4,000,000	-	4,000,000
	<hr/>	<hr/>	<hr/>
Summary	314,628,684	72,236,573	386,865,257

Total Cash reported  
on MOR's as received  
from subsidiaries

**(3) CHANGE IN OCI**

Unrealized gains and losses in securities are recorded in Other Comprehensive Income within equity. When that value changes at a subsidiary, WMI's Investment in Subsidiary balance changes as well. However, this is a change on the balance sheet of the subsidiaries and is not reported on WMI's income statement.

Securities were held at WMI Investment Corp, Marion and WMMRC. The change in balance would result from both changes in values of the securities held as well as the liquidation of the securities and the realization of actual gains and losses.

## 5. Assets of WMI Investment

WMI Investment is a Delaware corporation that, as of the Petition Date, held a variety of securities and investments. Certain entities have argued that the Debtors must more fully disclose the assets of WMI Investment, including all securities held by WMI Investment, and the divestiture of any such assets since the Petition Date.

Information regarding the assets of WMI Investment has been disclosed by the Debtors in every monthly operating report (“MOR”) filed subsequent to the Petition Date, each of which was also filed with the Securities and Exchange Commission (the “SEC”) under the cover of a form 8-K, and in WMI Investment’s schedule of assets and liabilities, first filed with the Bankruptcy Court on December 19, 2008 (the “WMI Investment Schedule”). As detailed in the WMI Investment Schedule, WMI Investment’s assets consisted, as of the Petition Date, of:

- a \$566 million intercompany receivable from WMI (which, pursuant to Section 32.2 of the Seventh Amended Plan, will be extinguished, unless otherwise agreed or resolved);
- a membership interest in JPMC Wind Investment Portfolio LLC with a book value of \$65 million<sup>41</sup> (which WMI Investment will transfer to JPMC pursuant to the Global Settlement Agreement) (see Sections IV.A.9.a and V.B.3.b(iii) below);
- \$53 million of cash on deposit at JPMC (which the Debtors will receive free and clear pursuant to the Global Settlement Agreement) (see Section V.B.3.b(i) below);
- a tax receivable from WMI in the amount of \$22 million<sup>42</sup> (which, pursuant to Section 32.2 of the Seventh Amended Plan, will be extinguished, unless otherwise agreed or resolved); and
- \$266 million of investments and \$4 million of accrued interest.

After the Petition Date, the Debtors were required to liquidate the \$266 million of investments held by WMI Investment to comply with section 345(b) of the Bankruptcy Code, which governs investment requirements for bankrupt companies. The conversion of these assets to cash was disclosed in the Schedule of Cash Receipts and Disbursements included as part of the MORs filed with the Bankruptcy Court and the SEC with respect to November 2008 through December 2008, as “Cash Receipts” from the “Sale of Assets/Securities.” Furthermore, the applicable balance sheets set forth in each MOR during that period illustrated the increase of cash and the reduction of securities. Each of these documents are publicly available on the Bankruptcy Court’s docket, as well as on the website maintained by the Debtors’ solicitation and voting agent, Kurtzman Carson Consultants, LLC, at [www.kccllc.net/wamu](http://www.kccllc.net/wamu), and the SEC, at [www.sec.gov](http://www.sec.gov).<sup>43</sup>

<sup>41</sup> The book value of WMI Investment’s membership interest in JPMC Wind Investment Portfolio LLC is now approximately \$49 million.

<sup>42</sup> This amount is included in, and is not incremental to, the estimated total amount of Tax Refunds to be received by the Debtors.

<sup>43</sup> At a hearing before the Bankruptcy Court held on March 21, 2011, Bettina Haper asserted that the Debtors’ liquidation of WMI Investment’s securities, discussed herein, was unauthorized. On October 2, 2008, the Debtors filed the *Motion of Debtors for (I) Authorization to Maintain Existing Bank Accounts and Business Forms, and (II) for an Extension of Time to Comply with Section 345(b) of the Bankruptcy Code* [D.I. 16]. On October 8, 2008, the

Pursuant to Sections 1.140 and 27.3 of the Seventh Amended Plan, all assets of WMI Investment will be contributed to the Liquidating Trust.

#### 6. WM Mortgage Reinsurance Company, Inc. (“WMMRC”)

WM Mortgage Reinsurance Company, Inc. (previously defined as “WMMRC”), a Hawaiian corporation and non-debtor, wholly-owned subsidiary of WMI, is a captive reinsurance company, created to reinsure the risk associated with residential mortgages that were originated or acquired by WMB. Mortgage insurance for WMB-originated or acquired loans had historically been provided by seven mortgage insurance companies (collectively, the “Mortgage Insurers”), although currently WMMRC is party to mortgage reinsurance agreements with only six mortgage insurance companies. WMMRC entered into reinsurance agreements (the “Reinsurance Agreements”) with each Mortgage Insurer, pursuant to which it would share in the risk, in the form of Claim losses, in exchange for a portion of the premiums generated from the residential mortgage loan portfolio held by the Mortgage Insurer.<sup>44</sup>

Pursuant to each Reinsurance Agreement, WMMRC established a trust account with US Bank N.A. (defined above as the “WMMRC Trusts”), for the benefit of the Mortgage Insurer, to hold premiums collected and to secure WMMRC’s obligations to each Mortgage Insurer with respect to the insured loans. WMMRC was historically party to seven trust agreements—one for each Reinsurance Agreement to which it was a party. As of October 31, 2011, the value of the six remaining Trust’s assets was estimated to be \$344 million.

Each Reinsurance Agreement requires that WMMRC maintain a certain minimum amount of capital in the applicable Trust (the “Reinsurance Reserve”), which amount is determined by applicable law, as well as each Mortgage Insurer’s calculation of reserves needed, which is generally inclusive of reserves for known delinquencies within the loan portfolio and a percentage of the remaining aggregate risk exposure contained in each portfolio. Minimum capital requirements fluctuate on a

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Court entered the order extending the Debtors’ time period to comply with Section 345(b) of the Bankruptcy [D.I. 44]. In the *Supplemental Motion of Debtors for an Extension of Time to Comply with Section 345(b) of the Bankruptcy Code*, dated December 8, 2008 [D.I. 402], the Debtors noted that they had undertaken, and were continuing to undertake, a “steady liquidation of WMI Investment’s remaining non-government backed securities.” Ms. Haper also noted that, early in the Chapter 11 Cases, the U.S. Trustee filed an objection regarding sales of certain investments by the Debtors. (See *Objection of the United States Trustee to the Motion of Debtors Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for Order Approving Procedures for Sale of the Debtors’ Interests in Certain Investments Free and Clear of Liens, Claims and Encumbrances and Without Further Court Approval* [D.I. 420] (the “Securities Sales Objection”); see also Section IV.A.9.b below.) The Securities Sales Objection, however, was filed by the U.S. Trustee in response to a motion by the Debtors regarding the sale of WMI’s limited partner interests in venture capital funds held directly by WMI—not by WMI Investment. (See *Motion of Debtors Pursuant to Sections 105(a) and 363 of the Bankruptcy Code for Order Approving Procedures for Sale of the Debtors’ Interests in Certain Investments Free and Clear of Liens, Claims and Encumbrances and Without Further Court Approval* [D.I. 334] (the “Securities Sales Motion”).) The Bankruptcy Court approved the Securities Sales Motion, with certain modifications, by order, dated January 5, 2009 [D.I. 536]. Pursuant to the order, the Debtors were authorized to sell the limited partner interests held by WMI without seeking court approval of each sale, but were required to give notice of any such sale prior thereto.

<sup>44</sup> One of WMMRC’s Reinsurance Agreement counterparties is PMI Mortgage Ins. Co., Inc. (“PMI Mortgage”), which Entity was seized by Arizona state regulators on October 20, 2011. The Debtors understand that, although PMI Mortgage has ceased writing new business, PMI Mortgage will continue to insure its existing mortgage loan portfolio on a runoff basis, and will continue to make payments of premium income to WMMRC pursuant to the Reinsurance Agreement.

monthly basis and are reflected in monthly “cession statements” provided by each Mortgage Insurer to WMMRC. By order dated December 3, 2008, the Bankruptcy Court approved a loan from WMI to WMMRC in the amount of approximately \$11.9 million in order to maintain an adequate Reinsurance Reserve in one of its Trusts.

As of the Petition Date, due to the FDIC’s seizure of WMB’s assets and the sale of substantially all of WMB’s assets to JPMC, all the WMMRC Trusts are operating on a “run-off” basis because WMMRC has ceased to reinsure any newly originated loans.

WMMRC’s failure to maintain adequate Reinsurance Reserves could result in the Mortgage Insurers’ election to terminate the Reinsurance Agreements on a “cut-off” basis, in which case WMMRC would no longer be liable for the reinsured loans and would no longer receive reinsurance premiums with respect thereto. WMMRC would, however, be liable for the Reinsurance Reserve, which may, in certain cases, result in the extinguishment of all assets on account in the Trust at issue. As described in Section V.B.6.h hereof, WMMRC was named as a defendant in the Alexander & Reed Action.

Refer to Articles VII and VIII of this Disclosure Statement for additional information regarding WMMRC. Pursuant to the Seventh Amended Plan, WMMRC will not be transferred to the Liquidating Trust but, rather, will be the sole operating subsidiary of Reorganized WMI.

#### **7. Assets of WMI’s Non-Debtor Subsidiaries, Other than WMMRC**

Pursuant to applicable law, and as stated by the Bankruptcy Court at the March 21, 2011 hearing, the Bankruptcy Court’s jurisdiction is limited to assets of the Debtors and not to those of any non-Debtor subsidiary. However, because the value of the Debtors’ interests in such non-Debtor subsidiaries and non-Debtor assets, including WMMRC, ultimately accretes to the benefit of the Debtors’ chapter 11 estate, the Debtors have reflected such value in their liquidation and recovery analyses. To provide parties in interest with additional information, set forth below is information related to WMI’s direct and indirect subsidiaries as of the Petition Date, including WMMRC, as well as historical information regarding any transfers of assets by WMI’s non-Debtor subsidiaries from and after the Petition Date. Pursuant to Section 1.140 of the Seventh Amended Plan, WMI’s Equity Interest in all of its subsidiaries, except for WMI Investment, WMMRC and WMB, will be transferred to the Liquidating Trust. For the avoidance of doubt, and as set forth in more detail below, with the exception of a few *de minimis* residential real estate properties held by Ahmanson Obligation (defined below) as a result of mortgage foreclosures, neither the Debtors nor their non-Debtor subsidiaries hold any real estate.

The general background and status of the Non-Debtor Non-Banking Subsidiaries set forth below is delineated as follows: (a) subsidiaries currently owned by WMI, (b) subsidiaries merged on or prior to December 30, 2008, (c) subsidiaries merged in April 2009, and (d) subsidiaries merged or liquidated on June 30, 2010.

##### ***a. Currently Owned WMI Non-Banking Subsidiaries, Other than WMMRC***

**WaMu 1031 Exchange.** Prior to the Petition Date, WaMu 1031 Exchange (“WaMu 1031”) facilitated Section 1031 exchanges for residential and commercial property owners. Specifically, WaMu 1031 provided qualified intermediary services to assist real estate investors in deferring capital gains taxes with respect to real estate transactions involving investment properties. WaMu 1031 Exchange was formed as a combination of three predecessor 1031 exchange companies and processed 15,000 exchanges annually, with each exchange averaging \$300,000 to \$400,000 in size. WaMu 1031 ceased facilitating exchanges, however, in July 2009. The company has been undergoing a wind-down

process and currently has no employees, offices or assets other than cash. Since the Petition Date, WaMu 1031 has paid \$4 million to WMI, either as distributions or in satisfaction of obligations to WMI. WaMu 1031's balance sheet as of October 31, 2011 is shown below in Section IV.IV.8.

**WM Citation Holdings, LLC.** WM Citation Holdings, LLC ("WM Citation") is a Delaware limited liability company formed in July 2001. As of the Petition Date, WM Citation held partial interests in three corporate aircraft managed by NetJets, which interests were sold immediately after the commencement of the Chapter 11 Cases. The aggregate sale proceeds were approximately \$3 million after NetJets broker fees, and the eventual buyers were NetJets and JPMC. Over the course of the reorganizations, WM Citation also has been utilized to consolidate other Non-Banking Subsidiaries and, as a result, has accumulated various assets and cash through those reorganizations. Since the Petition Date, WM Citation along with the Non-Banking Subsidiaries that have merged into it have paid \$287 million to WMI, either as distributions or in satisfaction of obligations to WMI.

Through the consolidation process of merging PCA Asset Holdings and HS Loan Partners into WM Citation, WM Citation owns two note receivables payable by WMB which continue to accrue monthly interest. Pursuant to the Global Settlement Agreement, JPMC will pay all obligations of WMB, WMB's subsidiaries, or JPMC under the Revolving Notes set forth on Exhibit "V" thereto. (See Global Settlement Agreement § 2.16 and Section V.B.3.b(v) below.) Specifically, Exhibit "V" to the Global Settlement Agreement includes the following Revolving Notes which relate to WM Citation: (i) \$73,670,153 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and WM Citation (as successor to HS Loan Partners), as lender, and (ii) \$13,576,245 under that certain Registered Security, Note A, dated as of December 17, 2004, by and between University Street, Inc., as payor and predecessor in interest to WMB, and WM Citation (as successor to WMRP Delaware Holdings LLC), as payee, and predecessor in interest to PCA Asset Holdings LLC.

WM Citation owned six (6) multi-family home mortgages through the mergers of Flower Street, Sutter Bay Corporation and HS Loan Partners into WM Citation. Collectively, through a competitive auction process, 14 multi-family loan mortgages, consisting of eight (8) owned by H.S. Loan Corporation and the 6 owned by WM Citation, were sold in June 2009 and generated approximately \$3.5 million in proceeds after fees and expenses.

Through the consolidation process, WM Citation became the eventual owner of WM Aircraft's 72% interest in SoundBay Leasing LLC ("SoundBay Leasing"). SoundBay Leasing owned a 1986 Boeing 767-223ER, which was leased by American Airlines. The lease term expires at the beginning of 2012. Through an airline broker, SoundBay Leasing auctioned the plane, received six (6) bids, and generated gross proceeds of \$5.1M in January 2010, of which WM Citation retained 72%.

WM Citation's balance sheet, as of October 31, 2011, is shown below in Section IV.A.8.

**Ahmanson Obligation Company.** Ahmanson Obligation Company ("Ahmanson Obligation") is a California corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. Prior to the Petition Date, Ahmanson Obligation generally purchased loans that had been sold with recourse by WMI affiliates. Both Freddie Mac and Fannie Mae filed Claims against WMI, which guaranteed recourse obligations of Ahmanson Obligation. Ahmanson Obligation settled a \$53 million recourse Claim with Freddie Mac for \$250,000 in March 2010 and a \$17 million recourse Claim with Fannie Mae for \$50,000 in September 2010.

As of the Petition Date, Ahmanson Obligation held approximately \$18 million in unpaid principal balance ("UPB") on outstanding mortgage loans. In July 2010, through a third party advisor, Ahmanson Obligation engaged outside buyers in a competitive bidding process and received nineteen

(19) bids for a majority of these loans. Total proceeds on the sale of approximately 220 loans, or approximately \$14 million in UPB, were \$10.3 million after fees and expenses. Ahmanson Obligation currently has 50 remaining loans on the balance sheet with a total UPB of approximately \$2 million. These loans are currently in the process of being sold or prepared for sale. In addition, all previous loans or owned real estate through the loan foreclosure process has either been sold or reclassified.

Since the Petition Date, Ahmanson Obligation has paid \$22 million to WMI, either as distributions or in satisfaction of obligations to WMI. Ahmanson Obligation's balance sheet, as of October 31, 2011, is shown below in Section IV.A.8.

**WMI Rainier LLC.** WMI Rainier LLC ("WMI Rainier") is a Washington limited liability company formed in April 2006. Prior to the Petition Date, the company primarily served as a consolidation subsidiary for use in merging former WMI subsidiaries out of existence. Over the course of the reorganizations after the Petition Date, the company acquired Ahmanson Developments, Inc. which had potential liabilities related to the BKK Litigation and certain warranty obligations. The BKK Litigation and the Claims associated with it are further described in Section V.B.6.j of this Disclosure Statement. Pursuant to a pending settlement with JPMC and the plaintiffs, WMI will pay JPMC \$1.49 million on behalf of WMI Rainier in exchange for a release by JPMC of all Claims against WMI and the Non-Banking Subsidiaries related to the BKK Litigation. In addition, JPMC will indemnify the WMI Entities for any loss related to the BKK Litigation not covered by insurance; provided, that such indemnification is limited to an amount of up to \$1.49 million with respect to liabilities of WMI Rainier or its predecessor ADI (defined below) or Oxford Investment Corp. (See Certification of Counsel Regarding Order Approving Settlement Agreement Between Debtors, JPMorgan Chase Bank N.A., California Department of Toxic Substances Control, the BKK Joint Defense Group and Certain of That Group's Individual Members, Exhibit A [D.I. 6261].)

The Debtors recently learned that, through ADI's (defined below) historical real estate development activities, WMI Rainier may own two parcels of land in Riverside County, California. Both parcels are approximately two acres each and consist of narrow strips of land abutting alongside a highway. Additionally, such parcels are designated as utility corridors and zoned as "open space limiting development" and encumbered by the City of Corona and Riverside County. These utility corridors were most likely intended to be conveyed to the city during development and have zero value or assessed property tax.

WMI Rainier LLC's balance sheet, as of October 31, 2011, is shown below in Section IV.A.8.

**H.S. Loan Corporation.** H.S. Loan Corporation ("H.S. Loan") is a California corporation and was acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. As of the Petition Date, the company owned 8 multi-family home mortgages. Collectively, through a competitive auction process, 14 multi-family loan mortgages, consisting of the 6 owned by H.S. Loan and 8 owned by WM Citation (previously owned by Flower Street, Sutter Bay Corp. and HS Loan Partners at the Petition Date), were sold in June 2009 and generated approximately \$3.5 million in proceeds after fees and expenses.

As of the Petition Date, H.S. Loan also owned a note receivable asset payable by WMB, which continues to accrue monthly interest. Pursuant to the Global Settlement Agreement, JPMC will pay all obligations of WMB, WMB's subsidiaries, or JPMC under the Revolving Notes as set forth on Exhibit "V" thereto. (See Global Settlement Agreement § 2.16 and Section V.B.3.b(v) below.) Exhibit "V" to the Global Settlement Agreement includes the following Revolving Note which relates to H.S. Loan:

\$82,048,081 under that certain Revolving Master Note, dated as of December 22, 2005, by and between WMB, as borrower, and H.S. Loan, as lender.

JPMC owns a minority interest in H.S. Loan of approximately 1.33% and will convey such minority interest to WMI upon implementation of the Global Settlement Agreement, as set forth in Section V.B.3.b(iv) below.

H.S. Loan's balance sheet as of October 31, 2011 is shown below in Section IV.A.8.

***b. WMI Subsidiaries Merged at December 31, 2008***

**ACD 2 (Merged into WM Citation).** ACD 2 was a California corporation acquired as a part of the H.F. Ahmanson & Co. acquisition in October 1998. ACD 2 was incorporated in September 1992 to engage in real estate development. As of the Petition Date, ACD 2 did not have any ongoing operations or hold any real estate.

**Great Western Service Corporation Two (Merged into WM Citation).** Great Western Services Corporation Two ("GWST") was a California corporation acquired as part of the Great Western Bank acquisition in July 1997. At the Petition Date, GWST held one subsidiary, Washington Mutual Finance Group, LLC, which was involved in class action litigation in Mississippi, described below.

**Providian Services Corporation (Merged into WMI Rainier).** Providian Services Corporation ("PSC") was a Delaware corporation acquired as part of the Providian acquisition in October 2005. PSC was incorporated in June 1998 to hold certain investments in the Robena coal project transaction. As of the Petition Date, PSC was not active and did not have any assets.

**Ahmanson Developments, Inc. (Merged into WMI Rainier).** Ahmanson Developments, Inc. ("ADI") was a California corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. ADI was incorporated in August 1971 to engage in real estate development. As of the Petition Date, ADI was no longer active in development, but continued to hold warranty liabilities on various development projects. ADI had potential liabilities related to the BKK Litigation as well as certain outstanding warranty liabilities, but transferred all liabilities to WMI Rainier when it merged with WMI Rainier through the consolidation process. Refer to the above discussion of WMI Rainier for further explanation.

**Ahmanson Residential Development (Merged into WM Citation).** Ahmanson Residential Development ("ARD") was a California corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. Prior to the Petition Date, ARD owned a real estate development project in Owing Mills, Maryland. As of the Petition Date ARD did not have any ongoing operations or hold any real estate.

**WM Funds Disbursements, Inc. (Merged into WMI Rainier).** WM Funds Disbursements, Inc. ("WM Funds Disbursements") was a Nevada corporation acquired as part of the Commercial Capital Bancorp Inc. acquisition in October 2006. WM Funds Disbursements did not engage in business activities prior to 2007. As of April 2007, WM Funds Disbursement's name was changed to its current name, "WM Fund Disbursements, Inc.," and it was repurposed to make employee benefit payments to people who were employees of WM Advisors, Inc., WM Funds Distributor, Inc. and WM Shareholder Services, Inc. before WMI and/or its affiliates sold those companies. WM Funds Disbursements also held a small equity stake in Providian Technology Services Private Limited. The

equity stake was believed to have no value and WM Funds Disbursements disposed of it in September 2009.

**H.F. Ahmanson & Company (Merged into WMI Rainier).** H.F. Ahmanson & Co. was a Nevada corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. As of the Petition Date, H.F. Ahmanson & Co. was not active and did not have any assets.

**Flower Street Corporation (Merged into WM Citation).** Flower Street Corporation (“Flower Street”) was a California corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. Flower Street was formed in November 1996 to engage in real estate development. As of the Petition Date, Flower Street (a) had divested itself of any of its Los Angeles real estate assets and (b) owned a few multi-family home mortgages. Through the consolidation process these mortgages were sold to WM Citation. See the above discussion of WM Citation for further detail on the sale and proceeds.

**Robena Feedstock LLC (Merged into WMI Rainier).** Robena Feedstock LLC (“Robena Feedstock”) was a Delaware limited liability company acquired as part of the Providian acquisition in October 2005. The company was formed in June 1998 to own a wash plant associated with the coal agglomeration plant owned by Robena LLC. As of the Petition Date, the company was not active and did not have any assets.

**Providian Services LLC (Merged into WMI Rainier).** Providian Services LLC was a Delaware limited liability company acquired as part of the Providian acquisition in October 2005. The company was formed in June 1998 to hold a limited partnership interest in Robena LP. As of the Petition Date, the company was not active and did not have any assets.

**ACD 3 (Merged into WM Citation).** ACD 3 was a California corporation acquired as a part of the H.F. Ahmanson & Co. acquisition in October 1998. ACD 3 was incorporated in January 1994 to develop real estate. As of the Petition Date, ACD 3 did not hold any real estate or any other assets.

**Ahmanson GGC LLC (Merged into WM Citation).** Ahmanson GGC was a California limited liability company originated as a limited partnership formed in December 1996 by H.F. Ahmanson & Co. Ahmanson GGC converted to a limited liability company in June 1999. As of the Petition Date, Ahmanson GGC operated as a holding company for WM Aircraft Holdings LLC.

**Ahmanson Residential 2 (Merged into WM Citation).** Ahmanson Residential 2 was a California corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. Prior to the Petition Date, Ahmanson Residential 2 historically engaged in real estate development. As of the Petition Date, Ahmanson Residential 2 did not have ongoing operations or hold any real estate.

**Sutter Bay Associates LLC (Merged into WM Citation).** Sutter Bay Associates was a California limited liability company originated as a limited partnership formed by H.F. Ahmanson & Co. in December 1994. Sutter Bay Associates converted to a limited liability company in June 1999. As of the Petition Date, Sutter Bay Associates was a holding company for WaMu entities that leased commercial aircraft.

**Sutter Bay Corporation (Merged into WM Citation).** Sutter Bay Corporation was a California corporation acquired as part of the H.F. Ahmanson & Co. acquisition in October 1998. Sutter Bay Corporation was incorporated in November 1996 to engage in real estate development. As of the Petition Date, Sutter Bay Corporation owned a few multi-family home mortgages, but did not hold any

real estate. Through the consolidation process these mortgages were sold to WM Citation. See the above discussion of WM Citation for further detail on the sale and proceeds.

**Robena LLC (Merged into WMI Rainier).** Robena LLC was a Delaware limited liability company acquired as part of the Providian acquisition in October 2005. Robena LLC was formed in March 1998 to own a coal agglomeration plant. As of the Petition Date, Robena LLC was not active and did not have any assets.

**WMHFA Delaware Holdings LLC (Merged into PCA Asset Holdings).** WMHFA Delaware Holdings LLC was a Delaware limited liability company formed in June 1999. As of the Petition Date, WMHFA Delaware Holdings LLC did not hold any assets or liabilities.

*c. WMI Subsidiaries Merged at April 30, 2009*

**HS Loan Partners LLC (Merged in WM Citation).** HS Loan Partners LLC was a California limited liability company originated as a limited partnership formed in December 1996 by H.F. Ahmanson & Co. HS Loan Partners LLC converted to a limited liability company in June 1999. As of the Petition Date, HS Loan Partners LLC owned a note receivable asset payable by WMB which continues to accrue monthly interest. Through the consolidation process this asset now is owned by WM Citation and is discussed more fully in the above discussion of WM Citation. As of the Petition Date, HS Loan Partners LLC owned 1 multi-family home mortgage. Through the consolidation process this mortgage was sold to WM Citation. See the above discussion of WM Citation for further detail on the sale and proceeds.

**PCA Asset Holdings LLC (Merged in WM Citation).** PCA Asset Holdings LLC (“PCA”) was a California limited liability company formed in January 2005. PCA served as a holding company for real estate that was to be sold to third parties. As of the Petition Date, PCA owned a note receivable asset payable by WMB (acquired by JPMC and outlined in the Global Settlement Agreement) which continues to accrue monthly interest. Through the consolidation process this asset now is owned by WM Citation and is discussed more fully in the above discussion of WM Citation. As of the Petition Date, PCA did not have any ongoing operations or hold any real estate.

**WM Aircraft Holdings LLC (Merged in WM Citation).** WM Aircraft was a Delaware limited liability company was formed in December 2000 to act as a holding company. As of the Petition Date, the company directly held a 72% interest in SoundBay Leasing. This 72% interest was merged into WM Citation through the consolidation process.

**Riverpoint Associates (Merged in WM Citation).** Riverpoint Associates (“Riverpoint”) was a California general partnership acquired as part of the H.F. Ahmanson & Co., acquisition in October 1998. Riverpoint was formed to engage in real estate development. As of the Petition Date, Riverpoint did not have ongoing operations or hold any real estate.

**ACD 4 (Merged in WM Citation).** ACD 4 was a California corporation acquired as a part of the H.F. Ahmanson & Co. acquisition in October 1998. ACD 4 was incorporated in October 1993 to develop real estate. As of the Petition Date, ACD 4 did not have any ongoing operations or any assets.

**Washington Mutual Finance Group, LLC (Merged into WM Citation).** WM Finance Group was a Delaware limited liability company formed in April 2000 to engage in mortgage lending in Kentucky, Maryland, Mississippi, North Carolina, Tennessee, Virginia and West Virginia. Substantially all of WM Finance Group’s assets were sold to CitiFinancial Credit company in March 2004. As of the

Petition Date, the company existed to address certain Mississippi class action litigation arising from Mississippi loans, which since has been resolved.

*d. WMI Subsidiaries Merged or Dissolved at June 30, 2010*

**Marion Insurance Company, Inc. (Merged into WM Citation).** Marion Insurance Company (“Marion”), a Vermont corporation and non-debtor, wholly-owned subsidiary of WMI, was a captive reinsurance company, incorporated in September 2000 to act as a Vermont domiciled captive insurance company to reinsure the risk associated with lender placed hazard insurance policies, accidental death and dismemberment and mortgage life insurance. Prior to the Petition Date, Marion reinsured mortgage life, disability, and accidental death insurance written on mortgagees of WMB’s banks as well as lender placed hazard-related coverage on loans in the banks’ servicing portfolios.

In February 2009, the insurance commissioner of Vermont notified Marion that it was no longer in compliance with Vermont captive law because it no longer reinsured the risks of its affiliates, and therefore required that Marion no longer provide reinsurance as a Vermont captive. In response to this directive, in early 2009, Marion began the process of commuting its existing reinsurance contracts with four separate companies. By the beginning of June 2010, Marion had successfully commuted all reinsurance agreements with the four companies, including its reinsurance agreement with Assurant. As part of its commutation effort with Assurant, Marion created and deposited \$17 million into a trust for the benefit of Assurant to pay remaining Claims over the next two years. Per the insurance commissioner’s requirements, Marion subsequently distributed the trust to WMI to ensure the successful wind-down of the Marion entity. In March 2011, the Assurant Trust distributed \$7.7 million to WMI. The term of the trust expires on December 31, 2011, after which the remaining assets, currently approximately \$6.4 million, will revert, unrestricted, to WMI. In total, since the Petition Date, Marion has paid \$74 million to WMI, either as distributions or in satisfaction of obligations to WMI.

As of June 30, 2010, Marion surrendered its Vermont insurance license and merged out of existence as part of the ongoing WMI subsidiary wind-down process.

**SoundBay Leasing LLC (Dissolved).** SoundBay Leasing was a Delaware limited liability company formed in December 2000 to be a joint venture with Bank of America involved in the leasing of aircraft and other equipment. As of the Petition Date, SoundBay Leasing owned a 1986 Boeing 767-223ER which was leased by American Airlines. The asset was sold in June 2010. For further information on the sale, refer to the above discussion of WM Citation.

**WMGW Delaware Holdings LLC (Merged into WM Citation).** WMGW Delaware Holdings LLC (“WMGW”) was a Delaware limited liability company formed in June 1999 to engage in commercial leasing and lending. As of the Petition Date, WMGW did not hold any assets or leases.

**8. WMI Non-Debtor Subsidiary Balance Sheets**

Balance sheets as of October 31, 2011 for all the WMI subsidiaries, save WMI Investment and WMMRC, are below. For financial information regarding WMMRC, refer to Article VII of this Disclosure Statement. For WMI Investment's balance sheet, refer to the Debtors' MORs.

***WaMu 1031 Exchange Balance Sheet***  
***(Unaudited)***

	<u>October 31, 2011</u>
ASSETS	
Cash	\$ 1,421,987.48
<b>TOTAL ASSETS</b>	<b><u>1,421,987.48</u></b>
LIABILITIES & EQUITY	
Liabilities	
Accounts Payable	-
Taxes Pay / (Rec) and Deferreds -- Intercompany	(76,446.62) (1)
Other Accrued Liabilities	<u>(10,961.84)</u>
Total Liabilities	(87,408.46)
Total Equity	1,509,395.94
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>\$ 1,421,987.48</u></b>

## NOTES:

- (1) All tax balances represent intercompany balances with WMI per the tax sharing agreement. However, prior to the seizure, balances had not been reconciled on an individual company basis. Current balances represent the balances as of 9/26/2008. No adjustments have been made to the balances since the seizure awaiting final determination of the rights of ownership and the correct amounts. Per the Global Settlement Agreement, net tax refunds for WMI and its non-banking subsidiaries will be paid to WMI based on the agreed upon -percentages. Further, the Seventh Amended Plan provides that all intercompany balances will be extinguished as of the Effective Date.

**WM Citation Holdings, LLC Balance Sheet  
(Unaudited)**

	<u>October 31, 2011</u>
<b>ASSETS</b>	
Cash	\$ 2,030,163.64
Other Assets	
Investment in Subsidiaries	23,930,026.18
Intercompany Notes -- WMI	114,473,051.68
Intercompany Notes -- WMB and Subs	<u>98,720,488.36</u>
Total Other Assets	
<b>TOTAL ASSETS</b>	<b><u>239,153,729.86</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Accounts Payable	-
Taxes Pay / (Rec) and Deferreds -- Intercompany	12,209,467.42
Payroll & Benefits Accruals	843,854.00
Other Accrued Liabilities	<u>49,803.38</u>
Total Liabilities	13,103,124.80
Total Equity	226,050,605.06
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>\$ 239,153,729.86</u></b>

NOTES:

- (1) Investment in HS Loan Corporation. Balance is eliminated in consolidation.
- (2) Per the Seventh Amended Plan, all intercompany balances within WMI and its non-banking subsidiaries will be extinguished.
- (3) Per the Global Settlement Agreement, JPMC will pay WMI for notes receivable from WMB and subs.
- (4) All tax balances represent intercompany balances with WMI per the tax sharing agreement. However, prior to the seizure, balances had not been reconciled on an individual company basis. Current balances represent the balances as of 9/26/2008. No adjustments have been made to the balances since the seizure awaiting final determination of the rights of ownership and the correct amounts. Per the Global Settlement Agreement, net tax refunds for WMI and its non-banking subsidiaries will be paid to WMI based on the agreed upon -percentages. Further, the Seventh Amended Plan provides that all intercompany balances will be extinguished as of the Effective Date.
- (5) Represents post-retirement medical benefits recorded on WMI-non-banking subsidiaries as of 9/26/08. Per the Global Settlement Agreement, JPMC is assuming this Plan.

***Ahmanson Obligation Company Balance Sheet  
(Unaudited)***

	<u>October 31, 2011</u>	
<b>ASSETS</b>		
Cash	\$ 8,731,923.74	
Loans -- Secured by Real Estate	<u>541,716.14</u>	(1)
<b>TOTAL ASSETS</b>	<b><u><u>9,273,639.88</u></u></b>	
<b>LIABILITIES &amp; EQUITY</b>		
Accounts Payable	3,060.00	
Taxes Pay / (Rec) and Deferreds -- Intercompany	<u>3,604,680.81</u>	(2)
Total Liabilities	3,607,740.81	
 Total Equity	 5,665,899.07	
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u><u>\$ 9,273,639.88</u></u></b>	

**NOTES:**

- (1) Represents 53 loans secured by homes and manufactured housing. The remaining loans have not yet been sold due to documentation or performance issues which existed as of the seizure.

Gross book value	\$ 1,993,656.01
Proceeds receivable -- from servicer	43,944.22
Loan Loss Reserve	<u>(1,495,884.09)</u>
Net book value -- Loans -- Secured by Real Estate	<u>\$ 541,716.14</u>

- (2) All tax balances represent intercompany balances with WMI per the tax sharing agreement. However, prior to the seizure, balances had not been reconciled on an individual company basis. Current balances represent the balances as of 9/26/2008. No adjustments have been made to the balances since the seizure awaiting final determination of the rights of ownership and the correct amounts. Per the Global Settlement Agreement, net tax refunds for WMI and its non-banking subsidiaries will be paid to WMI based on the agreed upon percentages. Further, the Seventh Amended Plan provides that all intercompany balances will be extinguished as of the Effective Date.

**WMI Rainier LLC Balance Sheet**  
**(Unaudited)**

	<u>October 31, 2011</u>	
<b>ASSETS</b>		
Cash	\$ 1,642,851.91	(1)
Intercompany Notes -- WMI	<u>2,430,365.36</u>	(2)
<b>TOTAL ASSETS</b>	<b><u><u>4,073,217.27</u></u></b>	
<b>LIABILITIES &amp; EQUITY</b>		
Liabilities		
Intercompany Payables -- WMI	50,000.00	(2)
Taxes Pay / (Rec) and Deferreds -- Intercompany	(3,707,495.73)	(3)
Other Prepetition Liabilities	<u>10,000.00</u>	
Total Liabilities	<u>(3,647,495.73)</u>	
Total Equity	7,720,713.00	
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u><u>\$ 4,073,217.27</u></u></b>	

NOTES:

- (1) Per the pending agreement with BKK and JPMC, \$1,490,000 will be paid to JPMC in exchange for a release of all obligations related to the BKK litigation.
- (2) Per the Seventh Amended Plan, all intercompany balances within WMI and its non-banking subsidiaries will be extinguished.
- (3) All tax balances represent intercompany balances with WMI per the tax sharing agreement. However, prior to the seizure, balances had not been reconciled on an individual company basis. Current balances represent the balances as of 9/26/2008. No adjustments have been made to the balances since the seizure awaiting final determination of the rights of ownership and the correct amounts. Per the Global Settlement Agreement, net tax refunds for WMI and its non-banking subsidiaries will be paid to WMI based on the agreed upon percentages. Further, the Seventh Amended Plan provides that all intercompany balances will be extinguished as of the Effective Date.

***H.S. Loan Corporation Balance Sheet  
(Unaudited)***

	<u>October 31, 2011</u>	
<b>ASSETS</b>		
Cash	\$ 982,162.45	
Intercompany Notes -- WMI	1,397,644.18	(1)
Intercompany Notes -- WMB and Subs	<u>83,190,934.06</u>	(2)
<b>TOTAL ASSETS</b>	<b><u><u>85,570,740.69</u></u></b>	
<b>LIABILITIES &amp; EQUITY</b>		
Taxes Pay / (Rec) and Deferreds -- Intercompany	<u>1,433,321.98</u>	(3)
Total Liabilities	1,433,321.98	
 Total Equity	 84,137,418.71	
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u><u>\$ 85,570,740.69</u></u></b>	

NOTES:

- (1) Per the Seventh Amended Plan, all intercompany balances within WMI and its non-banking subsidiaries will be extinguished.
- (2) Per the Global Settlement Agreement, JPMC will pay WMI for notes receivable from WMB and subs.
- (3) All tax balances represent intercompany balances with WMI per the tax sharing agreement. However, prior to the seizure, balances had not been reconciled on an individual company basis. Current balances represent the balances as of 9/26/2008. No adjustments have been made to the balances since the seizure awaiting final determination of the rights of ownership and the correct amounts. Per the Global Settlement Agreement, net tax refunds for WMI and its non-banking subsidiaries will be paid to WMI based on the agreed upon -percentages. Further, the Seventh Amended Plan provides that all intercompany balances will be extinguished as of the Effective Date.

**9. Other Assets**

***a. Wind Energy Investment***

WMI Investment's assets include, among other things, an indirect membership interest (the "Wind Interest") in a portfolio holding company, JPMC Wind Investment Portfolio LLC ("JPMC Wind Investment"), which owns an Equity Interest in each of (i) Airtricity Sand Bluff WF Holdco, LLC, which owns the Airtricity-Sand Bluff wind farm, near Sterling City, Texas, (ii) UPC Hawaii Wind Partners II, LLC, which owns the UPC-Kaheawa Pastures wind farm, located in Maui, Hawaii, (iii) Whirlwind Energy, LLC, which owns the RES-Whirlwind wind farm, located in Floyd County, Texas, and (iv) Buffalo Gap Holdings 2, LLC, which owns the AES-Buffalo Gap 2 wind farm, located in Nolan and Taylor Counties, Texas (collectively, the "Projects"). The Debtors retained CP Energy Group, LLC,

a financial advisory and commercial asset management firm that focuses on the renewable energy sector, to assist with the marketing and sale of the Wind Interest.

The Debtors, with CP Energy's assistance, undertook an extensive marketing process for the Wind Interest. As a result of such process, the Debtors determined that an expression of interest submitted by Goldman, Sachs & Co. ("Goldman") was the highest and best expression of interest remitted as of that date. Accordingly, on September 4, 2009, the Debtors filed a motion with the Bankruptcy Court to allow them to enter into a letter of intent with Goldman, to grant Goldman exclusivity and pay for due diligence expenses, in connection with Goldman's potential purchase of the Wind Interest. Specifically, the Debtors requested authorization to reimburse Goldman for its reasonable out-of-pocket professional fees and expenses in an amount no to exceed \$300,000, provided, that, WMI Investment would only be required to reimburse Goldman if the purchase price, as set forth in definitive agreements, as the same may have been adjusted in accordance therewith, was greater than \$15 million. The Bankruptcy Court granted the motion on September 25, 2009, however, commercial terms were never reached. Prior to the Bankruptcy Court's ruling, on September 18, 2009, JPMC Wind Investment filed a reservation of rights with respect to its right of first refusal regarding any transfer of the Wind Interest.

Pursuant to the Global Settlement Agreement and a sale under section 363 of the Bankruptcy Code, WMI Investment will be deemed to have sold, transferred and assigned to JPMC, or its designee, any and all of WMI Investment's right, title and interest in and to the Wind Interest, free and clear of the liens, Claims, interests and encumbrances.

***b. Strategic Capital Fund Investments***

As of the Petition Date, WMI held investments in its Strategic Capital Fund (the "SCF"), comprised of certain Equity Interests (the "Preferred & Common Stock") and WMI's interest, as a limited partner, in ten (10) venture capital funds (the "LP Investments" and, together with the Preferred & Common Stock, the "Investments"). The venture capital funds primarily invested in companies in the technology and financial technology industries. By order, dated January 5, 2009, the Bankruptcy Court approved procedures for the sale of the Investments. The Investments were sold for \$12.3 million in cash and the purchasers assumed approximately \$8.7 million in indebtedness. As additional consideration, WMI received a beneficial interest in an unsecured and subordinated promissory note of approximately \$807,000, paid down in September 2011 to approximately \$312,200, which currently earns interest at 8%, of which interest at 3.2% is paid in cash and interest at 4.8% is "payment-in-kind" through July 2012. Thereafter, such promissory note will earn interest at 12% through July 2013 and 14% until maturity in July 2014.

***c. Visa Shares***

As of the Petition Date, WMI held 3.147 million Class B shares (the "Visa Shares") of Visa Inc. ("Visa") issued pursuant to Visa's initial public offering. The Visa Shares were set forth on the Schedules and/or WMI's books and records as of the Petition Date. Class B shares were derived from participating member's interests in Visa U.S.A. prior to the initial public offering. The value of these shares is contingent on the outcome of certain litigation, including that certain Interchange litigation discussed in Section V.B.6.i hereof. In the JPMC Adversary Proceeding, JPMC has asserted that it is entitled to the beneficial ownership of the Visa Shares, which the Debtors dispute.

Pursuant to the Global Settlement Agreement, and as set forth in Section V.B.3.b(iii) below, JPMC will pay WMI \$25 million and WMI will be deemed to have transferred to JPMC all of WMI's right, title and interest in and to the Visa Shares. WMI will retain the right to all dividends that

pre-date the effective date of the Global Settlement Agreement. JPMC will also assume the liabilities and obligations of the Debtors arising from or relating to the Interchange Litigation, other than Claims, liabilities and obligations associated with directors' and officers' liability in connection with the Interchange Litigation. JPMC has also agreed to pay or fund the payment of the Assumed Liabilities portion of any proofs of Claim related to the Interchange Litigation, to the extent such portion becomes an Allowed Claim. Furthermore, pursuant to the Global Settlement Agreement, WMI will not, without obtaining JPMC's prior written consent, which consent shall not be unreasonably withheld, (a) commence or continue any Claim objection proceedings, or (b) enter into, or seek Bankruptcy Court approval of, any settlement agreement with Visa U.S.A.

## **B. The Debtors' Capital Structure And Significant Prepetition Indebtedness**

### **1. Overview**

As of the Petition Date, WMI had, among other indebtedness, outstanding principal unsecured indebtedness totaling approximately \$6.45 billion, with \$4.1 billion attributable to nine issuances of senior unsecured notes (the "Senior Notes"), \$1.6 billion attributable to three issuances of senior subordinated unsecured notes (the "Senior Subordinated Notes"), and \$789 million attributable to junior subordinated unsecured debentures (the "Junior Subordinated Debentures") issued in connection with certain trust preferred equity redeemable securities (defined below as the "PIERS Preferred Securities"). As of the Petition Date, WMI also had preferred and common stock issued and outstanding, as described below.

### **2. Senior Notes**

All nine issuances of the Senior Notes, described below, were issued pursuant to that certain Senior Debt Securities Indenture, dated as of August 10, 1999, as supplemented and amended by that certain First Supplemental Indenture and that certain Second Supplemental Indenture, dated as of August 1, 2002 and November 20, 2002, respectively (collectively, the "Senior Notes Indenture"). The Senior Notes rank equally with all other unsecured and unsubordinated indebtedness of WMI. Certain of the Senior Notes issued by WMI pursuant to the Senior Notes Indenture have a fixed rate of interest (the "Fixed Rate Notes"), while others have floating rates of interest (the "Floating Rate Notes").

**EXHIBIT B**

LIQUIDATING TRUST AGREEMENT

EX-10.1 2 mm03-1212\_8ke101.htm EX.10.1 - WMI LIQUIDATING TRUST AGREEMENT

**EXHIBIT 10.1****EXECUTION VERSION****WMI LIQUIDATING TRUST AGREEMENT**

WMI LIQUIDATING TRUST AGREEMENT, dated as of March 5, 2012 (this “Trust Agreement”), is by and among Washington Mutual, Inc. (“WMI”) and WMI Investment Corp. (“WMI Investment”) and, together with WMI, the “Debtors”), as debtors and debtors-in-possession, William C. Kosturos, as liquidating trustee (together with any successor or additional trustee appointed under the terms hereof, the “Liquidating Trustee”), and CSC Trust Company of Delaware as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms hereof, the “Resident Trustee” and collectively with the Liquidating Trustee, the “Trustees”) of the WMI Liquidating Trust (the “Liquidating Trust”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors’ Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code, dated December 12, 2011, as confirmed (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “Plan”).

**BACKGROUND**

- A. On September 26, 2008, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- B. On December 12, 2011, the Debtors filed the Plan and the disclosure statement relating to the Plan (as amended, the “Disclosure Statement”) with the Bankruptcy Court.
- C. On February 24, 2012, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”).
- D. The Plan provides for the creation of a liquidating trust on or before the Effective Date to hold, manage and administer the Liquidating Trust Assets and distribute the proceeds thereof, if any, to the Liquidating Trust Beneficiaries, in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order.
- E. The Liquidating Trust is being created on behalf of, and for the benefit of, the Liquidating Trust Beneficiaries.
- F. The Liquidating Trustee shall have all powers necessary to implement the provisions of this Trust Agreement and administer the Liquidating Trust, including, without limitation, the power to: (i) prosecute for the benefit of the Liquidating Trust Beneficiaries through Trust Professionals (as defined herein) any causes of action that may from time to time be held by the Liquidating Trust; (ii) preserve, maintain and liquidate the Liquidating Trust Assets; (iii) distribute the Liquidating Trust proceeds to the Liquidating Trust Beneficiaries; and (iv) otherwise perform the functions and take the actions provided for in this Trust Agreement or permitted in the Plan and/or the Confirmation Order or in any other agreement executed pursuant to the Plan, in each case

subject to the provisions of Sections 6.3, 6.4, 6.5 and 6.6 of this Trust Agreement regarding limitation on the Liquidating Trustee and the oversight and consent rights of the Trust Advisory Board (as defined herein), the Litigation Subcommittee (as defined herein) and the Bankruptcy Court as provided for herein.

G. The Liquidating Trust is organized for the sole purpose of liquidating and distributing the Liquidating Trust Assets, with no objective to conduct a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

H. The Liquidating Trust is intended to qualify as a “liquidating trust” under the Internal Revenue Code of 1986, as amended (the “IRC”) and the regulations promulgated thereunder (the “Treasury Regulations”), specifically Treasury Regulations section 301.7701-4(d) and, as such, as a “grantor trust” for United States federal income tax purposes with the Liquidating Trust Beneficiaries treated as the grantors and owners of the Liquidating Trust.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein, the Debtors and the Liquidating Trustee agree as follows:

### **ARTICLE I**

#### **DECLARATION OF TRUST**

1.1 Creation of Trust. The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby constitute and create the Liquidating Trust, which shall bear the name “WMI Liquidating Trust.” In connection with the exercise of the Liquidating Trustee’s power hereunder, the Liquidating Trustee may use this name or such variation thereof as the Liquidating Trustee sees fit.

1.2 Purpose of Liquidating Trust. The sole purpose of the Liquidating Trust is to implement the Plan on behalf, and for the benefit, of the Liquidating Trust Beneficiaries, and to serve as a mechanism for liquidating, converting to Cash and distributing the Liquidating Trust Assets in accordance with Treasury Regulations section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

1.3 Transfer of Liquidating Trust Assets. On the Effective Date, the Debtors shall transfer, for the sole benefit of the Liquidating Trust Beneficiaries, pursuant to Bankruptcy Code sections 1123(a)(5)(B) and 1123(b)(3)(B) and in accordance with the Plan and the Confirmation Order, the Liquidating Trust Assets to the Liquidating Trust, free and clear of any and all liens, claims, encumbrances and interests (legal, beneficial or

otherwise) of all other entities to the maximum extent contemplated by and permissible under Bankruptcy Code section 1141(c); provided, however, that the Liquidating Trust Assets may be transferred subject to certain liabilities, as provided in the Plan, Confirmation Order or as otherwise provided herein. On the Effective Date, there shall be set aside out of the Liquidating Trust Assets the amount of Cash that was reasonably determined by the Debtors and the Creditors' Committee following consultation with the Equity Committee prior to the Effective Date to be necessary to fund the activities of the Liquidating Trust, which amount shall be Sixty Million Dollars (\$60,000,000.00) (the "Funding"); provided, however, that the Funding may be increased from time to time during the term of the Liquidating Trust upon the request of the Liquidating Trustee and the approval of a Supermajority of the Trust Advisory Board. A "Supermajority" shall mean the affirmative vote of seven (7) of the nine (9) members of the Trust Advisory Board (excluding the Holdco Member); provided, however, that if the Trust Advisory Board is reduced to five (5) members pursuant to Section 6.4(e), a "Supermajority" shall mean the affirmative vote of three (3) of the five (5) members of the Trust Advisory Board. Twenty Million Dollars (\$20,000,000.00) of the Funding (the "Litigation Funding") shall be allocated to the Litigation Subcommittee, with both the first Ten Million Dollars (\$10,000,000.00) of the Litigation Funding and the second Ten Million Dollars (\$10,000,000.00) of the Litigation Funding (the "Second Tranche") to be used for the prosecution of the Recovery Claims (as defined herein); provided, however, that, prior to the allocation and use of any portion of the Second Tranche, the Litigation Subcommittee shall obtain the approval of the Trust Advisory Board as to the reasonable expenditure of such funds; provided, further, that the Litigation Funding may be increased during the term of the Liquidating Trust upon the request of the Litigation Subcommittee and the approval of a Supermajority of the Trust Advisory Board, which approval may be granted or withheld by the Trust Advisory Board in its sole and absolute discretion, and provided that any additional Litigation Funding that is approved shall be deducted from any remaining portion of the Administrative Funding (as defined herein); provided, further, that nothing herein shall preclude the Trust Advisory Board or the Litigation Subcommittee from seeking additional financing from sources other than the Liquidating Trust Assets in the discharge of their fiduciary duties; provided, further, that any portion of the Funding, including the Litigation Funding, that is not used to fund the activities of the Liquidating Trust shall be distributed in accordance with Section 4.3 hereof. The transfer of the Liquidating Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar Tax, pursuant to section 1146(a) of the Bankruptcy Code. Upon delivery of all Liquidating Trust Assets to the Liquidating Trust, the Debtors shall be discharged and released from all liability with respect to the delivery of such distributions, and exculpated as provided in Section 41.8 of the Plan. In connection with the receipt of the Liquidating Trust Assets, the Liquidating Trust shall acquire and assume all of WMI's rights and obligations pursuant to Section 2.4 of the Global Settlement Agreement, and WMI shall have no further liability or obligations thereunder. The Liquidating Trust Assets and all other property held from time to time by the Liquidating Trust under this Trust Agreement and any earnings, including without limitation, interest, on any of the foregoing are to be applied by the Liquidating Trustee in accordance with the terms hereof, the Plan and the

Confirmation Order for the benefit of the Liquidating Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms hereinafter set forth.

1.4 Appointment and Acceptance of Liquidating Trustee. As set forth in the Confirmation Order, the members of the Trust Advisory Board hereby designate William C. Kosturos in connection with the applicable provisions of the Delaware Statutory Trust Act, 12 Del. C. § 3801 et seq., as the same may from time to time be amended, or any successor statute (the "Trust Act") to serve as the initial Liquidating Trustee under the Plan. The Liquidating Trustee shall be deemed to be appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The Liquidating Trustee accepts the Liquidating Trust created by this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Liquidating Trustee, on behalf, and for the benefit, of the Liquidating Trust Beneficiaries, by the Debtors of all of their respective right, title and interest in the Liquidating Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order. The Liquidating Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Liquidating Trust and not otherwise. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity as Liquidating Trustee, and not individually.

1.5 Liquidation of Liquidating Trust Assets. The Liquidating Trustee shall, in an expeditious but commercially reasonable manner and subject to the provisions of the Plan (including, without limitation, Section 31.14 of the Plan), the Confirmation Order and the other provisions of this Trust Agreement, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the terms hereof and the Plan and not unduly prolong the existence of the Liquidating Trust. The Liquidating Trustee shall exercise reasonable business judgment and liquidate the Liquidating Trust Assets to maximize net recoveries; provided, however, that the Liquidating Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the maximization of recoveries and the determinations and actions of the Liquidating Trustee shall in all cases be subject to the limitations provided elsewhere herein. Subject to the terms of this Trust Agreement, such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action of the Liquidating Trust or through the sale or other disposition of the Liquidating Trust Assets (in whole or in combination, and including the sale of any claims, rights or causes of action of the Liquidating Trust). The Liquidating Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Liquidating Trust Assets into Cash or in connection with the administration of the Liquidating Trust and, to the extent that any Administrative Funding (as defined herein) is available, such expenses shall first be deducted from the Administrative Funding.

1.6 No Reversion to Debtors. In no event shall any part of the Liquidating Trust Assets revert to or be distributed to any Debtor or Reorganized Debtor.

1.7 Incidents of Ownership. Except as provided in Section 1.6 hereof, the Liquidating Trust Beneficiaries shall be the sole beneficiaries of the Liquidating Trust and the Liquidating Trust Assets, and the Liquidating Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including, but not limited to, those powers set forth in Section 6.2 hereof.

1.8 Privileges and Obligation to Respond to Ongoing Investigations. All Privileges shall be transferred, assigned, and delivered to the Liquidating Trust, without waiver, and shall vest in the Liquidating Trustee solely in its capacity as such (and any other individual whom the Liquidating Trustee, with the consent of the Trust Advisory Board or the Litigation Subcommittee, as applicable, may designate, it being understood that, as of the date of this Trust Agreement, the Liquidating Trustee shall designate the Trust Advisory Board and the Litigation Subcommittee, solely in their capacities as such, as well as any other individual designated in this Trust Agreement). Pursuant to Federal Rule of Evidence 502(d) (to the extent Rule 502(d) is relevant notwithstanding the fact that the Debtors, the Liquidating Trustee, the FDIC Receiver and JPMC are joint holders of certain attorney-client privileges, work product protections, or other immunities or protections from disclosure), no Privileges shall be waived by disclosure to the Liquidating Trustee, the Trust Advisory Board and/or the Litigation Subcommittee of the Debtors' information subject to attorney-client privileges, work product protections, or other immunities or protections from disclosure, or by disclosure among the Debtors, the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee, the FDIC Receiver, and/or JPMC of information that is subject to attorney-client privileges, work product protections, or other immunities or protections from disclosure jointly held by the Debtors, the FDIC Receiver, the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee and/or JPMC. The Liquidating Trustee shall be obligated to respond, on behalf of the Debtors, to all Information Demands. The FDIC Receiver and JPMC shall take reasonable steps to cooperate with the Liquidating Trustee in responding to Information Demands, and such cooperation shall include, for example, taking all steps necessary to maintain and avoid waiver of any and all Privileges (including, without limitation, any Privileges that are shared jointly among or between any of the parties). The Liquidating Trustee, with the consent of the Trust Advisory Board or the Litigation Subcommittee, as applicable, may waive Privileges that are held solely by the Debtors and/or the Liquidating Trust, but not jointly held with the FDIC Receiver and/or JPMC, in the event and to the extent the Liquidating Trustee, with the consent of the Trust Advisory Board or the Litigation Subcommittee, as applicable, determines in good faith that doing so is in the best interests of the Liquidating Trust and its beneficiaries. The Liquidating Trustee, the FDIC Receiver and JPMC may disclose information that is subject to attorney-client privileges, work product protections, or other immunities or protections from disclosure that are jointly held with the FDIC Receiver and/or JPMC only (i) upon written permission from the Liquidating Trustee, the FDIC Receiver and JPMC, as the case may be; (ii) pursuant to an order of a court of competent jurisdiction, subject to the procedure described in the next sentence insofar as it applies; or (iii) as otherwise required by law, subject to the procedure

described in the next sentence insofar as it applies. If the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee, the FDIC Receiver or JPMC receives a request from a third party to disclose information that is subject to attorney-client privileges, work product protections, or other immunities or protections from disclosure that are jointly held with the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee, the FDIC Receiver and/or JPMC, the party or parties who receives such request will (w) pursue all reasonable steps to maintain the applicable privileges or protections from disclosure, including, if necessary, to maintain the privileges or protections from disclosure by seeking a protective order against and/or otherwise objecting to the production of such material, (x) notify the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee, the FDIC Receiver and/or JPMC, as the case may be, (y) allow the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee, the FDIC Receiver and/or JPMC, as the case may be, reasonable time under the circumstances to seek a protective order against and/or otherwise object to the production of such material, and (z) unless required by law, not disclose the materials in question unless and until any objection raised by the Liquidating Trustee, the Trust Advisory Board, the Litigation Subcommittee, the FDIC Receiver and/or JPMC is resolved in favor of disclosure.

1.9 Liquidating Trustee's Administration and Rights with Respect to Runoff Notes. Until such time as any Runoff Notes that are held by the Liquidating Trust are distributed to any Liquidating Trust Beneficiaries entitled thereto in accordance with the Plan, the Liquidating Trustee shall (i) not sell, convey, dispose or otherwise transfer the Runoff Notes except as expressly provided for in the Plan and (ii) exercise any remedies available to Holders (as defined in the Indenture) under the Indenture or any Security Document (as defined in the Indenture) as the Liquidating Trustee deems necessary and advisable solely to protect the interests of such Liquidating Trust Beneficiaries.

## ARTICLE II

### LIQUIDATING TRUST BENEFICIARIES

2.1 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Liquidating Trust Interest, the Liquidating Trustee shall be entitled, at his sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Liquidating Trustee, at his sole election, may elect to make no payment or distribution with respect to the Liquidating Trust Interest subject to the claims or demands involved, or any part thereof, and the Liquidating Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Liquidating Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Liquidating Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (ii) all differences have been resolved by a written agreement among all

of such parties and the Liquidating Trustee, which agreement shall include a complete release of the Liquidating Trust and the Liquidating Trustee (the occurrence of either (i) or (ii) in this Section 2.1 being referred to as a "Dispute Resolution"). Promptly after a Dispute Resolution is reached, the Liquidating Trustee shall transfer the payments and distributions, if any, together with any interest thereon to be paid in accordance with Section 4.6 hereof, in accordance with the terms of such Dispute Resolution. Any payment of any interest or income should be net of any taxes attributable thereto in accordance with Section 5.4.

2.2 Rights of Liquidating Trust Beneficiaries. Each Liquidating Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Liquidating Trust Beneficiary hereunder according to the terms of its Liquidating Trust Interest. The interest of a Liquidating Trust Beneficiary is hereby declared and shall be in all respects personal property. Except as expressly provided hereunder, a Liquidating Trust Beneficiary shall have no title to, right to, possession of, management of or control of the Liquidating Trust or the Liquidating Trust Assets or to any right to call for a partition or division of such assets or to require an accounting. No surviving spouse, heir or devisee of any deceased Liquidating Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Liquidating Trust Assets, but the whole title to the Liquidating Trust Assets shall be vested in the Liquidating Trustee and the sole interest of the Liquidating Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement and the Plan.

2.3 Evidence of Liquidating Trust Interest. Ownership of a Liquidating Trust Interest in the Liquidating Trust will be evidenced by the recording of such ownership in an electronic book-entry system (the "Book Entry System") maintained either by the Liquidating Trust or an agent of the Liquidating Trust. A Liquidating Trust Beneficiary shall be deemed the "holder of record" (hereinafter "holder") of such Liquidating Trust Beneficiary's Liquidating Trust Interest(s) for purposes of all applicable United States federal and state laws, rules and regulations. The Liquidating Trustee shall, upon the written request of a holder of a Liquidating Trust Interest, provide reasonably adequate documentary evidence of such holder's Liquidating Trust Interest, as indicated in the Book Entry System. The expense of providing such documentation shall be borne by the requesting holder.

2.4 Transfers of Liquidating Trust Interests.

(a) General. Liquidating Trust Interests shall not be transferable or assignable except by will, intestate succession or operation of law.

(b) Book Entry System. Pursuant to the Book Entry System, the Liquidating Trust shall maintain, or cause the agent of the Liquidating Trust to maintain, a register (which may be electronic) setting forth the names and addresses of the Liquidating Trust Beneficiaries, and the amount and class of their Liquidating Trust Interests from time to time. Any transfer or assignment of a Liquidating Trust Interest by will, intestate succession or operation of law shall not be effective unless and until such

transfer or assignment is recorded in the Book Entry System, which shall be completed as soon as practicable. Subject to Section 2.4(d), the entries in the Book Entry System shall be conclusive absent manifest error, and the Liquidating Trust and the Liquidating Trustee shall treat each person whose name is recorded in the Book Entry System pursuant to the terms hereof as the owner of Liquidating Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

(c) Registration. If the Liquidating Trustee, with the consent of the Trust Advisory Board and upon advice of counsel, determines that any class of Liquidating Trust Interests may be subject to registration pursuant to section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Liquidating Trustee shall pursue relief from such registration by obtaining either an exemptive order, a no-action letter or an interpretive letter from the Securities and Exchange Commission or its staff or, absent its ability to achieve that objective or in lieu thereof, shall register such class pursuant to section 12 of such statute (it being understood and agreed that the Liquidating Trustee with the consent of the Trust Advisory Board shall be authorized, among other things, to register such class and to seek relief from one or more of the requirements then applicable subsequent to such registration and to de-register such class). To the extent that any Administrative Funding is available, any expenses that are associated with such application for relief and/or registration shall first be deducted from the Administrative Funding.

(d) Further Limitations on Transfer. Notwithstanding any other provision to the contrary, the Liquidating Trustee may disregard any purported transfer or assignment of Liquidating Trust Interests by will, intestate succession or operation of law if sufficient necessary information (as reasonably determined by the Liquidating Trustee), including applicable Tax-related information, is not provided by such purported transferee or assignee to the Liquidating Trustee.

2.5 Limited Liability. No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Liquidating Trust Beneficiary, shall give rise to any liability of such Liquidating Trust Beneficiary solely in its capacity as such, whether such liability is asserted by any Debtor, by creditors, employees, or equity interest holders of any Debtor, or by any other Person. Liquidating Trust Beneficiaries are deemed to receive the Liquidating Trust Assets in accordance with the provisions of this Trust Agreement, the Plan and the Confirmation Order in exchange for their Allowed Claims or Equity Interests, as applicable, without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement.

### ARTICLE III

#### **DURATION AND TERMINATION OF LIQUIDATING TRUST**

3.1 Duration. The Liquidating Trust shall become effective upon the Effective Date of the Plan and shall remain and continue in full force and effect until dissolved as provided for in Section 27.14(d) of the Plan.

3.2 Dissolution of the Liquidating Trust. The Liquidating Trustee and the Liquidating Trust shall be discharged or dissolved, as the case may be, on the earlier to occur of (i) all of the Liquidating Trust Assets having been distributed pursuant to the Plan and this Trust Agreement, (ii) the Liquidating Trustee having determined, with the consent of the Trust Advisory Board, that the administration of any remaining Liquidating Trust Assets is not likely to yield sufficient additional Liquidating Trust proceeds to justify further pursuit, or (iii) all distributions required to be made by the Liquidating Trustee under the Plan and this Trust Agreement having been made; provided, however, that in no event shall the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of any extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee and the Trust Advisory Board that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. If at any time the Liquidating Trustee determines, in reliance upon such Trust Professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to the Liquidating Trust Beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidating Trust, (ii) donate any balance to a charitable organization (A) of the type described in section 501(c)(3) of the IRC, (B) exempt from United States federal income tax under section 501(a) of the IRC, (C) that is not a "private foundation", as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the Liquidating Trust, and any insider of the Liquidating Trustee, and (iii) dissolve the Liquidating Trust. Upon receipt of such authority from the Bankruptcy Court, the Liquidating Trustee shall (X) notify each Liquidating Trust Beneficiary, (Y) file a Certificate of Cancellation with the Secretary of State of the State of Delaware and (Z) provide a copy of the evidence of such cancellation to the Resident Trustee.

3.3 Continuance of Liquidating Trust for Winding Up. After the dissolution of the Liquidating Trust and solely for the purpose of liquidating and winding up the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until its duties have been fully performed. Upon distribution of all the Liquidating Trust Assets, the Liquidating Trustee shall retain the books, records and files that shall

have been delivered to or created by the Liquidating Trustee. At the Liquidating Trustee's discretion, all of such records and documents may be destroyed at any time following the date that is six (6) years after the final distribution of the Liquidating Trust Assets, subject to any joint prosecution and common interests agreement(s) to which the Liquidating Trustee may be party.

#### ARTICLE IV

##### ADMINISTRATION OF LIQUIDATING TRUST

4.1 Payment of Claims, Expenses and Liabilities. Subject to the Budget (as defined below) from time to time approved by the Trust Advisory Board in accordance with Section 4.14(b) hereof, and subject to the approval of the Bankruptcy Court in accordance with Sections 6.4(m), 6.5(k), 6.8(b), 6.11(c) and 7.7, and except as otherwise provided herein, the Liquidating Trustee shall use the Funding (i) to pay reasonable costs and expenses of the Liquidating Trust that are incurred (including, but not limited to, the costs and expenses associated with the administration of the Disputed Equity Escrow (excluding any Taxes), any Taxes imposed on the Liquidating Trust, the actual reasonable out-of-pocket fees and expenses incurred by Trust Professionals in connection with the administration and liquidation of the Liquidating Trust Assets, as provided in Section 6.8 hereof, and the preservation of books and records of the Liquidating Trust); (ii) to satisfy other obligations or other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order, the Global Settlement Agreement or this Trust Agreement, including fees and costs incurred in connection with the protection, preservation, liquidation and distribution of the Liquidating Trust Assets and the costs of investigating, prosecuting, resolving and/or settling any Claims; (iii) as reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets during liquidation, (iv) to satisfy any other obligations of the Liquidating Trust expressly set forth in the Plan, this Trust Agreement, the Confirmation Order, and the Global Settlement Agreement.

4.2 BB Liquidating Trust Interests. On the Effective Date, the Liquidating Trustee shall immediately distribute the funds on account of the BB Liquidating Trust Interests, subject to consensual release by the parties pursuant to Section 2.4 of the Global Settlement Agreement of such funds from the tax escrow account.

##### 4.3 Distributions.

(a) Generally. Subject to Section 4.4(b) hereof, the Liquidating Trustee is required to distribute to the Liquidating Trust Beneficiaries on account of their Liquidating Trust Interests, on each Distribution Date (as defined below) all unrestricted Cash then on hand (including any Cash received from the Debtors on the Effective Date, and treating any permissible investment as Cash for purposes of this Section 4.3), except (i) the Funding, (ii) such other amounts as are allocable to or retained

on account of Disputed Claims in accordance with Section 26.3 of the Plan, and (iii) after taking into account the Funding, such additional amounts (A) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets pending their liquidation during the term of the Liquidating Trust, (B) as are necessary to pay reasonably incurred or anticipated expenses (including, but not limited to, any Taxes imposed on or payable by the Debtors or the Liquidating Trust or in respect of the Liquidating Trust Assets), or (C) as are necessary to satisfy other liabilities incurred or anticipated by the Liquidating Trust in accordance with the Plan, the Global Settlement Agreement, or this Trust Agreement; provided, that the amounts listed in clause (iii) shall be subject to the approval of a Supermajority of the Trust Advisory Board; provided, further, that the Liquidating Trustee shall not be required to make a distribution pursuant to this Section 4.3 if the aggregate, net amount of unrestricted Cash available for distribution (taking into account the above listed exclusions) is such as would make the distribution impracticable as reasonably determined by the Liquidating Trustee, with the consent of the Trust Advisory Board, in accordance with applicable law, and so long as such aggregate amount is less than Twenty-Five Million Dollars (\$25,000,000.00); and provided, further, that the Liquidating Trustee, with consent of the Trust Advisory Board, may decide to forego the first quarterly distribution to those Liquidating Trust Beneficiaries with respect to which the Liquidating Trustee, in its reasonable judgment, is not administratively prepared to make such distribution, in which case, such distribution shall be made to such holders as soon as practicable after the Liquidating Trustee is administratively prepared to do so. "Distribution Date" means the 1st day of the second month in each fiscal quarter during the term of the Liquidating Trust or such other dates that the Liquidating Trustee determines, in consultation with the Trust Advisory Board, are appropriate from time to time; provided, however, that there shall be at least one such date in each fiscal quarter during the term of the Liquidating Trust.

(b) Payment of Distributions. Subject to Section 4.2, each Liquidating Trust Beneficiary's share of the Liquidating Trust Interests as determined pursuant to the Plan (including any Cash to be received on account of any Liquidating Trust Interests) shall be allocated and distributed, and the Liquidating Trust Assets shall be allocated and distributed, in accordance with Article XXXI of the Plan and Annex C hereto. Any distribution that is to be made to a Liquidating Trust Beneficiary who elected to forego fifty percent (50%) of such Liquidating Trust Beneficiary's Litigation Proceeds Interest shall be adjusted as required pursuant to Sections 6.2(b), 7.2(b), 16.2(b)(ii), 18.2(b), 19.1(b) and 20.2 of the Plan.

(c) De Minimis Distributions. No Cash payment shall be made to any holder of a Liquidating Trust Interest until such time, if ever, as the amount payable thereto, in any distribution from the Liquidating Trust, is equal to or greater than ten dollars (\$10.00). Any holder of a Liquidating Trust Interest on account of which the amount of Cash to be distributed pursuant to any distribution from the Liquidating Trust is less than ten dollars (\$10.00) shall be deemed to have no claim for such distribution against the Debtors, the Reorganized Debtors, the Liquidating Trust or the Liquidating Trust Assets. Subject to Section 4.6 hereof, any Cash not distributed pursuant to this

Section 4.3 shall be the property of the Liquidating Trust free of any restrictions thereon, and shall be available for distribution to the other Liquidating Trust Beneficiaries, in accordance with the Plan and this Trust Agreement.

(d) Runoff Notes. To the extent the Liquidating Trust Assets include Runoff Notes that are not allocable to the Liquidating Trust Claims Reserve, the Liquidating Trustee shall distribute such Runoff Notes in accordance with Section 31.14 of the Plan.

#### 4.4 Undeliverable Property.

(a) Holding of Undeliverable Distributions: For purposes of this Trust Agreement, an “undeliverable” distribution shall include, without limitation, a check that is sent to a holder in respect of a distribution to such holder, which check has not been negotiated within six (6) months following the date on which such check was issued. Subject to Section 4.4(b), if any distribution to the holder of a Liquidating Trust Interest is undeliverable, no further distribution shall be made to such holder unless and until the Liquidating Trustee (or its duly authorized agent) is notified, in writing, of such holder’s then-current address. Undeliverable distributions shall remain in the possession of the Liquidating Trustee (or its duly authorized agent) until such time as a distribution becomes deliverable or as set forth in Section 4.4(b) below. All Entities ultimately receiving an undeliverable distribution shall not be entitled to any interest or other accruals of any kind on account of the delay in payment resulting from the undeliverable status of such distribution. Except as required by law, the Liquidating Trustee (or its duly authorized agent) shall not be required to attempt to locate any holder of a Liquidating Trust Interest.

(b) Failure to Claim Undeliverable Distributions: If (i) a check is sent to a holder in respect of a distribution and such check is not negotiated within six (6) months following the date on which the check was issued, or (ii) any other form of distribution to a holder is otherwise undeliverable, the Liquidating Trustee (or its duly authorized agent) shall, no later than seven (7) months after the sending of the un-negotiated check or other form of undeliverable distribution, send a written notice (a “Missing Holder Notice”) to such holder at the address shown on the Book Entry System with respect to such holder. The Missing Holder Notice shall state that (i) the holder has been sent a check or other form of distribution that has not yet been negotiated or is otherwise undeliverable, (ii) no further distributions will be made to such holder unless and until the Liquidating Trustee (or its duly authorized agent) is notified, in writing, of such holder’s then-current address, and (iii) that unless such holder notifies the Liquidating Trustee (or its duly authorized agent) of the holder’s then-current address within thirty (30) days of the date of the Missing Holder Notice, such holder shall have its entitlement to such undeliverable distribution and the Liquidating Trust Interest or Interests to which such undeliverable distribution relates cancelled and shall be forever barred from asserting any entitlement with respect thereto pursuant to the Plan, this Trust Agreement or otherwise against the Debtors, the Reorganized Debtors, the Liquidating

Trust, or their respective property. In such case, any consideration held for distribution on account of such Liquidating Trust Interest(s) shall revert to the Liquidating Trustee for redistribution to other holders of Liquidating Trust Interests in accordance with the terms and provisions of this Trust Agreement, the Plan and the Confirmation Order.

4.5 Interest on Liquidating Trust Interests. As set forth in the Plan, interest shall not accrue and be paid on the Liquidating Trust Interests themselves, but only with respect to and to the extent provided in the Plan with respect to an Allowed Claim (“Interest”). Interest may, as an incremental adjustment on the maximum amount the Liquidating Trust distributes in respect of a Liquidating Trust Interest, accrue up to and including the date of final payment in full of the Allowed Claim related to the Liquidating Trust Interest as provided in the Plan.

4.6 Setoffs. The Liquidating Trustee may, pursuant to applicable bankruptcy or non-bankruptcy law, set off against any Liquidating Trust Interest and the distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Liquidating Trust Interest by the Liquidating Trustee), the claims, rights, and causes of action of any nature that one or more of the Debtors, Debtors in Possession, the Liquidating Trustee or the Reorganized Debtors may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, Debtors in Possession, the Liquidating Trustee or the Reorganized Debtors of any such claims, rights, and causes of action that the Debtors, Debtors in Possession, the Liquidating Trustee or the Reorganized Debtors may possess against such holder; and, provided, further, that nothing contained herein is intended to limit the ability of any Liquidating Trust Beneficiary to effectuate rights of setoff or recoupment preserved or permitted by the provisions of sections 553, 555, 559, or 560 of the Bankruptcy Code or pursuant to the common law right of recoupment.

4.7 Distributions After the Effective Date. Distributions made after the Effective Date to holders of Liquidating Trust Interests on account of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made in accordance with the terms and provisions of Article XXXI of the Plan.

4.8 Compliance with Laws. Any and all distributions of Liquidating Trust Assets shall be in compliance with applicable laws, including but not limited to, applicable federal and state tax and securities laws.

4.9 Fiscal Year. Except for the first and last years of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be the calendar year. For the first and last years of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be such portion of the calendar year that the Liquidating Trust is in existence.

4.10 Books and Records. The Liquidating Trustee shall retain and preserve the Debtors’ books, records and files that shall have been delivered to or created

by the Liquidating Trustee. Subject to Section 3.3 hereof, the Liquidating Trustee shall maintain, in respect of the Liquidating Trust and the Liquidating Trust Beneficiaries and all others to receive distributions under this Trust Agreement, books and records relating to the assets and the income of the Liquidating Trust and the payment of expenses of, liabilities of, and claims against or assumed by, the Liquidating Trust and the Liquidating Trustee, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and applicable provisions of law, including but not limited to applicable Tax, securities and other federal and state laws. Except as otherwise provided herein or in the Plan, nothing in this Trust Agreement requires the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets. The Liquidating Trustee shall provide any member of the Trust Advisory Board with access to such books and records during normal business hours as may be reasonably requested with five (5) days' advance notice. Liquidating Trust Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Liquidating Trustee to inspect such books and records; provided, that, if so requested, all costs associated with such inspection shall be paid in advance by such requesting Liquidating Trust Beneficiary and such Liquidating Trust Beneficiary shall have entered into a confidentiality agreement reasonably satisfactory in form and substance to the Liquidating Trustee.

4.11 Cash Payments. Subject to Section 26.3 of the Plan and Section 4.3(d) hereof, all distributions required to be made by the Liquidating Trustee to the Liquidating Trust Beneficiaries shall be made in Cash denominated in United States dollars by checks drawn on a domestic bank selected by the Liquidating Trustee or, at the option of the Liquidating Trustee, by wire transfer from a domestic bank selected by the Liquidating Trustee or as otherwise required or provided in applicable agreements; provided, however, that Cash payments to foreign holders of Liquidating Trust Interests may be made, at the option of the Liquidating Trustee, in such funds as and by such means as are necessary or customary in a particular foreign jurisdiction.

4.12 Insurance. The Liquidating Trust shall maintain customary insurance coverage for the protection of the Liquidating Trustee, the members of the Trust Advisory Board, employees and any such other persons serving as administrators and overseers of the Liquidating Trust on and after the Effective Date. The Liquidating Trustee also may obtain insurance coverage it deems necessary and appropriate with respect to real and personal property which may become Liquidating Trust Assets, if any.

4.13 Disputes. To the extent a dispute arises between the Liquidating Trustee, the Trust Advisory Board and/or the Litigation Subcommittee concerning the performance of any of the powers, duties, and/or obligations herein, the Liquidating Trustee, the Trust Advisory Board or the Litigation Subcommittee may file a motion and/or other pleadings with the Bankruptcy Court and obtain advice and guidance or such other relief as may be appropriate concerning a resolution of the matter(s) in dispute between the parties. In the event of a dispute, the Liquidating Trustee, the Trust

Advisory Board and the Litigation Subcommittee, as applicable, shall have the right to engage legal counsel to advise it with respect to the matter(s) in dispute and the reasonable fees and expenses of such legal counsel shall be reimbursed by the Liquidating Trustee from the Funding (excluding the Litigation Funding, the “Administrative Funding”) or, in the event the Administrative Funding has been spent, any other unrestricted Cash in the Liquidating Trust, subject to the approval of a Supermajority of the Trust Advisory Board and subject to Section 7.6 hereof.

#### 4.14 Reports.

(a) The Liquidating Trustee shall deliver reports to members of the Trust Advisory Board not later than thirty (30) days following the end of each fiscal quarter. Such reports shall specify in reasonable detail (i) the status of any Causes of Action, Claims and litigation involving the Liquidating Trust or the Liquidating Trust Assets, including, without limitation, Avoidance Actions, including any settlements entered into by the Liquidating Trust, (ii) the costs and expenses of the Liquidating Trust that are incurred (including, but not limited to, any Taxes imposed on the Liquidating Trust or actual reasonable out-of-pocket fees and expenses incurred by Trust Professionals in connection with the administration and liquidation of the Liquidating Trust Assets and preservation of books and records as provided in Section 4.10 hereof) during the preceding fiscal quarter and the remaining amount (if any) of the Administrative Funding and the Litigation Funding, (iii) the amounts listed in clause (ii) incurred since the Effective Date, (iv) the amount of Cash and other assets received by the Liquidating Trust during the prior fiscal quarter, (v) the Liquidating Trustee’s estimate as of the end of the most recent fiscal quarter of the uncollected Tax Refunds and all other Liquidating Trust Assets, (vi) the aggregate amount of Cash and other assets received by the Liquidating Trust since the Effective Date, (vii) the calculation of the estimated amount of the Cash and other assets to be distributed on the next Distribution Date, including any Cash on hand that is not to be distributed pursuant to Section 4.3(a) above, (viii) the aggregate amount of distributions from the Liquidating Trust to the Liquidating Trust Beneficiaries since the Effective Date, and (ix) such other information as the Trust Advisory Board or the Litigation Subcommittee may reasonably request from time to time. The Liquidating Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions (A) as may be necessary to cause the Liquidating Trust and the Liquidating Trustee to be in compliance with applicable law or (B) as may be otherwise reasonably requested from time to time by the Trust Advisory Board.

(b) The Liquidating Trustee shall prepare and submit to the Trust Advisory Board (or, pursuant to Section 6.5(c)(z), the Litigation Subcommittee, as applicable) for approval an annual plan and budget at least thirty (30) days prior to the commencement of each fiscal year of the Liquidating Trust; provided, however, that the first such report shall be submitted no later than forty-five (45) days after the Effective Date of the Plan. Such annual plan and budget shall set forth in reasonable detail: (i) the Liquidating Trustee’s anticipated actions to administer and liquidate the Liquidating Trust Assets; and (ii) the anticipated expenses, including the expenses of Trust

Professionals, associated with conducting the affairs of the Liquidating Trust. Such annual plan and budget shall be updated and submitted to the Trust Advisory Board (or, pursuant to Section 6.5(c)(z), the Litigation Subcommittee) for review and approval on a quarterly basis, and each such quarterly update shall reflect the differences between the anticipated actions described in the annual report and actual operations of the Liquidating Trust to date. Any such annual plan and budget as approved by the Trust Advisory Board (or, pursuant to Section 6.5(c)(z), the Litigation Subcommittee) is referred to herein as the “Budget”. All actions by the Liquidating Trustee must be substantially consistent with the then current Budget, provided that the Liquidating Trustee may take action outside the Budget with the prior approval of the Trust Advisory Board (or the Litigation Subcommittee with respect to Section 6.5(c)(z)).

4.15 Until such time as the Liquidating Trust is dissolved in accordance with Section 27.14(d) of the Plan (or otherwise in accordance with this Agreement), the Liquidating Trust shall file with (or furnish to, as the case may be) the Securities and Exchange Commission (the “SEC”) such periodic reports as the Liquidating Trust is required to file pursuant to the Exchange Act. In addition, until the Chapter 11 Cases are closed, the Liquidating Trust shall file Post-Confirmation Quarterly Summary Reports for each of the Chapter 11 Cases with the Bankruptcy Court and, thereafter, and until such time as the Liquidating Trust is dissolved in accordance with Section 27.14(d) of the Plan (or otherwise in accordance with this Agreement), the Liquidating Trust shall file with (or furnish to, as the case may be) the SEC or otherwise make available to the Liquidating Trust Beneficiaries quarterly reports that are substantially similar to such Post-Confirmation Quarterly Summary Reports.

## **ARTICLE V**

### **TAX MATTERS**

#### **5.1 Liquidating Trustee’s Tax Power for Debtors.**

(a) For all taxable periods ended on or before December 31, 2009, the Liquidating Trustee shall have full and exclusive authority and responsibility in respect of all Taxes of the Debtors (including, without limitation, as the common parent or other agent of any consolidated, combined or unitary Tax group of which the Debtors were the agent), to the same extent as if the Liquidating Trustee were the Debtors. Without limiting the foregoing, each of the Debtors shall execute, on or prior to the Effective Date, a power of attorney authorizing the Liquidating Trustee to correspond with any Tax authority on behalf of such Debtor and to sign, collect, negotiate, settle, and administer Tax payments and Tax returns.

(b) In furtherance of the transfer of the Liquidating Trust Assets to the Liquidating Trust on the Effective Date, the Liquidating Trust shall be entitled to all Tax Refunds of the Debtors (and the Liquidating Trust shall bear responsibility for (i) all Tax liabilities of the Debtors for taxable years ended on or before December 31, 2009, to the extent not discharged by the Plan or provided for payment in

the Plan or the Global Settlement Agreement and (ii) WMI's obligations pursuant to Section 2.4 of the Global Settlement Agreement), it being understood that the Liquidating Trustee only shall have whatever rights the Debtors have pursuant to the terms of the Global Settlement Agreement, and the Liquidating Trustee shall be contractually bound to all restrictions in the Global Settlement Agreement with respect to Tax filings.

(c) Following the Effective Date, the Liquidating Trustee shall prepare and file (or cause to be prepared and filed), on behalf of the Debtors, all Tax Returns required to be filed or that the Liquidating Trustee otherwise deems appropriate, including the filing of amended Tax Returns or requests for refunds for all taxable periods ended on or before December 31, 2009.

5.2 Liquidating Trust Assets Treated as Owned by Liquidating Trust Beneficiaries. For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, the Reorganized Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (1) a transfer of the Liquidating Trust Assets (subject to any obligations relating to those assets) directly to the Liquidating Trust Beneficiaries and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Liquidating Trust Claims Reserve, followed by (2) the transfer by such beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Liquidating Trust Claims Reserve) in exchange for Liquidating Trust Interests. Accordingly, the Liquidating Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than such Liquidating Trust Assets as are allocable to the Liquidating Trust Claims Reserve, discussed below). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

### 5.3 Tax Reporting.

(a) The Liquidating Trustee shall file Tax Returns for the Liquidating Trust treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Article V. The Liquidating Trustee also will annually send to each holder of a Liquidating Trust Interest a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for United States federal income tax purposes and will instruct all such holders to use such information in preparing their United States federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their United States federal income tax returns. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidating Trust that is required by any governmental unit.

(b) On or before the Effective Date, the Debtors shall provide the Liquidating Trustee with a good-faith valuation of the Tax Refunds as of the Effective Date or shall otherwise arrange for such a valuation to be provided to the Liquidating

Trustee as soon as practicable after the Effective Date by such third party professionals as the Debtors deem appropriate. The Liquidating Trustee, in consultation with the Trust Advisory Board, will then in good faith value all other Liquidating Trust Assets, and shall make all such values (including the Tax Refund values) publicly available from time to time (by posting on a website or otherwise), to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtors, the Liquidating Trustee, and Liquidating Trust Beneficiaries) for all United States federal income tax purposes.

(c) Allocations of Liquidating Trust taxable income among the Liquidating Trust Beneficiaries (other than taxable income allocable to the Liquidating Trust Claims Reserve) shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Liquidating Trust Claims Reserve) to the holders of the Liquidating Trust Interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purposes of this Section 5.3(c) shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

(d) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (i) timely elect to treat any Liquidating Trust Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtors, and the Liquidating Trust Beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

(e) The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any Taxes imposed on the Liquidating Trust or its assets, including the Liquidating Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Liquidating Trust Claims Reserve is insufficient to pay the portion of any such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims (including any income that may arise upon the distribution of the assets from the Liquidating Trust Claims Reserve), such Taxes may be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent

such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

(f) The Liquidating Trustee may request an expedited determination of Taxes of the Liquidating Trust, including the Liquidating Trust Claims Reserve, or the Debtors under section 505(b) of the Bankruptcy Code for all Tax Returns filed for, or on behalf of, the Liquidating Trust or the Debtors for all taxable periods through the dissolution of the Liquidating Trust.

5.4 Tax Withholdings by Liquidating Trustee. The Liquidating Trustee may withhold and pay to the appropriate Tax Authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state or local tax law with respect to any payment or distribution to the holders of Liquidating Trust Interests. All such amounts withheld and paid to the appropriate Tax Authority (or placed in escrow pending resolution of the need to withhold) shall be treated as amounts distributed to such holders of Liquidating Trust Interests for all purposes of the Trust Agreement. The Liquidating Trustee shall be authorized to collect such tax information from the holders of Liquidating Trust Interests (including, without limitation, social security numbers or other tax identification numbers) as in its sole discretion the Liquidating Trustee deems necessary to effectuate the Plan, the Confirmation Order, and the Trust Agreement. In order to receive distributions under the Plan, all holders of Liquidating Trust Interests (including, without limitation, holders of Allowed Senior Notes Claims, Allowed Senior Subordinated Notes Claims, Allowed CCB-1 Guarantees Claims, Allowed CCB-2 Guarantees Claims, Allowed General Unsecured Claims, Allowed Late-Filed Claims, Allowed PIERS Claims, Allowed WMB Senior Notes Claims, Allowed Preferred Equity Interests, Allowed Common Equity Interests, holders of Dime Warrants, and Accepting Non-Filing WMB Senior Note Holders, who in each case, deliver a release in accordance with the provisions of Section 41.6 of the Plan) shall be required to identify themselves to the Liquidating Trustee and provide tax information and the specifics of their holdings, to the extent the Liquidating Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Liquidating Trustee for these purposes. This identification requirement generally applies to all holders, including those who hold their Claims in "street name." The Liquidating Trustee may refuse to make a distribution to any holder of a Liquidating Trust Interest that fails to furnish such information in a timely fashion, and until such information is delivered may treat such holder's Liquidating Trust Interests as disputed; provided, however, that, upon the delivery of such information by a holder of a Liquidating Trust Interest, the Liquidating Trustee shall make such distribution to which the holder of the Liquidating Trust Interest is entitled, without additional interest occasioned by such holder's delay in providing tax information; and, provided, further, that, if such information is not furnished to the Liquidating Trustee within six (6) months of the original request to furnish such information, no further distributions shall be made to the holder of such Liquidating Trust Interest; and, provided, further, that, if the Liquidating Trustee fails to withhold in respect of amounts received or distributable with respect to

any such holder and the Liquidating Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidating Trustee for such liability (to the extent such amounts were actually distributed to such holder).

## ARTICLE VI

### POWERS OF AND LIMITATIONS ON THE TRUSTEES

#### 6.1 Liquidating Trustee.

(a) “Liquidating Trustee” means William C. Kosturos so long as he continues in office, and all other individuals who have been duly elected and qualify as liquidating trustees of the Liquidating Trust hereunder pursuant to Section 1.4 or Article VIII hereof, but shall not include the Resident Trustee. Subject to Article VIII hereof, the Liquidating Trustee shall hold office until the termination of the Liquidating Trust in accordance with the terms set forth herein. References herein to the Liquidating Trustee shall refer to the individual or individuals serving as the Liquidating Trustee solely in its or their capacity as trustees hereunder.

(b) Subject to the express limitations set forth herein, any actions of the Liquidating Trustee contemplated by this Trust Agreement shall be decided and conducted by the Liquidating Trustee only.

#### 6.2 Powers of the Liquidating Trustee.

(a) Pursuant to the terms of the Plan, the Confirmation Order and this Trust Agreement, the Liquidating Trustee shall have various powers, duties and responsibilities concerning the prosecution of certain litigation claims, the disposition of assets, the resolution of claims, and numerous other obligations relating to maximizing the proceeds of the Liquidating Trust Assets and the administration of the Liquidating Trust.

(b) The Liquidating Trustee shall have only such rights, powers and privileges expressly set forth in the Confirmation Order, the Plan and this Trust Agreement and as otherwise provided by applicable law. Subject to the Confirmation Order, the Plan, the Global Settlement Agreement and the provisions of this Trust Agreement, including, without limitation, the oversight and approvals by and of the Trust Advisory Board, the Litigation Subcommittee and the Bankruptcy Court provided herein, the Liquidating Trustee shall be expressly authorized to undertake the following actions (and, except with respect to Section 6.2(b)(iii) and Section 6.2(b)(vi), to delegate such authority to such representatives or agents of the Liquidating Trustee as the Liquidating Trustee may nominate from time to time):

(i) to open bank accounts, and to hold, manage, convert to Cash, and distribute the Liquidating Trust Assets,

including prosecuting and resolving the Claims and Causes of Action belonging to the Liquidating Trust;

(ii) to hold the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries, whether their Claims or Interests are Allowed on or after the Effective Date;

(iii) in the Liquidating Trustee's reasonable business judgment, to investigate, prosecute, settle and/or abandon rights, Causes of Action, Claims, or litigation of the Liquidating Trust, including, without limitation, Avoidance Actions;

(iv) to monitor and enforce the implementation of the Plan;

(v) to file all Tax and regulatory forms, returns, reports, and other documents required with respect to the Liquidating Trust;

(vi) in the Liquidating Trustee's reasonable business judgment, to object to Claims, and manage, control, prosecute, and/or settle on behalf of the Liquidating Trust, objections to Claims on account of which the Liquidating Trustee (as Disbursing Agent) will be responsible (if Allowed) for making distributions under the Plan;

(vii) to take all actions and create any document necessary to implement the Plan;

(viii) to hold, manage, and distribute Cash or non-Cash Liquidating Trust Assets obtained through the exercise of its power and authority;

(ix) to act as a signatory to the Debtors for all purposes, including those associated with the novation of contracts or other obligations arising out of the sales of the Debtors' assets; and

(x) to take all necessary actions and file all appropriate motions to obtain an order closing the Chapter 11 Cases.

(c) In all circumstances, the Liquidating Trustee shall comply with all of the Debtors' obligations under the Global Settlement Agreement and in accordance with applicable law and shall otherwise act in the best interest of all Liquidating Trust Beneficiaries, and the Liquidating Trustee shall act in furtherance of the purpose of the Liquidating Trust. With the consent of the Trust Advisory Board, the Liquidating Trustee may serve on the board of directors of any subsidiary of the

Liquidating Trust, provided the subsidiary's objective is consistent with that of the Liquidating Trust (i.e. to sell its assets and distribute the proceeds in liquidation) (the "Objective").

(d) Except as otherwise provided in this Trust Agreement, the Liquidating Trustee will not be required to obtain the order or approval of the Bankruptcy Court, or any other court of competent jurisdiction in, or account to the Bankruptcy Court or any other court of competent jurisdiction for, the exercise of any right, power or privilege conferred hereunder. Notwithstanding the foregoing, where the Liquidating Trustee determines, in its reasonable discretion, that it is necessary, appropriate or desirable, the Liquidating Trustee will have the right to submit to the Bankruptcy Court any question or questions regarding any specific action proposed to be taken by the Liquidating Trustee with respect to this Trust Agreement, the Liquidating Trust, or the Liquidating Trust Assets, including, without limitation, the administration and distribution of the Liquidating Trust Assets and the termination of the Liquidating Trust. Pursuant to the Plan, the Bankruptcy Court has retained jurisdiction for such purposes and may approve or disapprove any such proposed action upon motion by the Liquidating Trustee.

### 6.3 Limitations on Liquidating Trustee.

(a) The Liquidating Trustee shall, on behalf of the Liquidating Trust, hold the Liquidating Trust out as a trust in the process of liquidation and not as an investment company. The Liquidating Trustee shall be restricted to the liquidation of the Liquidating Trust Assets on behalf, and for the benefit, of the Liquidating Trust Beneficiaries and the distribution and application of Liquidating Trust Assets for the purposes set forth in, and the conservation and protection of the Liquidating Trust Assets and the administration thereof in accordance with, the provisions of this Trust Agreement, the Plan and the Confirmation Order.

(b) Notwithstanding anything in this Trust Agreement to the contrary, and subject to any powers that are expressly vested in the Litigation Subcommittee pursuant to this Trust Agreement, the Liquidating Trustee shall submit to the Trust Advisory Board for its approval the following matters and any other matters that expressly require the approval of the Trust Advisory Board pursuant to the other terms of this Trust Agreement:

(i) Any transaction involving the sale, assignment, transfer or abandonment of any Liquidating Trust Asset or Assets having a value in excess of \$500,000.00;

(ii) Any incurrence of any cost, expense or fee in excess of \$500,000.00 (covering services to be rendered or products utilized by the Liquidating Trustee within a one month period);

(iii) Subject to Section 6.8(b), any determination to retain Trust Professionals and any compensation arrangements for such Trust Professionals, it being understood that the Liquidating Trustee initially intends to engage Weil, Gotshal & Manges LLP, Quinn Emanuel Urquhart & Sullivan, LLP and such other counsel as may be appointed by the Trust Advisory Board from time to time to litigate Disputed Claims;

(iv) Determination of the amount and timing of any distribution to the Liquidating Trust Beneficiaries;

(v) Any determination to initiate lawsuits or proceedings;  
and

(vi) The dissolution of the Liquidating Trust.

The foregoing shall not limit the Liquidating Trustee's ability to make determinations and take actions regarding compliance with tax withholding requirements (including remittances).

(c) The Liquidating Trustee shall submit any proposed settlement, disposition or abandonment of any Claims asserted against the Debtors or the Debtors' estates to the Trust Advisory Board or to the Litigation Subcommittee, as applicable, for consideration and approval as provided in this Section 6.3(c) and in Section 6.6(a), other than (i) any proposed final settlement, disposition or abandonment that was made or accepted by the Debtors prior to the Effective Date, the principal terms of which have been evidenced in writing (whether or not such offer or acceptance is conditioned upon approval of any supervising authority), and (ii) any settlement, disposition or abandonment of a GUC Claim (as defined below) where the proposed settlement, disposition or abandonment amount with respect to such GUC Claim is \$2,000,000.00 or less (each such GUC Claim, a "De Minimis GUC Claim"). Proposed settlements, dispositions or abandonments of (A) Claims asserted against the Liquidating Trust (other than de Minimis GUC Claims), (B) Claims previously asserted against the Debtors or the Debtors' estates within Class 12 (General Unsecured Claims) of the Plan (the "GUC Claims") or (C) Claims, that if litigated, could result in the classification of such Claim within Class 12 (General Unsecured Claims), including claims related to Dime Warrants, in each case, shall be submitted to the Trust Advisory Board for consideration and approval and the Trust Advisory Board shall promptly, and in any event within twenty (20) Business Days of such submission, make a determination regarding the proposed settlement, disposition or abandonment. Subject to the provisions of Section 6.6(a) hereof, proposed settlements, abandonments or dispositions of Claims asserted against the Liquidating Trust (other than De Minimis GUC Claims) or claims previously asserted against the Debtors or the Debtors' estates within Class 17A (WMB Senior Notes Claims), Class 17B (WMB Subordinated Notes Claims) and Class 18 (Subordinated Claims) of the Plan (collectively, the "Junior Disputed Claims"), shall be submitted to the Litigation Subcommittee for the consideration and approval of the

Litigation Subcommittee (provided, however, that such Claims shall not be submitted to the Litigation Subcommittee if, when litigated, such litigation could result in the classification of such Claim within Class 12 (General Unsecured Claims)) and the Litigation Subcommittee shall promptly, and in any event within twenty (20) Business Days of such submission, make a determination regarding the proposed settlement, disposition or abandonment. If the Litigation Subcommittee does not approve, within twenty (20) Business Days of its submission to the Litigation Subcommittee, a settlement offer that the Liquidation Trustee believes in good faith should be accepted, the Liquidating Trustee may submit the settlement offer to the Trust Advisory Board for consideration and approval.

#### 6.4 Establishment of Trust Advisory Board.

(a) The “Trust Advisory Board” means the board to be appointed in accordance with, and to exercise the duties set forth in, this Trust Agreement, which duties shall be (i) to oversee the liquidation and distribution of the Liquidating Trust Assets by the Liquidating Trustee in accordance with this Trust Agreement, the Plan and the Confirmation Order, (ii) to approve (or withhold approval) of those matters submitted to it for approval in accordance with the terms of this Trust Agreement, and (iii) to remove and appoint any successor to the Liquidating Trustee as provided for in this Trust Agreement.

(b) The Trust Advisory Board initially shall be comprised of (A) three (3) members, to be selected by the Creditors’ Committee (together with any successors and the Additional CC Member, the “CC Members”); (B) four (4) members, to be selected by the Equity Committee (together with any successors, the “EC Members”), with one (1) such member to be named by the TPS Funds (as defined below) before being selected (together with any successors, the “TPS Member”); (C) one (1) member, to be selected by the Creditors’ Committee and approved by the Equity Committee, such approval not to be unreasonably withheld (together with any successors, the “CC-EC Member”); (D) one (1) member to be selected by Tricadia Capital Management, LLC (the “Tricadia Member”); and (E) one (1) *ex officio* member, to be selected by Holdco Advisors, L.P., subject to the execution of appropriate agreements regarding confidentiality, non-disclosure and restrictions on trading, with limited member rights consisting solely of the right of observation and the review of materials provided to the Trust Advisory Board and, subject to the agreement of the other members of the Trust Advisory Board, a right of participation in discussions of the Trust Advisory Board but with no right to vote (the “Holdco Member”). The “TPS Funds” means, collectively, Black Horse Capital LP, Black Horse Capital Master Fund Ltd, Greywolf Capital Partners II LP, Greywolf Capital Overseas Master Fund, Greywolf Opportunities Fund II LP, Greywolf Structured Products Master Fund, Ltd., Greywolf Capital Overseas Fund II, Pines Edge Value Investors Ltd., Pine River Convertibles Master Fund Ltd. (f/k/a Nisswa Convertibles Master Fund Ltd.), Pine River Fixed Income Master Fund Ltd. (f/k/a Nisswa Fixed Income Master Fund Ltd.), Pine River Master Fund Ltd. (f/k/a Nisswa Master Fund Ltd.), LMA SPC for and on behalf of the MAP 89 Segregated Portfolio, Visium Global Master Fund, Ltd., Visium Catalyst Credit Master Fund, Ltd., VR Global

Partners, L.P., Scoggin Worldwide Fund Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Karnak Partners, L.P., Ermitage Selz Fund, Ltd., GAM Selection Hedge Investments, Inc., and Varana Onshore, LP. The initial members of the Trust Advisory Board are set forth on Annex A hereto. Each member of the Trust Advisory Board shall have a fiduciary duty to act in the best interests of the Liquidating Trust Beneficiaries as a whole.

(c) If, during the term of the Liquidating Trust, all Allowed CCB-2 Guarantees Claims are paid in full in Cash or through the issuance of Runoff Notes and Reorganized Common Stock in accordance with the Plan, the Tricadia Member shall, without any further action by the Liquidating Trustee, the Trust Advisory Board, the Bankruptcy Court or any other Person, resign immediately, and one (1) new member of the Trust Advisory Board shall be selected by (i) the Creditors' Committee, as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days, or (ii) if the Creditors' Committee has been dissolved, by the other CC Members, as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days (the "Additional CC Member"). The Holdco Member shall, without any further action by the Liquidating Trustee, the Trust Advisory Board, the Bankruptcy Court or any other Person, resign immediately upon the earlier to occur of (A) all Allowed CCB-1 Guarantees Claims being paid in full and (B) the two (2) year anniversary of the Effective Date.

(d) If, during the term of the Liquidating Trust, the aggregate outstanding amount of the Liquidating Trust Interests representing (i) Allowed Claims, (ii) the greater of Intercreditor Interest Claims or Postpetition Interest Claims in respect of such Allowed Claims, (iii) Disputed Claims, (iv) the greater of Intercreditor Interest Claims or Postpetition Interest Claims in respect of such Disputed Claims, and (v) contingent, unliquidated Claims, is \$50,000,000.00 or less, (X) one (1) CC Member who is not a CC Subcommittee Member (as defined below) shall without any further action by the Liquidating Trustee, the Trust Advisory Board, the Bankruptcy Court or any other Person, resign, and (Y) within twenty (20) Business Days of such event, the EC Members shall appoint a new member of the Trust Advisory Board and notify the Liquidating Trustee of the identity of the new member in writing. Solely for the purposes of this subsection (d), (A) the amount of any Disputed Claim shall be (1) the liquidated amount set forth in the filed proof of Claim relating to such Disputed Claim, (2) if the Bankruptcy Court has estimated the amount of the Disputed Claim pursuant to Section 502 of the Bankruptcy Code in an amount that constitutes and represents the maximum amount in which such Claim may ultimately become an Allowed Claim (such estimated amount, the "Disputed Claim Estimate"), the Disputed Claim Estimate, or (3) if the Liquidating Trustee and the holder of such Disputed Claim have agreed upon an amount (the "Agreed Amount"), the Agreed Amount and (B) the amount of any contingent, unliquidated Claim shall be the amount agreed by a majority of the Trust Advisory Board and a majority of the Litigation Subcommittee or, in the event that a majority of the Trust Advisory Board and a majority of the Litigation Subcommittee do not agree as to the amount within twenty (20) Business Days, the amount estimated by the Bankruptcy Court at the request

of any member of the Trust Advisory Board or the Litigation Subcommittee. For the purposes of this subsection (d), Disputed Claims and contingent, unliquidated Claims shall include any claims that are withdrawn as of the date hereof but that, pursuant to stipulation with the Debtors and by order of the Bankruptcy Court, may be refiled and asserted in Class 18 (Subordinated Claims) of the Plan.

(e) If, during the term of the Liquidating Trust, all Liquidating Trust Interests representing Allowed Claims and Postpetition Interest Claims in respect of such Allowed Claims are paid in full, (X) any remaining CC Members shall, without any further action by the Liquidating Trustee, the Trust Advisory Board, the Bankruptcy Court or any other Person, resign immediately and (Y) within twenty (20) Business Days of such event, the remaining members of the Trust Advisory Board shall (i) appoint such number of new members of the Trust Advisory Board as is equal to the number of resigning CC Members and notify the Liquidating Trustee in writing of the identity of such members, or (ii) elect to continue without such replacement members and so notify the Liquidating Trustee in writing.

(f) The authority of the members of the Trust Advisory Board shall be effective as of the Effective Date and shall remain and continue in full force and effect until the Liquidating Trust is dissolved in accordance with Section 3.2 hereof. The service of the members of the Trust Advisory Board shall be subject to the following:

(i) subject to Section 6.4(d) and Section 6.4(e), the members of the Trust Advisory Board shall serve until death or resignation pursuant to clause (ii) below, or removal pursuant to clause (iii) below;

(ii) a member of the Trust Advisory Board may resign at any time by providing a written notice of resignation to the remaining members of the Trust Advisory Board. Such resignation shall be effective when a successor is appointed as provided herein;

(iii) a member of the Trust Advisory Board may be removed by the unanimous vote of the other members for (a) fraud or willful misconduct in connection with the affairs of the Liquidating Trust or (b) cause, which shall include a breach of fiduciary duty other than as specified in the foregoing clause (a). Such removal shall be effective immediately upon such vote.

(iv) subject to Section 6.4(d) and Section 6.4(e), in the event of a vacancy in a member's position (whether by removal, death or resignation), a new member may be appointed, (A) in the case of a CC Member, by (i) the Creditors' Committee, as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days, or (ii) if the Creditors' Committee

has been dissolved, the CC Members, as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days; or (iii) if there are no remaining CC Members, the Liquidating Trustee, as notified in writing to the Trust Advisory Board within ten (10) Business Days, (B) in the case of an EC Member (other than the TPS Member), by the other EC Members; (C) in the case of a TPS Member, by the TPS Funds as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days, (D) in the case of the CC-EC Member, by (i) the Creditors' Committee subject to the approval of the EC members (such approval not to be unreasonably withheld), as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days, or (ii) if the Creditors' Committee has been dissolved, the CC Members subject to the approval of the EC Members (such approval not to be unreasonably withheld), as notified in writing to the Trust Advisory Board and the Liquidating Trustee within ten (10) Business Days, or (iii) if there are no remaining CC Members, the Liquidating Trustee subject to the approval of the EC Members (such approval not to be unreasonably withheld), as notified in writing to the Trust Advisory Board within ten (10) Business Days. In each case, the appointment of a successor member of the Trust Advisory Board (including any appointment pursuant to Section 6.4(d) and Section 6.4(e)) shall be evidenced by the filing with the Bankruptcy Court by the Liquidating Trustee of a notice of appointment, which notice shall include the name, address, and telephone number of the successor member of the Trust Advisory Board; and

(v) immediately upon appointment of any successor member of the Trust Advisory Board, all rights, powers, duties, authority, and privileges of the predecessor member of the Trust Advisory Board hereunder shall be vested in and undertaken by the successor member of the Trust Advisory Board without any further act; and the successor member of the Trust Advisory Board shall not be liable personally for any act or omission of the predecessor member of the Trust Advisory Board.

(g) Each member of the Trust Advisory Board shall designate (i) one or more representatives who shall attend meetings of and participate in other activities of the Trust Advisory Board and (ii) an alternate representative to attend meetings and participate in other activities of the Trust Advisory Board when the representatives designated pursuant to clause (i) above are unavailable.

(h) Notwithstanding anything in this Trust Agreement to the contrary, the Trust Advisory Board shall not take any action which will cause the

Liquidating Trust to fail to qualify as a “liquidating trust” for United States federal income tax purposes.

(i) A quorum for meetings of the Trust Advisory Board shall consist of a majority of the non-recused, voting members of the Trust Advisory Board then serving; provided, however, that, for purposes of determining whether a quorum is present at such a meeting, a voting member of the Trust Advisory Board shall be deemed present if a representative of the member is attending in person, by telephone or by proxy.

(j) Except as expressly provided herein, the affirmative vote of a majority of the non-recused, voting members of the Trust Advisory Board shall be the act of the Trust Advisory Board with respect to any matter that requires the determination, consent, approval or agreement of such board. If an equal number of the non-recused voting members of the Trust Advisory Board vote for and against a particular matter, the Liquidating Trustee shall only in such circumstances have the authority to cast a vote with respect to such matter. Any or all of the members of the Trust Advisory Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Trust Advisory Board participating in a meeting by this means is deemed to be present in person at the meeting. In all matters submitted to a vote of the Trust Advisory Board, each Trust Advisory Board member (excluding the Holdco Member) shall be entitled to cast one vote, which vote shall be cast personally by such Trust Advisory Board member or by proxy. In a matter in which the Liquidating Trustee cannot obtain direction or authority from the Trust Advisory Board, the Liquidating Trustee may file a motion requesting such direction or authority from the Bankruptcy Court; provided, however, that any member of the Trust Advisory Board may oppose such motion.

(k) A Trust Advisory Board member and its representative shall be recused from the Trust Advisory Board’s deliberations and votes on any and all matters as to which such member has a conflicting interest. If a Trust Advisory Board member or its representative does not recuse itself from any such matter, that Trust Advisory Board member and its representative may be recused from such matter by the majority vote of the remaining, voting members of the Trust Advisory Board that are not recused from the matter.

(l) Any action required or permitted to be taken by the Trust Advisory Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Trust Advisory Board (excluding the Holdco Member) as evidenced by one or more written consents describing the action taken, signed by the Trust Advisory Board and filed with the minutes or proceedings of the Trust Advisory Board.

(m) The members of the Trust Advisory Board shall be compensated as set forth in the attached Annex B from the Administrative Funding. Any member of the Trust Advisory Board shall also be reimbursed by the Liquidating Trustee from the Administrative Funding for its actual, reasonable out-of-pocket expenses incurred for serving on such board and for reasonable legal fees incurred by any member of the Trust Advisory Board in their capacity as such with respect to outside counsel in the same manner and priority as the compensation and expenses of the Liquidating Trustee under this Trust Agreement, in accordance with the Budget, after submission of reasonably detailed receipts or invoices evidencing such expenses and the approval of such expenses by the Bankruptcy Court. Except as provided for in this Section 6.4, the members of the Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Budget shall include a reserve for the fees and expenses of the Trust Advisory Board.

#### 6.5 The Litigation Subcommittee

(a) The “Litigation Subcommittee” means the subcommittee of the Trust Advisory Board appointed in accordance with Section 6.5(b) of this Agreement to exercise the duties set forth in Section 6.5(c) of this Trust Agreement.

(b) The Litigation Subcommittee initially shall be comprised of (A) two (2) members, to be selected by the Creditors’ Committee (together with any successors, the “CC Subcommittee Members”), with Joel Klein and Marc. S. Kirschner to be the initial CC Subcommittee Members; (B) two (2) members, to be selected from the EC Members (excluding the TPS Member) (together with any successors, the “EC Subcommittee Members”), with Hon Douglas Southard and Michael Willingham to be the initial EC Subcommittee Members; and (C) one (1) member, who shall be the TPS Member. The initial members of the Litigation Subcommittee are set forth on Annex A hereto. Each member of the Litigation Subcommittee shall (i) continue to act as a member of the Litigation Subcommittee until he or she is no longer a member of the Trust Advisory Board, and (ii) have a fiduciary duty to act in the best interests of the Liquidating Trust Beneficiaries as a whole.

(c) The Litigation Subcommittee shall oversee (i) the prosecution of, subject to the exculpation and release provisions of the Plan, (A) claims against present and former officers and directors of the Debtors for actions arising during the period prior to the Petition Date (the “D&O Claims”), (B) claims against professionals and representatives retained by the Debtors with respect to conduct that occurred prior to the Petition Date; and (C) claims based on conduct that occurred prior to the commencement of the Debtors’ bankruptcy cases against third-parties for any non-contractual breach of duty to WMI, including, but not limited to, antitrust claims and business tort claims (collectively categories (A), (B), and (C) are the “Recovery Claims”) and (ii) the defense of Junior Disputed Claims including Disputed Claims of WMB Noteholders for misrepresentation, which Disputed Claims are classified in Class 18 (Subordinated Claims) pursuant to the Plan (the “WMB Claims”); provided, however, that the Litigation Subcommittee shall not pursue business tort Claims that were released

against JPMC and its Related Persons pursuant to the Global Settlement Agreement. In connection with the foregoing, and subject to the review and approval of the Bankruptcy Court, upon notice and a hearing, the Litigation Subcommittee shall have discretion over the following matters: (x) retention of counsel and professionals in conjunction with the Recovery Claims and the Junior Disputed Claims; provided, however, that the prosecution of any D&O Claims shall be the responsibility of Klee, Tuchin, Bogdanoff, & Stern LLP and the defense of any Junior Disputed Claims shall be the responsibility of Weil, Gotshal & Manges LLP, Quinn Emanuel Urquhart & Sullivan, LLP and such other counsel as may be appointed from time to time; (y) subject to the provisions set forth in Section 6.3(c) and Section 6.6(a) hereof, prosecution and settlement of the Recovery Claims; and (z) establishment of budgets and expenditure of the first Ten Million Dollars (\$10,000,000.00) of the Litigation Funding and of the second Ten Million dollars (\$10,000,000) if authorized by the Trust Advisory Board. In the event that all of the Litigation Funding has been spent, the Litigation Subcommittee may request additional funds from the Trust Advisory Board which shall have the sole and absolute discretion as to whether to allocate such additional funds. To the extent the Litigation Funding or any additional funds that are allocated to the Litigation Subcommittee are unused, such funds shall be distributed by the Liquidating Trust in accordance with the terms and conditions of the Plan.

(d) Any proceeds that are obtained with respect to any Recovery Claims (whether by settlement, judgment or otherwise) shall be retained by the Liquidating Trust and distributed by the Liquidating Trustee in accordance with the terms and conditions of this Liquidating Trust Agreement and the Plan.

(e) If any member of the Litigation Subcommittee is not a natural person, it shall designate (i) one or more representatives who shall attend meetings of and participate in other activities of the Litigation Subcommittee and (ii) an alternate representative to attend meetings and participate in other activities of the Litigation Subcommittee when the representatives designated pursuant to clause (i) above are unavailable.

(f) Notwithstanding anything in this Trust Agreement to the contrary, the Litigation Subcommittee shall not take any action which will cause the Liquidating Trust to fail to qualify as a "liquidating trust" for United States federal income tax purposes.

(g) A quorum for meetings of the Litigation Subcommittee shall consist of a majority of the non-recused, voting members of the Litigation Subcommittee then serving; provided, however, that, for purposes of determining whether a quorum is present at such a meeting, a voting member of the Litigation Subcommittee shall be deemed present if a representative of the member is attending in person, by telephone or by proxy.

(h) Except as expressly provided herein, the affirmative vote of a majority of the non-recused, voting members of the Litigation Subcommittee shall be

the act of the Litigation Subcommittee with respect to any matter that requires the determination, consent, approval or agreement of such subcommittee. If an equal number of the non-recused voting members of the Litigation Subcommittee vote for and against a particular matter, the Liquidating Trustee shall only in such circumstances have the authority to cast a vote with respect to such matter. Any or all of the members of the Litigation Subcommittee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the Litigation Subcommittee participating in a meeting by this means is deemed to be present in person at the meeting. In all matters submitted to a vote of the Litigation Subcommittee, each Litigation Subcommittee member shall be entitled to cast one vote, which vote shall be cast personally by such Litigation Subcommittee member or such member's representative as appointed pursuant to Section 6.5(e). In a matter in which the Liquidating Trustee cannot obtain direction or authority from the Litigation Subcommittee, the Liquidating Trustee may file a motion requesting such direction or authority from the Bankruptcy Court; provided, however, that any member of the Litigation Subcommittee may oppose such motion.

(i) A Litigation Subcommittee member and its representative shall be recused from the Litigation Subcommittee's deliberations and votes on any and all matters as to which such member has a conflicting interest. If a Litigation Subcommittee member or its representative does not recuse itself from any such matter, that Litigation Subcommittee member and its representative may be recused from such matter by the majority vote of the remaining, voting members of the Litigation Subcommittee that are not recused from the matter.

(j) Any action required or permitted to be taken by the Litigation Subcommittee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Litigation Subcommittee as evidenced by one or more written consents describing the action taken, signed by the Litigation Subcommittee and filed with the minutes or proceedings of the Litigation Subcommittee.

(k) The members of the Litigation Subcommittee shall be compensated as set forth in the attached Annex B from the Litigation Funding. Any member of the Litigation Subcommittee shall also be reimbursed by the Liquidating Trustee from the Litigation Funding for its actual, reasonable out-of-pocket expenses incurred for serving on such committee and for reasonable legal fees incurred by any member of the Litigation Subcommittee in their capacity as such with respect to outside counsel in the same manner and priority as the compensation and expenses of the Liquidating Trustee under this Trust Agreement, in accordance with the Budget, after submission of reasonably detailed receipts or invoices evidencing such expenses and the approval of such expenses by the Bankruptcy Court. Except as provided for in this Section 6.5, the members of the Litigation Subcommittee shall not be entitled to receive

any other form of compensation for their services as such members. The Budget shall include a reserve for the fees and expenses of the Litigation Subcommittee.

#### 6.6 Resolution of Claims.

(a) Except as otherwise provided in Section 6.3(c), the Trust Advisory Board shall have the authority, subject to Bankruptcy Court review and approval, to settle (A) all GUC Claims (other than any De Minimis GUC Claim), (B) all Claims relating to Dime Warrants, and (C) all Claims that, if litigated, could result in the classification of such Claim as a GUC Claim (other than any De Minimis GUC Claim). Notwithstanding the foregoing, and except as otherwise provided in Section 6.3(c), the Litigation Subcommittee shall have authority to settle all Recovery Claims and the Junior Disputed Claims, subject to Bankruptcy Court review and approval; provided, however, that, from and after the expiry of the six (6) month period beginning on the Effective Date, both the Trust Advisory Board and the Litigation Subcommittee shall have the authority to settle all Recovery Claims and the Junior Disputed Claims, subject to Bankruptcy Court review and approval; provided further that the Litigation Subcommittee shall not settle a Junior Disputed Claim if such settlement would result in the classification of all or any part of such Claim as a GUC Claim.

(b) The Trust Advisory Board shall have the authority to retain counsel and professionals in conjunction with the GUC Claims (other than any De Minimis GUC Claim), subject to Bankruptcy Court review and approval. The fees and expenses of such counsel and professionals shall be deducted from the Administrative Funding.

(c) Except as provided in the proviso to Section 6.5(c)(x), the Litigation Subcommittee shall have authority to retain counsel and professionals in conjunction with the Recovery Claims and the Junior Disputed Claims, subject to Bankruptcy Court review and approval. The fees and expenses of counsel and professionals for the Recovery Claims shall be deducted from the Litigation Funding. The fees and expenses of counsel for the Junior Disputed claims shall be paid from the Administrative Funding and not deducted from the Litigation Funding.

(d) Notwithstanding any other provision hereof, if any portion of a Claim is disputed, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

(e) To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan and this Trust Agreement.

(f) In connection with the exercise of the powers that are vested in the Trust Advisory Board and the Litigation Subcommittee pursuant to Section 6.6(a), the Trust Advisory Board and the Litigation Subcommittee, as applicable, may at any time request that the Bankruptcy Court estimate any GUC Claim or Junior Disputed

Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or any other Person previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any GUC Claim or Junior Disputed Claim, the amount so estimated shall constitute either the allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim the Trust Advisory Board or the Litigation Subcommittee, as applicable, may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

(g) The amount of any Liquidating Trust Assets allocable to, or retained on account of, any Disputed Claim in the Liquidating Trust Claims Reserve shall be determined based on the estimation of such Disputed Claim pursuant to Section 6.6(f) hereof or as otherwise agreed in writing by the Trust Advisory Board or the Litigation Subcommittee, as applicable, and the holder of such Claim.

6.7 Actions Taken on Other Than A Business Day. In the event that any payment or act under the Plan or this Trust Agreement is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

#### 6.8 Agents, Employees and Professionals.

(a) The Liquidating Trust may, but shall not be required to, from time to time enter into contracts with, consult with and retain employees, officers and independent contractors, including attorneys, accountants, appraisers, disbursing agents or other parties deemed by the Liquidating Trustee to have qualifications necessary or desirable to assist in the proper administration of the Liquidating Trust (collectively, the "Trust Professionals"), on such terms as the Liquidating Trustee deems appropriate. The Liquidating Trustee may assume existing contracts and/or leases to which WMI is a party as of the date hereof including, without limitation, employment agreements, or may enter into new arrangements on substantially similar terms. None of the professionals that represented parties-in-interest in the Chapter 11 Cases shall be precluded from being engaged by the Liquidating Trustee solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. Without limiting the foregoing, it is understood and agreed that the Liquidating Trustee may elect to hire Alvarez & Marsal North America, LLC and/or any of its Affiliates (together "A&M") notwithstanding that the Liquidating Trustee may be a member or Managing Director of A&M. The Liquidating Trustee shall not be subject to any liability

whatsoever on account of the hiring of or the decision to hire A&M as a Trust Professional, notwithstanding the Liquidating Trustee's relationship with A&M.

(b) After the Effective Date, Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Liquidating Trustee and the Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. Subject to the approval of the Bankruptcy Court, the Liquidating Trustee shall pay such invoices thirty (30) days after such invoices are approved by the Bankruptcy Court. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Trust Professionals, either the Liquidating Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute.

(c) Except as provided in the following sentence, all payments to Trust Professionals shall be paid out of the Administrative Funding or, if all of the Administrative Funding has been spent, any remaining Liquidating Trust Assets, subject to the approval of a Supermajority of the Trust Advisory Board. All payments to Trust Professionals related to the Recovery Claims shall be paid out of the Litigation Funding.

6.9 Investment of Liquidating Trust Monies. All monies and other assets received by the Liquidating Trustee as Liquidating Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.9) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Liquidating Trust Beneficiaries, and shall not be segregated from other Liquidating Trust Assets, unless and to the extent required by the Plan. The Liquidating Trustee shall promptly invest any such monies (including any earnings thereon or proceeds thereof) as permitted by section 345 of the Bankruptcy Code, in the manner set forth in this Section 6.9, but shall otherwise be under no liability for interest or income on any monies received by the Liquidating Trust hereunder and held for distribution or payment to the Liquidating Trust Beneficiaries, except as such interest shall actually be received. Investment of any monies held by the Liquidating Trust shall be administered in accordance with the general duties and obligations hereunder. The right and power of the Liquidating Trustee to invest the Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power to (i) invest such Liquidating Trust Assets (pending distributions in accordance with the Plan or this Trust Agreement) in (a) short-term direct obligations of, or obligations guaranteed by, the United States of America or (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; or (ii) deposit such assets in demand deposits at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000 (collectively, the "Permissible Investments"); provided, however, that the scope of any such Permissible Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations section 301.7701-4(d), may be permitted to

hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

6.10 Termination. The duties, responsibilities and powers of the Liquidating Trustee shall terminate on the date the Liquidating Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.2 hereof, under applicable law in accordance with the Plan, by an order of the Bankruptcy Court or by entry of a final decree closing the Debtors' Chapter 11 cases; provided, that Sections 7.2, 7.4, 7.5 and 7.6 hereof shall survive such termination, dissolution and entry.

6.11 Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Liquidating Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Liquidating Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Liquidating Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under Section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Liquidating Trust, the Liquidating Trustee, the Trust Advisory Board or the Liquidating Trust Beneficiaries. Contemporaneously with the execution of this Trust Agreement, the Resident Trustee is hereby authorized and directed to file a Certificate of Trust with the Secretary of State of the State of Delaware as provided under the Trust Act.

(b) By its execution hereof, the Resident Trustee accepts the Liquidating Trust created herein. Except as otherwise expressly required by Section 6.11(a), the Resident Trustee shall not have any duty or liability with respect to the administration of the Liquidating Trust, the investment of the Liquidating Trust Assets or the distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries, and no such duties shall be implied. The Resident Trustee shall not be liable for the acts or omissions of the Liquidating Trustee or the Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Liquidating Trustee or the Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.11(a). The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith or gross negligence. Without limiting the foregoing:

(i) the Resident Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent

such error of judgment constitutes willful misconduct, bad faith or gross negligence;

(ii) no provision of this Trust Agreement shall require the Resident Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder if the Resident Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution hereof by the other parties hereto;

(iv) the Resident Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect;

(v) the Resident Trustee may request the Liquidating Trustee to provide a certificate with regard to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, and such certificate shall constitute full protection to the Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Liquidating Trust hereunder, the Resident Trustee (a) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and (b) may consult with nationally recognized counsel selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Administrative Funding from the Liquidating Trust for the services that the Resident Trustee performs in accordance with this Trust Agreement in

accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee, the Liquidating Trustee and the Trust Advisory Board, as approved by the Bankruptcy Court. The Resident Trustee may also consult with counsel (who may be counsel for the Liquidating Trustee or for the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Liquidating Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Administrative Funding to the Resident Trustee pursuant to this Section 6.11(c) provided such fees are approved by the Bankruptcy Court and provided further that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Liquidating Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving thirty (30) days' written notice to the Liquidating Trustee and the Trust Advisory Board; provided, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Liquidating Trustee, with the consent of the Trust Advisory Board, by providing thirty (30) days' written notice to the Resident Trustee; provided, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the Resident Trustee, the Liquidating Trustee, with the consent of the Trust Advisory Board, shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within forty-five (45) days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this Section 6.11(d) shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section 6.11(d), shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

## ARTICLE VII

### CONCERNING THE LIQUIDATING TRUSTEE

7.1 Reliance by the Trustees and the Members of the Trust Advisory Board and the Litigation Subcommittee. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Trustees and the Members of the Trust Advisory Board and the Litigation Subcommittee may rely and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request,

consent, order or other paper or document reasonably believed by the Trustees to be genuine and to have been signed or presented by the proper party or parties.

7.2 Liability to Third Persons. No Liquidating Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trustee. The Liquidating Trustee, the Trust Professionals and the members of the Trust Advisory Board and the Litigation Subcommittee shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Liquidating Trustee and members of the Trust Advisory Board and the Litigation Subcommittee, to any Trust Professionals retained by the Liquidating Trustee in accordance with this Trust Agreement) in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Liquidating Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Liquidating Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section 7.2 shall be deemed to release any Liquidating Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

7.3 Nonliability of Liquidating Trustee, Trust Advisory Board and the Litigation Subcommittee for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidating Trustee, the Trust Advisory Board (or its members) or the Litigation Subcommittee (or its members) or the Trust Professionals of any of the liabilities, obligations or duties of the Debtors or shall be deemed to be or contain a covenant or agreement by the Liquidating Trustee to assume or accept any such liability, obligation or duty. Any successor Liquidating Trustee, Trust Advisory Board member or Litigation Subcommittee member may accept and rely upon any accounting made by or on behalf of any predecessor Liquidating Trustee hereunder, and any statement or representation made as to the assets comprising the Liquidating Trust Assets or as to any other fact bearing upon the prior administration of the Liquidating Trust, so long as it has a good faith basis to do so. The Liquidating Trustee, the Trust Advisory Board members and the Litigation Subcommittee members shall not be liable for having accepted and relied in good faith upon any such accounting, statement or representation if it is later proved to be incomplete, inaccurate or untrue. The Liquidating Trustee or any successor Liquidating Trustee, the Trust Advisory Board members and the Litigation Subcommittee members shall not be liable for any act or omission of any predecessor Liquidating Trustee, Trust Advisory Board member or Litigation Subcommittee member, nor have a duty to enforce any claims against any predecessor Liquidating Trustee, Trust Advisory Board member or Litigation Subcommittee member on account of any such act or omission, unless directed to do so by the Trust Advisory Board or the Litigation Subcommittee, as applicable. No provision of this Trust Agreement shall require the

Liquidating Trustee to expend or risk his personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Liquidating Trustee has reasonable grounds to believe that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to him.

7.4 Exculpation. As of the Effective Date, the Liquidating Trustee, the Trust Professionals and the members of the Trust Advisory Board and the Litigation Subcommittee shall be and hereby are exculpated by all Persons, including without limitation, Liquidating Trust Beneficiaries, holders of Claims, holders of Equity interests, and other parties-in-interest, from any and all claims, causes of action and other assertions of liability arising out of or related to the discharge of their respective powers and duties conferred by the Plan, this Trust Agreement or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law or otherwise, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence or willful misconduct. No Liquidating Trust Beneficiary, holder of a Claim, holder of an Equity Interest, or other party-in-interest shall have or be permitted to pursue any claim or cause of action against the Liquidating Trustee, the Liquidating Trust, the employees, professionals or representatives of either the Liquidating Trustee or the Liquidating Trust (including the Trust Professionals) or the members of the Trust Advisory Board and the Litigation Subcommittee, for making payments in accordance with, or for implementing, the provisions of the Plan, the Confirmation Order and this Trust Agreement. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court, the Trust Advisory Board or the Litigation Subcommittee shall conclusively be deemed not to constitute gross negligence or willful misconduct; provided, however, that, notwithstanding any provision herein to the contrary, the Liquidating Trustee shall not be obligated to comply with a direction of the Trust Advisory Board or the Litigation Subcommittee, whether or not express, which would result in a change to the distribution provisions of this Trust Agreement and the Plan.

7.5 Limitation of Liability. The Trustees, the members of the Trust Advisory Board, the members of the Litigation Subcommittee, and the Trust Professionals will not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Trust Agreement under any circumstances.

7.6 Indemnity. The Trustees (including the individual(s) serving as or comprising the Liquidating Trustee), the employees of the Liquidating Trust, the members of the Trust Advisory Board and the members of the Litigation Subcommittee, and their respective agents, employees, officers, directors, professionals, attorneys, accountants, advisors, representatives and principals, including, without limitation, the Trust Professionals (collectively, the "Indemnified Parties") shall be indemnified by the Liquidating Trust solely from the Liquidating Trust Assets for any losses, claims, damages, liabilities and expenses occurring after the Effective Date, including, without limitation, reasonable attorneys' fees, disbursements and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in

connection with any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of the acts or omissions in their capacity as, or on behalf of, the Trustees or a member of the Trust Advisory Board or the Litigation Subcommittee; provided, however, that the Liquidating Trust shall not be liable to indemnify any Indemnified Party for any act or omission arising out of such Indemnified Party's respective gross negligence, fraud or willful misconduct as determined by a Final Order of the Bankruptcy Court. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Liquidating Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such, except for any actions or omissions arising from their own respective willful misconduct, fraud or gross negligence; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Liquidating Trust immediately upon the entry of a final, non-appealable judgment or order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.6. The foregoing indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified Party from the capacity for which they are indemnified.

7.7 Compensation and Expenses. The Liquidating Trustee (including the individual(s) serving as or comprising the Liquidating Trustee) shall receive compensation for its services, to be paid out of the Administrative Funding, in accordance with Annex D. In addition, the Liquidating Trustee shall be entitled, with the consent of the Trust Advisory Board, and subject to the approval of the Bankruptcy Court, to reimburse itself from the Administrative Funding on a monthly basis for all reasonable out-of-pocket expenses actually incurred in the performance of duties in accordance with this Trust Agreement and the Plan.

## ARTICLE VIII

### SUCCESSOR LIQUIDATING TRUSTEES

8.1 Resignation. The Liquidating Trustee may resign from the Liquidating Trust by giving at least sixty (60) days prior written notice thereof to each member of the Trust Advisory Board. Such resignation shall become effective on the later to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Liquidating Trustee in accordance with Section 8.4 hereof and such successor's acceptance of such appointment in accordance with Section 8.5 hereof.

8.2 Removal. The Liquidating Trustee may be removed by a majority vote of the members of the Trust Advisory Board. Such removal shall become effective on the date specified in such action by the Trust Advisory Board.

8.3 Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy or insolvency of the Liquidating Trustee shall not operate to

terminate the Liquidating Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order or invalidate any action theretofore taken by the Liquidating Trustee. All fees and expenses properly incurred by the Liquidating Trustee prior to the resignation, incompetency or removal of the Liquidating Trustee shall be paid from the Liquidating Trust Assets, unless such fees and expenses are disputed by (a) the Trust Advisory Board or (b) the successor Liquidating Trustee, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Liquidating Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Liquidating Trust Assets. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall: (i) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Liquidating Trustee or directed by the Bankruptcy Court to effect the termination of such Liquidating Trustee's capacity under this Trust Agreement; (ii) promptly deliver to the successor Liquidating Trustee all documents, instruments, records and other writings related to the Liquidating Trust as may be in the possession of such Liquidating Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidating Trustee.

8.4 Appointment of Successor. In the event of the death, resignation, removal, incompetency, bankruptcy or insolvency of the Liquidating Trustee, a vacancy shall be deemed to exist and a successor shall be appointed by a majority of the Trust Advisory Board; provided, however, that, under no circumstance, shall the successor Liquidating Trustee be a director or officer of any Affiliate of the Liquidating Trust. In the event that a successor Liquidating Trustee is not appointed within thirty (30) days after the date of such vacancy, the Bankruptcy Court, upon its own motion or the motion of a Liquidating Trust Beneficiary or any member of the Trust Advisory Board, shall appoint a successor Liquidating Trustee.

8.5 Acceptance of Appointment by Successor Liquidating Trustee. Any successor Liquidating Trustee appointed hereunder shall execute an instrument accepting its appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing and to the Trust Advisory Board and, in case of the Liquidating Trustee's resignation, to the resigning Liquidating Trustee. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Liquidating Trust with like effect as if originally named Liquidating Trustee and shall be deemed appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The resigning or removed Liquidating Trustee shall duly assign, transfer and deliver to such successor Liquidating Trustee all property and money held by such resigning or removed Liquidating Trustee hereunder and shall, as directed by the Bankruptcy Court or reasonably requested by such successor Liquidating Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidating Trustee upon the trusts herein expressed, all the liabilities, duties, powers, rights, title, discretion and privileges of such resigning or removed Liquidating Trustee.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS

9.1 Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

9.2 Jurisdiction. Subject to the proviso below, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust and the Liquidating Trustee, including, without limitation, the administration and activities of the Liquidating Trust and the Liquidating Trustee, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction; provided, however, that notwithstanding the foregoing, the Liquidating Trustee shall have power and authority to bring any action in any court of competent jurisdiction (including the Bankruptcy Court) to prosecute any Claims or Causes of Action assigned to the Liquidating Trust.

9.3 Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust Agreement or the application of such provision to persons or circumstances or in jurisdictions other than those as to or in which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Trust Agreement shall be valid and enforceable to the full extent permitted by law.

9.4 Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by email, facsimile, sent by nationally recognized overnight delivery service or mailed by first-class mail:

(i) if to the Liquidating Trustee, to:

William C. Kosturos  
Alvarez & Marsal  
100 Pine Street, Suite 900  
San Francisco, CA 94111  
Fax: 415-837-1684  
Email: bkosturos@alvarezandmarsal.com

with a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue

New York, New York 10153  
Attention: Brian S. Rosen, Esq.  
Facsimile: (212) 310-8007  
Email: brian.rosen@weil.com

if to the Resident Trustee, to:

CSC Trust Company of Delaware  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808  
Attention: Trust Administration  
Fax: 302-636-8666  
Email: csctrust@cscinfo.com

with a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Brian S. Rosen, Esq.  
Facsimile: (212) 310-8007  
Email: brian.rosen@weil.com

each of; (ii) if to members of the Trust Advisory Board, then to

Wells Fargo Bank, N.A.  
MAC: N9311-110  
625 Marquette Avenue, 11th Floor  
Minneapolis, MN 55479  
Attention: Thomas Korsman  
Facsimile: (612) 667-9825  
Email: Thomas.m.korsman@wellsfargo.com

Arnold Kastenbaum  
655 Barrymore Lane  
Mamaroneck, NY 10543  
Email: akastenbaum@yahoo.com

Joel Klein  
PPM America, Inc.  
225 West Wacker Drive, Suite 1200  
Chicago, IL 60606  
Facsimile: (312) 634-0050

Email: Joel.klein@ppmamerica.com

Michael Willingham

Email: wservices@earthlink.net

Matthew Cantor

235 West 71st Street, 3rd Floor

New York, NY 10023

Email: mcantor4@me.com

Marc S. Kirschner

Kirschner Consulting Company

18 East 94th Street, Suite 1A

New York, NY 10128

Facsimile: (212) 722-0349

Email: mskirschner@kirschnerconsulting.com

Hon. Douglas Southard

Email: dksouthard@sbcglobal.net

Joe McInnis

GREYWOLF CAPITAL

4 Manhattanville Road, Suite 201

Purchase, New York 10577

Facsimile: 914-251-8244

Email: joe.mcinnis@greywolfcapital.com

Misha Zaitzeff

HoldCo Advisors, LP

32 Broadway, Suite 1112

New York, NY 10004

Email: misha@holdcoadvisors.com

Mayur Lakhani

Tricadia Capital

780 Third Ave., 29th floor

New York, NY 10017

Email: mlakhani@tricadiacapital.com

(iii) if to the TPS Funds, to

Brown Rudnick LLP

One Financial Center

Boston, MA 02111

Attention: Jeremy Coffey

Facsimile: (617) 856-8200

Email: jcoffey@brownrudnick.com

(iv) if to any Liquidating Trust Beneficiary, to the last known address of such Liquidating Trust Beneficiary according to the Debtors' Schedules, such Liquidating Trust Beneficiary's proof of claim or the lists of record holders provided to the Liquidating Trustee; and

(v) To the Debtors or the Post-Effective Date Debtors:

Washington Mutual, Inc.

1201 Third Avenue, Suite 3000

Seattle, Washington 98101

Attention: General Counsel

Facsimile: (206) 432-8879

Email: chad.smith@wamuinc.net

With a copy to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, New York 10153

Attention: Brian S. Rosen, Esq.

Facsimile: (212) 310-8007

Email: brian.rosen@weil.com

9.5 Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

9.6 Relationship to the Plan. The terms of this Trust Agreement are intended to supplement the terms provided by the Plan and the Confirmation Order, and therefore this Trust Agreement incorporates the provisions of the Plan and the Confirmation Order (which may amend or supplement the Plan). Additionally, the Liquidating Trustee, the Trust Advisory Board and the Litigation Subcommittee may seek any orders from the Bankruptcy Court, upon notice and a hearing in furtherance of implementation of the Plan, the Confirmation Order and this Trust Agreement. However, to the extent that there is conflict between the provisions of this Trust Agreement, the provisions of the Plan, or the Confirmation Order, each document shall have controlling effect in the following rank order: (1) this Trust Agreement, (2) the Confirmation Order, and (3) the Plan.

9.7 Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous

agreements or understandings by and among the parties with respect to the subject matter hereof.

9.8 Cooperation. The Debtors shall turn over or otherwise make available to the Liquidating Trustee at no cost to the Liquidating Trust or the Liquidating Trustee, all books and records reasonably required by the Liquidating Trustee to carry out its duties hereunder, and agree to otherwise reasonably cooperate with the Liquidating Trustee in carrying out its duties hereunder, subject to the confidentiality provisions herein to preserve the confidential nature of the Debtors' books and records.

9.9 Amendment and Waiver. Any provision of this Trust Agreement may be amended or waived by the Liquidating Trustee with the consent of all voting members of the Trust Advisory Board; provided that any such amendment which alters the duties or liabilities of the Resident Trustee shall require the consent of the Resident Trustee. Notwithstanding this Section 9.9, any amendment to this Trust Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulations section 301.7701-4(d) and Section 1.2 hereof.

9.10 Confidentiality. The Trustees and their employees, members, agents, professionals and advisors, including the Trust Professionals, and each member of the Trust Advisory Board and the Litigation Subcommittee (each a "Confidential Party" and, collectively, the "Confidential Parties") shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any Debtor to which any of the Liquidating Trust Assets relates; provided, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties; or (b) such disclosure is required of the Confidential Parties pursuant to legal process including but not limited to subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Liquidating Trustee (or the Trust Advisory Board in case the Liquidating Trustee or the Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Liquidating Trustee (or the Trust Advisory Board, as applicable) in making any such objection, including but not limited to appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

9.11 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, if appropriate, words importing the singular number shall include the plural number and vice versa and words importing persons shall include firms, associations, corporations and other entities. All references herein to Articles, Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the

Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Trust Agreement, and the words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

9.12 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A facsimile or portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

9.13 Intention of Parties to Establish Liquidating Trust. This Trust Agreement is intended to create a liquidating trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such United States federal income tax laws, which amendments may apply retroactively.

[Remainder of Page Blank — Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed by their respective officers, representatives or agents, effective as of the date first above written.

**WASHINGTON MUTUAL, INC.**

By: /s/ Charles Edward Smith  
Name: Charles Edward Smith  
Title: Executive Vice President &  
General Counsel

**WMI INVESTMENT CORP.**

By: /s/ Charles Edward Smith  
Name: Charles Edward Smith  
Title: Executive Vice President &  
General Counsel

**WILLIAM C. KOSTUROS**

By: /s/ William C. Kosturos  
Name: William C. Kosturos

**CSC TRUST COMPANY OF  
DELAWARE**, not in its individual capacity,  
but solely as Resident Trustee

By: /s/ Alan R. Halpern  
Name: Alan R. Halpern  
Title: Vice President

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**Annex A**Initial Trust Advisory Board Members

## CC Members:

1. Wells Fargo Bank, N.A.
2. Arnold Kastenbaum
3. Marc S. Kirschner

## EC Members:

4. Joel Klein
5. Michael Willingham
6. Hon. Douglas Southard
7. Joe McInnis (TPS Member)

## CC-EC Member:

8. Matthew Cantor

## Holdco Member:

9. Misha Zaitzeff

## Tricadia Member:

10. Mayur Lakhani

Initial Litigation Subcommittee Members

1. Hon. Douglas Southard
  2. Michael Willingham
  3. Marc S. Kirschner
  4. Joel Klein
  5. Joe McInnis
-

## Annex B

### Trust Advisory Board and Litigation Subcommittee Compensation

#### (a) Base Compensation

The annual base compensation of each member of the Trust Advisory Board shall be \$40,000.00 per member, which amount shall be paid in twelve equal installments on a monthly basis in arrears. In addition, each member of the Litigation Subcommittee shall be paid an additional amount of \$10,000.00 per annum, which amount shall be paid in twelve equal installments on a monthly basis in arrears.

#### (b) Incentive Compensation

In addition to the base compensation set forth above, each member of the Trust Advisory Board (excluding the Holdco Member) shall be entitled to receive such member's pro rata share (based on the total number of Trust Advisory Board members at the time at which such compensation is paid) of the following additional incentive compensation; provided, however, that the total annual incentive compensation of each Member shall not exceed \$50,000.00:

(i) On an annual basis in arrears during the term of the Liquidating Trust, 0.1% of the aggregate value of the Liquidating Trust Assets (excluding any Runoff Notes, Funding and the Liquidating Trust Claims Reserve) that are distributed to the Liquidating Trust Beneficiaries during the preceding 12 month period, excluding the first distribution that the Liquidating Trust makes on or after the Effective Date;

(ii) Upon the dissolution of the Trust in accordance with the terms of this Trust Agreement, and after taking into account any reasonable reserve that may be required to be retained with respect to the winding up of the affairs of the Liquidating Trust in accordance with Section 3.3, 0.1% of any portion of the Funding that remains unspent immediately prior to such dissolution and the payment of any final distribution to the Liquidating Trust Beneficiaries; and

(iii) On an annual basis in arrears during the term of the Liquidating Trust, 0.1% of the aggregate reduction in the Liquidating Trust Claims Reserve which is the result of the disallowance of any Disputed Claims during the preceding 12 month period.

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Annex C

	Senior Fixed Rate Notes	Senior Floating Rate Notes	Senior Subordinated Notes	CCB Guarantees	PIERS	General Unsecured Creditors	510(b) Sub. Claims	Preferred Stock
Tranche 1	No LTIs							
Tranche 2	<ul style="list-style-type: none"> <li>• Senior Note Postpetition Interest (939322AL7) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AP8) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AX1) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AT0) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AV5) Liquidating Trust Interests</li> </ul>	<ul style="list-style-type: none"> <li>• Senior Note Postpetition Interest (939322AW3) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AQ6) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AS2) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AU7) Liquidating Trust Interests</li> </ul>	<ul style="list-style-type: none"> <li>• Prepetition Claim &amp; Postpetition Interest Claim Subordinated Note (939322AE3) Liquidating Trust Interests</li> <li>• Prepetition Claim &amp; Postpetition Interest Claim Subordinated Note (939322AN3) Liquidating Trust Interests</li> <li>• Prepetition Claim &amp; Postpetition Interest Claim Subordinated Note (939322AY9) Liquidating Trust Interests</li> </ul>	No LTIs	No LTIs	<ul style="list-style-type: none"> <li>• General Unsecured Creditor Liquidating Trust Interests: Pro Rata Share based on Claims<sup>(4) (9)</sup></li> <li>• Liquidating Trust Interests on Late-Filed Claims<sup>(8)</sup></li> </ul>	No LTIs	No LTIs

Recovery (1)(2)(3)

Senior Fixed Rate Notes	Senior Floating Rate Notes	Senior Subordinated Notes	CCB Guarantees	PIERS	General Unsecured Creditors	510(b) Sub. Claims	Preferred Stock
No LTIs	No LTIs	No LTIs	<ul style="list-style-type: none"> <li>• Prepetition Claim &amp; Postpetition Interest Claim CCB Capital Trust IV (22499AAB5) Liquidating Trust Interests<sup>(5)</sup></li> <li>• Prepetition Claim &amp; Postpetition Interest Claim CCB Capital Trust V (19499AAI6) Liquidating Trust Interests<sup>(5)</sup></li> <li>• Prepetition Claim &amp; Postpetition Interest Claim CCB Capital Trust VII (22899AAB1) Liquidating Trust Interests<sup>(5)</sup></li> </ul>	No LTIs	<ul style="list-style-type: none"> <li>• General Unsecured Creditor Liquidating Trust Interests: Pro Rata Share based on Claims<sup>(4) (9)</sup></li> </ul>	No LTIs	No LTIs

Senior Fixed Rate Notes	Senior Floating Rate Notes	Senior Subordinated Notes	CCB Guarantees	PIERS	General Unsecured Creditors	510(b) Sub. Claims	Preferred Stock
			<ul style="list-style-type: none"> <li>• Prepetition Claim &amp; Postpetition Interest Claim CCB Capital Trust VIII (22899AAA3) Liquidating Trust Interests (5)</li> <li>• Prepetition Claim &amp; Postpetition Interest Claim HFC Capital Trust I (420542AD4) Liquidating Trust Interests (5)</li> <li>• Prepetition Claim &amp; Postpetition Interest Claim HFC Capital Trust I (420542102) Liquidating Trust Interests (5)</li> <li>• Prepetition Claim &amp; Postpetition Interest Claim CCB Capital Trust VI (124873AA8) Liquidating Trust Interests (5)</li> </ul>				

	Senior Fixed Rate Notes	Senior Floating Rate Notes	Senior Subordinated Notes	CCB Guarantees	PIERS	General Unsecured Creditors	510(b) Sub. Claims	Preferred Stock
				<ul style="list-style-type: none"> <li>• Prepetition Claim &amp; Postpetition Interest Claim CCB Capital Trust IX (124871AA2) Liquidating Trust Interests<sup>(5)</sup></li> </ul>				
	No LTIs	<ul style="list-style-type: none"> <li>• Senior Note Postpetition Interest (939322AW3) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AQ6) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AS2) Liquidating Trust Interests</li> <li>• Senior Note Postpetition Interest (939322AU7) Liquidating Trust Interests</li> </ul>	No LTIs	No LTIs	<ul style="list-style-type: none"> <li>• Residual PIERS (939322848) Liquidating Trust Interests<sup>(6)</sup></li> <li>• Subordinated PIERS (93933U407) Liquidating Trust Interests<sup>(7)</sup></li> </ul>	<ul style="list-style-type: none"> <li>• General Unsecured Creditor Liquidating Trust Interests: Pro Rata Share based on Claims<sup>(4) (9)</sup></li> </ul>	No LTIs	No LTIs

	Senior Fixed Rate Notes	Senior Floating Rate Notes	Senior Subordinated Notes	CCB Guarantees	PIERS	General Unsecured Creditors	510(b) Sub. Claims	Preferred Stock
	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs
	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs	No LTIs

## Notes:

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- (1) Within Tranche 2, the holders of Senior Notes Postpetition Interest Claim Liquidating Trust Interests and the holders of Subordinated Notes Prepetition Claim Liquidating Trust Interests and Postpetition Interest Claim Liquidating Trust Interests will share Pro Rata based on the size of those claims. For the calculation of the General Unsecured Creditors' Pro Rata Share in all Tranches, see Note 4.
  - (2) Holders of Liquidating Trust Interests in Tranches will be paid in order with Tranche 2 Liquidating Trust Interests (if any) receiving distributions first and Tranche 6 Liquidating Trust Interests (if any) receiving distributions last. Claims of Tranche 2 Liquidating Trust Interests (if any) must be satisfied in full prior to Tranche 3 Liquidating Trust Interests receiving distributions and so forth.
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- (3) All CUSIP numbers that appear in this Annex C refer to the CUSIP numbers for the applicable tranches of debt, as applicable, as of December 2011.
  - (4) There shall be only one class of General Unsecured Creditor Liquidating Trust Interests. The Pro Rata Share of holders of General Unsecured Creditor Liquidating Trust Interests are calculated by dividing (a) the amount of General Unsecured Claims, by (b) the total cash distributed within the Tranche. The cash distributed within the Tranche is the lesser of (i) the amount necessary to satisfy all claims within the Tranche or (ii) the amount of cash available. Separate Liquidating Trust Interest sub-Tranches may need to be issued by claim in order to track interest accretion post the Effective Date.
  - (5) Each CCB Guarantee Liquidating Trust Interest under Tranche 3 represents the related class of CCB preferred securities only, in each case as described more specifically in Exhibits A and B of the Plan. In accordance with the terms of the Global Settlement Agreement, and upon implementation thereof, holders of CCB-related common securities will release all claims against the Debtors and will not receive a distribution related to such common securities. While no funds or Liquidating Trust Interests will be distributed in relation to CCB-related common securities, amounts claimed by holders of CCB-related common securities with respect to CCB Guarantees will be taken into account for disbursement calculation purposes.
  - (6) See Note 9 below for a description of pro rata sharing with General Unsecured Creditor Liquidating Trust Interests.
  - (7) The Subordinated PIERS Liquidating Trust Interests are representative of the common PIERS securities and are owned by WMI. While Subordinated PIERS Liquidating Trust Interests will be issued for disbursement calculation purposes, as set forth in the Plan, WMI will not collect any funds in association with these Subordinated PIERS Liquidating Trust Interests. See Note 9 below for a description of pro rata sharing with General Unsecured Creditor Liquidating Trust Interests.
  - (8) Holders of Liquidating Trust Interests on account of Allowed Late-Filed Claims will be paid only after all other pre-Petition Date claims (other than Subordinated Claims) are paid in full without giving effect to applicable turnover provisions. Liquidating Trust Interests on Allowed Late-Filed Claims will not share pro rata with Liquidating Trust Interests based on any other claims. Therefore, to the extent holders of Liquidating Trust Interests on Allowed Late-Filed Claims are paid, this will create a break in the recovery of other creditors prior to their recovery on account of post-petition interest. The placement of Liquidating Trust Interests for Allowed Late-Filed Claims in the chart above is illustrative only, as the size of the Allowed General Unsecured Claims and the amount of post-Petition Date interest turned over on account of contractual subordination provisions will influence the position of relevant Liquidating Trust Interests in the waterfall. The Liquidating Trust Interests for Allowed Late-Filed Claims will, in any event, be paid immediately after satisfaction of General Unsecured Creditor Liquidating Trust Interests, but prior to the payment of post-Petition Date interest and Liquidating Trust Interests on Subordinated Claims.
  - (9) If it is provided for in an applicable contract or by law, the General Unsecured Creditors Liquidating Trust Interests will share pro rata in distributions to holders of PIERS Liquidating Trust Interests on account of post-Petition Date interest with respect to all Postpetition Interest Claims, including Postpetition Interest Claims to which the holders of PIERS Claims have been subrogated (on account of turnover in accordance with contractual subordination provisions). The chart above is illustrative only, as the point at which the holders of Allowed General Unsecured Liquidating Trust Interests begin receiving post-Petition Date interest is dependent on the size of the Allowed General Unsecured Prepetition Claims and the amount of post-Petition Date interest paid pursuant to contractual subordination. Separate Liquidating Trust Interest sub-Tranches may need to be issued by claim in order to track interest accretion post the Effective Date.
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**Annex D****Liquidating Trustee Compensation**

The Liquidating Trustee shall be compensated on a monthly rate for any services that the Liquidating Trustee provides while acting as Liquidating Trustee. The Liquidating Trustee's monthly rate as of the date of this Agreement is \$15,000, which rate is subject to adjustment on an annual basis on January 1 each year.

**EXHIBIT C**

FORM OF NOTICE

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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

**NOTICE OF UNCLAIMED OR NON-NEGOTIATED DISTRIBUTIONS**

**PLEASE TAKE NOTICE** that, by order, dated December \_\_\_\_, 2019, the United States Bankruptcy Court for the District of Delaware authorized and approved, among other things, (a) the closing of the chapter 11 cases of Washington Mutual Inc. and WMI Investment Corp. (collectively, the “Debtors”) and (b) noticing procedures with respect to unclaimed or non-negotiated distributions made pursuant to the Debtors’ Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code (the “Plan”).

**PLEASE TAKE FURTHER NOTICE** that, on \_\_\_\_\_, 2020, WMI Liquidating Trust (“WMILT”) made its final distribution of remaining assets and escrowed equity interests pursuant to the Plan. A list of recipients that have either (a) had any such distributions returned to WMILT due to incorrect initial or forwarding address information or (b) received such distributions but, as of the date hereof, have not negotiated the check distributed, is set forth on WMILT’s website, [www.wmitrust.com](http://www.wmitrust.com). Any recipients’ listed thereon that have had distributions returned to WMILT shall have until May \_\_, 2020, to notify WMILT of such recipients’ whereabouts and receive such distribution.

**PLEASE TAKE FURTHER NOTICE** that all distributions shall expire on June \_\_\_\_, 2020 and the failure by a listed recipient to negotiate any distribution by June \_\_\_\_, 2020 shall be a bar to any recovery on account of any claim against the Debtors and the Debtors’ chapter 11 estates and the distribution otherwise allocated to such Creditor should be forever forfeited.

For further information concerning the final distribution or this notice, please contact the Washington Mutual Restructuring Hotline at (888) 830-4644.

Dated: February \_\_, 2020  
Wilmington, Delaware

PROSKAUER ROSE LLP  
Eleven Times Square  
New York, New York 10036

RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
Wilmington, Delaware 19801

*Attorneys to the WMI Liquidating Trust*

**EXHIBIT D**

FORM OF PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----	X	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
WASHINGTON MUTUAL, INC., <u>et al.</u> ,	:	<b>Case No. 08-12229 (MFW)</b>
	:	
Debtor.	:	<b>(Jointly Administered)</b>
	:	
	:	
-----	X	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
WMI Investment Corp.,	:	<b>Case No. 08-12228 (MFW)</b>
	:	
Debtor.	:	
	:	
	:	
-----	X	
	:	
<i>In re</i>	:	<b>Chapter 11</b>
	:	
WASHINGTON MUTUAL, INC.,	:	<b>Case No. 08-12229 (MFW)</b>
	:	
Debtor.	:	
	:	<b>Re: D.I. _____</b>
	:	
-----	X	

**FINAL DECREE AND ORDER  
CLOSING REORGANIZED DEBTORS' CHAPTER 11 CASES  
AND TERMINATING CERTAIN CLAIMS AND NOTICING SERVICES**

Upon the application dated November 14, 2019 (the "Application")<sup>1</sup>, of WMI Liquidating Trust ("WMILT" or the "Trust") for entry of an order, pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1, authorizing, among other

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<sup>1</sup> Unless otherwise defined here, capitalized terms used herein shall have the meanings ascribed thereto in the Application.

things, (a) the closing of the Debtors' chapter 11 cases, (b) a post-closing mechanism with respect to undelivered and uncashed distributions, and (c) following a final distribution to holders of Class 18 Allowed Claims, (i) the wind-up and dissolution of the Trust, including the making of one or more charitable contributions of remaining Liquidating Trust Assets, and (ii) the termination of KCC as Claims Agent; and notice of the Application having been served upon the Office of the United States Trustee, the IRS and all parties requesting notices in the Debtors' chapter 11 cases; and no further notice being required; and a hearing to consider the Application and relief requested therein having been held on December 19, 2019 (the "Hearing"); and based upon the evidence submitted and arguments presented at the Hearing, good and sufficient cause appearing therefor, it is hereby ORDERED as follows:

1. The chapter 11 case of Washington Mutual, Inc., Case No. 08-12229 (MFW), is hereby closed.
2. The chapter 11 case of WMI Investment Corporation, Case No. 08-12228 (MFW), is hereby closed.
3. Entry of this Final Decree and Order is without prejudice to the rights of WMILT, the Reorganized Debtors or other parties in interest to seek to reopen any of Debtors' chapter 11 cases for cause pursuant to section 350(b) of the Bankruptcy Code.
4. Entry of this Order is not intended to have nor shall it have, any effect whatsoever on the Griffin Appeal and no party to such appeal may use this order or the closing of these chapter 11 cases to support or defend any position taken in the Griffin Appeal.
5. The Claims and Noticing services for the Debtors' chapter 11 cases are terminated in accordance with the Application upon the completion of the services listed in decretal paragraph 6 below. Thereafter, KCC shall have no further obligations to this Court, WMILT, the Reorganized Debtors, or any other party in interest with respect to the Claims and Noticing

Services in Debtors' chapter 11 cases; provided, however, that KCC may still provide services to the Trust in connection with the wind-up and dissolution of the Trust.

6. Pursuant to Local Rule 2002-1(f)(ix), within thirty days of entry of a final decree KCC shall (a) forward to the Clerk of the Court an electronic version of all imaged claims, (b) upload the creditor mailing list into CM/ECF, and (c) docket a final claims register in the lead case containing claims of all cases. KCC shall also box and deliver all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, Pennsylvania 19154 and docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

7. Within fourteen (14) days of entry of this Final Decree and Order, WMILT shall (a) file with the Court and provide to the U.S. Trustee all outstanding post-confirmation reports, and (b) pay all fees due and payable pursuant to 28 U.S.C. § 1930.

8. Commencing on the date ninety (90) days following the final distribution to be made pursuant to the Plan, WMILT is directed to (a) post a notice on the WMILT website, [www.wmitrust.com](http://www.wmitrust.com), and maintain such notice for thirty (30) days, setting forth the names of parties (i) to whom distributions have been made and such distributions have been returned to WMILT or (ii) to whom distributions have been made and such distributions remain uncashed or not-negotiated and (b) publish a notice, the form of which is annexed hereto as Exhibit "A" once in The Seattle Times notifying all parties that have had their distributions returned to WMILT or which have gone unclaimed and the potential forfeiture of recoveries unless promptly negotiated.

9. In the event that a Creditor fails to respond to the notices and negotiate its distribution within sixty (60) days of the publication referred to in decretal paragraph 8 subsection (b) hereof, such Creditor shall be precluded from receiving any recovery from the

Debtors' estates and the distribution otherwise allocable to such Creditor shall be forfeited and become part of any ultimate donation to a charitable organization by WMILT.

10. Notwithstanding the closure of the Debtors' chapter 11 cases and the wind-up and dissolution of WMILT, the Trust Advisory Board, the Liquidating Trustee, the officers and management of WMILT and their respective agents and representatives, including, without limitation, retained professionals of WMILT, shall continue to be entitled to the benefits of the exculpation and indemnification provisions of the Plan, the Confirmation Order and the Liquidating Trust Agreement, including, without limitation, the provisions of Article VII of the Liquidating Trust Agreement.

11. WMILT and its agents are authorized to take any and all actions necessary to effectuate the relief granted pursuant to this Final Decree and Order in accordance with the Application, including, without limitation, (a) any and all actions arising from or related to the wind-up and dissolution of WMILT and the amendment of the Liquidating Trust Agreement in connection therewith and (b) the making of donations to one or more charitable organizations in accordance with qualification requirements set forth in the Liquidating Trust Agreement.

12. Notwithstanding anything to the contrary, the terms and conditions of this Final Decree and Order shall be immediately effective and enforceable upon its entry.

13. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Final Decree and Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE